

Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2007 No. (N.I.)

NORTHERN IRELAND

**The Health (Miscellaneous Provisions) (Northern Ireland)
Order 2007**

Made - - - - - *2007*

*Coming into operation in accordance with Article
1(2) to (4)*

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At the Court at Buckingham Palace, the ** day of ** 2007

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Introductory

Title and commencement

1.—(1) This Order may be cited as the Health (Miscellaneous Provisions) (Northern Ireland) Order 2007.

(2) This Article and Articles 2 and 18 come into operation on the expiration of 7 days from the day on which this Order is made.

(3) The following provisions come into operation on such day or days as the Department may by order appoint—

- (a) Articles 4 to 9;
- (b) Articles 16(1) to (3) and 17;
- (c) Part I of Schedule 2, and Article 19 so far as it relates thereto.

(4) The remaining provisions of this Order come into operation on the expiration of one month from the day on which it is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

“the Department” means the Department of Health, Social Services and Public Safety;

“the Order of 1972” means the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14).

Primary medical services

Persons performing primary medical services: listing subject to conditions

3. In Article 57G of the Order of 1972 (persons performing primary medical services), after paragraph (3) insert—

“(3A) Regulations under paragraph (1) may, in particular, also provide for—

- (a) a person’s inclusion or continued inclusion in a list to be subject to conditions determined by a Health and Social Services Board;
 - (b) a Board to vary the conditions or impose different ones;
 - (c) the consequences of failing to comply with a condition (including removal from a list);
 - (d) the review by a Board of decisions made by it by virtue of the regulations.
- (3B) The imposition of such conditions may be with a view to—
- (a) preventing any prejudice to the efficiency of the services to which the list relates, or
 - (b) preventing fraud.”.

Dental services

Provision of dental services

4.—(1) After Article 60 of the Order of 1972 (prohibition of sale of, etc. medical practices), omit the cross-heading “General Dental Services, General Ophthalmic Services and Pharmaceutical Services” and insert—

“Primary dental services

Primary dental services

60A.—(1) Each Health and Social Services Board shall, to the extent that it considers necessary to meet all reasonable requirements, exercise its powers so as to provide primary dental services within its area, or secure their provision within its area.

(2) A Health and Social Services Board may (in addition to any other power conferred on it)—

- (a) provide primary dental services itself (whether within or outside its area);
- (b) make such arrangements for their provision (whether within or outside its area) as it thinks fit, and may in particular make contractual arrangements with any person.

(3) Each Health and Social Services Board shall publish information about such matters as may be prescribed in relation to the primary dental services provided under this Part.

(4) A body on which functions are conferred under this Article shall co-operate with any other such body in the discharge of their respective

functions relating to the provision of primary dental services under this Part.

(5) Regulations may provide that services of a prescribed description are, or are not, to be regarded as primary dental services for the purposes of this Part.

(6) Regulations under this Article may in particular describe services by reference to the manner or circumstances in which they are provided.”.

(2) For Article 61 of the Order of 1972 (arrangements for general dental services) substitute—

“General dental services contracts

General dental services contracts: introductory

61.—(1) A Health and Social Services Board may enter into a contract under which primary dental services are provided in accordance with the following provisions of this Part.

(2) A contract under this Article is called in this Order a “general dental services contract”.

(3) Subject to any provision made by or under this Part, a general dental services contract may make such provision as may be agreed between the Health and Social Services Board and the contractor or contractors in relation to—

- (a) the services to be provided under the contract,
- (b) remuneration under the contract, and
- (c) any other matters.

(4) The services to be provided under a general dental services contract may include—

- (a) services which are not primary dental services;
- (b) services to be provided outside the area of the Health and Social Services Board.

(5) In this Part, “contractor”, in relation to a general dental services contract, means any person entering into the contract with the Health and Social Services Board.

Requirement to provide certain primary dental services

61A.—(1) A general dental services contract shall require the contractor or contractors to provide, for his or their patients, primary dental services of such descriptions as may be prescribed.

(2) Regulations under paragraph (1) may in particular prescribe services by reference to the manner or circumstances in which they are provided.

Persons eligible to enter into general dental services contracts

61B.—(1) A Health and Social Services Board may, subject to such conditions as may be prescribed, enter into a general dental services contract with—

- (a) a dental practitioner;
- (b) a dental corporation;
- (c) two or more individuals practising in partnership where the conditions in paragraph (2) are satisfied.

