

MANX CARE BILL 2020

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Minister David Ashford MHK.

INTRODUCTION

1. These explanatory notes relate to the Manx Care Bill 2020 (the "**Bill**"). The Bill is promoted jointly by the Cabinet Office and the Department of Health and Social Care (the "**DHSC**"). The notes have been prepared by the Health and Care Transformation Programme of the Cabinet Office in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
2. The notes need to be read in conjunction with the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.
3. The Bill has been subject to public consultation and has been updated to take account of comments raised.
4. An impact assessment of the Bill has been prepared.
5. In the opinion of the Member moving the Bill, the provisions of the Bill are compatible with the Convention rights within the meaning of the Human Rights Act 2001.
6. If approved, the Act is expected to have financial implications associated with the costs of splitting the DHSC into two organisations and bringing in external quality inspections. The Transformation Programme Team continues to work to quantify the costs of the implementation of the Bill including the following cost areas:
 - a. additional resource within the DHSC, once health and care delivery staff have been transferred to Manx Care, to ensure that it is suitably staffed to deliver its responsibilities including matters of policy, legislation, finances and oversight of Manx Care's delivery of the agreed mandate;
 - b. medical indemnity, due to a change arising from the duty of candour imposed in the Bill which potentially could lead to more claims;
 - c. insurance, which could change potentially by including an additional organisation;
 - d. branding of Manx Care;
 - e. implementation of external inspections of health and social care service provision; and
 - f. potentially, additional infrastructure relating to additional office space required by splitting Manx Care from DHSC

BACKGROUND

7. This Bill, which is promoted by the Cabinet Office in association with the DHSC, establishes a legal framework, in line with the recommendations made in Sir

Jonathan Michael's Independent Review of the Health and Social Care System, to establish a new, arms-length organisation focussed on delivering health and social care services on the Island.

8. The arms-length organisation is to be known as Manx Care and will be set up as a Statutory Board responsible for delivering and commissioning all health and care services for the Island's residents.
9. The content of the Bill focusses on how Manx Care will be set up and the requirement for DHSC to obtain health and social services via a written agreement (known as the mandate) with Manx Care.
10. It is intended that the Bill will come into operation on 1st April 2021 establishing Manx Care as a legal entity on that date.

STRUCTURE OF THE BILL

11. The Bill has 40 clauses. There are 7 Parts and 5 Schedules as follows –
12. **Part 1** of the Bill (clauses 1 to 3) contains preliminary matters – principally commencement and interpretation provisions.
13. **Part 2** of the Bill (clauses 4 to 11) outlines the duties and responsibilities of the DHSC.
14. **Part 3** of the Bill (clauses 12 to 19) establishes Manx Care, its general functions and outlines the requirement for a mandate between DHSC and Manx Care.
15. **Part 4** of the Bill (clauses 20 to 27) outlines the duties of Manx Care.
16. **Part 5** of the Bill (clauses 28 to 30) provides Manx Care with the means to carry out its functions and for DHSC to be able to intervene in case of failure.
17. **Part 6** of the Bill (clauses 31 to 33) requires Manx Care to publish operating plans and annual reports and to provide information to DHSC upon request.
18. **Part 7** of the Bill (clauses 34 to 40) contains a duty to share information, brings in the remaining Schedules and other miscellaneous provisions.
19. **Schedule 1** of the Bill makes further provision about Manx Care, including its membership, staff and how it shall be inspected.
20. **Schedule 2** of the Bill specifies what must be included in the mandate.
21. **Schedule 3** of the Bill allows for a scheme to be made for transferring rights and liabilities from DHSC to Manx Care.
22. **Schedule 4** of the Bill provides that a scheme can be made for transferring staff to Manx Care.

23. **Schedule 5** of the Bill contains necessary amendments to other pieces of legislation to account for the formation of Manx Care.

COMMENTARY ON CLAUSES

Part 1 – Introductory

24. **Clause 1 and 2** provide for the short title and commencement of the 'Manx Care Bill 2020'.
25. **Clause 3** defines terms in the Bill.

