



Isle of Man

Ellan Vannin

AT 13 of 2016

**NATIONAL HEALTH AND CARE SERVICE
ACT 2016**



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NATIONAL HEALTH AND CARE SERVICE ACT 2016

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AN ACT to provide for national health and care services; to make provision for private care; 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 National Health and Care Service Act 2016.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on such day or days as the Department may by order appoint, and different days may be appointed for different purposes of this Act.
- (2) In accordance with subsection (1) the Department may at any time bring into operation Parts 1 and 2, and sections 8, 9, 10, 11, and 12; but the Department shall not bring any other provision of this Act into operation until at least one Scheme required by Part 3 has been approved by Tynwald in accordance with section 8(2).
- (3) An order under subsection (1) may make such transitional and saving provisions as the Department considers necessary or expedient.

3 Interpretation

In this Act —

“**Appointments Commission**” means the Commission established by section 1 of the *Tribunals Act 2006*;

“**care**” means health care and services and includes care and services that the Department may or is required to provide under other legislation;

“**Charter**” means the Charter for the time being in operation under Part 2;

“**Department**” means the Department of Health and Social Care;

“**Independent Review Body**” has the meaning given in section 23(2)(a);

“**NHCS**” means the Isle of Man National Health and Care Service;

“**publish**”, in respect of information required to be published under this Act, means publish in a manner that gives the public free and convenient access to a copy of the information;

“**Scheme**” means a Scheme established under section 8.

4 Citation of the Isle of Man National Health and Care Service

A Scheme or Schemes and the care provided to individuals under the Scheme or Schemes may collectively be referred to and cited as the Isle of Man National Health and Care Service.

PART 2 - THE NHCS CHARTER

5 Department to prepare and maintain a Charter

The Department must prepare a Charter, which it must —

- (a) lay before Tynwald; and
- (b) publish and maintain, subsequent to laying it before Tynwald.

6 Character of the Charter

- (1) The Charter must set out the Department’s general commitments in respect of the NHCS.
- (2) The Department must have regard to the Charter in the provision of care.

7 Revision and amendment of the Charter

- (1) Subject to subsection (2), the Department must review and, if appropriate, revise the Charter at least once every 5 years and may amend it at any time.
- (2) Following each revision or amendment of the Charter in accordance with subsection (1), the Department must lay the revised or amended Charter before Tynwald.

PART 3 –SCHEMES

8 Department to provide care

- (1) Subject to section 9, the Department must ensure that care is provided to individuals to the extent and in the manner set out in one or more Schemes made by the Department.
- (2) Schemes will not come into operation unless they have first been approved by Tynwald.

9 Standards of care

The Department must ensure that care provided under a Scheme —

- (a) is in accordance with generally accepted standards;
- (b) provides, subject to available resources, the highest levels of human knowledge and skill necessary to save lives and improve health;
- (c) is administered with compassion and concern for the wellbeing of the individuals to whom it is provided;
- (d) is comprehensive and available to all;
- (e) is designed to improve, prevent, diagnose and treat both physical and mental health conditions with equal regard;
- (f) supports individuals to promote and manage their own health; and
- (g) provides best value for money by using in the most effective, fair and sustainable manner the resources allocated to the Scheme.

10 Contents of a Scheme

When making a Scheme the Department must determine —

- (a) the care that will be provided to individuals under the Scheme;
- (b) the way in which that care will be provided;
- (c) the terms and conditions on which that care will be provided to individuals; and
- (d) the manner in which the Scheme is to be administered.

11 Charges under a Scheme

- (1) The terms and conditions of a Scheme must provide for —
 - (a) the charges (if any) to be paid for the provision of care and for the use of the Department's facilities under the Scheme; and
 - (b) the manner in which those charges are to be calculated.