(2) The conditions referred to in paragraph (1)(c) in relation to a partnership are that—

- (a) at least one partner is a dental practitioner; and
- (b) any partner who is not a dental practitioner is either—
 - (i) an HSS employee;
 - (ii) an Article 15B employee, a section 28C employee or a section 17C employee;
 - (iii) a health care professional who is engaged in the provision of services under this Order; or
 - (iv) an individual falling within Article 15C(1)(c)(iii).

(3) Regulations may make provision as to the effect, in relation to a general dental services contract entered into by individuals practising in partnership, of a change in the membership of the partnership.

(4) In this Article—

“dental corporation” means a body corporate which, in accordance with the provisions of Part IV of the Dentists Act 1984, is entitled to carry on the business of dentistry;

“health care professional” has the same meaning as in Article 15C;

“HSS employee”, “Article 15B employee”, “section 28C employee” and “section 17C employee” have the same meaning as in Article 15C.

General dental services contracts: payments

61C.—(1) The Department may give directions as to payments to be made under general dental services contracts.

(2) A general dental services contract must require payments to be made under the contract in accordance with directions for the time being in force under this Article.

(3) Without prejudice to the generality of the power under paragraph (1) directions under that paragraph may—

- (a) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance;
- (b) provide for payments to be made by reference to—
 - (i) any scheme or scale specified in the direction; or

- (ii) a determination made by any person in accordance with factors specified in the direction;
 - (c) provide for the making of payments in respect of individual practitioners;
 - (d) provide that the whole or any part of a payment is subject to conditions (and may provide that payments are payable by a Health and Social Services Board only if it is satisfied as to certain conditions);
 - (e) make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.
- (4) Before giving a direction under paragraph (1), the Department—
- (a) shall consult any body appearing to it to be representative of persons to whose remuneration the direction would relate, and
 - (b) may consult such other persons as it thinks appropriate.
- (5) References in this Article to payments include fees, allowances, reimbursements, loans and repayments.

General dental services contracts: other required terms

- 61D.—(1) A general dental services contract shall contain such provision as may be prescribed (in addition to the provision required by the preceding provisions of this Part).
- (2) Regulations under paragraph (1) may in particular make provision as to—
- (a) the manner in which, and standards to which, services are to be provided;
 - (b) the persons who perform services;
 - (c) the persons to whom services are to be provided;
 - (d) the variation of contract terms (other than terms required by or under this Part);
 - (e) rights of entry and inspection (including inspection of clinical records and other documents);
 - (f) the circumstances in which, and the manner in which, the contract may be terminated;
 - (g) enforcement;
 - (h) the adjudication of disputes.
- (3) Regulations under paragraph (2)(d) may make provision as to the circumstances in which a Health and Social Services Board may impose a variation of contract terms.
- (4) Regulations under paragraph (1) shall make provision as to the right of patients to choose the persons from whom they are to receive services.

General dental services contracts: disputes and enforcement

61E.—(1) Regulations may make provision for the resolution of disputes as to the terms of a proposed general dental services contract.

(2) Regulations under paragraph (1) may make provision—

- (a) for the referral of the terms of the proposed contract to the Department; and
- (b) for the Department, or a person appointed by it, to determine the terms on which the contract may be entered into.

(3) Regulations may make provision for a person or persons entering into a general dental services contract to be regarded as a health and social services body for any purposes of Article 8 of the Health and Personal Social Services (Northern Ireland) Order 1991, in circumstances where he or they so elect.

(4) Regulations under paragraph (3) may include provision as to the application of Article 8 of that Order in cases where—

- (a) persons practising in partnership elect to become a health and social services body; and
- (b) there is a change in the membership of the partnership.

(5) Where—

- (a) by virtue of regulations under paragraph (3), paragraph (8) of Article 8 of that Order applies in relation to a general dental services contract, and
- (b) a direction as to payments is made under that paragraph in relation to the contract,

the direction is to be enforceable in a county court (if the court so orders) as if it were a judgment or order of that court.

Persons providing general dental services

61F.—(1) Regulations may provide that a health care professional of a prescribed description may not provide any general dental services for which a Health and Social Services Board is responsible unless that professional is included in a list maintained under the regulations by the Health and Social Services Board.

(2) For the purposes of this Article—

- (a) “health care professional” has the same meaning as in Article 15C;
- (b) a Health and Social Services Board is responsible for general dental services if it provides the services, or secures provision of the services, under or by virtue of Article 61.

(3) Paragraphs (3), (3A), (3B) and (4) of Article 57G shall apply for the purposes of regulations made under paragraph (1) above in the same manner as those paragraphs apply for the purposes of regulations made under paragraph (1) of that Article.”.

