



Northern Ireland
Assembly

Research and Information Service Bill Paper

Paper 139/13

26th September 2013

NIAR 712-13

Dr Janice Thompson

The Health and Social Care (Amendment) Bill

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Executive Summary

This paper examines the Health and Social Care (Amendment) Bill that was introduced to the Assembly by the Minister for Health, Social Services and Public Safety on 16th September 2013 and passed the second stage on 24th September 2013. The proposed amendments and the reasons behind them are considered.

The Health and Social Care (Amendment) Bill appears to be a straight-forward piece of legislation designed to put in place measures to correct certain oversights or gaps now identified in the Health and Social (Reform) Act (NI) 2009.

The Department for Health, Social Services and Public Safety's consultation on the proposals ran from 1 February until 29 March 2013 and received three replies, "*which were all in favour of the proposed amendments*".¹

The main intention of the Bill is to amend the Health and Social (Reform) Act (NI) 2009 (The Reform Act) to properly reflect the purpose for which the **Business Services Organisation** was established, which is, to provide support services for **all** Department of Health Social Services and Public Safety (DHSSPS) Arm's Length Bodies and to administer health and social care functions on behalf of the DHSSPS.

The Bill also proposes a number of other amendments to enable the DHSSPS to prescribe that the Chair of the Regional HSC Board, the Regional Public Health Agency and the Business Services Organisation must satisfy certain prescribed conditions.

The Schedule of the Bill includes amendments that, according to the Explanatory and Financial Memorandum, should have originally been included in Schedule 6 of the 2009 Reform Act.

The Explanatory and Financial Memorandum accompanying the Bill highlights that the DHSSPS believes:

- There are no financial implications as a result of its implementation of the Bill;
- That the provisions are compatible with the European Convention on Human Rights;
- That there are no Section 75 implications; and
- That it is not anticipated that the Bill will have any impact on the business or the voluntary and community sector.

¹ Health and Social Care (Amendment) Bill, Explanatory and Financial Memorandum, DHSSPS, paragraph 7

1. Introduction

This paper examines the Health and Social Care (Amendment) Bill that was introduced in the Assembly by the Minister for Health, Social Services and Public Safety on 16th September 2013 and passed the second stage on 24th September 2013 with general support for the amendments proposed in the Bill.

The Health and Social Care (Reform) Act (NI) 2009 (the Reform Act) represented one of the most significant pieces of legislation affecting the Northern Ireland health service in recent decades. It delivered a major overhaul of the structures underpinning the health and social care system and contained the legislative provision for the reconfiguration or creation of a number of key organisations including:

- The creation of a smaller DHSSPS;
- An amalgamation of the four health boards into the Regional Health and Social Care Board;
- Creation of five Local Commissioning Groups;
- Creation of the Regional Public Health Agency;
- The amalgamation of four Health and Social Services Councils into the Patient and Client Council; and
- The creation of the **Regional Business Services Organisation (BSO)** to replace the Central Services Agency.

The **BSO** was established under section 14 of the Reform Act and its role is to provide or secure a range of support services to the health and social care bodies defined at section 1(5) of the Reform Act.

At the time of the consultation on the draft Bill, the purposes of the proposed Health and Social Care (Amendment) Bill were as follows²:

- The Reform Act does not provide the DHSSPS with the power to direct the BSO to provide support services to the DHSSPS itself, nor to the NI Health and Social Care Council (NISCC), the NI Practice and Education Council for Nurses and Midwives (NIPEC) and the NI Fire and Rescue Service (NIFRS) (all Arm's Length Bodies ALBs) – the draft Bill proposes to amend the Reform Act to enable the BSO to provide support service to the DHSSPS and these ALBs;
- The Reform Act transferred the functions of the Central Services Agency to the BSO – the draft Bill proposes an amendment to the Reform Act to ensure that the BSO can administer any *similar* functions that the DHSSPS may confer on it in the future;

² The Health and Social Care (Amendment) Bill, Proposals for a Draft Bill, Consultation Document, February 2013, paragraphs 4-7

- The draft Bill proposes a technical amendment to reflect the correct title of the Regulation and Quality Improvement Authority (RQIA) in other existing legislation; and
- The draft Bill also proposes a technical amendment to provide greater clarity on the nature of the fraud prevention support service that is provided by the BSO.

