STATUTORY RULES OF NORTHERN IRELAND

2002 No. 66

HEALTH AND PERSONAL SOCIAL SERVICES

The Health and Personal Social Services Act (Northern Ireland) 2001 (Fund-holding Practices) (Transfer of Assets, Rights and Liabilities and Transitional Provisions) Order (Northern Ireland) 2002

Made . . . . . 26th February 2002

Coming into operation . . 1st April 2002

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The Department of Health, Social Services and Public Safety(**a**), in exercise of powers conferred on it by section 58 of the Health and Personal Social Services Act (Northern Ireland) 2001(**b**) and of all other powers enabling it in that behalf, hereby makes the following Order:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Health and Personal Social Services Act (Northern Ireland) 2001 (Fund-holding Practices) (Transfer of Assets, Rights and Liabilities and Transitional Provisions) Order (Northern Ireland) 2002 and shall come into operation on 1st April 2002.

(2) In this Order—

"the 1972 Order" means the Health and Personal Social Services (Northern Ireland) Order 1972(**c**);

"the 1991 Order" means the Health and Personal Social Services (Northern Ireland) Order 1991(**d**);

"the 1993 Regulations" means the Health and Personal Social Services (Fund-holding Practices) Regulations (Northern Ireland) 1993(**e**) as in operation before the coming into operation of this Order;

"allotted sum" has the same meaning as in Article 18(1) of the 1991 Order as then in operation;

(**a**) *See* S.I. 1999/283 (N.I.1) Article 3(6)
(**b**) 2001 c. 3 (N.I.)
(**c**) S.I. 1972/1265 (N.I. 14)
(**d**) S.I. 1991/194 (N.I. 1)
(**e**) S.R. 1993 No. 142, amended by S.R. 1996 No. 131; S.R. 1997 No. 184; S.R. 1998 No. 323 and S.R. 1999 No. 60

"final balance" shall be construed in accordance with Article 7;

"former members of a fund-holding practice" means the medical practitioners who—

(*a*) were members of a fund-holding practice and who—

(i) renounced recognition as a fund-holding practice in accordance with regulation 9 of the 1993 Regulations, or

(ii) withdrew from a fund-holding practice in circumstances other than death or retirement in accordance with regulation 8(**a**) of the 1993 Regulations;

(*b*) were members of a recognised fund-holding practice on 1st April 2001;

"fund-holding account" means a bank account (including any account with a building society incorporated under the Buildings Societies Act 1986(**b**)) maintained by the former members of a fund-holding practice for the purpose of receiving an allotted sum or any part of it;

"fund-holding practice" means a fund-holding practice recognised under Article 17 of the 1991 Order as then in operation;

"fund-holding provisions" means Articles 17 to 20 of the 1991 Order as then in operation;

"list size" means the number of individuals on the list of patients of a medical practitioner who provides general medical services in accordance with arrangements under Article 56 of the 1972 Order(**c**);

"notice" means notice in writing;

"savings" shall be construed in accordance with regulation 21(1) and (2) of the 1993 Regulations(**d**);

"transferred assets" shall be construed in accordance with Article 2; and

"written consent" means written consent by the Health and Social Services Board to the application of part of the allotted sum for a specific purpose in accordance with regulation 21(2) and (3) of the 1993 Regulations as the applicable regulation had effect on the date the consent was given.

(3) In this Order, any reference to a Health and Social Services Board is a reference to the relevant Health and Social Services Board, construed in accordance with Article 18(7) of the 1991 Order as then in operation.

(4) In this Order any reference to the rights and liabilities of the former members of a fund-holding practice is a reference to rights acquired and liabilities incurred in connection with the application of an allotted sum.