- (2) Nothing in subsection (1) is to be taken as implying that a charge must be made for the provision of care or for the use of the Department's facilities under a Scheme.
- (3) In setting a charge for care or for the use of the Department's facilities under a Scheme, the Department must have due regard to the funds and other resources available to it.
- (4) A Scheme may provide that individuals specified in the Scheme are exempt from a charge for care or for the use of the Department's facilities provided under the Scheme or are only liable to a reduced charge.
- (5) Except as may otherwise be provided by a Scheme, a charge for care provided under a Scheme or for the use of a facility of the Department under a Scheme is a debt due to the Department or, in the case of care provided by another person under a Scheme, that person.
- (6) The Department must pay any amount it receives for care it provides under a Scheme or for the use of its facilities under a Scheme into the general revenue of the Island.

12 Contributions under a Scheme

- (1) The terms and conditions of a Scheme may provide for the Department to make payments to meet or to contribute towards specified care-related costs incurred or to be incurred in respect of individuals who have received or who are to receive care under the Scheme.
- (2) In setting those payments, the Department must have due regard to the funds and other resources available to it.

13 Care may be provided by others

- (1) The obligation on the Department to establish one or more Schemes is not to be taken as implying that the care to be provided under a Scheme must be provided by the Department.
- (2) A Scheme may provide that all or any part of the care to be provided under the Scheme may be provided by a person who —
 - (a) has been commissioned by, or on behalf of, the Department; or
 - (b) has entered into a contract with the Department,to provide the care or that part of it.

14 Department to maintain list of qualified care providers

- (1) The Department must maintain a list of the names of persons that it is satisfied are qualified to provide care in accordance with section 13(2).

- (2) The list may include the name of a person practising on the Island who is providing care under a Scheme, whether the care is provided by the Department or by the person in accordance with section 13(2).
- (3) The Department may publish the list either in full or to such extent as the Department considers appropriate in any particular case.
- (4) The Department must publish details setting out —
 - (a) how a person may apply to have his or her name included on the list; and
 - (b) the procedure it will follow to determine an application by a person to have his or her name included on the list.
- (5) The Department may keep the list in any form it considers appropriate.
- (6) If the Department determines that the name of a person should not be included on the list or should be removed from it, the person may appeal to the committee or body to which responsibility is given for this purpose by regulations made under section 23(2)(j).
- (7) Where the committee or body referred to in subsection (6) hears an appeal under this section, the Department must comply with the decision of the committee or body in respect of the appeal.

15 Private facilities and care

- (1) Nothing in this Part is to be taken as implying —
 - (a) that only the Department may provide care under a Scheme; or
 - (b) that the Department's facilities can be used only by the Department for the provision of care under a Scheme.
- (2) If otherwise than under a Scheme the Department —
 - (a) allows care to be provided; or
 - (b) makes its facilities available for the provision of care,it may do so on terms and conditions it determines.

16 Misuse of the Department's facilities

- (1) Subsection (2) applies where —
 - (a) an individual occupies any of the Department's facilities for the purpose of receiving care;
 - (b) the individual or the individual's representative, having been informed by an appropriate person that it is no longer necessary for the individual to occupy the facility for the purpose of receiving such care, is asked to vacate the facility or to remove the individual from the facility; and
 - (c) the individual refuses to vacate the facility, or the individual's representative refuses to remove the individual from the facility.

- (2) As an alternative to evicting the individual, the Department may charge the individual in respect of the period for which the individual continues to occupy the facility after having been asked to vacate.
- (3) The charge must be –
- (a) determined by the Department on a case by case basis; and
 - (b) set at such a level, having regard to the individual's means or the means of the individual's representative, as to discourage –
 - (i) the individual from continuing to occupy the facility; or
 - (ii) the individual's representative from refusing to remove the individual from the facility,

after an appropriate person has advised that the individual is required to vacate the facility.

- (4) Any charge under this section –
- (a) is a debt due to the Department;
 - (b) may be recovered by way of legal proceedings; and
 - (c) when recovered, whether by way of legal proceedings or otherwise, must be paid by the Department into the general revenue of the Island.
- (5) In this section –

“appropriate person” means a person who has actual or ostensible authority, derived from the Department, to communicate to the individual or to the individual's representative the decision of the Department regarding whether the individual is required to vacate the facility;

“individual's representative” means any person satisfactory to the Department that, in respect of an individual who –

- (a) is receiving care;
- (b) is occupying any of the Department's facilities for the purpose of receiving such care; and
- (c) is personally unable to make decisions in respect of the care the individual is receiving or any matter associated with such care,

has formally indicated to the Department that the person is responsible for making on the individual's behalf decisions referred to in paragraph (c), regardless of whether that person has also committed to meeting from the person's own resources any costs associated with the care being provided.

