



**Isle of Man**

*Ellan Vannin*

**AT 2 of 2021**

**MANX CARE ACT 2021**





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## MANX CARE ACT 2021

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## MANX CARE ACT 2021

*Signed in Tynwald:* 16 March 2021  
*Received Royal Assent:* 16 March 2021  
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**AN ACT** to establish Manx Care; to confer duties on it in connection with the functions it discharges; and for connected purposes.

**BE IT ENACTED** by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### PART 1 – INTRODUCTORY

#### 1 Short title

The short title of this Act is the Manx Care Act 2021.

#### 2 Commencement

- (1) This Act, apart from section 1 and this section, comes into operation on such day or days as the Department may by order appoint.<sup>1</sup>
- (2) An order under subsection (1) may include such supplemental, incidental, consequential and transitional provisions as appear to the Department to be necessary or expedient.

#### 3 Interpretation

- (1) In this Act —
  - “**data protection legislation**” has the meaning given in regulation 5(1) of the GDPR and LED Implementing Regulations 2018<sup>1</sup>;
  - “**Department**” means the Department of Health and Social Care;
  - “**financial year**”, in relation to Manx Care, means —

<sup>1</sup> SD 2018/0145

- (a) the period beginning with the date on which Manx Care is established and ending with the following 31st March; and
- (b) each successive period of 12 months ending with 31st March;

“**health and social care service**” means the service of providing health services and social care services and “**health and social care services**” shall be construed accordingly;

“**health services**” means the services referred to in the *National Health Service Act 2001*;

“**service user**” means an individual to whom, or in relation to whom, a health service or social care service is provided;

“**social care services**” means social care services and carer support provided under the *Social Services Act 2011* and social services provided under the *Children and Young Persons Act 2001*.

- (2) Any document which may or must be published by any person under this Act must, unless otherwise stated, be published —
  - (a) without undue delay;
  - (b) electronically on an appropriate website if one exists or, where electronic publication is not possible or appropriate, in such manner as the person in question thinks appropriate.

## **PART 2 – DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT**

### **4 Promotion of comprehensive health and social care service**

- (1) Without prejudice to the following provisions of this Act, the Department must continue to promote in the Island a comprehensive health and social care service to secure improvement in —
  - (a) the physical and mental health of people in the Island;
  - (b) the prevention, diagnosis and treatment of physical and mental illness;
  - (c) the provision of social care services for people in the Island.
- (2) For that purpose, the Department has the duties conferred on it by or under—
  - (a) the *National Health Service Act 2001* and the *National Health and Care Service Act 2016*;
  - (b) the *Social Services Act 2011*;
  - (c) the *Children and Young Persons Act 2001*;
  - (d) the *Mental Health Act 1998*;
  - (e) this Act; and

- (f) any other enactment (whenever passed).
- (3) The Department retains responsibility to Tynwald for the provision of health services and social care services comprising the health and social care service whether those services are provided in the Island or elsewhere.

## 5 Improvement in quality of services

- (1) The Department must exercise its functions with a view to securing continuous improvement in the outcome of services provided to individuals for or in connection with the following—
  - (a) the prevention, diagnosis or treatment of illness;
  - (b) the protection or improvement of public health;
  - (c) the assessment and provision of social care services,and in doing so must, in particular, have regard to principles of generally accepted evidence-based practice.
- (2) Those outcomes include, in particular, outcomes which show—
  - (a) the effectiveness of the services;
  - (b) the safety of the services; and
  - (c) the quality of the services.

## 6 Promotion of autonomy

- (1) The Department must, in the exercise of its functions, have regard to the desirability of securing so far as consistent with the interests of the health and social care service—
  - (a) that any other person (P) —
    - (i) exercising functions in relation to that service; or
    - (ii) providing services for the Department's purposes,is free to exercise those functions, or provide those services, in the manner P considers most appropriate; and
  - (b) that unnecessary burdens are not imposed on P.
- (2) Where the Department considers that there is a conflict between the requirements under this section and those under section 4, it must give priority to the latter.

## 7 Obtaining of appropriate advice

The Department must obtain advice appropriate for enabling it effectively to discharge its functions from persons who (taken together) have a broad range of professional expertise in—

- (a) the prevention, diagnosis or treatment of illness;

- (b) the protection or improvement of public health; and
- (c) the provision or improvement of social care services.

## **8 Public involvement and consultation by the Department**

- (1) This section applies to any health services and social care services which are, or are to be, provided by the Department or by a person with whom the Department has entered into arrangements for that purpose (“relevant arrangements”).
- (2) The Department must make provision to secure that individuals to whom services are being, or may be, provided are involved whether by being consulted or provided with information in other ways —
  - (a) in the planning of the relevant arrangements by the Department;
  - (b) in the development and consideration of proposals by the Department for changes in the relevant arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health services and social care services available to them; and
  - (c) in decisions of the Department affecting the operation of the relevant arrangements where the implementation of the decisions would, if made, have an impact.
- (3) The reference in subsection (2)(b) to the delivery of services is to their delivery at the point they are received by service users.

## **9 Promoting education and training**

The Department must, in the exercise of its functions, have regard to the need to promote education and training for persons who are engaged under a contract of service or for services or otherwise, or who are considering engaging in that way, in an activity which involves or is connected with the provision of either, or both, health services and social care services in the Island.

## **10 Reducing inequalities**

The Department must, in the exercise of its functions, have regard to the need to reduce inequalities between service users with respect to —

- (a) their ability to access health services and social care services; and
- (b) the outcomes achieved for them by the provision of such services.

## **11 Candour**

- (1) The Department must, in the exercise of its functions, act in an open and transparent way.

- (2) The Department must, by regulations, make provision as to the information to be provided by a relevant service provider in a case where an incident of a specified description, or a prescribed degree of severity, affecting a service user's safety occurs in the course of the service user being provided with a health service or a social care service.

Tynwald procedure – approval required.