General dental services: transitional

5.—(1) The Department shall by order make transitional provision in respect of persons who, immediately before the coming into operation of Article 4, are providing services under Article 61 of the Order of 1972 (general dental services).

(2) An order under this Article may provide that, in such circumstances as the order may prescribe, a Health and Social Services Board shall, if any such person so wishes, enter into a general dental services contract with him; and the order may make provision as to the terms of any such contract.

(3) An order under this Article may provide that, in such circumstances as the order may prescribe, a Health and Social Services Board shall, if any such person so wishes, enter into a contract with him, containing such terms as the order may specify, for the provision of dental services.

(4) An order under this Article may make provision for the resolution of disputes in relation to any contract entered into, or proposed to be entered into, under paragraph (2) or (3), including provision for the determination of disputes by the Department or a person appointed by it.

(5) An order under this Article may make provision in respect of a period beginning before the coming into operation of the provision (or of Article 4), provided that the provision is not as a whole detrimental to the remuneration of the persons to whom it relates.

(6) In this Article “general dental services contract” means a contract under Article 61 of the Order of 1972 (as inserted by Article 4).

(7) An order made under this Article shall be subject to negative resolution.

Charges for dental services

6.—(1) In Article 98 of the Order of 1972 (services free of charge), after paragraph (2) add—

“(3) Schedule 15A, which makes provisions with respect to exemptions from dental charges under paragraph 1A of Schedule 15, shall have effect.”.

(2) In Schedule 15 to the Order of 1972 (charges in respect of certain services), for paragraph (1A) substitute—

“1A.—(1) Regulations may provide for the making and recovery, in such manner as may be prescribed, of charges for relevant dental services.

(2) Regulations under sub-paragraph (1) may in particular include provision—

- (a) specifying the amount, or maximum amount, of any charge (or aggregate charge in respect of the provision for two or more relevant dental services);
- (b) for calculating the amount of any charge;
- (c) for the variation of the amount, or maximum amount, of any charge in cases of a prescribed description;
- (d) for any charge not to be payable in cases of a prescribed description;

- (e) for power to direct that a charge is not payable in any particular case;
- (f) for the repayment of any charge (including provision as to the persons by whom, and manner in which, repayments are to be made).

(3) Regulations under sub-paragraph (1) may provide for sums which would otherwise be payable by a Health and Social Services Board to persons providing relevant dental services to be reduced by the amount of the charges authorised by the regulations.

(4) This paragraph is subject to Schedule 15A.

(5) In this Schedule and Schedule 15A “relevant dental services” means—

- (a) dental treatment provided—
 - (i) under Article 60A(2) (dental services provided by a Health and Social Services Board);
 - (ii) under a general dental services contract;
 - (iii) in accordance with Article 15B arrangements; and
- (b) the supply of dentures and other dental appliances under this Order.

(6) Any reference in this paragraph or Schedule 15A to the supply of an appliance includes a reference to its repair, adjustment, refitting or replacement and, in the case of dentures, to their being relined or having additions made to them.”.

(3) After Schedule 15 to that Order insert—

“SCHEDULE 15A

DENTAL CHARGING: EXEMPTIONS

General exemptions

1.—(1) No charge is to be made under regulations under paragraph 1A(1) of Schedule 15 in respect of a relevant dental service provided for any person who at the prescribed time—

- (a) was under the age of 18;
- (b) was under the age of 19 and receiving qualifying full-time education;
- (c) was pregnant; or
- (d) had given birth to a child within the previous 12 months.

(2) In sub-paragraph (1)(b), “qualifying full-time education” means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the person or body making the regulations.

(3) For the purposes of sub-paragraph (2)—

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- (a) “recognised educational establishment” means an establishment recognised by the Department as being, or as comparable to, a school, college or university; and
 - (b) regulations may prescribe the circumstances in which a person is or is not to be treated as receiving full-time instruction.
- (4) In sub-paragraph (1)(d), “child” includes a still-born child (within the meaning of the Births and Deaths Registration (Northern Ireland) Order 1976).
- (5) This paragraph is subject to paragraph 3.

Repair and replacement

- 2.—(1) No charge is to be made under regulations under paragraph 1A(1) of Schedule 15 in respect of the repair or replacement of any appliance.
- (2) This paragraph is subject to paragraph 3.

