

HEALTH AND SOCIAL CARE (REFORM) ACT (NORTHERN IRELAND) 2009

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c.1) which received Royal Assent on 21 January 2009. They have been prepared by the Department of Health, Social Services and Public Safety in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. These notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or Schedule does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The rationale behind the reform of the health and social care system is to put in place structures which are patient-led, patient-centred and responsive to the needs of patients, clients and carers as well as being more effective and efficient (releasing resources for investment in front line health and social care).
4. The purpose of the Act will be to provide the legislative framework within which the proposed new health and social care structures can operate. It seeks to set out, as transparently as possible, the high level functions of the various health and social care bodies. The Act seeks, either within the body of the Act or by securing sufficient powers to make subordinate legislation, to establish the parameters within which each health and social care body will be permitted to operate and to establish the necessary governance and accountability arrangements which will support the effective delivery of health and social care in Northern Ireland.

CONSULTATION

5. A formal consultation exercise on the policy proposals informing the Health and Social Care (Reform) Act was carried out during the period from 18 February 2008 until 12 May 2008. Over the 12 week period the consultation process was informed by a considerable number of workshops with HSC organisations, the Voluntary and Community sector, the Department and one on Public Health. In addition, various meetings have taken place with a wide range of stakeholders including – HSS Councils, Trades Unions, the Assembly HSSPS Committee, NI Local Government Association, Directorate of Information Systems, Family Practitioners Services,

Superannuation Branch, NI Confederation, Regulation and Improvement Authority, Health Promotion Agency, General Practitioners Commission, Royal College of GPs, Chartered Institute of Environmental Health, British Dental Association, and the Omnibus Partnership. Over 200 formal responses to the consultation were received. In general, there were many positive comments that welcomed the proposals for health and social care reform. A range of issues and suggestions were also highlighted and have been extremely helpful in informing consideration of the detail of the proposals.

OPTIONS CONSIDERED

6. The provision of health and social care in Northern Ireland is currently provided for by the Health and Personal Social Services (Northern Ireland) Order 1972 (the 1972 Order). The 1972 Order is now some 36 years old and has been significantly amended over the years. One option was to introduce a new single piece of primary legislation in order to consolidate all existing enactments as was the case in England and Wales. The timescale within which the new arrangements need to be in place, however, prevented such an all-embracing approach.
7. Another approach would have been to replace the delegation model which underpins the existing legislation. In this model, all the functions are cascaded down from the Department of Health, Social Services and Public Safety to HSC organisations. The alternative would involve defining the functions of the new bodies on the face of the Act. Such a rigidly defined approach would, however, have been problematic given the breadth of functions which need to be defined at each level of the system and the pace of change in the way health and social care is delivered.

OVERVIEW

8. The Act has 35 sections and 7 Schedules. It comprises 10 headings: *Restructuring of administration of health and social care* – covers the restructuring of health and social care bodies; *Department's role in promoting and providing health and social care* – consists of 5 sections and outlines the general duties, powers and priorities of the Department of Health, Social Services and Public Safety (“the Department”); *The Regional Board* - consists of 5 sections and provides for the establishment of the Regional Health and Social Care Board. It also covers the functions of the Regional Board and outlines its objectives; *Regional Agency* - consists of 2 sections and provides for the establishment of the Regional Agency for Public Health and Social Well-being; *RBSO* - consists of 2 sections and provides for the establishment of the Regional Business Services Organisation; *Patient representation and public involvement* – establishes the Patient and Client Council, covers the functions of the Patient and Client Council and deals with the need for health and social care bodies to consult with service users and produce consultation schemes; *HSC trusts* – places a duty on HSC trusts in relation to the improvement of health and social well-being; *Public-private partnerships* – provides for the Department of Health, Social Services and Public Safety, the Regional Health and Social Care Board, the Health and Social Care trusts, the RBSO, special agencies and the Regional Agency to form, or participate in forming, public-private partnerships; *Transfer of assets, liabilities and*

functions - deals with the dissolution of various health and social care bodies and the transfer of assets, liabilities and functions; *Supplementary* – provides for the Department to make supplementary provisions as it thinks necessary and makes general provisions in respect of subordinate legislation, amendments and repeals. It also sets out the title and commencement dates and includes interpretation provisions.

9. *Schedule 1* sets out the constitution of the Regional Health and Social Care Board, *Schedule 2* covers the establishment of the Regional Agency for Public Health and Social Well-being, *Schedule 3* provides for the establishment of the Regional Business Services Organisation, *Schedule 4* covers the establishment of the Patient and Client Council, *Schedule 5* provides for the transfer of assets and liabilities and outlines the arrangements for the completion of annual reports and accounts of dissolved bodies, *Schedule 6* deals with minor and consequential amendments to other legislation and *Schedule 7* deals with repeals of other legislation.

COMMENTARY ON SECTIONS

A commentary on the provisions follows below. Comments are not given where the wording is self-explanatory.