- (3) Regulations may set out a “duty of candour procedure” applicable to a relevant service provider and may in particular make provision about –
- (a) the notification to be given by the relevant service provider;
  - (b) the apology to be provided by the relevant service provider to a service user or relevant person;
  - (c) the actions to be taken by the relevant service provider to offer and arrange a meeting with a service user or relevant person, including asking them whether they wish to receive an account of the incident referred to in subsection (2) or information about further steps taken;
  - (d) the actions which must be taken at, and following, such a meeting;
  - (e) an account of the incident referred to in subsection (2);
  - (f) information about further steps taken and any other information to be provided by the relevant service provider;
  - (g) the form and manner in which information must be provided;
  - (h) the circumstances in which the relevant service provider is to make available, or provide information about, support to persons affected by the incident;
  - (i) the keeping of information by the relevant service provider;
  - (j) steps to be taken by the relevant service provider –
    - (i) to review the circumstances leading to the incident; and
    - (ii) following such a review,  
even if the service user or relevant person has advised that they do not wish to receive an account of the incident as mentioned in subsection (2) or information about further steps taken;
  - (k) training, supervision and support to be provided by a relevant service provider to any person carrying out any part of the procedure on behalf of the relevant service provider;
  - (l) a relevant person.
- (4) Regulations may provide for –
- (a) the making of a report on the duty of candour which must not mention the name of any individual or contain any information which, in the relevant service provider's opinion, is likely to identify any individual; and
  - (b) the timing of such a report.

- (5) Regulations may, in respect of a report referred to in subsection (4), provide that it must include –
- (a) information about the number and nature of incidents to which the duty has applied;
  - (b) an assessment of the extent to which the relevant service provider carried out the duty;
  - (c) information about the relevant service provider’s policies and procedures in relation to the duty, including information about—
    - (i) procedures for identifying and reporting incidents; and
    - (ii) support available to staff and to persons affected by incidents,
  - (d) information about any changes to the relevant service provider’s policies and procedures as a result of incidents to which the duty has applied; and
  - (e) such other information as the relevant service provider thinks fit.
- (6) The relevant service provider must publish a report referred to in subsection (4) in such manner as the relevant service provider thinks appropriate.
- (7) “Apology” means a statement of sorrow or regret in respect of an incident referred to in subsection (2) and an apology or other step taken in accordance with the duty of candour does not of itself amount to an admission of negligence or a breach of a statutory duty.
- (8) “Relevant service provider” has the same meaning as in paragraph 7(11) of Schedule 1.

## **PART 3 — MANX CARE AND THE MANDATE**

### **12 Establishment of Manx Care**

A Statutory Board known as Manx Care is established and Schedule 1 has effect.

### **13 Manx Care and its general functions**

- (1) Such of the functions of the Department referred to in section 4 which are the subject of the mandate, must be discharged by Manx Care on behalf of the Department in accordance with the mandate, applicable regulations and any directions given to Manx Care.
- (2) In discharging those functions of the Department referred to in subsection (1) Manx Care must promote in the Island a comprehensive health and social care service, and in doing so has—

- (a) the functions of providing and arranging for the provision of services for the purposes of the health and social care service in the Island in accordance with this Act; and
  - (b) the duties referred to in Part 4.
- (3) Schedule 1 makes further provision about Manx Care.
- (4) A function of the Department which is discharged by Manx Care on its behalf or by a person with whom Manx Care has entered into an agreement under section 17, remains a function of the Department.
- (5) Any contracts or agreements entered into by the Department which are connected to, or dependent on, or have as their subject matter a function of the Department which is the subject of the mandate are deemed to be novated to Manx Care and references to the Department in such contracts and agreements are (unless the context otherwise requires) to be read as references to Manx Care.

#### **14 Mandate to Manx Care**

- (1) Before the start of each financial year, the Department must publish and lay before Tynwald a document to be known as “the mandate”.
- (2) The mandate must include the matters specified in Schedule 2 (which has effect for that purpose) and may include other matters.
- (3) The Department may by regulations amend Schedule 2.  
Tynwald procedure — approval required.
- (4) Manx Care must seek to achieve the objectives specified in the mandate, and comply with any requirements specified in it.
- (5) Before specifying any objectives or requirements in the mandate, the Department must consult and have due regard to the views of—
- (a) Manx Care;
  - (b) in respect of public health, such persons whom it considers are suitably qualified to advise on such matters by virtue of their training or experience; and
  - (c) such other persons as the Department considers appropriate.
- (6) The Department must keep Manx Care’s performance in achieving any objectives or requirements specified in the mandate, applicable regulations and directions under review.

#### **15 Revision to the mandate**

- (1) The Department may make a revision to the mandate in a financial year only if—
- (a) Manx Care agrees to the revision; or

- (b) the Department considers that there are exceptional circumstances that make the revision necessary.
- (2) Revisions to the mandate may consist of adding, omitting or modifying requirements.
- (3) If the Department revises the mandate, it must—
  - (a) publish the mandate as so revised; and
  - (b) lay it before Tynwald, together with an explanation of the reasons for making the revision.

## **16 General power**

Manx Care may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions under this Act.

## **17 Manx Care’s powers: further provision**

- (1) The power conferred on Manx Care by section 16 includes, in particular, power to enter into agreements with any person to exercise, whether jointly with Manx Care or otherwise, its functions under this Act.
- (2) An agreement made under this section does not affect the liability of Manx Care for the exercise of any of its functions and Manx Care remains liable under the mandate accordingly.

## **18 Powers in relation to private patients**

- (1) Manx Care may make either, or both, accommodation and services in any hospital provided by the Department available to private patients.
- (2) “Private patients” are patients who undertake, or in respect of whom an undertaking is given, to pay such charges as the Department may determine for the accommodation or services.
- (3) The charges referred to in subsection (2) shall be calculated on any basis which the Department considers to be appropriate.
- (4) Manx Care may allow any medical practitioner to make arrangements for the treatment of that practitioner’s private patients at any hospital in the Island.
- (5) Manx Care may exercise the powers specified in this section only if, and to the extent that, —
  - (a) the Department has given written approval; and
  - (b) both the Department and Manx Care are satisfied that anything which Manx Care proposes to do—
    - (i) will not to a significant extent interfere with the performance by Manx Care of any of its functions under this Act; and

- (ii) will not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services vested in the Department for the purposes of the Department's functions under this or any other Act or services provided by Manx Care on the Department's behalf under this Act.