Part 2 – Duties and responsibilities of the Department

26. **Clause 4** provides that the DHSC continues to have responsibility for ensuring that a comprehensive health and social care service is promoted in the Island and that the DHSC retains its existing duties under other relevant legislation irrespective of provisions made in the rest of the Bill.
27. **Clause 5** requires that the DHSC must act with a view to securing continuous improvement in the effectiveness, safety and quality of health and social care services, including following evidence based practice when setting the strategy for the health and social care service for the Island.
28. **Clause 6** provides that the DHSC is required to promote autonomy of other persons involved in providing health and social care services so that as far as possible decisions are made independently from the DHSC in how services are provided. The inclusion of this duty is to ensure that Manx Care is able to operate autonomously as envisaged within the recommendations of Sir Jonathan Michael's Independent Review.
29. **Clause 7** ensures that the DHSC must exercise its functions on advice from persons with professional expertise to qualify them in providing such advice.
30. **Clause 8** requires that the DHSC must involve patients and service users in planning arrangements for new services or making any changes that impact on existing services, whether those services are provided by DHSC or another person. This is to bring in strengthened service user representation in policy making in line with the recommendations of Sir Jonathan Michael's Independent Review.
31. **Clause 9** imposes a duty on the DHSC to promote education and training for every person whose employment is connected to the provision of health or social care services. This is in line with a duty on the Department of Health and Social Care in England and has been included in consideration of the fact that it is essential that health and social care staff are able to maintain and develop their skills whilst

working on the Island, to aid recruitment and retention of staff and develop the workforce.

32. **Clause 10** provides that the DHSC is responsible for reducing inequality between patients and service users in accessing health and social care services and in respect of the outcomes achieved by provision of these services.
33. **Clause 11** makes the duty of candour a statutory duty for the DHSC, with the effect that the DHSC is required to be transparent and open in the way in which it carries out its functions. It also requires the DHSC to make regulations about information to be provided in cases where incidents such as breaches of safety standards or harm to individuals have occurred in the course of health and care services being provided. It is intended that the regulations are brought in at the same time as the Bill.

Part 3 – Manx Care and the Mandate

34. **Clause 12** establishes Manx Care as a statutory board and gives effect to Schedule 1 of the Bill, which sets out more detail about its operation.
35. **Clause 13** sets out Manx Care's functions, which will be to discharge the duties of the DHSC in relation to provision of services in accordance with an agreement between the DHSC and Manx Care (the mandate). Manx Care also shares the duty given to DHSC in clause 4 to ensure that a comprehensive health and social care service is promoted. Additional functions are provided to Manx Care within this clause to enable it to act as a "prime contractor" overseeing the direct provision of services from its own resources, as well as collaboratively planning and purchasing other necessary services from providers based on and off Island, including from the third sector and private sector.
36. **Clause 14** sets out the requirements for publishing and laying before Tynwald the mandate before the start of each financial year. The mandate will be the document agreed between the DHSC and Manx Care whereby the DHSC requires Manx Care to provide a range of health and social care services to a specified standard for a certain amount of funding to address the needs of the Island's population. This clause also requires the DHSC to keep Manx Care's performance under review in meeting its standards and requirements under the mandate.
37. **Clause 15** makes provision for circumstances in which the mandate may be revised in-year and requires that, if revised in any way, it should again be published and laid before Tynwald with an explanation for why the revision has taken place.
38. **Clause 16** gives Manx Care a general power to do anything that will assist it in discharging its functions under the Bill.
39. **Clause 17** gives a power to Manx Care specifically for it to make agreements with other persons to carry out its functions whilst retaining liability under the mandate. This will allow it to enter into agreements with other service providers, both on and

off-Island, to provide the health and social care services required under the mandate.