(**a**) Regulation 8 was substituted by regulation 4 of S.R. 1996 No. 131 and amended by S.R. 1997 No. 184; S.R. 1998 No. 323 and S.R. 1999 No. 60

(**b**) 1986 c. 53

(**c**) Article 56 was amended by S.I. 1978/1907 (N.I. 26); S.I. 1981/432; S.I. 1986/2229 (N.I. 24); S.I. 1988/2249 (N.I. 24); S.I. 1991/194 (N.I. 1) and S.I. 1997/1177 (N.I. 7)

(**d**) Regulation 21 was substituted by regulation 14 of S.R. 1998 No. 323

PART II

TRANSFER OF ASSETS, RIGHTS AND LIABILITIES

Transfer of assets

2.—(1) The allotted sum, or any remaining part of it, for the financial year 2001-2002, or any previous financial year, whether held by the former members of the fund-holding practice or by the Health and Social Services Board, shall on 1st April 2002 be transferred to the Health and Social Services Board.

(2) On 1st April 2002 the Health and Social Services Board shall be substituted as the account holder of the fund-holding account.

(3) The Health and Social Services Board shall deal with the allotted sum transferred under paragraph (1) in accordance with Articles 4 to 8.

Transfer of rights and liabilities

3.—(1) Subject to paragraphs (2) and (3)—

(*a*) any rights to which the former members of the fund-holding practice were entitled, or which were enforceable by them, immediately before 1st April 2002; and

(*b*) any liabilities to which the former members were subject, or which were enforceable against them immediately before that date,

shall on that date be transferred to or, as the case may be, shall on and after that date be enforceable by or against, the Health and Social Services Board.

(2) Paragraph (1) shall not apply to any rights acquired or liabilities incurred in connection with the application of savings for which written consent was required.

(3) Paragraph (1) shall not apply to any rights acquired or liabilities incurred in connection with the application of the allotted sum for the purpose of—

(*a*) the purchase of goods and materials for the use of the former fund-holding practice, including support and maintenance contracts relating to computers or office equipment;

(*b*) payments under leasing and hire purchase agreements for the purchase of goods and materials.

PART III

LIABILITIES AND COSTS TO BE MET BY HEALTH AND SOCIAL SERVICES BOARDS

Use of the transferred assets

4.—(1) Subject to paragraph (2), where—

(*a*) any assets have been transferred to the Health and Social Services Board in accordance with Article 2; and

(*b*) in accordance with Articles 3, 5 and 6, any liability is enforceable against the Health and Social Services Board, or any cost is to be met by the Health and Social Services Board,

the Health and Social Services Board shall secure that the liability or cost shall first be met out of the transferred assets.

(2) Where liabilities and costs exceed the total value of the transferred assets they shall be met from the transferred assets in the following order—

(*a*) the cost of meeting rights and liabilities retained by the former members of a fund-holding practice as set out in Article 5;

(*b*) costs incurred in preparation of the accounts as set out in Article 6;

(*c*) the cost of meeting rights and liabilities transferred to the Health and Social Services Board in accordance with Article 3.

Rights and liabilities remaining with former members

5.—(1) Subject to paragraphs (2) and (3), any liability which did not become enforceable against the Health and Social Services Board in accordance with Article 3, shall nevertheless be paid for by the Health and Social Services Board if the liability—

(*a*) is one which falls within Article 3(2); or

(*b*) is incurred on or after 1st April 2002 pursuant to written consent granted before that date.

(2) The Health and Social Services Board shall be liable to pay for a liability of the former members of the fund-holding practice under paragraph (1) up to any limitation on the sum to be applied set out in the written consent.

(3) Where the former members of a fund-holding practice become aware of any claim relating to a liability falling within paragraph (1), they shall—

(*a*) notify the Health and Social Services Board of the claim; and

(*b*) take such action as the Health and Social Services Board shall reasonably require to avoid, dispute, resist, compromise, defend or appeal against the claim.

Costs incurred in preparing the accounts of fund-holding practices

6.—(1) Subject to Article 9, the Health and Social Services Board shall meet the reasonable costs incurred by the former members of a fund-holding practice in preparing the annual accounts of that practice for the financial year 2001-2002, which may include—

(*a*) payments to employees or former employees of the fund-holding practice;

(*b*) payments to either—

(i) a former member of the fund-holding practice, or

(ii) a medical practitioner to provide general medical services to the patients of a former member of the fund-holding practice who is engaged in preparing those accounts;

(*c*) auditors' fees;

(*d*) payments relating to computers and information technology.