## **19 Powers in relation to the management etc of facilities**

- (1) Manx Care may run, manage or supervise one or more facilities on hospital premises or grounds providing refreshments, newspapers, magazines, periodicals, confectionery, gifts and similar items.
- (2) "Hospital" has the same meaning as in the *National Health Service Act 2001*.

## **PART 4 – MANX CARE'S DUTIES**

### **20 Duty as to effectiveness, efficiency etc.**

Manx Care must exercise its functions under this Act effectively, efficiently and economically.

### **21 Duty of candour**

Manx Care must exercise its functions under this Act in an open and transparent way and, in doing so, comply with regulations made under section 11.

### **22 Duty as to clinical and social care governance framework**

- (1) In the exercise of its functions, Manx Care must –
  - (a) establish and operate a clinical and social care governance framework;
  - (b) require any person it has entered into an agreement with under section 17 to operate in the performance of that agreement –
    - (i) Manx Care's clinical and social care governance framework; or
    - (ii) operate a framework of broad equivalence; and
  - (c) where paragraph (b)(i) applies, generally promote that framework.
- (2) "A clinical and social care governance framework" means a framework through which any provider of health services or social care services endeavours continuously to improve the quality of its care, and which safeguards high standards in the provision of those services by creating an environment in which excellence can flourish.

### **23 Duty as to improvement in quality of services**

- (1) Manx Care must exercise its functions with a view to securing the continuous improvement in the outcome of services provided under the mandate and in doing so must, in particular, have regard to principles of generally accepted evidence-based practice.
- (2) Those outcomes include, in particular, outcomes which show—
  - (a) the effectiveness of the services;
  - (b) the safety of the services; and
  - (c) the quality of the services.
- (3) The Department may by regulations impose requirements and standards in relation to Manx Care's duty under subsection (1) with a view to securing that any services provided under the mandate are of an appropriate quality.

Tynwald procedure — approval required.

### **24 Duty as to reducing inequalities**

Manx Care must, in the exercise of its functions, have regard to the need to reduce inequalities between persons with respect to —

- (a) their ability to access health and social care services; and
- (b) the outcomes achieved for them by the provision of such services.

### **25 Duty as to promoting autonomy**

- (1) Manx Care must, in the exercise of its functions, have regard to the desirability of securing so far as consistent with the interests of the health and social care service—
  - (a) that any other person (P) —
    - (i) exercising functions in relation to the health and social care service; or
    - (ii) providing services for Manx Care's purposes, is free to exercise those functions or provide those services in the manner P considers most appropriate; and
  - (b) that unnecessary burdens are not imposed on P.
- (2) Where Manx Care considers that there is a conflict between its duty under this section and its functions referred to in section 13, Manx Care must give priority to the latter.

### **26 Duty as to promoting education and training**

Manx Care must, in the exercise of its functions, have regard to the need to promote education and training for persons who are engaged under a contract of

service or for services or otherwise, or who are considering engaging in that way, in an activity which involves or is connected with the provision of either, or both, health services and social care services in the Island.

## **27 Duty to promote involvement of service users**

Manx Care must, in the exercise of its functions, take reasonable steps to promote the involvement of service users, their carers and representatives (if any), in decisions which relate to—

- (a) the prevention or diagnosis of illness in relation to service users within available resources and subject to applicable guidelines; or
- (b) the care or treatment of service users within such resources and subject to such guidelines.

## **PART 5 –FUNCTIONS: ADDITIONAL**

### **28 Exercise of functions**

- (1) This section applies to functions exercisable by Manx Care under this Act.
- (2) Manx Care may arrange for the exercise of any of its functions on its behalf by—
  - (a) any of its executive or non-executive members (see paragraph 1 of Schedule 1), or
  - (b) any member of its staff (see paragraph 6 of Schedule 1).
- (3) Manx Care may also arrange for any of its functions to be exercised by or jointly with another person or body.
- (4) Where any functions are exercisable jointly by Manx Care and another body, they may be exercised by a joint committee of Manx Care and the other body.
- (5) Arrangements under this section may be on such terms and conditions including those as to payment as may be agreed between Manx Care and the other party to the arrangements.
- (6) Arrangements made under this section do not affect the liability of Manx Care for the exercise of any of its functions and paragraph 3 of Schedule 2 to the *Statutory Boards Act 1987* does not apply.

### **29 Power to confer additional functions on Manx Care**

- (1) The Department may by regulations provide that Manx Care is to have such additional functions in relation to the health and social care service as may be specified in the regulations.

- (2) A function may be specified in regulations under subsection (1) only if the function is connected to another function of Manx Care under the mandate.

Tynwald procedure – approval required.

### **30 Failure by Manx Care to discharge any of its functions**

- (1) Where the Department –
- (a) considers (whether following an inspection referred to in Schedule 1 or otherwise) that Manx Care –
    - (i) is failing or has failed to discharge, or properly discharge, any of its functions; or
    - (ii) is failing or has failed to comply with any applicable regulations or directions addressed to it by the Department; and
  - (b) considers that the failure is significant,
- it may direct Manx Care to take steps to rectify the failure and to prevent its repetition.
- (2) Directions under subsection (1) may (in particular) include directing Manx Care –
- (a) to rectify the failure within a given period;
  - (b) to engage experts (named or otherwise) to assist in addressing and rectifying the failure; and
  - (c) to provide the Department with periodic reports on its progress in rectifying the failure.
- (3) Where Manx Care fails to comply with a direction given to it by the Department, and the Department considers that the failure on the part of Manx Care is significant, it must notify the Council of Ministers in writing as soon as practicable.
- (4) Where notified in accordance with subsection (3), the Council of Ministers may give a direction if, and not otherwise, it considers that there is a failure on the part of Manx Care and it agrees with the Department’s assessment that the failure is significant.
- (5) A direction given by the Council of Ministers under subsection (4) may direct Manx Care to discharge such of its functions, and in such manner and within such period or periods, as may be specified in the direction.
- (6) If Manx Care fails to comply with a direction given under subsection (4), the Council of Ministers may direct the Department –
- (a) to discharge the functions to which it relates; or
  - (b) make arrangements for any other person to discharge them.

