

## SCHEDULES

### SCHEDULE 3

### Article 10. HEALTH AND SOCIAL SERVICES TRUSTS

#### PART I

#### ORDERS UNDER ARTICLE 10(1)

1. Any reference in this Part to an order is a reference to an order under Article 10(1) establishing an HSS trust or any subsequent order under that provision amending or revoking a previous order.

2. The provisions made by an order shall be in conformity with any general provision made by regulations under Article 10(6).

3.—(1) Without prejudice to any amendment made by a subsequent order, the first order to be made in relation to any HSS trust shall specify—

- (a) the name of the trust;
- (b) the functions of the trust;
- (c) the number of executive directors and non-executive directors;
- (d) where the trust is to be regarded as having a significant teaching commitment, a provision to secure the inclusion in the non-executive directors referred to in head (c) of a person appointed from a university with a medical or dental school specified in the order;
- (e) the operational date of the trust, that is to say, the date on which the trust is to begin to undertake the whole of the functions conferred on it; and
- (f) if a scheme is to be made under Article 11, the relevant body which is to make the scheme.

(2) For the purposes of sub-paragraph (1)(d), an HSS trust is to be regarded as having a significant teaching commitment in the following cases—

- (a) if the trust is established to assume responsibility for the ownership and management of a hospital or other establishment or facility which, in the opinion of the Department, has a significant teaching and research commitment; and
- (b) in any other case, if the Department so provides in the order.

(3) In a case where the order contains a provision made by virtue of sub-paragraph (1)(d) and a person who is being considered for appointment by virtue of that provision—

- (a) is employed by the university in question, and
- (b) would also, apart from this sub-paragraph, be regarded as employed by the trust, his employment by the trust shall be disregarded in determining whether, if appointed, he will be a non-executive director of the trust.

4.—(1) An order may require a relevant body to make staff, premises and other facilities available to an HSS trust pending the transfer or appointment of staff to or by the trust and the transfer of premises or other facilities to the trust.

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(2) An order making provision under this paragraph may make provision with respect to the time when the relevant body's functions under the provision are to come to an end.

5.—(1) An order may provide for the establishment of an HSS trust with effect from a date earlier than the operational date of the trust and, during the period between that earlier date and the operational date, the trust shall have such limited functions for the purpose of enabling it to begin to operate satisfactorily with effect from the operational date as may be specified in the order.

(2) If an order makes the provision referred to in sub-paragraph (1), then, at any time during the period referred to in that sub-paragraph, the HSS trust shall be regarded as properly constituted (and may carry out its limited functions accordingly) notwithstanding that, at that time, all or any of the executive directors have not yet been appointed.

(3) If an order makes the provision referred to in sub-paragraph (1), the order may require a relevant body to discharge such liabilities of the HSS trust as—

- (a) may be incurred during the period referred to in that sub-paragraph; and
- (b) are of a description specified in the order.

## PART II

### DUTIES, POWERS AND STATUS

#### **Specific duties**

6.—(1) An HSS trust shall carry out effectively, efficiently and economically the functions for the time being conferred on it by an order under Article 10(1) and by the provisions of this Schedule and, with respect to the exercise of the powers conferred by Article 10(9) and paragraphs 10 to 15 below, shall comply with any directions given to it by the Department, whether of a general or a particular nature.

(2) An HSS trust shall comply with any directions given to it by the Department with respect to all or any of the following matters—

- (a) the qualifications of persons who may be employed as officers of the trust;
- (b) the employment, for the purpose of performing functions specified in the direction, of officers having qualifications or experience of a description so specified;
- (c) the manner in which officers of the trust are to be appointed;
- (d) prohibiting or restricting the disposal of, or of any interest in, any asset which, at the time the direction is given, the Department reasonably considers to have a value in excess of such sum as may be specified in an order under Article 10(1) and in respect of which the Department considers that the interests of the health and personal social services require that the asset should not be disposed of;
- (e) compliance with guidance or directions given (by circular or otherwise) to a relevant body; and
- (f) the implementation of awards relating to the distinction or merit of medical practitioners or dental practitioners or any class or classes of such practitioners.

7.—(1) For each financial year an HSS trust shall prepare and send to the Department an annual report in such form as may be determined by the Department.

(2) At such time or times as may be prescribed, an HSS trust shall hold a public meeting at which its audited accounts and annual report shall be presented.

(3) In such circumstances and at such time or times as may be prescribed, an HSS trust shall hold a public meeting at which such documents as may be prescribed shall be presented.

8. An HSS trust shall furnish to the Department such reports, returns and other information, including information as to its forward planning, as, and in such form as, the Department may require.

