
STATUTORY INSTRUMENTS

1994 No. 429 (N.I. 2)

The Health and Personal Social Services (Northern Ireland) Order 1994

- - - - - 24th February 1994

Title and commencement

1.—(1) This Order may be cited as the Health and Personal Social Services (Northern Ireland) Order 1994.

(2) Except as provided by paragraph (3), this Order shall come into operation on 1st March 1994.

(3) Articles 5 to 7 and Schedules 1 and 2 shall come into operation on 1st April 1994.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954^{F1} shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972^{F2} (interpretation) shall apply for the purposes of this Order as it applies for the purposes of that Order.

F1 1954 c. 33 (NI)

F2 1972 NI 14

Certain functions of Health and Social Services Boards to be exercisable on their behalf by [^{F3}HSC trusts]

3.—(1) A Health and Social Services Board may, with the approval of the Department, by instrument in writing under seal provide for such relevant functions of the Board as are specified to be exercisable, in relation to the operational area of a specified [^{F4}HSC trust], by that [^{F4}HSC trust] on behalf of the Board.

(2) In this Article and Article 4—

“authorisation” means an instrument executed under paragraph (1);

“relevant functions”, in relation to a Health and Social Services Board, means functions of the Board under any statutory provision prescribed for the purposes of this Article by regulations made by the Department subject to negative resolution;

“specified” means specified in the authorisation;

“the 1991 Order” means the Health and Personal Social Services (Northern Ireland) Order 1991^{F5};

and references in those Articles to functions of a Health and Social Services Board include references to functions exercisable by a Board on behalf of the Department.

(3) Section 17(2) of the Interpretation Act (Northern Ireland) 1954^{F6} applies to an authorisation as if it were a statutory instrument; and references in this Article and Article 4 to an authorisation include references to an amendment or revocation of an authorisation.

(4) An authorisation shall come into operation on such date, not being a date earlier than 1st April 1994, as may be specified.

(5) An authorisation may contain such transitional provisions as the Health and Social Services Board thinks fit, including in particular provisions—

- (a) for specified acts done by or in relation to the Board or an [F7HSC trust] at any time before the authorisation comes into operation to have effect after that time for specified purposes as if done by or in relation to the other of those two bodies;
- (b) for any reference to the Board or an [F8HSC trust] in any statutory provision, statutory document (within the meaning of section 1(e) of the Interpretation Act (Northern Ireland) 1954) or order or direction of a court to have effect for specified purposes as a reference to the other of those two bodies;

and any such transitional provisions shall for such purposes have effect in relation to such acts, statutory provisions, statutory documents, orders or directions.

(6) Without prejudice to the operation of Article 17 of the Health and Personal Social Services (Northern Ireland) Order 1972^{F9}, the Department—

- (a) may direct a Health and Social Services Board to execute an authorisation in such terms as the Department may direct;
- (b) shall give directions to a Health and Social Services Board as to the notification and publication by the Board of authorisations.

(7) An [F10HSC trust] shall, notwithstanding that it is exercising functions on behalf of a Health and Social Services Board by virtue of an authorisation for the time being in operation under this Article, be entitled to enforce any rights acquired and shall be liable in respect of any liabilities incurred (including any liabilities in tort) in the exercise of those functions in all respects as if it were acting as a principal, and all proceedings for the enforcement of such rights or liabilities shall be brought by or against the [F10HSC trust] in its own name.

Para. (8) rep. by 2001 c. 3 (NI)

(9) In Schedule 3 to the 1991 Order after paragraph 3 there shall be inserted—

“**3A.** An order made in relation to an [F11HSC trust] shall, if the trust is to exercise functions on behalf of a Health and Social Services Board by virtue of an authorisation under Article 3(1) of the Health and Personal Social Services (Northern Ireland) Order 1994, specify the operational area of the trust, that is to say, the area in relation to which those functions are to be exercisable.”.

(10) References in any other statutory provision to functions of an [F12HSC trust] include references to functions exercisable by an [F12HSC trust] on behalf of a Health and Social Services Board by virtue of an authorisation.

(11) The Department may by regulations make such amendments to any statutory provision (including those mentioned in Schedule 1) as appear to the Department to be necessary or expedient to facilitate, or to be otherwise consequential on, the exercise by [F13HSC trusts] of relevant functions of Health and Social Services Boards by virtue of authorisations executed under this Article.