- (7) Where the Council of Ministers gives a direction under this section it must publish the reasons for doing so.
- (8) For the purposes of this section a failure to discharge a function properly includes a failure to discharge it consistently with the mandate, any applicable regulations or any directions addressed to Manx Care.
- (9) In consequence of this section, paragraph 12 of Schedule 2 to the *Statutory Boards Act 1987* does not apply.

## PART 6 – PLANS AND REPORTS

### 31 Operating plan

- (1) In respect of the financial year in which Manx Care is established and the financial year immediately following it (“the second financial year”), Manx Care must publish an overview document setting out how it intends to comply with the mandate in those years.
- (2) Manx Care must in each financial year following the second financial year publish an operating plan covering the next three consecutive financial years.
- (3) That operating plan must set out –
  - (a) how Manx Care proposes to exercise its functions and comply with the mandate in the first of those three consecutive financial years; and
  - (b) in outline, its proposals in relation to the exercise of its functions in the following two financial years.
- (4) Before publishing its operating plan, Manx Care may consult such other persons as it considers appropriate.
- (5) Manx Care may revise the operating plan.
- (6) Manx Care must publish any revised operating plan.
- (7) Manx Care must send a copy of the operating plan to –
  - (a) the Department, and
  - (b) such other persons as Manx Care considers appropriate.
- (8) The Department must lay a copy of the operating plan before Tynwald together with the mandate.
- (9) References to “plan” in subsections (7) and (8) include a revised plan.

### 32 Annual report

- (1) No later than six months after the end of each financial year, Manx Care must publish an annual report on how it has exercised its functions during the year.

- (2) The annual report must, in particular, contain an assessment of—
  - (a) the extent to which Manx Care met any objectives or requirements specified in the mandate for that year; and
  - (b) the extent to which it gave effect to the proposals in its operating plan for that year.
- (3) The Department must, having considered the annual report, set out in a letter to Manx Care its assessment of Manx Care's performance of its functions in the financial year in question.
- (4) The letter must, in particular, contain the Department's assessment of the matters mentioned in subsection (2).
- (5) The Department must—
  - (a) publish the letter; and
  - (b) lay a copy of the letter and the annual report before Tynwald.
- (6) The Minister for the Department shall, as soon as may be, move a resolution that the report be received by Tynwald.

### **33 Departmental requests**

- (1) The Department may, by a request in writing, require Manx Care to provide it with information which is necessary, or reasonably incidental, for the purposes of the Department's functions in relation to the health and social care service.
- (2) Manx Care must provide that information, or an explanation for not doing so, by the date specified in the request and in accordance with the request.

## **PART 7 – MISCELLANEOUS AND SUPPLEMENTARY**

### **34 Duty to share information**

- (1) This section applies to information about a service user that is held by a relevant person for the purposes of its functions under the mandate.
- (2) A relevant person must ensure that the information is disclosed in an appropriate and timely manner to—
  - (a) those working for that person; and
  - (b) any other relevant person with whom that person communicates about the service user.

This is subject to subsections (3) to (6).

- (3) Subsection (2) applies only so far as the relevant person considers that the disclosure —
  - (a) is necessary for the provision to the service user of health services or social care services; and

- (b) is in the best interests of the service user.
- (4) A relevant person need not comply with subsection (2) if that person reasonably considers that one or more of the following apply—
  - (a) the service user objects, or would be likely to object, to the disclosure of the information;
  - (b) for any other reason the relevant person is not reasonably able, or should not be required, to comply with subsection (2).
- (5) This section does not permit a relevant person to do anything which, but for this section, would be inconsistent with—
  - (a) any provision of data protection legislation; or
  - (b) any duty of care or confidence imposed by statute or otherwise.
- (6) This section does not require a relevant person to do anything which that person is required to do under a common law duty of care or confidence (and, accordingly, any such requirement is to be treated as arising under that common law duty and not under this section).
- (7) “Relevant person” means the Department, Manx Care and, where appropriate, a person with whom Manx Care has entered into an agreement under section 17.

### **35 Transfer schemes**

- (1) Schedule 3 has effect in respect of the transfer to Manx Care of interests, rights and liabilities of, or pertaining to, the Department.
- (2) Schedule 4 has effect in respect of the transfer to Manx Care of staff.

### **36 References to the Department**

- (1) All references to the Department or an officer of the Department, so far as they relate to its functions which are the subject of the mandate but not otherwise, in any statutory provision, agreement, deed, instrument, licence, consent, application, notice or other document whatsoever shall, unless the context otherwise requires, be construed—
  - (a) as references to Manx Care or an officer of Manx Care; or
  - (b) where Manx Care has entered into an agreement with any person under section 17, as references to that person or an officer of that person.
- (2) Nothing in this section effects a transfer of the functions of the Department which are the subject of the Mandate from it to Manx Care or from it to any other person.

### **37 Amendment of Statutory Boards Act 1987**

[Amended Schedule 1 to the *Statutory Boards Act 1987*]

### 38 Consequential amendments

The enactments specified in Schedule 5 are amended in accordance with that Schedule.

### 39 Regulations

- (1) The Department may by regulations make—
  - (a) any supplementary, incidental or consequential provision;
  - (b) any transitory, transitional or saving provision;which it considers necessary or expedient for the purposes of, in consequence of or for giving full effect to any provision of this Act.
- (2) Regulations may modify, repeal or revoke any provision of any enactment passed or made before or at the same time as this Act.

Tynwald procedure — approval required.