9.—(1) An HSS trust shall be liable to pay—

- (a) to the chairman and any non-executive director of the trust remuneration of an amount determined by the Department, not exceeding such amount as may be approved by the Department of Finance and Personnel;
- (b) to the chairman and any non-executive director of the trust such travelling and other allowances as may be determined by the Department with the approval of the Department of Finance and Personnel;
- (c) to any member of a committee or sub-committee of the trust who is not also a director such travelling and other allowances as may be so determined.

(2) If an HSS trust so determines in the case of a person who is or has been a chairman of the trust, the trust shall be liable to pay such pension, allowances or gratuities to or in respect of him as may be determined by the Department with the approval of the Department of Finance and Personnel.

(3) Different determinations may be made under sub-paragraph (1) or sub-paragraph (2) in relation to different cases or descriptions of cases.

### **Specific powers**

10. In addition to carrying out its other functions, an HSS trust may enter into HSS contracts.

11. An HSS trust may undertake and commission research and make available staff and provide facilities for research by other persons.

12. An HSS trust may—

- (a) provide training for persons employed or likely to be employed by the trust or otherwise in the provision of services under the principal Order; and
- (b) make facilities and staff available in connection with training by a university or any other body providing training in connection with the health and personal social services.

13. An HSS trust may enter into arrangements for the carrying out, on such terms as seem to the trust to be appropriate, of any of its functions jointly with any relevant body, with another HSS trust or with any other body or individual.

14. According to the nature of its functions, an HSS trust may make accommodation or services or both available for persons who give undertakings (or for whom undertakings are given) to pay, in respect of the accommodation or services (or both), such charges as the trust may determine.

15. For the purpose of making additional income available in order better to perform its functions, an HSS trust shall have the powers specified in Article 3(2) of the Health and Medicines (Northern Ireland) Order 1988(1) (extension of powers of the Department for financing health services).

### **General powers**

16. Subject to Schedule 4, an HSS trust shall have power to do anything which appears to it to be necessary or expedient for the purpose of or in connection with the discharge of its functions, including in particular power—

- (a) to acquire and dispose of land and other property;

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- (b) to enter into such contracts as seem to the trust to be appropriate;
- (c) to accept gifts of money, land or other property, including money, land or other property to be held on trust for the general or any specific purposes of the HSS trust (including the purposes of any specific hospital or other establishment or facility which is owned and managed by the trust);
- (d) to employ staff on such terms as the trust thinks fit.

**17.—(1)** Without prejudice to the generality of paragraph 16, to or in respect of such of its employees as it may determine, an HSS trust may make such arrangements for providing pensions, allowances or gratuities as it may determine; and such arrangements may include the establishment and administration, by the trust or otherwise, of one or more pension schemes.

(2) The reference in sub-paragraph (1) to pensions, allowances or gratuities to or in respect of employees of an HSS trust includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any of the trust's employees who suffer loss of office or employment or loss or diminution of emoluments.

### **Status**

**18.** An HSS trust shall not be regarded as the servant or agent of the Crown or, except as provided by this Order or the Health and Personal Social Services (Northern Ireland Consequential Amendments) Order 1991(2), as enjoying any status, immunity or privilege of the Crown; and an HSS trust's property shall not be regarded as property of, or property held on behalf of, the Crown.

## **PART III**

### **SUPPLEMENTARY PROVISIONS**

#### **Re-imburement for health and personal social services work carried out otherwise than under HSS contract**

**19.—(1)** In any case where an HSS trust provides goods or services for the benefit of an individual and—

- (a) the provision of those goods or services is not pursuant to an HSS contract, and
- (b) the condition of the individual is such that he needs those goods or services and, having regard to his condition, it is not practicable before providing them to enter into an HSS contract for their provision, and
- (c) the provision of those goods or services—
  - (i) is within the primary functions (as defined in Article 9(5)) of a Health and Social Services Board or special agency or of a health authority within the meaning of the National Health Service Act 1977(3), or
  - (ii) is a function of a Health Board within the meaning of the National Health Service (Scotland) Act 1978(4), the trust shall be remunerated by that Health and Social Services Board, special agency, health authority or Health Board in respect of the provision of the goods or services in question.

(2) The rate of any remuneration payable by virtue of sub-paragraph (1) shall be calculated in such manner or on such basis as may be determined by the Department.

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(2) S.I.1991/195

(3) 1977 c. 49

(4) 1978 c. 29

**20.** In any case where an HSS trust provides goods or services for the benefit of an individual and—

- (a) the provision of those goods or services is not pursuant to an HSS contract, and
- (b) the individual is resident outside the United Kingdom and is of a description (being a description associating the individual with another country) specified for the purposes of this paragraph by a direction made by the Department, the trust shall be remunerated by the Department in respect of the provision of the goods or services in question at such rate or rates as the Department considers appropriate.

