



## **NATIONAL HEALTH AND CARE SERVICE BILL**

**THESE NOTES ARE CIRCULATED FOR THE INFORMATION OF MEMBERS WITH THE APPROVAL OF THE MEMBER IN CHARGE OF THE BILL, HON. R H QUAYLE, MINISTER FOR HEALTH AND SOCIAL CARE**

### **Introduction**

These notes have been prepared by the Department of Health and Social Care and need to be read in conjunction with the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.

The Bill has been subject to public consultation and, in the opinion of the member moving the Bill, is compatible with the convention rights within the meaning of the Human Rights Act 2001.

As the Bill is facilitatory and introduces very little which isn't happening already, no financial or staffing impact is anticipated.

### **Background**

The aim of this Bill is to update the National Health Service Act 2001 to make it fit for the current and future purposes of the Department of Health and Social Care.

This legislation is an important piece of legislation which will serve to ensure that the Department can continue to be legally compliant in the delivery of its obligations in respect of the delivery of health care, including where those obligations are closely linked to regulatory regimes in the United Kingdom.

It is acknowledged that as more health and social care is integrated, and in accordance with the development of the Department's recently published 5-year strategy, more legislation may, in due course, be required to dovetail the relevant health and social care legal obligations.

In the meantime this legislation deals principally with health care but some pertinent adjustments have been made to recognise and facilitate integrated health and social care as it develops.

The Bill has intentionally been drafted as a framework under which there will be supporting schemes and procedures containing the detail about how the National Health and Care Service operates.

It should be noted that health care services on the Isle of Man are only provided by either Department employed staff or via arrangements between the Department and service providers. Therefore, the layers of regulation and direction which exist in the United Kingdom between Westminster and the service providers are not required here.

## **Content of Bill**

Part 1 of the Bill is introductory.

### **Clause 1 (short title)**

Clause 1 confirms the short title of the Act as the National Health and Care Service Act 2016.

The word 'Care' has been added into the title of the Act from the previous National Health Service Act 2001 to reflect the fact that the Department of Health and Social Care now has a wider care remit than the traditional health services model of curing illnesses, and also deals with prevention, screening, early care and after care interventions.

### **Clause 2 (commencement)**

Clause 2 allows for the Act to be brought into operation using appointed day orders, and for different days to be appointed for different purposes.

This clause also allows an appointed day order to make transitional and saving provisions.

It is the Department's intention to bring as much of the Act as possible into operation at the earliest possible juncture after Royal Assent is announced.

### **Clause 3 (Interpretation)**

Clause 3 deals with necessary interpretation for the Bill.

'Appointments Commission' is interpreted, for the purposes of Clause 23(2) and the appointment of members of committees, as the Commission established under section 1 of the Tribunals Act 2006.

'Care' is defined to make it clear that the Department's responsibilities under the Act include both the specific provision of health care and services and a wider responsibility to provide care which may include care and services which are set out in other legislation.

'Charter' is defined in accordance with part 2 of the Bill.

'Department' is defined as meaning the Department of Health and Social Care.

'Independent Review Body' is defined as having the meaning given in section 23(2).

'NHCS' is defined as meaning the National Health and Care Service.

'Publish' is defined to make it clear that wherever the Bill requires the Department to publish information it must do so in a way which will give the public free and convenient access to it. This will include making the information available on the Department's web site and circulating and placing hard copies wherever they are necessary to make sure everyone who needs to see the information can do so.

Finally, 'Scheme' is defined with reference to section 8 of the Bill.

#### **Clause 4 (Citation of the Isle of Man National Health and Care Service)**

Clause 4 states that the Scheme or Schemes established under the Bill and the care provided under them may collectively be known as the Isle of Man National Health and Care Service.

This is intended to recognise that the Bill does not significantly move away from the traditional 'NHS' model for the provision of health care and maintains the close links between the Isle of Man and the United Kingdom National Health Service.

#### **Clause 5 (Department to prepare and maintain a Charter), Clause 6 (Character of the Charter) and**

#### **Clause 7 (Revision and amendment of the Charter)**

Clause 5 introduces the first element of the new legislative framework by requiring the Department to publish and maintain a Charter in respect of the NHCS.

The idea for the Charter is based on the NHS Constitution in England and Clause 6 states that it must set out the Department's general commitments for the NHCS.

Clause 6 also confirms that the Department must have regard to the Charter when it is providing care.