### 40 Directions

- (1) Directions under this Act must be in writing.
- (2) Without prejudice to any other provision of this Act, directions given to Manx Care by the Department may—
  - (a) specify objectives to be achieved by Manx Care;
  - (b) specify the time frames for the achievement of objectives; and
  - (c) suggest methods of achieving objectives (such suggestions are not binding).
- (3) Directions must be published by the Department.
- (4) Subsection (3) does not require the Department to publish part of a direction if—
  - (a) it could refuse to disclose it in response to a request under the *Freedom of Information Act 2015*; or
  - (b) its disclosure is prohibited by any enactment.

**SCHEDULE 1**

[Section 12]

**MANX CARE****PART 1- MANX CARE: MEMBERSHIP****1 Membership**

- (1) Manx Care is to consist of—
- (a) the following non-executive members —
    - (i) a chair; and
    - (ii) at least four other non-executive members one of whom must hold the post of vice-chair; and
  - (b) the following executive members —
    - (i) a chief executive;
    - (ii) a director of finance;
    - (iii) two or more appropriately qualified persons.

This is subject to sub-paragraph (7).

*[This sub-paragraph must be read alongside paragraph 1 of Schedule 2 to the Statutory Boards Act 1987 which provides that such a Board must elect a vice-chairman of the Board at its first meeting and where a casual vacancy in the office of vice-chairman arises. Paragraph 1 of Schedule 2 of the Statutory Boards Act 1987 applies to Manx Care but, by virtue of this sub-paragraph, a vice-chairman must be a non-executive member of Manx Care.]*

- (2) Where sub-paragraph (1) applies, the number of non-executive members must exceed the number of executive members.
- (3) The following persons cannot be appointed as an executive member of Manx Care—
- (a) a member of the Legislative Council; or
  - (b) a member of the House of Keys.
- (4) The following persons cannot be appointed as a non-executive member of Manx Care—
- (a) a member of the Legislative Council;
  - (b) a member of the House of Keys;
  - (c) an employee of the Public Services Commission; or
  - (d) an employee of a Department, an office of Government or a Statutory Board.

- (5) An executive member of Manx Care who becomes a person referred to in sub-paragraph (3), ceases to hold the office of executive member upon doing so.
- (6) A non-executive member of Manx Care who becomes a person referred to in sub-paragraph (4), ceases to hold the office of non-executive member upon doing so.
- (7) A member of Manx Care ceases to be such a member on ceasing to hold the office specified in sub-paragraph (1).
- (8) Manx Care may determine that its composition should be other than as referred to in sub-paragraph (1).
- (9) Any determination by Manx Care under sub-paragraph (8) —
  - (a) must result in the number of non-executive members being greater than the number of executive members; and
  - (b) is subject to the approval of the Department.
- (5) “Appropriately qualified person” means a person whom the Public Services Commission or, as the case may be, Manx Care considers to be suitable to be appointed as an executive member of Manx Care by reason of their experience or expertise in either, or both, clinical and professional services.
- (10) Section 3 of the *Statutory Boards Act 1987* does not apply to members of Manx Care.

### *Non-executive members*

## **2 The non-executive members: appointment**

- (1) The non-executive members are to be appointed by the Department subject to the approval of Tynwald.
- (2) In appointing the non-executive members the Department must have regard to the need for Manx Care to include members who, by virtue of their qualifications, experience or otherwise, are fitted to participate in its functions.

## **3 Non-executive members: tenure**

- (1) A non-executive member holds office in accordance with that member’s terms of appointment.
- (2) A non-executive member’s term of appointment shall be for a fixed term of not less than 3 years and not more than 5 years.
- (3) A non-executive member may at any time resign from office by giving written notice to the Department.

- (4) The Council of Ministers may at any time remove a non-executive member from office on any of the following grounds—
  - (a) incapacity;
  - (b) misbehaviour; or
  - (c) failure to carry out the duties of that office.
- (5) A member who retires is eligible for re-appointment.

*Executive members*

#### 4 **Executive members: appointment**

- (1) The chief executive and the director of finance are to be appointed by the Public Services Commission under the *Public Services Commission Act 2015*.
- (2) An appropriately qualified person referred to in paragraph 1 may be appointed as an executive director by —
  - (a) the Public Services Commission under the *Public Services Commission Act 2015*; or
  - (b) by Manx Care on such terms and conditions as it should determine.
- (3) An appointee referred to in sub-paragraph (2) may be a person assigned or transferred to Manx Care under the *Public Services Commission Act 2015* or transferred to it under a staff transfer scheme referred to in Schedule 4.

*Quorum*

#### 5 **Quorum**

- (1) At a meeting of Manx Care —
  - (a) the quorum shall be determined by the members but it must not be less than 3 and paragraph 2(3)(c) of Schedule 2 to the *Statutory Boards Act 1987* does not apply;
  - (b) the number of non-executive members present must exceed the number of executive members present; and
  - (c) at least one of the executive members present must be an appropriately qualified person referred to in paragraph 1(1)(b)(iii).
- (2) Decisions shall be taken by a vote of all those members present at the meeting.
- (3) In the event of a tie, the chair shall have a second casting vote.
- (4) A meeting may be physical or virtual.

## PART 2 – ORGANISATION AND STAFF

### 6 Manx Care’s staff

- (1) Manx Care’s staff may consist of –
  - (a) persons transferred to it under a staff transfer scheme referred to in Schedule 4;
  - (b) new employees of the Public Services Commission (within the meaning of section 7 of the *Public Services Commission Act 2015*) who are assigned to Manx Care as the stationed employer;
  - (c) existing employees of the Public Services Commission (within the meaning of section 7 of the *Public Services Commission Act 2015*) who are, pursuant to the exercise of the Commission’s functions under section 5 of that Act, transferred to Manx Care as the stationed employer; and
  - (d) such persons as it appoints.
- (2) Persons transferred to Manx Care under sub-paragraph (1)(c) are employed on the same terms and conditions as those on and subject to which they were employed prior to the transfer.
- (3) Persons appointed by Manx Care under sub-paragraph (1)(d) are employed on such terms and conditions as Manx Care may determine.
- (4) Any question –
  - (a) whether a person is employed as mentioned in sub-paragraph 1(b) or (c); or
  - (b) as to the terms and conditions on, and subject to which, that person was so employed ,shall be referred to and determined by the Public Services Commission.
- (5) References in any enactment to members of staff of Manx Care are (unless the context otherwise requires) references to persons referred to in sub-paragraph (1).