Exceptions to paragraphs 1 and 2

3. Paragraphs 1 and 2 do not apply in relation to—
- (a) the repair or replacement of any appliance of a prescribed description; or
 - (b) the repair or replacement of any appliance where it is determined in the prescribed manner—
 - (i) in any case, that the repair or replacement was necessitated by an act or omission of the person supplied; or
 - (ii) in a case where the person supplied was under the age of 16, that the repair or replacement was necessitated by an act or omission, occurring while that person was under that age, of a person having charge of him.

Hospital patients

4. No charge is to be made under regulations under paragraph 1A(1) of Schedule 15 in respect of any appliance supplied to a patient for the time being resident in a hospital.
5. Paragraph 4 does not apply where an appliance is supplied—
- (a) under Article 60A(2);
 - (b) under a general dental services contract; or
 - (c) in accordance with Article 15B arrangements.

Arrest of bleeding

6. No charge is to be made under regulations under paragraph 1A(1) of Schedule 15 in respect of the arrest of bleeding.

Declarations and evidence

7. Regulations may provide, with respect to any exemption under this Schedule, that it is to be a condition of the exemption that—

- (a) a declaration of the prescribed kind is made in the prescribed form and manner; or
 - (b) a certificate or other evidence of the prescribed kind is supplied in the prescribed form and manner.”.
- (4) In Article 107 of the Order of 1972 (orders, regulations and directions)—
- (a) in paragraph (1), after “and” (second time) insert “, except as provided in paragraph (1A),”;
 - (b) after paragraph (1) insert—
“(1A) The Department may not make a statutory rule containing the first regulations made under paragraph 1A(1) of Schedule 15 unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.”.
- (5) Article 26 of the Health Services (Primary Care) (Northern Ireland) Order 1997 (NI 7) is repealed.
- (6) In respect of any period after the coming into operation of this Article but before the coming into operation of Article 8 of this Order, paragraph 1A(5)(b) of Schedule 15 to the Order of 1972 (as inserted by paragraph (2) above) shall have effect as if it included a reference to the supply of dentures and other dental appliances in accordance with a pilot scheme under Part II of the Health Services (Primary Care) (Northern Ireland) Order 1997 (NI 7).

Provision of dental services: Article 15B arrangements

- 7.—(1) The Order of 1972 shall be amended as follows.
- (2) In Article 15B (provision for primary medical services and personal dental services)—
- (a) in the cross-heading and heading that precede the Article, for “personal dental services” substitute “primary dental services”;
 - (b) in paragraphs (1)(b), (2)(a) and (b)(i) and (4), for “personal dental services”, in each place where those words occur, substitute “primary dental services”;
 - (c) omit paragraphs (3) and (6).
- (3) In Article 15C (persons with whom arrangements under Article 15B may be made), for sub-paragraph (c) of paragraph (1) substitute—
- “(c) in the case of an agreement under which primary dental services are provided—
- (i) a dental practitioner who satisfies the prescribed conditions;
 - (ii) a health care professional who satisfies the prescribed conditions;
 - (iii) an individual who is providing services—
 - (A) under a general dental services contract; or
 - (B) in accordance with Article 15B arrangements, section 28C arrangements or section 17C arrangements;or has so provided them within such period as may be prescribed;”.

(4) In paragraph (1A) of that Article, for the words from “or” to “sub-paragraph (d),” substitute “(c)(iii) or (d)”.

(5) In paragraph (2) of that Article—

(a) in the definition of “HSS employee”—

(i) in paragraph (bb), after “contract” insert “or a general dental services contract”, and

(ii) omit paragraph (c);

(b) omit the definition of “qualifying dental practitioner”.

(6) In Article 15D (regulations concerning Article 15B arrangements)—

(a) in the heading, for “personal dental services”, substitute “primary dental services”; and

(b) in paragraph (2), omit sub-paragraph (b) and the definition of “practitioner”.

(7) In paragraphs (3)(ca) and (3E) of that Article, after “services” insert “or primary dental services”.

(8) In paragraph (3C) of that Article, after “contract” insert “or a general dental services contract”.

(9) In paragraph (6) of that Article—

(a) for “personal dental services” substitute “primary dental services”, and

(b) omit the words from “(whether” to “otherwise)”.

(10) Article 15F (right to choose dental practitioner) shall cease to have effect.

Revocation of power to make pilot schemes for provision of personal dental services

8. The power of a Health and Social Services Board under Part II of the Health Services (Primary Care) (Northern Ireland) Order 1997 (NI 7) to make pilot schemes for the provision of personal dental services shall cease to have effect.

Assistance and support for persons providing primary dental services

9. In Article 57H(1) of the Order of 1972 (assistance and support), for sub-paragraph (a) substitute—

“(a) any person providing, or proposing to provide, primary medical services or primary dental services under a general medical services contract or a general dental services contract;”.