Clause 7 requires the Department to review, and if appropriate, revise the Charter at least once every 5 years, although it can amend it at any time.

Although it is not a requirement of the Bill the Department would anticipate laying a copy of the NHCS Charter before the Tynwald court at least once in every 5 years and if and when there is any significant amendment to it.

#### **Clause 8 (Department to provide care)**

Part 3 of the Bill deals with the second part of the new legislative framework which is the Schemes which will set out how the Department will provide the NHCS.

Clause 8 sets out the basic duty for the Department to make Schemes which set out the extent and the manner in which care will be provided to individuals.

It is anticipated that the first Scheme or Schemes will be based on the current NHS model and that thereafter the Department will, in accordance with its recently published 5-year strategy, look to see how services might be delivered in a better and more efficient way including through increased integration of health and social care services.

As the Schemes will be legislative in character clause 8 also requires the Schemes to be laid before Tynwald.

#### **Clause 9 (Standards of care)**

Clause 9 sets out the standards of care to which the Department is required to provide care under a Scheme.

Firstly, in paragraph 9(a) the Department is required to provide care in accordance with generally accepted standards. These standards may include, for example, the professional standards required by the UK bodies with which care professionals must be registered, legal standards set out in relevant IOM or UK statute, or best practice guidelines issued by the UK Department of Health or the IOM DHSC.

Paragraph 9(b) requires, subject to available resources, care to be provided to the highest levels of human knowledge and skill necessary to save lives and improve health. This paragraph acknowledges that this is an aspiration as it is both impractical and unaffordable for the Department to provide every form of care on the Island and to be able to attract the very best care professionals in every field to the Island.

Paragraph 9(c) requires care to be administered with compassion and concern for the wellbeing of the individuals to whom it is provided.

Paragraph 9(d) requires care to be comprehensive and to be available to everyone on the Island. This does not commit the Department to providing all care services to everyone who might arrive on the Island and the Schemes may set out how access to services might be restricted, for example, for visitors to the Island.

Paragraph 9(e) requires care to be designed to improve, prevent, diagnose and treat both physical and mental health conditions with equal regard.

Paragraph 9(f) requires the care provided to support individuals to promote and manage their own health.

Finally, paragraph 9(g) requires a Scheme care to provide the best value for money by using the resources allocated to it in the most effective, fair and sustainable manner.

### **Clause 10 (Contents of a Scheme)**

Clause 10 requires the Department, when making a Scheme, to determine what care will be provided, how and under what terms and conditions. The Department must also determine how the Scheme is to be administered.

It is expected that there will be full and open consultation about any new or amended Schemes so that any potentially contentious issues can be addressed well before the Schemes are laid before Tynwald.

It must be noted that the Schemes will not include every last operational detail but they will make it clear where this detail can be found. It is anticipated that the operational detail will be contained in procedures which will be made available to all those who require access to them.

### **Clause 11 (Charges under a Scheme)**

This clause continues the existing provision whereby the Department can make charges in respect of NHCS care.

Firstly, subsection 11(1) states that the terms and conditions of a Scheme must provide for the charges (if any) to be paid. This paragraph slightly extends the existing provision in that it specifically allows the Department to also charge for the use of facilities.

Subsection 11(1) also states that a Scheme must include details about the manner in which charges are to be calculated.

Current charges include prescription and dental charges and charges to overseas visitors.

By including the provision for charges in the Schemes the existing requirement for charges to be set out in regulations is removed. However, as the Schemes are legislative in nature any changes to the charging arrangements will still need to be laid before Tynwald.

Subsection 11(2) makes it clear that, in making provision for charges, there is no implication that a charge must be made for the provision of care or for the use of facilities.

Subsection 11(3) recognises, for the avoidance of any doubt, that the Department must be fiscally aware of the cost implications of providing health care, by stating that the Department must have due regard to the funds and other resources available to it when setting a charge.

Subsection 11(4) continues the existing provision whereby the Department can exempt individuals from a charge for care or reduce their liability to a charge.

Subsection 11(5) allows a Scheme to make provision for a charge to be designated as a debt due to a third person in the event that the charge is not payable directly to the Department or to the person providing the care.

Finally, subsection 11(6) confirms that the Department must pay any monies it receives into general revenue.