## PART 3 - INSPECTIONS

### 7 Inspections arranged by the Department

- (1) This paragraph applies to a service provided by a relevant service provider under the mandate.
- (2) The Department must in each year draw up –
  - (a) a schedule specifying the service or services (or a specific matter connected to such a service) in respect of which an inspection will be undertaken in that year (a “scheduled inspection”); and

- (b) a list of services which the Department is minded to arrange an inspection of in each of the next two successive years.
- (3) The Department must satisfy itself that each service provided under the mandate is subject to an inspection at least once in every five years whether it is an inspection arranged by the Department under this paragraph or an inspection arranged by Manx Care under paragraph 8.
- (4) Subject to not unreasonably impeding a relevant service provider in discharging their functions or in providing services under the mandate, the Department may (in addition to a scheduled inspection) arrange for a non-scheduled inspection to be conducted.
- (5) A scheduled inspection shall take place on the date agreed between the relevant service provider and the Department.
- (6) Where no reasonable agreement is reached in accordance with subparagraph (5), the Department must notify the relevant service provider in writing of the date of the inspection.
- (7) Sub-paragraphs (5) and (6) notwithstanding, the Department may arrange for an inspection to be conducted without the prior agreement the relevant service provider.
- (8) An inspection must be conducted by one or more appropriate independent persons or bodies (“inspectors”) appointed by the Department.
- (9) In conducting an inspection the inspectors must—
- (a) conduct a review of the provision of the services which are, or the specific matter which is, the subject of the inspection against quality indicators and requirements agreed beforehand with the Department; and
  - (b) report on the efficiency and effectiveness of the relevant service provider against those indicators and requirements.
- (10) It is the duty of a relevant service provider to —
- (a) assist inspectors undertaking an inspection; and
  - (b) provide such information which is required by the inspectors for the proper performance of the inspection.
- (11) “Relevant service provider” means—
- (a) Manx Care where it provides the services in question under the mandate;
  - (b) a person with whom Manx Care has entered into an agreement under section 17 of this Act and who is based, and provides those services in the Island;
  - (c) both Manx Care and such a person or persons where the services in question are provided by them jointly.

## 8 Inspections arranged by Manx Care etc

- (1) Manx Care may arrange for an inspection of a service provided under the mandate by —
  - (a) Manx Care;
  - (b) a section 17 provider; or
  - (c) both jointly.
- (2) An inspection is to be conducted by one or more appropriate independent persons or bodies (“inspectors”) appointed by Manx Care.
- (3) An inspection must not unreasonably impede a section 17 provider in discharging its functions or in providing services under the mandate.
- (4) In conducting an inspection the inspectors must—
  - (a) conduct a review of the provision of the services which are, or the specific matter which is, the subject of the inspection against quality indicators and requirements agreed beforehand with Manx Care; and
  - (b) report on the efficiency and effectiveness of (as the case may be) Manx Care, a section 17 provider or both against those indicators and requirements.
- (5) It is the duty of a section 17 provider to —
  - (a) assist inspectors undertaking an inspection; and
  - (b) provide such information which is required by the inspectors for the proper performance of the inspection.
- (6) “Section 17 provider” means a person with whom Manx Care has entered into an agreement under section 17 of this Act and who is based, and provides those services in the Island.

## 9 Inspection reports

- (1) Where an inspection has been undertaken at the behest of the Department in accordance with paragraph 7, the report of the inspectors must be in such form as the Department specifies.
- (2) The Department must —
  - (a) arrange for the report referred to in sub-paragraph (1) to be published; and
  - (b) send a copy of it to Manx Care.
- (3) Where an inspection has been undertaken at the behest of Manx Care in accordance with paragraph 8, the report of the inspectors must be in such form as Manx Care specifies.
- (4) Manx Care must —

- (a) arrange for the report referred to in sub-paragraph (3) to be published; and
  - (b) send a copy of it to the Department.
- (5) Manx Care must —
  - (a) compile its observations on, and responses to, any published report referred to in sub-paragraphs (1) or (3); and
  - (b) prepare a written statement (an “action plan”) of—
    - (i) how it proposes to give effect to the recommendations made in the report and the period within which it proposes to do so; and
    - (ii) any other action which it proposes to take in the light of such a report and the period within which it proposes to do so,and send them to the Department.
- (6) The Department must publish the material sent to it by Manx Care under paragraph (5).
- (7) The Department must keep Manx Care’s performance in complying with a report, giving effect to the recommendations of a report or, as the case may be, taking action in the light of a report, under review.

## 10 **Inspections: additional**

- (1) Where, in carrying out an inspection referred to in paragraph 7 or 8, the inspector identifies a matter which is not within the remit of the inspection being undertaken but which the inspector considers should or could be the subject of an inspection, the inspector must —
  - (a) immediately notify the Department and Manx Care in writing of that fact including the reasons why the inspector considers that matter should or could be the subject of inspection; and
  - (b) make express reference to that matter in the inspector’s report together with the reasons why the inspector considers that matter should or could be the subject of inspection and any recommendations or suggestions in respect of it.
- (2) Where Manx Care receives such a notification, it must address the matter identified as part of its observations and responses under paragraph 9(5) to the inspector’s report.
- (3) Where the Department receives such a notification it must —
  - (a) consider what steps are necessary to deal with the matter identified and, in particular, determine whether it should be dealt with as part of the next scheduled inspection or should be the subject of a non-scheduled inspection; and
  - (b) publish a response addressing that matter and associated recommendations or suggestions which may be in the form of a

separate document or may form part of the publication referred to in paragraph 9(6).