Section 1: Restructuring of administration of health and social care

Provides for the restructuring of the administration of health and social care. It provides for the dissolution of the Health and Social Services Councils, Central Services Agency, Health and Social Services Boards, and Mental Health Commission. It also provides that Health and Social Services trusts will be known as Health and Social Care trusts, special health and social services agencies will be known as special health and social care agencies, and the Health and Personal Social Services Regulation and Improvement Authority will be known as the Health and Social Care Regulation and Quality Improvement Authority.

Section 2: Department's general duty

Sets out the Department's general duty in relation to the provision of health and social care in Northern Ireland. For example, the Department has the duty to promote an integrated system of health and social care designed to secure improvement in the physical and mental health and social well-being of people in Northern Ireland. Among other things, the Department also has a duty to develop policies for reducing health inequalities between the people in Northern Ireland.

Section 3: Department's general power

Sets out the Department's general power and provides that the Department may provide or secure the provision of such health and social care as it considers appropriate to the discharge of its duty.

Section 4: Department's priorities and objectives

Requires the Department to determine and, where appropriate, revise priorities and objectives in relation to the provision of health and social care. In setting such objectives, there is an onus on the Department to consult with such bodies or persons as it considers appropriate. The section also provides the Department with the power to give directions without consulting in cases where the urgency of the matter necessitates it but requires the

Department in cases where the duty to consult has been set aside because of the urgency of the matter, to report retrospectively to all appropriate bodies or persons as to its reason for taking this course of action.

Section 5: The framework document

Requires the Department to prepare a framework document which sets out the main priorities, objectives, guidance and other matters for each health and social care body in connection with the carrying out of its functions. The Department must also keep the framework document under review and may, from time to time, revise it.

Section 6: Power of Department to give directions to certain bodies

Provides a power for the Department to give directions (either general or specific) to the Regional Health and Social Care Board, Regional Agency for Public Health and Social Well-being and Regional Business Services Organisation as to how they should carry out their functions. The Department is also required to consult with those bodies before issuing directions but the section also provides the Department with the power to give directions without consulting in cases where the urgency of the matter necessitates it but requires the Department in cases where the duty to consult has been set aside because of the urgency of the matter, to report retrospectively to all appropriate bodies or persons as to its reason for taking this course of action.

Section 7: The Regional Health and Social Care Board

Provides for the establishment of the Regional Health and Social Care Board (Regional Board). It also introduces Schedule 1 which deals with the constitution of the Regional Board and also covers supplementary provisions including committees, sub-committees, finance and accounts of the Regional Board.

Section 8: Functions of the Regional Board

Sets out the functions of the Regional Board as being those transferred to it from existing Health and Social Services Boards and any other functions which the Department directs it to exercise.

Section 9: Local Commissioning Groups

Requires the Regional Board to appoint a prescribed number of Local Commissioning Groups and provides that in exercising their functions, these groups should have regard to, *inter alia*, improving the health and social well-being of people in the area within which the Local Commissioning Group exercises its functions and improving the availability and quality of health and social care in that area.

Section 10: Power of Regional Board to give directions and guidance to HSC trusts

Provides a power for the Regional Board to issue guidance to Health and Social Care trusts as to how they are to carry out all their functions and, where a Trust fails to have regard to such guidance, to issue directions (either general or specific) to that Trust as to the manner in which it should carry out that function.

Section 11: Provision of information, etc. to Regional Board by HSC trusts

Requires Health and Social Care trusts to provide the Regional Board with relevant information and reports in relation to their functions. The section also provides that the information must be recorded in such a form and kept for such a time as the Regional Board may require.

Section 12: The Regional Agency for Public Health and Social Well-being

Provides for the establishment of the Regional Agency for Public Health and Social Well-being. It also introduces Schedule 2 which deals with the constitution of the Regional Agency for Public Health and Social Well-being and covers supplementary provisions including its committees, sub-committees, finance and accounts.

Section 13: Functions of the Regional Agency

Sets out the functions of the Regional Agency for Public Health and Social Well-being in relation to the areas of health improvement and health protection. The section also provides that in exercising its functions, the Regional Agency for Public Health and Social Well-being must co-operate with other bodies which exercise functions relating to health improvement or protection.

Section 14: The Regional Business Services Organisation

Provides for the establishment of the Regional Business Services Organisation. It also introduces Schedule 3 which deals with the constitution of the Regional Business Services Organisation and covers supplementary provisions including its committees, sub-committees, finance and accounts.

Section 15: Functions of RBSO

Sets out the functions of the Regional Business Services Organisation and places a duty on the Regional Business Services Organisation to put in place arrangements which will secure the provision of those services in the most economic, efficient and effective way.

Section 16: The Patient and Client Council

Provides for the establishment of the Patient and Client Council. It also introduces Schedule 4 which sets out detailed arrangements for the operation of the Patient and Client Council, and deals with its status, constitution, remuneration, staffing, procedures, finance and annual reports.