### **Clause 12 (Contributions under a Scheme)**

Subsection 12(1) allows a Scheme to include provision for the Department to make payments in respect of specified care related costs which have been incurred or may be incurred in respect of an individual's care.

Existing payments include contributions towards the travel and accommodation costs of people travelling to the United Kingdom for NHS care.

Subsection 12(2) states that the Department must also have due regard to the funds and other resources available to it when making contributions.

### **Clause 13 (Care may be provided by others)**

Clause 13 firstly confirms that the obligation on the Department to establish Schemes is not to be taken as implying that only the Department can provide care under a Scheme.

Subsection 13(2) then states that all or any part of the care may be provided by a person who has been commissioned by, or on behalf of, the Department, or who has entered into a contract with the Department.

An example of commissioning would be the arrangements the Department currently has with the North West Regional Commissioning Group whereby they make the arrangements with the Hospital Trusts in the region, on behalf of the Department, in respect of patients who need to be transferred for treatment not available on the Island.

This is also the provision which specifically allows the Department to continue with the existing contracts it has with General Practitioners and General Dental Practitioners for the provision of NHS primary care services; and it will allow similar arrangements to be established in respect of ophthalmic, pharmaceutical and other services in the future.

## **Clause 14 (Department to maintain list of qualified care providers)**

Clause 14 firstly continues the existing provision whereby the Department must keep a list of the names of persons on the Island that it is satisfied are qualified to provide care via commissioning or contractual arrangements.

Subsection 14(2) provides that the list may also include the names of individuals who are providing care on behalf of the Department.

The need to be on a list is a requirement for certain health care professionals, such as GPs, in order to maintain their license to practice.

This does not mean that every single NHCS care provider must be on the list but the option for an individual to seek to be added to the list must be available.

For example, providers who are Department employees are routinely checked as part of the employment process. This is recorded on their employee record and, in most cases, they don't then need to be on a master list of qualified people as well.

Subsection 14(3) states that the Department may publish the list either in full or to such extent as it considers appropriate, and Subsection 14(5) provides that the Department can keep the list in any form it considers appropriate. It is unlikely that the Department would actually publish the list in full as it contains particulars about the service provider which may be considered confidential and would be of no interest to the general public. However, the UK regulators require specific information to be readily available to certain organisations, if they request to see it, and the Isle of Man, that is the Department, is obliged to ensure that this can happen for Isle of Man based service providers.

Clause 14 goes on to state that the Department must publish details of the application process for persons wanting to be added to the list, and the process which the Department must follow in dealing with applications.

Subsection 14(6) adds that a person may appeal against a decision by the Department not to include them on the list, or to remove them from the list, to a committee or body to which responsibility is given for this purpose by regulations. Subsection 14(7) confirms that the Department must comply with the decision of such a committee or body.

## **Clause 15 (Private facilities and care)**

Clause 15 firstly re-iterates that nothing in this part of the Bill is to be taken as implying that only the Department may provide care under a Scheme.

Paragraph 15(1)(b) then allows the Department's facilities to be used for the provision of care outside of a Scheme. The main purpose of this paragraph is to allow the Department to continue to make provision for private care in the private ward at Nobles Hospital, but it will also allow the Department to allow more of its facilities to be used for private care when they are not needed for NHCS care.

Subsection 15(2) confirms that where care is provided, or facilities are made available, outside of a Scheme, this would be subject to terms and conditions to be determined by the Department. These terms and conditions could include restrictions to ensure that private provision does not impact on NHCS service provision, and would include any provisions as to the cost to the person using the facilities.

## **Clause 16 (Misuse of the Department's facilities)**

Clause 16 introduces a new provision whereby the Department can make a charge for the use of its facilities once an individual has been informed that alternative accommodation arrangements would be more appropriate for their ongoing needs.

The aim of the new provision is to address the problem whereby some individuals currently refuse to leave, for example a hospital bed, for purely financial reasons, even though they have been assessed as being able to afford the alternative accommodation.

Subsection 16(1), therefore, states that a charge may be made where:-

- (a) an individual occupies any of the Department's facilities for the purpose of receiving care;
- (b) the individual or their representative has been informed by an appropriate person that they no longer need to occupy the facility and they have been asked to leave; and
- (c) they refuse to leave the facility.

Subsection 16(2) confirms that the Department may make a charge in the above circumstances.