## 11 Exclusions from publication

- (1) The Department may exclude from publication under paragraph 9 any part of a report or anything it receives from Manx Care under that paragraph if, in its opinion, its publication —
  - (a) could jeopardise the safety of any person; or
  - (b) would breach data protection legislation or an obligation of confidence imposed by statute or otherwise.
- (2) Manx Care may exclude from publication under paragraph 9 any part of a report if, in its opinion, publication of that part —
  - (a) could jeopardise the safety of any person; or
  - (b) would breach data protection legislation or any duty of care or confidence imposed by statute or otherwise.

## 12 Directions in respect of reports

The Department may issue directions under section 30 where a report under paragraph 9 shows that Manx Care is failing or has failed to discharge (properly or at all) any of its functions under this Act.

**SCHEDULE 2**

[Section 14]

**THE MANDATE**

- 1 The mandate must specify —
- (a) the objectives that the Department considers Manx Care should seek to achieve in the exercise of its functions during that financial year and such subsequent financial years as the Department considers appropriate;
  - (b) the services that Manx Care must provide, or secure the provision of, during that financial year and such subsequent financial years as the Department considers appropriate;
  - (c) the amount of funding that the Department will allocate to Manx Care for the provision of the services referred to in sub-paragraph (b);
  - (d) how the amount referred to in sub-paragraph (c) has been determined,
  - (e) the service levels and quality standards which Manx Care must comply with in the exercise of its functions under this Act;
  - (f) whether generally or specifically, information which is to be provided by Manx Care to the Department for the purpose of the exercise of the Department's functions under this Act;
  - (g) any requirements, including (but not limited to) compliance with or regard to specified standards and guidance, the use of government shared services and the entering into of service level agreements, that the Department considers it necessary to impose on Manx Care for the purpose of ensuring that it achieves the objectives referred to in sub-paragraph (a);
  - (h) how concerns about the performance of others under government shared services and service level agreements may be raised with the Department for resolution;
  - (i) the matters by reference to which the Department proposes to assess Manx Care's performance under the mandate;
  - (j) the procedure to be followed in the event of a dispute between the Department and Manx Care;
  - (k) when charges may be made in respect of the provision of services provided by Manx Care or any other person in accordance with this Act, including such matters as the determination of the amount of such charges, their remission, repayment and methods of recovery;
  - (l) the schedule of inspections of each service (or a specific matter connected to such a service) provided under the mandate drawn

up by the Department in accordance with paragraph 7 of Schedule 1.

2 The mandate must —

- (a) require Manx Care to establish and operate an internal complaints procedure in respect of the exercise of its functions under the mandate and that procedure must make provision enabling a person aggrieved by a decision of Manx Care under its complaints procedure to complain about that decision to the Department for consideration under the Department's complaints procedure; and
- (b) where Manx Care enters into an agreement with any person under section 17 (P), require P to establish and operate an internal complaints procedure in respect of the services it provides under that agreement and that procedure must make provision enabling a person aggrieved by a decision of P under P's complaints procedure to complain about that decision to Manx Care for consideration under Manx Care's complaints procedure.

3 The mandate must also include a statement of the steps that may be taken under this Act in respect of a failure by Manx Care to comply with all or any of its terms.

**SCHEDULE 3**

[Section 35]

**TRANSFER OF RIGHTS AND LIABILITIES****1 Transfer scheme**

- (1) The Department may make a scheme providing for the transfer to Manx Care of any interests, rights or liabilities of the Department.
- (2) Such a transfer scheme may—
  - (a) create interests and rights, or impose liabilities, in relation to rights transferred by virtue of the scheme;
  - (b) provide for anything done by or in relation to the Department in connection with any interest, rights or liabilities transferred by the scheme to be treated as done, or to be continued, by or in relation to Manx Care;
  - (c) apportion interests, rights and liabilities; and
  - (d) make provision about the continuation of legal proceedings.

**2 Effect of scheme**

Where a scheme provides for the transfer of interests, rights or liabilities, or for their creation—

- (a) at the time when the scheme is made, the interests, rights or liabilities vest, without further assurance, in the transferee; and
- (b) the provisions of the scheme in relation to those interests, rights or liabilities have effect from that time.

**3 Supplementary provisions**

- (1) A scheme may make such incidental, supplemental, consequential and transitional provision in connection with a transfer to be made in accordance with the scheme as the Department considers appropriate.
- (2) In particular, a scheme may make provision, in relation to a transfer in accordance with it —
  - (a) for the transferee to be treated as the same person in law as the transferor;
  - (b) for agreements made, transactions effected or other things done by or in relation to the transferor to be treated, so far as is necessary for the purposes of or in connection with the transfer, as made, effected or done by or in relation to the transferee;
  - (c) for references in an agreement, instrument or other document to the transferor, or to an employee or office holder of the transferor,

to have effect, so far as is necessary for the purposes of or in connection with a transfer, with such modifications as are specified in the scheme; and

- (d) for proceedings commenced by or against the transferor to be continued by or against the transferee.
- (3) Sub-paragraph (2)(c) does not apply to references in an enactment or in subordinate legislation.
- (4) In this paragraph references to a transfer in accordance with a scheme include references to the creation of an interest, right or liability in accordance with a scheme.

**SCHEDULE 4**

[Section 35]

**TRANSFER OF STAFF****1 Staff transfer scheme**

The Department may make a scheme (a “staff transfer scheme”) providing for designated persons who are employed by, or hold an office, with a Department, a Statutory Board or an office of Government but who are not employees of the Public Services Commission within the meaning of section 7 of the *Public Services Commission Act 2015*, to become members of Manx Care’s staff.

**2 Effect of scheme**

A person referred to in a staff transfer scheme under paragraph 1 shall, on the day the scheme is made, become employed by Manx Care without further appointment on and subject to the like terms and conditions (including those relating to pensions, allowances and gratuities) as those on and subject to which that person was employed immediately before that day.