40. **Clause 18** gives Manx Care a power to provide private accommodation and treatment. The DHSC currently has a similar power to provide private services within legislation, if it chooses to do so. Manx Care will only be able to use this power if the DHSC allows Manx Care to provide private health services and with the proviso that it will not interfere with the other services to be provided under the mandate.
41. **Clause 19** gives Manx Care the ability to continue to run the hospital shop and café.

Part 4 – Manx Care’s duties

42. **Clause 20** places a duty of effectiveness and efficiency on Manx Care. This duty supports the principles passed by Tynwald on 20 March 2018 which include: “*the NHS is committed to providing best value for taxpayers’ money and the most effectiveness [sic], fair and sustainable use of finite resources*”. The Final Report of Sir Jonathan Michael’s Independent Review noted that it is important to make the system work more effectively and efficiently: including a new statutory duty is the first step towards requiring this. When considering efficiency in this context it is vital to focus on value for money rather than cost-cutting initiatives. The duty will need to be supported by further work in a number of areas, including, for example, a corporate and clinical and care governance framework to ensure that Manx Care is run efficiently and effectively; and increased data and transparency of costs and spend to enable Manx Care and the DHSC to better understand if spend is appropriate and effective. These areas are being worked on as part of the Health and Care Transformation Programme.
43. **Clause 21** places a duty of candour on Manx Care so it is required to be transparent and open in the way in which it carries out its functions and to comply with regulations made under clause 11.
44. **Clause 22** provides that Manx Care must establish and operate a clinical and social care governance framework, which is a clear framework of accountability against which the organisations and practitioners can be held to account for the quality of care provided, and must require any person it has entered into agreements with under clause 17 to adhere to an equivalent framework.
45. **Clause 23** requires that Manx Care must act with a view to securing continuous improvement in the effectiveness, safety and quality of health and social care services. It also provides the DHSC power to make regulations to impose requirements and minimum standards on Manx Care. It is anticipated that Regulations are drafted that would align the standards to be achieved with the Care Quality Commission’s fundamental standards, which are widely accepted standards of care covering such things as person centred care, safety, safeguarding from abuse, food and drink, dignity and respect that service users would expect.

46. **Clause 24** provides that Manx Care is responsible for reducing inequality between patients and service users in accessing health and social care services and in respect of the outcomes achieved by provision of these services.
47. **Clause 25** requires Manx Care to promote autonomy of other persons involved in providing health and social care services so that, as far as possible, service providers are given the ability to act autonomously.
48. **Clause 26** requires Manx Care to promote education and training for those whose employment is connected to the provision of any health or social care service.
49. **Clause 27** requires that Manx Care must involve patients and service users, carers and their representatives in decisions relating to their diagnosis and care.

Part 5 – Functions: Additional

50. **Clause 28** provides Manx Care with the means to carry out its functions by arrangements with members of the board, staff or persons and bodies other than Manx Care. It also enables Manx Care to exercise its functions jointly with another person or body, if necessary or desirable. However, it confirms that when Manx Care enters into arrangements with others it continues to remain accountable for the fulfilment of its functions.
51. **Clause 29** gives the DHSC power to make regulations which provide Manx Care with additional functions in relation to health and social care services. These additional functions must be connected to another function of Manx Care under the mandate.
52. **Clause 30** allows the DHSC to direct Manx Care to take steps to rectify any failures, if it considers that Manx Care is failing or has failed. It also requires the DHSC to notify the Council of Ministers where it believes Manx Care is not complying with the directions addressed to it and gives the Council of Ministers power to be able to give directions to Manx Care and to the DHSC following receipt of such notification. If a direction is made by the Council of Ministers, it must publish the reasons for doing so.

Part 6 – Plans and reports

53. **Clause 31** requires Manx Care to publish an operating plan. For the first and second years of the establishment of Manx Care this will be an overview document and for every subsequent financial year it will set out Manx Care's proposals of how it intends to fulfil its responsibilities in order to comply with the mandate over the next three years.
54. **Clause 32** requires that Manx Care publish an annual report no later than six months after the end of each financial year, and sets out what the annual report must contain. It also requires the DHSC to produce a letter to Manx Care assessing

its performance over the year, to publish the letter and to lay the letter and the annual report before Tynwald.