Ophthalmic services

Ophthalmic services

10.—(1) Immediately before Article 62 of the Order of 1972 (arrangements for general ophthalmic services), insert the cross-heading—

“Ophthalmic services”.

(2) In paragraph (2) of that Article, sub-paragraphs (a) to (c) shall cease to have effect.

(3) After that Article, insert—

“Persons providing general ophthalmic services

62A.—(1) Regulations may provide that a health care professional of a prescribed description may not provide any general ophthalmic services for which a Health and Social Services Board is responsible unless that professional is included in a list maintained under the regulations by the Health and Social Services Board.

(2) For the purposes of this Article—

(a) “health care professional” has the same meaning as in Article 15C;

(b) a Health and Social Services Board is responsible for general ophthalmic services if it secures provision of the services under or by virtue of Article 62.

(3) Paragraphs (3), (3A), (3B) and (4) of Article 57G shall apply for the purposes of regulations made under this Article in the same manner as those paragraphs apply for the purposes of regulations made under paragraph (1) of that Article.”.

Local optical committees

11. In Article 55 of the Order of 1972 (recognition of local representative committees), in paragraph (3)(a) after the word “the” insert “ophthalmic medical practitioners and”.

Pharmaceutical services

Pharmaceutical services

12.—(1) Immediately before Article 63 of the Order of 1972 (arrangements for pharmaceutical services) insert the cross-heading—

“Pharmaceutical services”.

(2) Paragraphs (2A) to (2D) of that Article shall cease to have effect.

(3) After that Article insert—

“Persons providing pharmaceutical services

63AA.—(1) Regulations may provide that a health care professional of a prescribed description may not provide any pharmaceutical services for which a Health and Social Services Board is responsible unless that professional is included in a list maintained under the regulations by the Health and Social Services Board.

(2) Regulations under paragraph (1) shall include provision—

(a) that an application to a Health and Social Services Board for inclusion in such a list shall be made in the prescribed manner and shall state—

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- (i) the pharmaceutical services which the applicant will undertake to provide and, if they consist of or include the supply of appliances, which appliances he will undertake to supply; and
 - (ii) the premises from which he will undertake to provide those pharmaceutical services;
- (b) that, except in prescribed cases—
- (i) an application for inclusion in such a list by a person not already included; and
 - (ii) an application by a person already included in such a list for inclusion also in respect of pharmaceutical services or premises other than those already listed in relation to him,
- shall be granted only if the Health and Social Services Board is satisfied, in accordance with the regulations, that it is necessary or desirable to grant it in order to secure in the neighbourhood in which the premises are located the adequate provision by persons included in the list of the pharmaceutical services or some of the pharmaceutical services, specified in the application; and
- (c) for the removal of an entry in respect of premises from a list if it has been determined in the prescribed manner that the person to whom the entry relates—
- (i) has never provided from those premises, or
 - (ii) has ceased to provide from them,
- the pharmaceutical services, or any of the pharmaceutical services, which he is listed as undertaking to provide from them.
- (3) Regulations under paragraph (1) may include provision—
- (a) that an application to a Health and Social Services Board may be granted in respect of some only of the pharmaceutical services specified in it;
 - (b) that an application to a Health and Social Services Board relating to pharmaceutical services of a prescribed description shall be granted only if it appears to the Board that the applicant has satisfied such conditions with regard to the provision of those pharmaceutical services as may be prescribed;
 - (c) that an application to a Health and Social Services Board by a person who qualified to have his name registered under the Pharmacy (Northern Ireland) Order 1976 by virtue of Article 8(2)(c) of that Order (qualification by European diploma) shall not be granted unless the applicant satisfies the Board that he has the knowledge of English which, in the interests of himself and the persons making use of the pharmaceutical services to which the application relates, is necessary for the provision of pharmaceutical services in the Board's area;
 - (d) that the inclusion of a person in a list in pursuance of such an application may be for a fixed period;
 - (e) that, where the premises from which an application states that the applicant will undertake to provide pharmaceutical services are in

an area of a prescribed description, the applicant shall not be included in the list unless his inclusion is approved by a prescribed body and by reference to prescribed criteria; and

(f) that the prescribed body may give its approval subject to conditions.

(4) For the purposes of this Article—

(a) “health care professional” has the same meaning as in Article 15C;

(b) a Health and Social Services Board is responsible for pharmaceutical services if it secures provision of the services, under or by virtue of Article 63 or 63A.