PART 4 – COMMITTEES

17 Establishment of committees

The Department may by regulations –

- (a) subject to paragraphs (h) and (i) of section 23(2), establish a consultative committee to provide the Department with scrutiny and advice on the provision by the Department of services in furtherance of its functions;
- (b) establish committees to exercise on behalf of the Department and in its name any of its functions; or
- (c) establish committees to co-ordinate the provision and delivery of care under Schemes.

18 Advice of committees

- (1) The Department may seek advice from a committee established under section 17 in respect of any action the Department has taken or intends to take in respect of care.
- (2) The Department must take account of any advice it receives from a committee, whether or not the advice was sought under subsection (1), but is not bound to follow the advice.

PART 5 – COMPLAINTS UNDER A SCHEME

19 Application of Part

- (1) This Part applies to complaints made by individuals about care provided under a Scheme, whether by the Department or by a person acting in accordance with section 13(2).
- (2) A complaint under this Part may, in particular, be made in respect of –
 - (a) a failure to provide care;
 - (b) a delay in the provision of care;
 - (c) the quality or efficacy of care that was provided; or
 - (d) the manner in which care was provided.

20 Procedure for making complaints

- (1) The Department must publish details setting out –
 - (a) the procedure to be followed by an individual who wishes to make a complaint; and
 - (b) the procedure to be followed by those considering such a complaint.

- (2) The procedure to be followed in considering a complaint must ensure that the rules of natural justice are followed.

21 Independent Review Body to consider complaints

- (1) If a complaint is not resolved in accordance with the procedure published in accordance with section 20(1)(b), either party to the complaint may for the purpose of having the complaint resolved refer it to the Independent Review Body provided for in regulations made under paragraphs (a) to (g) of section 23(2).
- (2) The Independent Review Body must consider the complaint and report its decision to the parties to the complaint.
- (3) Sections 20(1)(b) and (2) apply to the Independent Review Body.
- (4) Nothing in this section is to be taken as prohibiting a person from seeking any other remedy in respect of a complaint.

PART 6 – FINAL AND SUPPLEMENTAL PROVISIONS

22 Powers and duties of the Department

- (1) The Department may enter into a contract with any person for the use of its facilities for any purpose whatsoever, and must pay into the general revenue of the Island all proceeds it receives from a contract under this or any other provision of this Act.
- (2) The Department must ensure that the following provisions of a Scheme are regularly and independently monitored and reviewed –
 - (a) the care provided to individuals under the Scheme;
 - (b) the way in which that care is provided;
 - (c) any facilities, equipment and other resources made available in respect of the Scheme; and
 - (d) the way in which the Scheme is being administered.
- (3) The Department must –
 - (a) ensure that a report of the findings of each independent monitoring and review under subsection (2) is provided to it; and
 - (b) publish or see to the publishing of the report so provided.

23 Regulations

- (1) In addition to the power to make regulations under section 17, the Department may make regulations necessary or convenient for its administration of this Act.

- (2) Without limiting subsection (1), the Department may make regulations —
- (a) providing for the appointment by the Appointments Commission of members of a body to be called the “Independent Review Body”, the purpose of which is to review complaints concerning the provision by the Department of services in furtherance of its functions;
 - (b) providing for the membership of the Independent Review Body;
 - (c) providing for the conduct of business of the Independent Review Body;
 - (d) providing for the appointment of panels by the Independent Review Body, to any of which panels the Independent Review Body may delegate any of its functions;
 - (e) providing for the expenses of the Independent Review Body;
 - (f) providing for the submission of annual reports by the Independent Review Body;
 - (g) providing for such other details in respect of the Independent Review Body as the Department considers necessary or convenient, including giving the Independent Review Body functions additional to that required by paragraph (a);
 - (h) providing for the appointment by the Appointments Commission of members of a body to be called the “Health Services Consultative Committee” —
 - (i) that the Department may consult on general matters relating to the services provided by the Department;
 - (ii) that the Department must respond to on such questions as the Health Services Consultative Committee may refer to it;
 - (iii) that may tender to the Department its views on any general matter relating to the services provided by the Department;
 - (iv) to the members of which payments may be made in respect of expenses; and
 - (v) the views of which the Department must have regard to in exercising its functions, provided those views are given under any of subparagraphs (i) to (iii);
 - (i) providing for the constitution, and for additional functions, of the Health Services Consultative Committee; or
 - (j) stipulating that a committee or body, —
 - (i) whether established by regulations made under this Act or by any other enactment; and