Section 17: Functions of the Patient and Client Council

Sets out the functions and certain requirements placed on the Patient and Client Council. These functions include: representing the interests of the public, promoting the involvement of the public, providing assistance to individuals making or intending to make a complaint relating to health and social care and promoting the provision by the Department and health and social care bodies of advice and information to the public about the design, commissioning and delivery of health and social care. The section also provides that the Patient and Client Council shall carry out research into the best methods for consulting with the public about involving them in health and social care and to provide advice about these methods to certain health and social care bodies.

Section 18: Duty to co-operate with the Patient and Client Council

Requires certain health and social care bodies to co-operate with the Patient and Client Council in carrying out its functions. Furthermore, it requires those health and social care bodies to have due regard to advice provided by the Patient and Client Council about the health and social care for which that particular body is responsible.

Section 19: Public involvement and consultation

Requires the Department, Regional Health and Social Care Board, Regional Agency for Public Health and Social Well-being, Health and Social Care trusts, and special agencies to

promote information about the health and social care for which they are responsible and to seek views from the recipients of health and social care either directly or through representative bodies. It also requires the health and social care bodies to prepare a consultation scheme in accordance with section 20.

Section 20: Public involvement: consultation schemes

Requires the Department, Regional Health and Social Care Board, Regional Agency for Public Health and Social Well-being, Health and Social Care trusts, and special agencies to show, in their consultation schemes, what arrangements are in place to consult with the Patient and Client Council and recipients of health and social care. The consultation scheme will also need to prepare a written statement which summarises the comments received and sets out the health and social care body's response to those comments.

Section 21: Duty on HSC trusts in relation to improvement of health and social well-being

Places a duty on each HSC trust to exercise its functions with the aim of improving the health and social well-being of, and reducing health inequalities between, those for whom it provides or may provide health and social care.

Section 22: Public-private partnerships

Enables the Department, and certain health and social care bodies to form, or participate in forming, public-private partnerships to provide facilities or services for the promotion or provision of health and social care.

Section 23: Schemes for transfer of assets and liabilities

Requires the Department to make a scheme or schemes for the transfer of assets and liabilities of a health and social care body that has been dissolved. It also introduces Schedule 5 which deals with the transfer of assets and liabilities and outlines the arrangements for the completion of annual reports and accounts of health and social care bodies that have been dissolved.

Section 24: Transfer of functions of Health and Social Services Boards

Provides for the transfer of certain functions of the existing Health and Social Services Boards to the Regional Agency for Public Health and Social Well-being or to the Regional Health and Social Care Board.

Section 25: Transfer of functions of the Mental Health Commission

Provides for the transfer of the functions exercisable by the Mental Health Commission to the Regulation and Quality Improvement Authority.

Section 26: Transfer of functions of Central Services Agency

Provides for the transfer of the functions exercisable by the Central Services Agency to the Regional Business Services Organisation.

Section 27: Amendment of statutory and other references to dissolved bodies, etc

Applies to sections 24, 25 and 26 and deals with amendments to any statutory and other references to health and social care bodies that have been dissolved.

Section 28: Dissolution of special agencies

Provides for the dissolution of special agencies.

*These Notes refer to the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c.1)
which received Royal Assent on 21 January 2009*

Section 29: Orders, regulations, guidance and directions

Contains provision about the procedure for making subordinate legislation under the Act and provides that any guidance issued or directions given by the Department may be varied or revoked by subsequent guidance or directions.

Section 30: Further provision

Allows the Department to make further provision in connection with implementing the Act.

Section 31: Interpretation

Applies the Interpretation Act (Northern Ireland) 1954 to the Act and defines other terms.

Section 32: Minor and consequential amendments

Introduces Schedule 6 which deals with amendments to other legislation as a result of the Act.

Section 33: Repeals

Introduces Schedule 7 which contains repeals of other legislation as a result of the Act.

Section 34: Commencement

Stipulates when the provisions of the Act will come into operation either from a date set out in the Act or a date subsequently decided by the Department.

Section 35: Short title

Sets out the title of the Act.

HANSARD REPORTS

10. The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly.

STAGE	DATE
First Stage – Introduction to the Assembly	23 June 2008
Second Stage debate	1 July 2008
Committee Stage – Departmental briefing on the provisions of the Act	11 September 2008
Committee Stage – evidence from the Central Services Agency	18 September 2008
Committee Stage – evidence from Health and Social Services Boards, Health and Social Services Councils and the Regulation and Quality Improvement Authority	25 September 2008
Committee Stage – evidence from the Royal College of Nursing, British Medical Association (NI) and the Allied Health Profession Federation	2 October 2008
Committee Stage – general consideration of sections and Schedules	9 October 2008
Committee Stage – continuation of general consideration of sections and Schedules	16 October 2008
Committee Stage – commencement of agreement of sections and Schedules	23 October 2008

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STAGE	DATE
Committee Stage – completion of agreement of sections and Schedules	6 November 2008
Committee’s report on the Act – Report number 10/08/09R	13 November 2008
Consideration Stage in the Assembly	1 December 2008
Further Consideration Stage	9 December 2008
Final Stage	12 January 2009
Royal Assent	21 January 2009

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