### **Compulsory acquisition**

**21.**—(1) An HSS trust may, for the purposes of its functions, acquire land compulsorily.

(2) Where an HSS trust desires to acquire land compulsorily it may apply to the Department for an order (in this paragraph referred to as a “vesting order”) vesting the land in the HSS trust and the Department may make a vesting order.

(3) Schedule 6 to the Local Government (Northern Ireland) Act 1972<sup>(5)</sup> shall, subject to the modifications specified in sub-paragraph (6), apply for the purposes of the acquisition of land by means of a vesting order made under this paragraph in the same manner as it applies to the acquisition of land by means of a vesting order made under that Act.

(4) The power to make a vesting order under this paragraph in respect of land—

- (a) which is the property of any public body which has power under any transferred provision to acquire land compulsorily; or
- (b) which is declared by or under any transferred provision to be inalienable; shall not, where representations objecting to the proposal for making the order have been duly made by the owner of the land and have not been withdrawn, be exercised in relation to that land unless the proposal has been approved by a resolution of the Assembly.

(5) Nothing in this paragraph shall authorise the acquisition, without the consent of the Department of the Environment, of any land on or in which there is to the knowledge of the Department any historic monument or archaeological object within the meaning of the Historic Monuments Act (Northern Ireland) 1971<sup>(6)</sup>.

(6) The modifications of Schedule 6 to the Local Government (Northern Ireland) Act 1972<sup>(7)</sup> referred to in sub-paragraph (3) are the following—

- (a) for any reference to a council or the council or the clerk of the council there shall be substituted a reference to an HSS trust or the HSS trust or the chief officer of the HSS trust respectively;
- (b) for any reference to the Ministry concerned there shall be substituted a reference to the Department;
- (c) for any reference to that Act there shall be substituted a reference to this Order;
- (d) any references to that Schedule shall be construed as references to that Schedule as modified by this sub-paragraph;
- (e) for any reference to a matter prescribed by regulations made by the Department of the Environment there shall be substituted a reference to a matter prescribed by regulations made by the Department of Health and Social Services;
- (f) in paragraphs 2(c) and 5(2) for the words “as may be prescribed” there shall be substituted the words “as appear to the HSS trust to have an interest in the matter”;

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<sup>(5)</sup> 1972 c. 9 (N.I.)

<sup>(6)</sup> 1971 c. 17 (N.I.)

<sup>(7)</sup> 1972 c. 9 (N.I.)

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(g) paragraph 19 shall be omitted.

(7) Where an HSS trust proposes to acquire land compulsorily under this paragraph, a person authorised in writing by the HSS trust may, on production if required of his credentials, at any reasonable time enter that land for the purpose of survey, valuation or examination.

(8) Paragraphs (2) to (8) of Article 49 of the principal Order shall apply in relation to the exercise of the power conferred by sub-paragraph (7) as it applies to the exercise of the power conferred by paragraph (1) of that Article; and in those paragraphs as so applied—

- (a) any reference to an authorised person shall be construed as a reference to a person authorised under sub-paragraph (7); and
- (b) any reference to the Department shall be construed as a reference to the HSS trust.

#### **Instruments, etc.**

**22.** The fixing of the seal of an HSS trust shall be authenticated by the signature of the chairman or of some other person authorised either generally or specially by the trust for that purpose and of one other director.

## **PART IV DISSOLUTION**

**23.—**(1) The Department may by order dissolve an HSS trust.

(2) An order under this paragraph may be made—

- (a) on the application of the HSS trust concerned; or
- (b) if the Department considers it appropriate in the interests of the health and personal social services.

(3) Except where it appears to the Department necessary to make an order under this paragraph as a matter of urgency, no such order shall be made until after the completion of such consultation as may be prescribed.

**24.—**(1) If an HSS trust is dissolved under this Part, the Department may by order transfer or provide for the transfer to—

- (a) the Department,
- (b) a relevant body,
- (c) another HSS trust, of such of the property, rights and liabilities of the HSS trust which is dissolved as in the Department's opinion is appropriate; and any such order may include provisions corresponding to those of Article 13.

(2) An order under this paragraph may make provision in connection with the transfer of staff employed by or for the purposes of the HSS trust which is dissolved; and such an order may include provisions corresponding to those of Articles 11 and 12 including provision for the making of a scheme by such relevant body or other body as may be specified in the order.

(3) No order shall be made under this paragraph until after the completion of such consultation as may be prescribed.

**25.** Without prejudice to the generality of paragraph 24, if an HSS trust is dissolved under this Part, the Department or such other HSS trust or relevant body as the Department may direct shall undertake the responsibility for the continued payment of any such pension, allowances or gratuities

as, by virtue of paragraph 9(2) or paragraph 17, would otherwise have been the responsibility of the trust which has been dissolved.

**26.** An HSS trust may not be dissolved or wound up except in accordance with this Part.