(2) The Health and Social Services Board may discharge its liability to meet the costs incurred in accordance with paragraph (1), in whole or part, by discharging the liability of the former members of the fund-holding practice to any other person.

PART IV

FINAL BALANCE

Calculation of final balance

7.—(1) When a Health and Social Services Board is satisfied that all liabilities and costs transferred to the Health and Social Services Board, or due to be met by it, have been discharged in accordance with Articles 4, 5 and 6, the Health and Social Services Board shall determine whether there remains any part of the assets transferred under Article 2.

(2) The Health and Social Services Board shall inform each former member of a fund-holding practice by notice of the unspent part of the transferred assets which is referred to in this Order as the final balance of the former members of the fund-holding practice.

Treatment of final balance

8.—(1) Subject to the remaining paragraphs, the Health and Social Services Board shall apply any final balance of the former members of a fund-holding practice in discharging liabilities incurred by the former members of the fund-holding practice for the purposes specified in paragraph (4) but only up to a maximum of £100,000.

(2) Where any part of the sum specified in Article 8(1) is unspent on 1st April 2004 the Health and Social Services Board shall no longer be required to apply it in discharging liabilities incurred by the former members of a fund-holding practice.

(3) The final balance shall not be applied in accordance with Article 8(1) until, except in the case of the former members of a fund-holding practice which was no longer recognised as a fund-holding practice on 1st April 2001, the annual accounts for the financial year 2001-2002 have been submitted to the Health and Social Services Board and audited, in accordance with Articles 9 and 10.

(4) The final balance shall only be applied for one or more of the following purposes—

(*a*) the purchase of material or equipment which—

(i) is to be used for the treatment (including diagnostic treatment) of patients of the former members of the fund-holding practice, or

(ii) enhances the comfort or convenience of patients of the former members of the fund-holding practice,

(*b*) payments to—

(i) dieticians, or

(ii) counsellors providing advice on diet, alcohol consumption, smoking or other personal health matters,

(*c*) the purchase of computers, including hardware and software;

(*d*) payments to staff but only those salaries and other payments permitted by paragraph 52.6 of the Statement published in accordance with regulation 37 of the General Medical Services Regulations (Northern Ireland) 1997(**a**);

(*e*) initiatives to improve prescribing;

(*f*) payments for—

(i) the purchase of health education materials or equipment,

(ii) advice on the dissemination of health education to patients,

(*g*) in relation to the premises from which the former members carry on their practice, improvements to the premises including alterations to or decoration of the premises, the purchase of furniture and furnishings and building an extension.

(5) Where any part of the final balance remains after liabilities incurred by the former members of the fund-holding practice have been discharged in accordance with Article 8(1), it shall be applied by the Health and Social Services Board as the Department may direct.

PART V

ACCOUNTS

Preparation of accounts

9.—(1) The duty in Article 90(5)(*c*) of the 1972 Order(**b**) shall apply to former members of a fund-holding practice with respect to the financial year 2001-2002 as it applies for other financial years.

(2) The duty in Article 90(5)(*d*) of the 1972 Order shall apply to Health and Social Services Boards with respect to the financial year 2001-2002 as it applies for other financial years.

(3) For the purposes of paragraphs (1) and (2), Article 90(5) of the 1972 Order shall continue to apply as though that Article and the fund-holding provisions had not been repealed.

Audit of accounts

10. Any duty imposed on the former members of a fund-holding practice by Article 92A of the 1972 Order(**c**) but not performed on 1st April 2002 shall be performed by the former members of the fund-holding practice in accordance with the provisions of that Article and of any directions which

(**a**) S.R. 1997 No. 380

(**b**) Article 90(5) of the 1972 Order was inserted by the Health and Personal Social Services (Northern Ireland) Order 1991 (N.I. 14), Article 22 and was repealed by the Health and Personal Social Services Act (Northern Ireland) 2001, section 60(3) and Schedule 5

(**c**) Article 92A of the 1972 Order was inserted by the Health and Personal Social Services (Northern Ireland) Order 1994 (N.I. 2), Article 5 and was repealed by the Health and Personal Social Services Act (Northern Ireland) 2001, section 60(3) and Schedule 5

may be given by the Department as though the fund-holding provisions and Article 92A of that Order had not been repealed.