The Department has a comprehensive discharge process, which includes careful assessments by both health clinicians and social care professionals of an individual's care needs and their ability to fund those needs. These assessments are done with the full involvement of the individual and, where relevant, their family, and it is only where everyone concerned in the assessment process is content that it would be in the best interests of the individual to move to an alternative facility, and they or their family still refuse to leave, that this option may be resorted to.

Subsection 16(3) provides for the Department to determine the charge on a case by case basis, having regard to the individual's means, so as to discourage the continued occupation of the facility.

Subsection 16(4) states that the charge is a debt due to the Department, may be recovered by way of legal proceedings, and must be paid into general revenue.

Subsection 16(5) firstly defines an appropriate person, for the purposes of communicating decisions under this clause, as a person who has the actual or ostensible authority of the Department.

The individual's representative is defined as a person who the Department has deemed can make decisions on behalf of an individual under this Clause, irrespective of whether the person has also committed to meeting any costs in respect of the individual's care.

## **Clause 17 (Establishment of committees)**

Part 4 of the Bill deals with Committees. Firstly paragraph (a) of Clause 17 states that the Department may establish a consultative committee to provide it with scrutiny and advice on the provision of services in furtherance of its functions. This is subject to paragraphs (h) and (i) of Clause 23(2) which set out provisions relating to the appointment and constitution of the committee.

The establishment of this committee, which is the existing Health Services Consultative Committee, is continued from the National Health Service Act 2001 with a slight rewording to allow the committee to provide scrutiny and advice on any of the Department's functions, not just those relating to the NHCS.

The HSCC is the nearest thing we have to the United Kingdom's Care Quality Commission, which is the 'arms length' body which has the general objective of protecting and promoting the health, safety and welfare of people who use the UK's health and social care services.

Paragraphs 17(b) and (c) allow the Department to establish other committees to exercise its functions and to co-ordinate the provision and delivery of care under the Schemes. Examples of such committees are the Department's senior leadership teams and the Clinical Recommendations Committee which has an important role in determining which clinical services the Department should or should not be providing.

In the UK the CQC has other powers beyond the scrutiny of health services although many of its powers are further delegated to other bodies. This is similar to what the Department has done in respect of delegating to its other committees and in seeking additional external review of its services by the West Midlands Quality Review Service.

It must be recognised that the Island does not have the resources to create the equivalent of all of the UK regulatory bodies and must live within its means but the Department takes its responsibilities in this area very seriously and continues to look at ways to strengthen its position in respect of seeking independent scrutiny and advice.

### **Clause 18 (Advice of committees)**

This Clause states that the Department may seek advice from any of the committees established under Clause 17 in respect of any action it has taken or intends to take in respect of care, and must take account of any advice it receives. However, it is not bound to follow the advice given.

This is similar to the UK position in that the CQC must have regard to government policy directions but it cannot direct the Secretary of State for Health (the UK equivalent of the Minister for Health and Social Care) as to how services should be provided.

### **Clause 19 (Application of Part)**

Part 5 of the Bill is concerned with complaints under a Scheme.

Clause 19 firstly confirms that complaints can be made by individuals about any element of care provided under a Scheme, whether that care is provided by the Department or by a commissioned or contracted service provider.

Subsection 19(2) then states that a complaint may, in particular, be made about a failure to provide care, a delay in the provision of care, the quality or efficacy of care, or the manner in which care was provided. This list is not intended to be exhaustive and further examples of types of complaints may be detailed in the proposed published complaints procedure.

It should be noted that the Bill intentionally omits any reference to service providers being able to complain as there are other avenues for them to do so such as by lodging a dispute under the contract arrangements.

## **Clause 20 (Procedure for making complaints)**

Clause 20 states that the Department must publish the procedure for both making a complaint and considering a complaint, and the complaints procedure must ensure that the rules of natural justice are followed.

The published procedure will replace the existing National Health Service (Complaints) Regulations 2004.

## **Clause 21 (Independent Review Body to consider complaints)**

Clause 21 firstly confirms that if a complaint is not resolved under clause 20 either party may refer the complaint to an Independent Review Body, appointed in accordance with paragraphs (a) to (g) of Clause 23(2). This is a slight change to the existing position in that only the individual making the complaint can currently refer to the IRB.

It is not anticipated that this will result in any increase in complaints but it might speed up the process if the Department can make the referral.

The Independent Review Body is an existing body which was established under the general powers to establish committees contained in the National Health Service Act 2001.

