

HEALTH AND SOCIAL CARE BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial memorandum has been prepared by the Department of Health in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It does not provide, and is not meant to be, a comprehensive description of the Bill and so where a clause or Schedule, or part of a clause or Schedule, does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. Both the Donaldson Report (2014) and the Review of Health and Social Care Commissioning Arrangements (2015) identified a number of weaknesses within the existing system including overly complex and bureaucratic structures, a lack of clarity in relation to accountability and decision making, and a lack of challenge to providers.
4. Former Minister Hamilton announced his intention to close the Regional Health and Social Care Board (“the Regional Board”) in 2015. Subsequently, former Minister O’Neill confirmed the decision to close the Board in October 2016 as part of the wider transformation of the HSC as set out in *Health & Wellbeing 2026: Delivering Together*. In 2020, Minister Swann further confirmed the decision to close the Board.
5. The Regional Board was established by primary legislation (the Health and Social Care (Reform) Act (Northern Ireland) 2009) and primary legislation is needed to close it and transfer its legislative functions.

CONSULTATION

6. A formal consultation on the policy proposals, “Getting the Structures Right”, that informed the draft Bill was carried out during the period of 15th December 2015 to 12th February 2016. Representatives of the Royal Colleges of GPs, Physicians, Surgeons, Paediatrics & Child Health, Anaesthetists, Psychiatrists, Radiologists, Pathologists and Emergency Medicine were consulted during the process. A full list of bodies and organisations that responded to the consultation is available in the Appendix to the Consultation Report which was published on the 29th March 2016. In general, responses agreed that there is too much complexity in the current system and that it is not working to its optimum capacity. Responses also agreed that reduced bureaucracy

would allow the system to respond more quickly to changing demands and that bringing performance management into the Department would help improve lines of accountability. The responses and comments have been helpful in informing the detail of the proposals.

OPTIONS CONSIDERED

7. The provision of health and social care in Northern Ireland is currently provided under a range of legislation, the main provisions being the Health and Personal Social Services (Northern Ireland) Order 1972 and the Health and Social Care (Reform) Act (Northern Ireland) 2009 (“the 2009 Act”).
8. This Bill gives effect to one of the options considered, namely the closure of the Regional Board. The Bill provides, on closure of the Regional Board, for:
 - (i) all the functions that the Regional Board currently exercises, and its oversight roles in relation to all functions exercised by HSC trusts, to go to the Department; and
 - (ii) the functions which began life as Health and Social Services Boards functions, now exercisable by HSC trusts by virtue of Article 3 of the Health and Personal Social Services (Northern Ireland) Order 1994, (called the Social Care and Children functions) to become exercisable by HSC trusts on the face of the primary legislation.
9. Another option considered was the transfer of a significant number of the Regional Board’s functions to the Regional Agency for Public Health and Social Well-being. This option was discounted as it would have significantly diluted the Regional Agency’s primary role and effectively resulted in the re-establishment of the layer of bureaucracy that the Department is seeking to remove.

OVERVIEW

10. The Bill has 9 clauses and 4 schedules. The clauses provide for the dissolution of the Regional Board while retaining Local Commissioning Groups and provides a duty on the Department to make regulations to establish bodies for local areas. In addition, the remaining clauses provide for the transfer of the Regional Board functions and require the Department to make transfer schemes for assets and staff. A further clause provides for necessary transitional provisions. Finally the remaining clauses provide for interpretation, commencement and the short title of the Bill.

COMMENTARY ON CLAUSES

11. A commentary on the provisions follow overleaf. Comments are not given where the wording is self-explanatory.

Clause 1 – Dissolution of the Regional Health and Social Care Board

Provides for the dissolution of the Regional Health and Social Care Board (“the Regional Board”).

Clause 2 – Transfer of the Regional Board’s functions

Introduces Schedule 1. Schedule 1 contains both the amendments providing for the transfer of the Regional Board’s functions and amendments consequential on the transfer of the Regional Board’s functions and its dissolution. Amendments to the Health and Personal Social Services (Northern Ireland) Order 1972 and the other Health specific Acts and Orders result in duties and responsibilities previously held by the Regional Board now being placed in the main directly upon the Department. As a consequence existing lines of accountability and performance management are clearer.

For those amendments that result in functions now being directly placed on HSC trusts (Social Care and Children functions) the Department is now directly responsible for the oversight of HSC trusts’ exercise of those functions, again simplifying accountability and performance management lines.

Clause 3 - Continuation of Local Commissioning Groups

Provides for the continuation of Local Commissioning Groups as unincorporated bodies following the closure of the Regional Health and Social Care Board. It also introduces Schedule 2.