(5) Paragraphs (3), (3A), (3B) and (4) of Article 57G apply for the purposes of regulations made under this Article in the same manner as those paragraphs apply for the purposes of regulations made under paragraph (1) of that Article.”.

The Tribunal

Disqualification by the Tribunal

13. Schedule 1 amends Schedule 11 to the Order of 1972 (disqualification of persons providing Part VI services).

Other amendments relating to health services

Charges for services provided to persons not ordinarily resident in Northern Ireland

14. In Article 42 of the Order of 1972 (provision of services to persons not ordinarily resident in Northern Ireland)—

(a) in paragraph (2), for “such exemptions as may be prescribed” substitute “paragraph (3)”; and

(b) after that paragraph add—

“(3) Regulations may provide that charges under paragraph (2) are only to be made in such cases as may be determined in accordance with the regulations.”.

Retirement of practitioners

15. Article 4 of the Health and Medicines (Northern Ireland) Order 1988 (NI 24) (retirement of practitioners) shall cease to have effect.

Minor and consequential amendments

16.—(1) The following minor and consequential amendments of the Order of 1972 shall have effect.

(2) In Article 2(2) (interpretation), at the appropriate place alphabetically, insert—

““general dental services contract” has the meaning given in Article 61(2);”.

(3) In Article 15C(1)(b)(iii) (persons with whom arrangements under Article 15B may be made), for “Article 17C” substitute “section 17C”.

(4) In Schedule 15 (charges in respect of certain services), in paragraph 1(a)—

(a) in paragraph (i), for “general” substitute “relevant”, and

(b) in paragraphs (ii) and (iii) for “charges under Article 61(2)(d)” substitute “charges for relevant dental services”.

Smoking

Smoking: exemption for performers

17.—(1) The Smoking (Northern Ireland) Order 2006 (NI 20) shall be amended as follows.

(2) In Article 4 (exemptions) after paragraph (4) insert—

“(4A) For the purpose of making provision for those participating as performers in a performance, or in a performance of a specified description, not to be prevented from smoking if the artistic integrity of the performance makes it appropriate for them to smoke—

(a) the power in paragraph (1) also includes power to provide for specified descriptions of premises or specified areas within such premises not to be smoke-free in relation only to such performers, and

(b) paragraph (3) does not prevent the exercise of that power as so extended.

(4B) For the purposes of paragraph (4A), the references to a performance—

(a) include, for example, the performance of a play, or a performance given in connection with the making of a film or television programme, and

(b) if the regulations so provide, include a rehearsal.”.

(3) In Article 7 (no-smoking signs) at the end of paragraph (9) add “(and references to smoke-free premises include premises which by virtue of regulations under Article 4(4A) are smoke-free except in relation to performers)”.

(4) In Article 8 (offence of smoking in smoke-free place)—

(a) in paragraph (1)(a) at the end add “(including premises which by virtue of regulations under Article 4(4A) are smoke-free except in relation to performers)”;

(b) after paragraph (2) insert—

“(2A) But a person who smokes in premises which are not smoke-free in relation to performers by virtue of regulations under Article 4(4A) does not commit an offence if he is such a performer.”.

(5) In Article 9 (offence of failing to prevent smoking in a smoke-free place)—

(a) after paragraph (1) insert—

“(1A) The reference in paragraph (1) to a person smoking does not include a performer in relation to whom the premises are not smoke-free by virtue of regulations under Article 4(4A).”;

- (b) at the end of paragraph (7) add “(and references to smoke-free premises include premises which by virtue of regulations under Article 4(4A) are smoke-free except in relation to performers)”.

Supplementary

Supplementary provision

18.—(1) The Department may by order make such transitional or transitory provisions and savings as it considers appropriate in connection with the coming into operation of any provision of this Order.

(2) Nothing in Article 5 restricts the power under paragraph (1) to make other transitional provisions.

(3) The Department may by order make such supplementary, incidental, or consequential provision as it considers appropriate for the purposes of, in consequence of or for giving full effect to any provision of this Order.

(4) An order under paragraph (1) or (3) may modify any statutory provision.

(5) In paragraph (4)—

“modify” includes add to, omit and amend; and

“statutory provision” has the meaning given in section 1(1)(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).

(6) An order made under this Article shall be subject to negative resolution.

Repeals

19. The statutory provisions set out in Schedule 2 are hereby repealed to the extent specified in the second column of that Schedule.

A.K. Galloway
Clerk of the Privy Council

SCHEDULES

SCHEDULE 1

Article 13.

AMENDMENTS OF SCHEDULE 11 TO THE 1972 ORDER

1.—(1) Paragraph 1 (general provisions) shall be amended as follows.