Subsection 21(2) states that the Review Body must consider a complaint and report its decision to the parties to the complaint.

Subsection 21(3) confirms that the Department must also publish the procedure for referring a complaint to the Review Body and the procedure which will be followed by the Body when considering a complaint, and states that the Review Body procedure must also follow the rules of natural justice.

Subsection 21(4) confirms that nothing in this clause is to be taken as prohibiting a person from seeking any other remedy in respect of a complaint.

## **Clause 22 (Powers and duties of the Department)**

Part 6 of the Bill deals with final and supplemental provisions.

Firstly, Clause 22(1) confirms that the Department may enter into a contract with any person for the use of its facilities, for any purpose whatsoever, and must pay any proceeds into general revenue.

The purpose of this provision is to make it clear that Department facilities can be used for purposes other than NHCS service provision rather than just lying idle for any part of a day. The Department can and should be looking at how to make better use of its facilities by hiring them out to outside parties (as long as this does not impinge on NHCS service provision).

Subsection 22(2) states that the Department must ensure that the provisions of a Scheme are regularly and independently monitored and reviewed in respect of what care is to be provided and how, what facilities, equipment and resources are made available, and how the Scheme is administered.

This is a new provision but it reflects the existing position whereby the Department has commissioned the West Midlands Quality Review Service to review its NHS service provision.

Subsection 22(3) requires the Department to make sure that it receives and publishes a report of the findings of any review.

### **Clause 23 (Regulations)**

Clause 23 firstly confirms that, in addition to the regulations mentioned in Clause 17, the Department may make any regulations which are necessary or convenient for the administration of the Act.

Subsection 23(2) then lists certain regulations which the Department might wish to make.

Paragraph 23(2)(a) provides for regulations to deal with the appointment of the members of the Independent Review Body, referred to in Clause 21, by the Appointments Commission.

The members of the Independent Review Body are appointed through the Appointments Commission in order to maintain their independence from the Department.

Paragraphs 23(2)(b) to (g) provide for regulations to deal with the membership, the conduct of business, the appointment of panels, the expenses of members, the submission of annual reports and any other details in respect of the Independent Review Body as the Department considers necessary. Paragraph 23(2)(g) also states that the Department may include in the other details functions which are not related to the review of complaints.

Paragraph 23(2)(h) provides for regulations to deal with the appointment of the members of the Health Services Consultative Committee, referred to in Clause 17, by the Appointments Commission.

As for the Independent Review Body, the members of the Health Services Consultative Committee are appointed by the Appointments Commission to maintain its independence from the Department.

The sub-paragraphs to subsection 23(2)(h) confirm that the Department may consult the committee on general matters and must respond to any questions which are referred to it, and that the committee may tender views on any general matter and the Department must have regard to those views.

Paragraph 23(2)(i) provides for regulations to deal with the constitution and for additional functions for the Health Services Consultative Committee.

Finally, paragraph 23(2)(j) provides for regulations to be made to stipulate that a committee or body be responsible for hearing and determining appeals by persons aggrieved by the exclusion or removal of their names from the list of qualified care providers referred to in Clause 14.

Clause 23(3) requires regulations made under this Bill to be approved by Tynwald.

## **Clause 24 (Saving)**

Clause 24 provides for various regulations, made under the National Health Service Act 2001, to continue in force as if they were made under this Bill.

Firstly the National Health Service (Appointment of Consultants) Regulations 2003 are continued. These regulations are made under a provision which allows the Department to make regulations in respect of the qualifications and appointment of persons appointed, engaged or employed to provide services. This specific provision has not been brought forward into the new Bill but there is an expectation from the UK regulatory body for hospital consultants that certain legal requirements contained in the regulations will be continued, hence the need for a saving provision.

The National Health Service (General Ophthalmic Services) Regulations 2004 and the National Health Service (Pharmaceutical Services) Regulations 2005 are also saved. It is proposed that both of these areas will become the subject of contractual arrangements under Clause 13 in the near future. However, these arrangements might not be in place before this Bill becomes an Act so the regulations need to be saved for the time being.

The National Health Service (Optical Payments) Regulations 2004, the National Health Service (Charges for Drugs and Appliances) Regulations 2004, the National Health Service (Dental Charges) Regulations 2006, the National Health Service (Overseas Visitors) Regulations 2011 and the National Health Service (Expenses in Attending Hospital) Regulations 2004 are all saved. These regulations all deal with aspects of charging and contributions towards costs. It is proposed that in due course all of the provisions contained in these regulations will become part of Schemes in accordance with Clauses 12 and 13 but the regulations are saved in case the Schemes are not in place by the time the Act comes into operation.