- (ii) subject to the requirements of section 20,
is responsible for hearing and determining appeals by persons aggrieved by the exclusion or removal of their names from the list provided for in section 14.
- (3) Regulations made under this Act must not come into operation unless approved by Tynwald.

24 Saving

- (1) Despite the repeal of the *National Health Service Act 2001*, the following regulations made under that Act continue in operation, with any necessary amendments, as if made under the provision of this Act specified below and approved by Tynwald —
- (a) the *National Health Services (Appointment of Consultants) Regulations 2003*,¹ as if made under section 23;
 - (b) the *National Health Service (Complaints) Regulations 2004*,² as if made under section 23;
 - (c) the *National Health Service (Expenses in Attending Hospitals) Regulations 2004*,³ as if made under section 23;
 - (d) the *National Health Service (General Ophthalmic Services) Regulations 2004*,⁴ as if made under section 23;
 - (e) the *National Health Service (Optical Payments) Regulations 2004*,⁵ as if made under section 23;
 - (f) the *National Health Service (Charges for Drugs and Appliances) Regulations 2004*,⁶ as if made under section 23;
 - (g) the *National Health Service (Pharmaceutical Services) Regulations 2005*,⁷ as if made under section 23;
 - (h) the *National Health Service (Dental Charges) Regulations 2006*,⁸ as if made under section 23;
 - (i) subject to subsection (2), the *National Health Service (Independent Review Body) Regulations 2004*,⁹ as if made under paragraphs (a) to (g) of section 23(2);
 - (j) the *National Health Service (Overseas Visitors) Regulations 2011*,¹⁰ as if made under section 23; and

¹ SD 0861/03

² SD 0216/04

³ SD 0348/04

⁴ SD 0018/04

⁵ SD 0019/04, as amended by SD 0662/04.

⁶ SD 0022/04, as amended by SD 0728/05, SD 0511/10 and SD 0049/13.

⁷ SD 0727/05

⁸ SD 0100/06, as amended by SD 0510/10, SD 0050/13 and SD 0117/13.

⁹ SD 0679/04

- (k) subject to subsection (3), the *Health Service Consultative Committee Constitution Regulations 2012*,¹¹ as if made under section 17(a) and in accordance with paragraphs (h) and (i) of section 23(2).
- (2) The *National Health Service (Independent Review Body) Regulations 2004* are amended as follows –
 - (a) by repealing regulation 2; and
 - (b) in regulation 3, by deleting “the Council of Ministers” wherever it appears and substituting in each case “the Appointments Commission”.
- (3) Regulation 4 of the *Health Services Consultative Committee Constitution Regulations 2012* is repealed.
- (4) In all regulations saved under this section, any reference to a provision of the *National Health Service Act 2001* is to be construed as a reference to the equivalent provision in this Act.
- (5) A Scheme may amend or repeal any of the regulations listed in subsection (1).

25 Transitional provision – existing contracts

- (1) This section applies to a contract that –
 - (a) was entered into pursuant to the *National Health Service Act 2001* that provided for a person to provide services; and
 - (b) was in force immediately before section 27 was brought into force.
- (2) The contract continues in force, with the necessary amendments, as if it had been entered into in accordance with section 13(2) of this Act.

26 Legislation amended

The Schedule has effect.

27 Repeal

The *National Health Service Act 2001* is repealed.

¹⁰ SD 0044/11

¹¹ SD 0455/12

SCHEDULE

LEGISLATION AMENDED

In a provision mentioned in column 1 of the following table, the expression in column 2 is omitted and if there is an expression in column 3 that expression is substituted.

