

These notes refer to the Health and Social Care Act (Northern Ireland) 2022 (c.3) which received Royal Assent on 2 February 2022

Health and Social Care Act (Northern Ireland) 2022

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 9 – Short title

Sets out the short title of the Act. This Act may be cited as the Health and Social Care Act (Northern Ireland) 2022.

Schedule 1 details the amendments required to existing legislation to effect the transfer of powers, duties and responsibilities to the Department and HSC trusts as a consequence of the closure of the Regional Board.

The statute book contains many references to Health and Social Services Boards. The Boards were dissolved under the 2009 Act with certain of their functions transferred to the Regional Board and certain of their functions transferred to the Regional Agency. In consequence, the 2009 Act provides that the references to the Boards must now be read as references to the Regional Board and/or the Regional Agency depending on context.

With the abolition of the Regional Board and the transfer of its functions to the Department, the references to Health and Social Services Boards are being replaced textually by references, as appropriate, to the Department or, in a very small number of cases, the Regional Agency.

There are other references to functions exercisable by Health and Social Services Boards (which now means the Regional Board) in areas where there is no HSC trust. Since there are HSC trusts for all areas in Northern Ireland, these functions are not currently exercisable by the Regional Board. The possibility of the functions being exercisable by the Department in the future, in the absence of an HSC trust for a particular area, is preserved by new paragraph 22A of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991 (“the 1991 Order”), inserted by Schedule 1 to the Act.

There are some functions which, on the face of the legislation, are conferred on the Department but which are currently delegated to the Regional Board and thence to HSC trusts. The dissolution of the Regional Board renders it necessary either (i) to leave the function notionally with the Department and for there to be new delegations from the Department direct to the HSC trusts

or (ii) to amend the primary legislation so the function is conferred directly on the HSC trusts, but preserving the power of the Department to issue guidance and directions and if necessary to recall the function. The Act takes the second of these approaches. Thus the Act contains some amendments which appear to be transferring functions from the Department to HSC trusts, but which in reality are consequential on the dissolution of the Board and preserve the current arrangements for the exercise of functions.

Articles 3 & 4 of the Health and Personal Social Services (Northern Ireland) Order 1994 provide for the delegation of certain functions of Health and Social Services Boards (that is, now the Regional Board) to HSC trusts. The functions are listed in the Statutory Rules made under Article 3. Again, the dissolution of the Board requires this portion of the legislative framework to be revised. The relevant functions (now called “social care and children functions”) are conferred directly on HSC trusts (new Article 10A of the 1991 Order, thereby replicating the effect of Article 3 and the Statutory Rules). The power of the Department to provide for delegation of other functions is included at new Article 10B.

Each of these four types of case are instances where the dissolution of the Regional Board makes it necessary to amend the legislation relating to the exercise of functions that are currently exercised by, or are capable of being exercised by, the Board; and the decision has been taken to set out more clearly on the face of legislation where responsibility for the exercise of the functions falls, whilst restating all the existing law relating to delegation and direction of the exercise of those functions.

Schedule 2 contains the statutory provisions to continue to operate Local Commissioning Groups (LCGs) beyond the closure of the Health and Social Care Board. With the abolition of the Board, these amendments are necessary to allow the Local Commissioning Groups to continue. Schedule 2 ensures the existing necessary legislative provisions in respect of functions and membership etc. of Local Commissioning Groups are retained for the now continued Local Commissioning Groups. It sets out how the LCGs are to function and then, ultimately, cease to operate.

Schedule 3 details the effect of schemes for the transfer of the Regional Board assets, liabilities and staff upon its closure.

Schedule 4 details general and specific transitional provisions.