The Health Services Consultative Committee Constitution Regulations 2012 and the National Health Service (Independent Review Body) Regulations 2004 are also saved. These regulations are effectively the regulations mentioned in Clause 23 in respect of the relevant committee and body and therefore need to be saved.

Finally the National Health Service (Complaints) Regulations 2004 are saved. These regulations will, in due course, be replaced by a procedure under Clause 20 but again need to be saved until such time as the procedure is in place.

Subsections 24(2) and 24(3) repeal provisions from the National Health Service (Independent Review Body) Regulations 2004 and the Health Services Consultative Committee Constitution Regulations 2012 which are no longer required as a consequence of this Bill.

Subsection 24(4) confirms that references to a provision of the National Health Service Act 2001 in the saved regulations are to be construed as references to the equivalent provision in this Bill.

Subsection 24(5) provides for a Scheme made under this Bill to amend or repeal any of the regulations saved under this Clause. As the Schemes are to be legislative in character this will simply avoid the need for a second piece of legislation when the Schemes come into force and the saved regulations are no longer required.

It is also possible that a Scheme might require some part of a saved regulation to be maintained which is why the provision for amending has also been included.

### **Clause 25 (Transitional provision – existing contracts)**

Clause 25 provides for contracts that were entered into under the National Health Service Act 2001, in respect of the provision of services, to continue under the new Bill as if they were entered into in accordance with Clause 13(2).

Examples of such contracts are the arrangements for General Practitioner and General Dental Practitioner services.

### **Clause 26 (Legislation amended) and the Schedule**

Clause 26 provides that the Schedule, which makes amendments to other legislation as a consequence of this Bill, has effect.

In the Schedule, section 2(4) of the Law Reform (Personal Injuries) Act 1949 is amended to refer to the National Health and Care Service Act 2015 instead of the Health Service Act 2001.

Section 118(1) of the Children and Young Persons Act 1966 is amended to remove the definition of hospital which refers to the National Health Service Act 2001. The term 'hospital' is not used in the new Bill as the dictionary definition is now deemed to be adequate.

Section 3(2)(a) of the Dental Act 1985 is amended to refer to the receipt of payments by the Department of Health and Social Care not constituting the carrying on of the business of dentistry for the purposes of that Act.

Section 11(2) of the Dental Act is also amended to remove some interpretation which is no longer required because of the amendment of Section 3(2)(a).

Section 26(4) of the Design Right Act 1991 is amended to refer more generally to the provision of care under the Isle of Man National Health and Care Service rather than to specific services which were mentioned in the National Health Service Act 2001 but are not mentioned in the new Bill.

Section 6(2)(b) of the Sexual Offences Act 1992 is amended to refer to the National Health and Care Service Act 2015 instead of the National Health Service Act 2001.

Section 1(2)(b) of the Access to Health Records and Reports Act 1993 is amended to refer to the National Health and Care Service Act 2015 instead of the National Health Service Act 2001. Section 10 of this Act is also amended to insert a new definition of 'general practitioner'; to mean a medical practitioner who is registered as a general medical practitioner in accordance with the Health Care Professional Act 2014 and who is providing care in accordance with the National Health and Care Service Act 2015.

Section 6(1)(b) of the Termination of Pregnancy (Medical Defences) Act 1995 is amended to add reference to various other sections of the Act only applying if the termination was done under the Isle of Man National Health Service in a national health service hospital.

Section 6(2)(a) of the same Act is also amended to confirm that an independent medical practitioner for the purposes of the Act must not be employed, contracted or commissioned by the Department to provide medical services in a post or office that is junior to the hospital surgeon who terminates the pregnancy.

Section 6(5)(b) is also amended to adjust the wording to state that if there is no live birth, the foetus must be disposed of in accordance with the wishes of the mother; or in the absence of a direction by the mother, in accordance with the normal practice of the Department, but the foetus or any part of it must not be used or made available for any medical or other experiment or procedure or for any purpose whatsoever without the express written consent of the mother.