Table

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Provision	Expression to be omitted	Expression to be substituted
Law Reform (Personal Injuries) Act 1949		
Section 2(4)	<i>Health Service Act 2001</i>	<i>National Health and Care Service Act 2016</i>
Children and Young Persons Act 1966		
Section 118(1) (definition of “hospital”)	“ hospital ” has the same meaning as in the <i>National Health Service Act 2001</i> ;	
Dental Act 1985		
Section 3(2)(a)	(a) by an authority providing national health services, or	(a) by the Department of Health and Social Care in respect of the provision of care under the <i>National Health and Care Service Act 2016</i> , or
Section 11(2)	(2) References in this Act to national health services are references to — (a) hospital services and specialist services under Part 3 of the <i>National Health Service Act 2001</i> ; or (b) services at health centres under section 15 of that Act; or (c) school medical services under section 16 of that Act; or (d) services for mothers and young children under section 17 of that Act;	
Design Right Act 1991		
Section 26(4)	for the purpose of providing — (a) general pharmaceutical services,	for the purpose of providing care under the Isle of Man National Health and Care Service

	(b) general medical services, or (c) general dental services, that is, services of those kinds under the <i>National Health Service Act 2001</i>	
Sexual Offences Act 1992		
Section 6(2)(b)	<i>National Health Service Act 2001</i>	<i>National Health and Care Service Act 2016</i>
Access to Health Records and Reports Act 1993		
Section 1(2)(b)	<i>National Health Service Act 2001</i>	<i>National Health and Care Service Act 2016</i>
Section 10	“ general practitioner ” means a medical practitioner who is providing general medical services in accordance with arrangements made under section 27 of the <i>National Health Service (Isle of Man) Act 1948</i> ;	“ general practitioner ” means a person who is a registered medical practitioner, is registered on the register of general medical practitioners in accordance with the <i>Health Care Professionals Act 2014</i> , and is providing care in accordance with the <i>National Health and Care Service Act 2016</i> ;
Termination of Pregnancy(Medical Defences) Act 1995		
Section 6(1)(b)	the pregnancy is terminated in a national health hospital	the pregnancy is terminated under the Isle of Man National Health and Care Service in a national health service hospital
Section 6(2)(a)	is not employed on the staff of, or otherwise contracted to provide medical services in, a national health hospital in a post or office which is junior to the hospital surgeon who terminates the pregnancy; or	is not employed by the Department or otherwise contracted or commissioned by the Department to provide medical services in a post or office that is junior to the hospital surgeon who terminates the pregnancy; or
Section 6(5)(b)	(b) if there is no live birth, the foetus shall be disposed of – (i) in accordance with the wishes of the pregnant woman; or (ii) in the absence of any direction by the pregnant woman, in accordance with the	(b) if there is no live birth, the foetus must be disposed of – (i) in accordance with the wishes of the mother; or (ii) in the absence of a direction by the mother, in accordance with the normal practice of the Department,

	normal practice of the hospital, but the foetus or any part of the foetus shall not be used or made available for any medical or other experiment or procedure or for any purpose whatsoever without the express written consent of the mother	but the foetus or any part of it must not be used or made available for any medical or other experiment or procedure or for any purpose whatsoever without the express written consent of the mother
Section 8(1) (definition of “consultant”)	at a hospital provided by the Department under section 28 of the <i>National Health Service Act 2001</i> ;	at a national health service hospital;
Section 8(1) (definition of “national health hospital”)	“ national health hospital ” means a hospital vested in the Department for the purposes of the <i>National Health Service Act 2001</i> .	“ national health service hospital ” means a hospital provided by the Department for the purposes of the Isle of Man National Health and Care Service.
Video Recordings Act 1995		
Section 8(10)(b)	for the purpose of services provided in pursuance of the <i>Health Service Act 2001</i>	for the purpose of care provided in pursuance of the <i>National Health and Care Service Act 2016</i>
Mental Health Act 1998		
Section 12(3)	section 6 (accommodation for private patients) of the <i>National Health Service (Isle of Man) Act 1948</i>	section 15 of the <i>National Health and Care Service Act 2016</i>
Section 19(3)	in a hospital vested in the Department for the purposes of its functions under the NHS Act or any accommodation used under Part I of that Act by the managers of such a hospital,	in a hospital provided by the Department for the purposes of the Isle of Man National Health and Care Service or any other accommodation provided for that purpose and used by the managers of such a hospital,
Section 121(2)	For the purposes of the NHS Act the making of payments under this section to persons for whom hospital and specialist services are provided under that Act shall be treated as included among those	The making of payments under this section to persons for whom care is provided under the Isle of Man National Health and Care Service is to be treated as included in that care.