55. **Clause 33** gives the DHSC power to request Manx Care to provide information relating to DHSC's functions in respect to health and social care services. It requires Manx Care to provide the information, or an explanation for not doing so.

Part 7 – Miscellaneous and supplementary

56. **Clause 34** places a duty on the DHSC, Manx Care and any person with whom Manx Care have entered into an agreement under clause 17, to share information with each other about patients and service users and sets out circumstances when this duty applies and when it does not. This duty was recommended within the Final Report of Sir Jonathan Michael's Independent Review. Effective information-sharing underpins integrated working. However, it is important to note that information can be shared lawfully within the parameters of the legislation covering data. That legislation and the legislation on human rights are not barriers to justified information sharing but provide a framework to ensure that personal information about individuals is shared appropriately; therefore, this new duty to share does not override anything within the DPA and, as with the planning and delivery of services, the individual should be at the centre of decision making when considering whether or not information should be shared, keeping them involved in decisions and seeking their agreement, unless it is unsafe or inappropriate to do so.
57. **Clause 35** gives effect to Schedules 3 and 4 of the Bill, dealing with schemes to transfer to Manx Care interests, rights and liabilities of the DHSC and the transfer to Manx Care of staff respectively.
58. **Clause 36** provides that any references to the DHSC in written documentation, that relate to functions that are the subject of the mandate, should be interpreted to mean Manx Care or where Manx Care has entered into an agreement with another person under clause 17, then that person.
59. **Clause 37** amends Schedule 1 of the Statutory Boards Act 1987 to include Manx Care as a statutory board.
60. **Clause 38** brings in Schedule 5, which contains consequential amendments to other legislation.
61. **Clause 39** enables the DHSC to make regulations, where necessary or advantageous, in relation to any provision of the Bill.
62. **Clause 40** sets out what matters may be included in, and the form of, directions given under the Bill.
63. **Schedule 1** of the Bill is made up of three parts. Part 1 sets out the constitution of the board of Manx Care and allows for appointment and removal of members. Part 2 makes provision for Manx Care to have staff. Part 3 requires external quality

inspections of each service provided under the mandate by appropriate independent inspectors at least once every five years. It requires that, following an inspection, the report must be published along with an action plan for effecting the recommendations made within the report. The DHSC is required to keep under review Manx Care's action taken in light of the report and, if a report demonstrates that Manx Care has significantly failed or is significantly failing, it allows the DHSC to issue a direction under clause 30.

64. **Schedule 2** of the Bill specifies what must be included in the mandate, covering the arrangements and obligations between DHSC and Manx Care. In particular, it states that the mandate must require Manx Care and any person which Manx Care enters into an agreement with under clause 17, to establish and operate an internal complaints procedure and it requires the mandate to include a statement about the steps that might be taken under the Bill in respect to a failure to comply with the terms.
65. **Schedule 3** of the Bill allows for a scheme to be made for transferring rights and liabilities from DHSC to Manx Care.
66. **Schedule 4** of the Bill provides that a scheme can be made for transferring designated persons to become the staff of Manx Care. This will allow staff directly employed by the DHSC to be transferred to Manx Care, and provides that any such scheme will protect the existing terms and conditions of those persons at the time at which the transfer takes place.
67. **Schedule 5** sets out the amendments that are required to be made to other pieces of legislation that currently reference the DHSC but also need to include reference to Manx Care. The legislation amended by this Schedule is the Local Government Act 1946, Criminal Justice Act 1963, Misuse of Drugs Act 1976, Jury Act 1980, Road Traffic Act 1985, Access to Health Records and Reports Act 1993, Custody Act 1995, Criminal Justice Act 2001, Residence Act 2001, National Health Service Act 2001, Education Act 2001, Social Services Act 2011, Health and Care Professionals Act 2014, Regulation of Care Act 2013, Freedom of Information Act 2015 and the Health Services Consultative Committee Constitution Regulations 2012.