(2) For paragraph 1(2), substitute—

“(2) If the Tribunal receives from a Health and Social Services Board representations that a person—

(a) who has applied to be included; or

(b) who is included,

in any list meets any of the conditions for disqualification, the Tribunal shall inquire into the case.”.

(3) In paragraph 1(4)(b), omit “the representations that the second condition for disqualification is met and”.

(4) In paragraph 1(6)—

(a) for “continued” substitute “inclusion or continued”;

(b) for the words from “list” (second time) to the end substitute “list—

“(a) in relation to a list referred to in paragraph (8)(a), (cc) or (e), perform;

(b) in relation to a list referred to in paragraph (8)(c) or (d), undertake to provide or are approved to assist in providing;”.

(5) After paragraph 1(7), insert—

“(7A) The third condition for disqualification is that the person concerned is unsuitable (by virtue of professional or personal conduct) to be included, or to continue to be included in the list.”.

(6) In paragraph 1(8),—

(a) omit paragraph (b);

(b) for paragraphs (c) to (e) substitute—

“(c) a list of health care professionals of a prescribed description and bodies corporate performing primary dental services;

(d) a list of medical practitioners and ophthalmic opticians undertaking to provide, and of persons who are approved to assist in providing, general ophthalmic services; or

(e) a list of registered pharmacists undertaking to provide pharmaceutical services;”.

(7) In paragraph 1(11),—

(a) omit “and”;

SCH. 1

(b) at the end insert “; and cases in which representations are made that the third condition for disqualification is met are referred to below as unsuitability cases”.

2.—(1) Paragraph 2 (supplementary provisions) shall be amended as follows.

(2) In paragraph 2(1), after “the second condition for disqualification” insert “or, as the case may be, the third condition for disqualification”.

(3) After paragraph 2(1), insert—

“(1A) A body corporate entitled, by virtue of section 43 of the Dentists Act 1984 (c. 24), to carry on the business of dentistry is to be treated for the purposes of this Schedule as meeting the second condition for disqualification or, as the case may be, the third condition for disqualification if any director meets that condition (whether or not he first met that condition when he was a director).”.

(4) In paragraph 2(3)—

(a) in paragraph (a), after “providing” insert “, assisting in providing, or as the case may be performing,”;

(b) in paragraph (b), after “provision” insert “, assistance in the provision or performance,”.

(5) In paragraph 2(5), for “a fraud case” substitute “an unsuitability case, a fraud case or an inefficiency case”.

(6) In paragraph 2(6), after “in” insert “an unsuitability,”.

3.—(1) Paragraph 3 (powers of the Tribunal) shall be amended as follows.

(2) In paragraph 3(1), after paragraph (b) insert—

“(c) on inquiring into an unsuitability case, that the person meets the third condition for disqualification.”.

(3) For paragraph 3(2), substitute—

“(2) The Tribunal shall disqualify him for inclusion in—

(a) the list to which the case relates;

(b) all lists within the same paragraph of paragraph 1(8) as that list;
and

(c) where the list to which the case relates is a list referred to in—

(i) paragraph 1(8)(c), all lists within paragraph (cc) of paragraph 1(8);

(ii) that paragraph (cc), all lists within that paragraph (c).”.

(4) In paragraph 3(3), after “provision” insert “, or as the case may be performance,”.

(5) In paragraph 3(4), for “any” substitute “a”.

4.—(1) Paragraph 4 (conditional disqualification) shall be amended as follows.

(2) In paragraph 4(2)—

(a) at the end of paragraph (a), omit “or”; and

(b) after paragraph (b), insert—

“(c) ensuring that the person—

- (i) performs, undertakes to provide or assists in providing only services specified (or of a description specified) in the condition;
- (ii) undertakes an activity (or course of activity) of a personal or professional nature, or refrains from conduct of a personal or professional nature, so specified (or of a description so specified).”.

(3) In paragraph 4(5), after paragraph (a) insert—

“(aa) vary any requirements to which the person subject to the inquiry is subject under or by virtue of Article 57G, 61F, 62A or 63AA;”.

5. In paragraph 5(4) (construction of references to Health and Social Services Board)—

- (a) after “providing” insert “, or as the case may be performing,”;
- (b) for “any corresponding authority” substitute “a reference to any authority which”; and
- (c) at the end add “would be entitled to request a review corresponding to that mentioned in that sub-paragraph”.

6.—(1) Paragraph 7 (disqualification provisions in Scotland or England and Wales) shall be amended as follows.