	services.	
Section 138(1) (definition of “the NHS Act”)	“the NHS Act” means the <i>Health Service Act 2001</i> ;	“the NHS Act” means the <i>National Health and Care Service Act 2016</i> ;
Children and Young Persons Act 2001		
Section 102(1) (definition of “health service hospital”)	“health service hospital” means a hospital provided by the Department under Part 3 of the <i>National Health Service Act 2001</i> ;	“health service hospital” means a hospital provided by the Department for the purposes of the Isle of Man National Health and Care Service;
Education Act 2001		
Section 41(6)	The Department shall make arrangements for encouraging and assisting pupils to take advantage of services provided by the Department of Health under section 16 of the <i>National Health Service Act 2001</i> .	The Department must make arrangements to encourage and assist pupils to take advantage of care provided for them under the Isle of Man National Health and Care Service.
Section 59(1) (definition of “school buildings”)	for affording facilities for enabling the Health Department to carry out its functions under section 16 of the <i>National Health Service Act 2001</i> ; or	for affording facilities to enable the Department of Health and Social Care to carry out any of its functions under the <i>National Health and Care Service Act 2016</i> ; or
Schedule 8, para 1(b)	a hospital trust within the meaning of Schedule 1 to the <i>National Health Service Act 2001</i>	a hospital trust, being a trust of property for purposes relating to hospital services
Medicines Act 2003		
Section 6(3)	and section 41 of the <i>National Health Service Act 2001</i> applies to consultations under paragraph (a) as it applies to consultations for the purposes of that Act	
Section 53(3)	For the purposes of this section the provision of services by or on behalf of the Department under the <i>National Health Service Act 2001</i> shall be treated as the carrying on of a business by	For the purposes of this section the provision of care by or on behalf of the Department under the <i>National Health and Care Service Act 2016</i> is to be treated as the carrying on of a business by that Department

	that Department	
Schedule 2 (definition of “health centre”)	means a health centre maintained under section 15 of the <i>National Health Service Act 2001</i>	means premises provided, equipped and maintained by the Department of Health and Social Care for the provision of care under the Isle of Man National Health and Care Service
Employment Act 2006		
Section 58(1)(c)	works or worked as a person providing general medical services, general dental services, general ophthalmic services or pharmaceutical services in accordance with arrangements made by the Department of Health under section 3, 6, 8 or 10 of the <i>Health Service Act 2001</i> ,	works or worked as an individual providing care under section 13(2) of the <i>National Health and Care Service Act 2016</i> .
Public Sector Pensions Act 2011		
Section 3(3)(a)	any persons engaged in any of the services mentioned in section 15 of the <i>National Health Service Act 2001</i>	any person providing care as defined under the Isle of Man National Health and Care Service
Social Services Act 2011		
Section 30(1) (definition of “hospital”)	“ hospital ” has the same meaning as in section 43 of the <i>National Health Service Act 2001</i> ;	
Regulation of Care Act 2013		
26(2)(b)	<i>National Health Service Act 2001</i>	<i>National Health and Care Service Act 2016</i>
Schedule (definition of “hospital”)	“ hospital ” see section 43 of the NHS Act.	
Schedule (definition of “NHS hospital”)	“ NHS hospital ” means a hospital provided under Part 3 (hospital and specialist services) of the NHS Act.	“ NHS hospital ” means a hospital provide by the Department for the purposes of the Isle of Man National Health and Care Service.

Published by Authority