Schedule 2 contains the statutory provisions necessary to continue to operate Local Commissioning Groups beyond the closure of the Health and Social Care Board. The schedule also provides for the existing regulations in terms of the functions, membership and appointments and terms of office to be retained.

Schedule 2 provides a regulation making power to the Department to dissolve Local Commissioning Groups on a day appointed by the Department. This Department may not however make regulations to dissolve Local Commissioning Groups until the Department makes regulations to establish bodies (Boards) for local areas.

Clause 4 - Duty to establish bodies for local areas

Provides a duty on the Department to make regulations to establish bodies (Boards) for local areas. Each Board is to exercise such functions relating to the matters detailed as may be prescribed and must exercise those functions with the aim of improving the health and social well-being of the people in its area and reducing health inequalities in comparison as described in the provision.

No regulations can be made by the Department in respect bodies (Boards) for local areas unless the draft regulations have been laid before and approved by the Assembly.

Clause 5 - Schemes for transfer of Assets and Liabilities

Requires the Department to make a scheme or schemes for the transfer of the assets and liabilities of the Regional Board. It also introduces Schedule 3 which deals with the transfer of assets and liabilities of the Regional Board including the transfer of its employed staff. Schedule 3 also provides for continuity in terms of providing that a transfer scheme does not affect the validity of anything done by or to the Regional Board (including legal proceedings) before the transfer date.

Clause 6 – Transitional Provision

Introduces Schedule 4 which contains provisions that require the Department to make arrangements for the preparation of the final accounts and report of the Regional Board. Further, the Auditor and Comptroller General must examine and provide a report to the Department. The Department must lay before the Assembly a copy of the final accounts and report and the report provided by the Auditor and Comptroller General.

Part 2 of Schedule 4 provides General Provisions and Specific Provisions to ensure continuity in terms of previous directions issued, and how references to the Regional Board in statutory provisions or statutory documents are now to be read. In addition the Department may continue anything being done by or to the Regional Board (including legal proceedings) following the closure of the Regional Board.

Clause 7 – Interpretation

Defines certain terms used in the Bill, including applying the Interpretation Act (Northern Ireland) 1954 to the expressions “statutory document” and “statutory provision”.

Clause 8 – Commencement

Stipulates that the provisions of the Act will come into operation either on Royal Assent or on a date subsequently decided by the Department.

Clause 9 – Short title

Sets out the title of the Act.

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

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

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

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

There are some functions which, on the face of the legislation, are conferred on the Department but which are currently delegated to the Regional Board and thence to HSC trusts. The dissolution of the Regional Board renders it necessary either (i) to leave the function notionally with the Department and for there to be new delegations from the Department direct to the HSC trusts or (ii) to amend the primary legislation so the function is conferred directly on the HSC trusts, but preserving the power of the Department to issue guidance and directions and if necessary to recall the function. The Bill takes the second of these approaches. Thus the Bill contains some amendments which appear to be transferring functions from the Department to HSC trusts, but which in reality are consequential on the dissolution of the Board and preserve the current arrangements for the exercise of functions.

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

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

Schedule 2 contains the statutory provisions to continue to operate Local Commissioning Groups (LCGs) beyond the closure of the Health and Social Care Board. With the abolition of the Board, these amendments are necessary to allow the Local Commissioning Groups to continue. Schedule 2 ensures the existing necessary legislative provisions in respect of functions and membership etc. of Local

Commissioning Groups are retained for the now continued Local Commissioning Groups. It sets out how the LCGs are to function and, ultimately then, cease to operate.

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

Schedule 4 details general and specific transitional provisions.

FINANCIAL EFFECTS OF THE BILL

12. The closure of the Regional Board will result in an annual saving of £0.1 million.

HUMAN RIGHTS ISSUES

13. The provisions of the Bill are compatible with the European Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

14. An equality screening was undertaken at the point the consultation was live. No impacts were identified with the exception of potential impacts on some Regional Board staff (through changes such as relocation). No relocation of staff is, however, planned and staff are to retain their existing terms and conditions. The decision is that a full Equality Impact Assessment (EQIA) was not required.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

15. As the Bill imposes no costs or savings, or negligible costs or savings, on business, charities, social economy or the voluntary sector, a Regulatory Impact Assessment was not considered necessary.

DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN

16. A Data Protection Impact Assessment screening was completed. A full Assessment was not required.

RURAL NEEDS IMPACT ASSESSMENT

17. As the Bill will have no impact on rural inhabitants, a full Rural Needs Impact Assessment is not appropriate.

LEGISLATIVE COMPETENCE

18. The Minister of Health had made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the Health and Social Care Bill would be within the legislative competence of the Northern Ireland Assembly.”



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ISBN: 978-1-78619-505-0