(12) Regulations under paragraph (11) which amend only statutory instruments shall be subject to negative resolution and all other regulations under that paragraph shall be subject to affirmative resolution.

- F3** Words in [art. 3](#) heading substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009](#) (c. 1), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)
- F4** Words in [art. 3\(1\)](#) substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009](#) (c. 1), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)
- F5** 1991 NI 1
- F6** 1954 c. 33 (NI)
- F7** Words in [art. 3\(5\)\(a\)](#) substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009](#) (c. 1), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)
- F8** Words in [art. 3\(5\)\(b\)](#) substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009](#) (c. 1), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)
- F9** 1972 NI 14
- F10** Words in [art. 3\(7\)](#) substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009](#) (c. 1), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)
- F11** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009](#) (c. 1), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)
- F12** Words in [art. 3\(10\)](#) substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009](#) (c. 1), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)
- F13** Words in [art. 3\(11\)](#) substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009](#) (c. 1), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)

Schemes for exercise by [^{F14}HSC trusts] of functions on behalf of Health and Social Services Boards

4.—(1) An [^{F15}HSC trust] shall submit to a Health and Social Services Board a scheme for the exercise by the trust on behalf of the Board of relevant functions which are, or are proposed to become, so exercisable by the trust by virtue of an authorisation.

(2) A Health and Social Services Board may approve a scheme submitted to it by an HSS trust under paragraph (1), either without modifications or with such modifications as may be agreed with the trust.

(3) A Health and Social Services Board shall submit a scheme approved by it under paragraph (2) to the Department.

(4) The Department may approve a scheme submitted to it under paragraph (3), either without modifications or with such modifications as may be agreed with the Health and Social Services Board and the [^{F16}HSC trust] concerned.

(5) An [^{F17}HSC trust] shall give effect to any scheme approved by the Department under paragraph (4).

(6) An [^{F18}HSC trust] may at any time, and shall if so requested by a Health and Social Services Board on whose behalf any relevant functions are exercisable by the trust by virtue of an authorisation, submit a new scheme under this Article to the Board and paragraphs (2) to (5) shall apply to any such new scheme as they apply to a scheme submitted under paragraph (1).

- F14** Words in [art. 4](#) heading substituted (1.4.2009) by virtue of [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009](#) (c. 1), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)

- F15** Words in art. 4(1) substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**
- F16** Words in art. 4(4) substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**
- F17** Words in art. 4(5) substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**
- F18** Words in art. 4(6) substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

Audit

5. For Article 92 of the Health and Personal Social Services (Northern Ireland) Order 1972^{F19} there shall be substituted the following Articles—

“Power of Department to give directions as to audit of accounts

92. The Department may give directions generally with respect to the audit of accounts under Article 90(2)(a) or (5)(a) or Article 91(1)(a).

Powers and duties of auditor in auditing accounts

92A.—(1) This Article applies to an auditor appointed by the Department in auditing accounts required to be audited under Article 90(2)(a) or (5)(a) or Article 91(1)(a).

(2) The auditor shall by examination of the accounts and otherwise satisfy himself—

- (a) that the accounts are in the form directed by the Department and comply with all requirements imposed by or under any statutory provision;
- (b) that proper practices have been observed in the compilation of the accounts; and
- (c) that the body whose accounts are being audited has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.

(3) The auditor shall comply with any directions under Article 92.

(4) The auditor shall consider whether, in the public interest, he should make a report on any matter coming to his notice in the course of the audit in order that it may be considered by the body whose accounts are being audited and brought to the attention of the Department, and shall consider whether the public interest requires any such matter to be made the subject of an immediate report rather than of a report to be made at the conclusion of the audit.

(5) If the auditor has reason to believe that the body whose accounts are being audited, or any officer of that body—

- (a) is about to make, or has made, a decision which involves or would involve the incurring of expenditure which is unlawful; or
- (b) is about to take, or has taken, a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency,

he shall refer the matter forthwith to the Department.

(6) The auditor shall be entitled—

- (a) to require access at all reasonable times to all such documents relating to the body whose accounts are being audited as appear to him necessary for the purposes of the audit;
- (b) to require from any person holding or accountable for any such document such information and explanation as he thinks necessary for the purposes of the audit;