Section 8(1) is also amended, firstly, to delete reference in the definition of "consultant" to a hospital provided under the National Health Service Act 2001 and replace it with reference to a national health service hospital. And secondly, the definition of "national health hospital" is replaced to read "national health service hospital" means a hospital provided by the Department for the purpose of the Isle of Man National Health and Care Service.

Section 8(10)(b) of the Video Recordings Act 1995 is amended to refer to the National Health and Care Service Act 2015 instead of the Health Service Act 2001.

Section 12(3) of the Mental Health Act 1998 is amended to refer to section 12 of the National Health and Care Service Act 2015 instead of section 6 of the National Health Service (Isle of Man) Act 1948. Section 12 deals with private facilities and care.

Section 19(3) of this Act is also amended to confirm that any patient who is liable to be detained in a hospital provided by the Department for the purposes of the Isle of Man National Health and Care Service or any accommodation provided for that purpose and used by the managers of such a hospital, may at any time be removed to any other such hospital or accommodation.

Section 121(2) is also amended to replace references to the NHS Act in respect of payments of pocket-money for in-patients in hospital to state 'The making of payments under this section to persons for whom care is provided under the Isle of Man National Health and Care Service is to be treated as included in that care'.

Section 138(1), in respect of the definition of "the NHS Act", is also amended to refer to the National Health and Care Service Act 2015 instead of the Health Service Act 2001.

Section 102(1) of the Children and Young Persons Act 2001 is amended, in respect of the definition of "health service hospital", to refer to the Isle of Man National Health and Care Service instead of the National Health Service Act 2001.

Section 41(6) of the Education Act 2001 is amended to refer to the Isle of Man National Health and Care Service instead of the National Health Service Act 2001.

Section 59(1) of this Act, in respect of the definition of "school buildings", is also amended to refer to the National Health and Care Service Act 2015 instead of the National Health Service Act 2001.

Schedule 8, paragraph 1(b) is also amended with reference to a hospital trust to replace reference to the National Health Service Act 2001 with 'a hospital trust, being a trust of property for purposes relating to hospital services'.

Section 6(3) of the Medicines Act 2003 is amended to remove reference to section 41 of the National Health Service Act 2001, which relates to certain requirements in respect of consultations about regulations, as this provision has not been brought through to the new Bill.

Section 53(3) of this Act is also amended to replace reference to services under the National Health Service Act 2001 with care under the National Health and Care Service Act 2015.

Schedule 2 is also amended, in respect of the definition of "health centre" to replace reference to the National Health Service Act 2001 with 'means premises provided, equipped and maintained by the Department of Health and Social Care for the provision of care under the Isle of Man National Health and Care Service'.

Section 58(1)(c) of the Employment Act 2006 is amended to replace references to a 'worker' who provides various services in accordance with arrangements under the Health Service Act 2001 with a more generic reference to a 'worker' who 'works or worked as an individual providing care under section 10(2) of the National Health and Care Service Act 2015'.

Section 3(3)(a) of the Public Sector Pensions Act 2011, which defines 'public sector employees' is amended to replace reference to services mentioned in section 15 of the National Health Service Act 2001 with a more generic reference of 'any person providing care as defined under the National Health and Care Service Act 2015'.

Section 30(1) of the Social Services Act 2011 is amended to remove the definition of hospital which refers to the National Health Service Act 2001. The term 'hospital' is not used in the new Bill.

Section 26(2)(b) of the Regulation of Care Act 2013 is amended to refer to the National Health and Care Service Act 2015 instead of the National Health Service Act 2001.

The Schedule to this Act is also amended. Firstly, the definition of hospital which refers to section 43 of the NHS Act 2001 is removed as the term 'hospital' is not used in the new Bill.

Secondly, the definition of "NHS hospital" is amended to refer to the Isle of Man National Health and Care Service instead of the NHS Act.

### **Clause 27 (Repeal)**

Clause 27 repeals the National Health Service Act 2001 which is replaced by this Bill.

### **Conclusion**

The purpose of the first National Health Service Act in 1948 was '*...to provide for the establishment of a comprehensive health service for the Isle of Man and for purposes connected therewith*'.

This has been achieved, so the main aim of this Bill is to make sure that going forward our legislation continues to be up to date, fit for purpose, and easily manageable to achieve the current and future provision and promotion of health care services.

The Department of Health and Social Care would, therefore, hope that members will support this essential piece of legislation.

The Department is not aware of any Human Rights implications from this legislation.

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