(2) In paragraph 7(1), for the words from the beginning to “question,” substitute—

“Where—

- (a) under or by virtue of any provisions in force in Scotland or England and Wales corresponding to the provisions of this Schedule, a person is disqualified for inclusion in all lists prepared under or by virtue of—
 - (i) those provisions so in force, or
 - (ii) provisions so in force corresponding to the provisions of Part VI of this Order,
of persons performing, undertaking to provide, approved to assist in providing or approved to perform any of the services mentioned in paragraph 1(8), then,
- (b) in relation to the service in question,”.

(3) In paragraph 7(2)—

- (a) after “provision” (first time) insert “, assistance in provision or performance”; and
- (b) at the end add “, Article 15B arrangements or a pilot scheme”.

7. In paragraph 8(2) (regulations: inquiry into more than one category of case), for “both an efficiency case and a fraud case” substitute “an efficiency case and a fraud case or an unsuitability case or any other combination of more than one such category of case”.

8.—(1) Paragraph 9 (applications for interim suspension) shall be amended as follows.

(2) In paragraph 9(5)(c), after “provision” insert “or performance”.

(3) In paragraph 9(7)(a), after “persons” insert “performing or”.

(4) At the end add—

“(8) Regulations may provide that where a Health and Social Services Board, in accordance with regulations made under Article 57G, 61F, 62A or 63AA, suspends a person from a list prepared under regulations made under the provision in question and the Board applies to the Tribunal for a direction to be made under sub-paragraph (2) in relation to the person to whom the suspension applies, the suspension may continue until the Tribunal determines the application.”.

9. For paragraph 12 (suspension provisions in Scotland or England and Wales) substitute—

“12.—(1) This paragraph applies where it appears to the Department that there is provision in Scotland or England or Wales under which a person may be dealt with in any way which corresponds (whether or not exactly) with a way in which a person may be dealt with under a provision of this Schedule.

(2) A decision in Scotland or England or Wales to deal with such a person in such a way is referred to in this paragraph as a “corresponding decision”.

(3) If this paragraph applies, the Department may make regulations providing for the effect to be given in Northern Ireland to a corresponding decision; and where the decision corresponds (whether or not exactly) with a decision which may be made under paragraph 4 or (so far as relating to conditional disqualification) paragraph 5 the regulations may provide for the effect to be given to be determined in the prescribed manner by the Department.

(4) That effect need not be the same as the effect of the corresponding decision in the place where it was made.”.

Article 19.

SCHEDULE 2

REPEALS

PART I

REPEALS COMING INTO OPERATION UNDER ARTICLE 1(3)

Short Title	Extent of repeal
The Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14).	Article 15B(3) and (6). In Article 15C(2)— (a) in the definition of “HSS employee”,

Health (Miscellaneous Provisions)

Short Title	Extent of repeal
<p>The Health and Social Services (Primary Care) (Northern Ireland) Order 1997 (NI 7).</p>	<p>paragraph (c), and (b) the definition of “qualifying dental practitioner”.</p> <p>In Article 15D— (a) in paragraph (2)— (i) sub-paragraph (b), and (ii) the definition of “practitioner”; (b) in paragraph (6), the words from “(whether” to “otherwise”).</p> <p>Article 15F.</p> <p>In Article 2— (a) in paragraph (3), the definitions of “pilot scheme” and “piloted services”, and (b) paragraph (4).</p> <p>Part II. Articles 24 and 26. Schedule 1.</p>

PART II

REPEALS COMING INTO OPERATION UNDER ARTICLE 1(4)

REPEALS

Short Title	Extent of repeal
<p>The Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14).</p>	<p>Article 62(2)(a) to (c). Article 63(2A) to (2D). In Schedule 11,— (a) in paragraph 1(4)(b), the words “the representations that the second condition for disqualification is met and”; (b) paragraph 1(8)(b); (c) in paragraph 1(11), the word “and”; (d) in paragraph 4(2), the word “or” following paragraph (a).</p>

Health (Miscellaneous Provisions)

SCH. 2

Short Title	Extent of repeal
The Health and Medicines (Northern Ireland) Order 1988 (NI 24).	Article 4.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes a number of amendments to the Health and Personal Social Services (Northern Ireland) Order 1972 in relation to the provision of health services. The Order also amends Article 4 of the Smoking (Northern Ireland) Order 2006 to provide that premises may not be smoke-free in relation only to performers, if the artistic integrity of the performance makes it appropriate for them to smoke.

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Printed and published in the U.K. by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament
N2934 12/2006

£4.50