PART VI

SAVING PROVISIONS

Investigation of complaints by the Commissioner for Complaints

11. A complaint made to the Commissioner for Complaints under the Commissioner for Complaints (Northern Ireland) Order 1996(**a**) in relation to the former members of a fund-holding practice whether made before or after the repeal of the fund-holding provisions may be investigated, or if not disposed of, shall continue to be investigated by the Commissioner in accordance with that Order as though Article 8(4) of that Order had not been repealed.

Investigation of other complaints

12. The procedure to investigate complaints established and operated under paragraph 52 of Schedule 2 to the General Medical Services Regulations (Northern Ireland) 1997(**b**) shall apply in relation to any complaint about the use of the allotted sum by the former members of a fund-holding practice, whether a complaint was made before, on or after the date this Order comes into operation, and notwithstanding the repeal of the fund-holding provisions the former members of the fund-holding practice shall co-operate with the investigation of the complaint by the Health and Social Services Board as required by paragraph 53 of Schedule 2 to those Regulations.

Outstanding applications relating to savings

13.—(1) Any application made before 1st April 2002 to the Health and Social Services Board to apply the allotted sum for a purpose specified in regulation 21(2) or (3) of the 1993 Regulations shall notwithstanding the repeal of the fund-holding provisions be determined by the Health and Social Services Board in accordance with regulation 21(**c**).

(2) For the purposes of paragraph (1), paragraphs (5) to (7) of regulation 21 of the 1993 Regulations shall continue to apply as though the fund-holding provisions had not been repealed.

Recovery of misapplied sums

14.—(1) Notwithstanding the repeal of the fund-holding provisions, the Department may on or after 1st April 2002 apply the procedure in regulation 22 of the 1993 Regulations(**d**) to determine whether any part of the allotted sum has been misapplied by the former members of a fund-holding practice

(**a**) S.I. 1996/127 (N.I. 7) as amended by S.I. 1997 No. 1758 (N.I. 14)
(**b**) S.R. 1997 No. 380
(**c**) Regulation 21 was substituted by regulation 14 of S.R. 1998 No. 323
(**d**) Regulation 22 was amended by S.R. 1996 No. 131 and S.R. 1997 No. 184

and the Department may recover in accordance with that regulation any sum found to have been misapplied and regulation 22 of the 1993 Regulations shall apply to such determinations and recoveries as though the fund-holding provisions had not been repealed.

(2) Paragraph (1) shall apply whether or not the procedures to determine whether a sum had been misapplied or to recover such a sum had been begun before 1st April 2002.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 26th February 2002.

(L.S.) *D. J. Thompson*

Senior Officer of the Department of
Health, Social Services and Public Safety

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order makes transitional provisions in connection with the abolition, by section 39 of the Health and Personal Social Services Act (Northern Ireland) 2001, of the system of GP fund-holding as established by the Health and Personal Social Services (Northern Ireland) Order 1991.

In particular, the Order provides for the transfer of assets, rights and liabilities connected with fund-holding to the relevant Health and Social Services Board of the former fund-holding practice (Articles 2 and 3) and for the use by the Health and Social Services Board of those assets in meeting rights and liabilities transferred to it and those retained by the former members of fund-holding practices (Articles 4 and 5).

Where there are still assets remaining after all the liabilities of the former fund-holding practice have been met the balance is to be applied by the Health and Social Services Board up to a specified maximum amount and for specified purposes (Article 8).

In Parts V and VI, provision is made so that, notwithstanding the abolition of fund-holding, obligations relating to accounts apply until final accounts have been audited and submitted, complaints in relation to the conduct of a fund-holding practice may still be examined, outstanding matters relating to the use of savings from fund-holding may be resolved and misapplied allotted sums recovered, on and after 1st April 2002.

The Statement referred to in Article 8(4)(*d*) is available from the Department of Health, Social Services and Public Safety, Dundonald House, Upper Newtownards Road, Belfast BT4 3TA.

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