**3 Supplementary provisions of schemes**

- (1) A staff transfer scheme may make such incidental, supplemental, consequential and transitional provision in connection with a transfer to be made in accordance with the scheme as the Department considers appropriate.
- (2) In particular, a staff transfer scheme may make provision, in relation to a transfer in accordance with it –
  - (a) for the transferee to be treated as the same person in law as the transferor;
  - (b) for agreements made, transactions effected or other things done by or in relation to the transferor to be treated, so far as is necessary for the purposes of or in connection with the transfer, as made, effected or done by or in relation to the transferee;
  - (c) for references in an agreement, instrument or other document to the transferor, or to an employee or office holder of the transferor, to have effect, so far as is necessary for the purposes of or in connection with a transfer, with such modifications as are specified in the scheme;
  - (d) for proceedings commenced by or against the transferor to be continued by or against the transferee;
  - (e) for a period before a person became a member of Manx Care’s staff to count as a period during which that person was a member of

Manx care's staff (and for the operation of the scheme not to be treated as having interrupted the continuity of that period).

- (3) Sub-paragraph (2)(c) does not apply to references in an enactment or in subordinate legislation.
- (4) In this paragraph references to a transfer in accordance with a scheme include references to the creation of an interest, right or liability in accordance with a scheme.

**SCHEDULE 5**

[Section 38]

**CONSEQUENTIAL AMENDMENTS****PART 1****AMENDMENT OF ACTS***Local Government Act 1946*

- 1 The *Local Government Act 1946* is amended as follows.
- 2 In section 23 (provision for early notification of births) —
- (a) [Amended subsection (1)]
  - (b) [Substituted subsection (2)]

3 [Amended section 24]

*Criminal Justice Act 1963*

4 [Amended section 2(1) of the *Criminal Justice Act 1963*]

*Family Law Reform (Isle of Man) Act 1971*

5 [Amended section 14(1) of the *Family Law Reform (Isle of Man) Act 1971*]

*Misuse of Drugs Act 1976*

6 [Substituted paragraph 12(b) in Schedule 3]

*Jury Act 1980*

7 [Amended Group E in Schedule 1 to the *Jury Act 1980*]

*Road Traffic Act 1985*

8 [Amended paragraph 10A(2)(c) in Schedule 3]

*Access to Health Records and Reports Act 1993*

9 The *Access to Health Records and Reports Act 1993* is amended as follows.

10 [Amended section 1(2)(a)(ii)]

11 In section 6 (duty of Department etc to take advice) —

- (a) [Amended subsection (1)]

(b) [Amended subsection (2)]

(c) [Amended subsection (3)]

12 [Amended section 10]

*Custody Act 1995*

13 [Amended paragraph 8(4)(a) in Schedule 2]

*Criminal Justice Act 2001*

14 The *Criminal Justice Act 2001* is amended as follows.

15 [Amended section 28(12)]

16 [Amended section 35(10)(b)]

17 [Amended paragraph 8(1) in Schedule 5]

*Residence Act 2001*

18 [Amended section 7(2) of the *Residence Act 2001*]

*National Health Service Act 2001*

19 The *National Health Service Act 2001* is amended as follows.

20 In section 2 (consultative and executive bodies) —

(a) [Amended subsection (1)(a)]

(b) [Amended subsection (2)]

(c) [Amended subsection (3)]

21 In section 38 (complaints procedure) —

(a) [Amended paragraph (a)]

(b) [Substituted paragraph (b) and inserted paragraphs (c) and (d)]

*Education Act 2001*

22 The *Education Act 2001* is amended as follows.

23 In section 30 (education supervision orders) —

(a) [Amended subsection (1)]

(b) [Amended subsection (3)]

(c) [Amended subsection (4)]

(d) [Inserted subsection (6)]

24 In Schedule 5 (education supervision orders) —

- (a) [Amended paragraph 1(1)]
- (b) [Amended paragraph 3(a)]
- (c) [Amended paragraph 5(2)]
- (d) [Amended paragraph 7(c)]

*Social Services Act 2011*

25 [Inserted section 26(1A), (1B) and (1C) into the *Social Services Act 2011*]

*Health [and] Care Professionals Act 2014<sup>2</sup>*

26 [Inserted section 5(2A) into the *Health Care Professionals Act 2014*]

*Regulation of Care Act 2013*

27 The *Regulation of Care Act 2013* is amended as follows.

28 [Amended section 5(1)]

29 [Inserted section 13(4)]

30 [Amended section 44(2)]

31 [Amended section 45(4)]

32 [Amended section 46(4)]

33 [Amended section 57(2)]

34 [Amended section 58(3)]

35 [Amended section 66(2)(b)]

36 [Amended section 140(1)]

37 [Amended the Schedule]

*Freedom of Information Act 2015*

38 [Inserted paragraph 15A into Schedule 1 to the *Freedom of Information Act 2015*]

**PART 2**

AMENDMENT OF STATUTORY DOCUMENTS

*Health Services Consultative Committee Constitution Regulations 2012*

39 [Amended regulation 13(1) of the Health Services Consultative Committee Constitution Regulations 2012]

## ENDNOTES

### Table of Endnote References

<sup>1</sup> ADO – Whole Act in operation – for details see table below [SD2021/0070].

<b>Provision</b>	<b>Date</b>	<b>Purpose</b>
Sections 3, 11, 14(1) to (3), (5)(b) & (c) and Schedule 2	16/03/2021	All purposes
Paragraphs 19 to 21 of Schedule 5	16/03/2021	For the purposes of making regulations
	01/04/2021	All other purposes
Paragraph 25 of Schedule 5	16/03/2021	For the purposes of making regulations
	01/04/2021	All other purposes
Section 12 and Schedule 1	16/03/2021	For the purpose of seeking Tynwald approval to the appointment of non-executive members of Manx Care
	01/04/2021	All other purposes
Remaining provisions	01/04/2021	All purposes

<sup>2</sup> Editorial Note: The cross heading incorrectly refers to the Health and Care Professionals Act 2014.