During the consultation process on the draft Bill, the DHSSPS discovered that there was also a need for a number of amendments to the Reform Act to clarify that the Chairs of the HSC Board, the Public Health Agency and the BSO “*must satisfy prescribed conditions, or hold prescribed posts, in order to be eligible for appointment by the Department*”.³ Presently those conditions only apply to the appointment of the Members of those boards and not the Chairs. The necessary amendments are proposed in the Bill.

The DHSSPS believes that the only feasible option to provide the BSO with the necessary legislative cover to provide support services to both the Department and all the ALBs, and to exercise any new functions for the Department (in relation to the administration of health and social care) is to make an amendment to the Reform Act.⁴

2. The Clauses and Schedule

2.1 Clause 1 – Functions of the BSO: support services

Clause 1 (1) to (4) will amend section 15 of the Reform Act and extends the support service authority of the BSO to the DHSSPS itself and to the additional three ALBs of the NI Health and Social Care Council (NISCC), the NI Practice and Education Council for Nurses and Midwives (NIPEC) and the NI Fire and Rescue Service (NIFRS). The Reform Act, as currently framed, does not enable the BSO to provide support services to the DHSSPS or to three of the ALBs as listed above. In a briefing to the Committee for HSSPS, the DHSSPS stated that it had been “*unable to determine why these bodies were not named in the Reform Act. However, it is clear that the intention of establishing the BSO at the time was to provide an economic, efficient and effective support service to all the Department’s ALBs*”.⁵

Clause 1 also amends section 15 to clarify the counter-fraud support service provided by the BSO. The Reform Act states that the BSO can provide ‘fraud prevention’ as one of its support services. The BSO had highlighted to the DHSSPS that the counter-fraud and probity services unit within the BSO also carries out investigation and probity

³ Health and Social Care (Amendment) Bill: DHSSPS Briefing, Committee for HSSPS, Official Report (Hansard), 15 May 2013

⁴ Health and Social Care (Amendment) Bill, Explanatory and Financial Memorandum, paragraph 8

⁵ Health and Social Care (Amendment) Bill: DHSSPS Briefing, Committee for HSSPS, Official Report (Hansard), 15 May 2013

services and had requested clarity from the DHSSPS on this matter. The DHSSPS thought it advisable for the sake of clarity to “*take this opportunity to include fraud investigation and probity services*” in the functions of the BSO.⁶

2.2 Clause 2 – Other functions of the BSO

Section 26 of The Reform Act contains a provision that enables the BSO to exercise those functions that the Central Services Agency (CSA) had exercised before its dissolution in 2009. However, it is apparent that section 26 did not allow for BSO to exercise any new functions relating to the administration of health and social care.⁷

Clause 2 will allow this to happen as it will provide the DHSSPS with a power similar to that provided for in section 8(1) of the Reform Act in relation to the HSC Board. The new power will enable the DHSSPS to direct the BSO to exercise any functions of the DHSSPS with respect to the administration of health and social care.⁸

In September 2008, the Committee for HSSPS took evidence from the CSA when it outlined its role at that time and indicated that its replacement by the BSO would “*represent a natural progression with the new organisation providing a wider range of services*”.⁹ It would therefore seem that it was expected that the BSO would do more than just replace the CSA and would be exercising new functions. The Reform Act at present does not allow for that.

2.3 Clause 3 – Minor Amendments

Clause 3 makes a number of minor amendments to correct anomalies in Schedules 1, 2 and 3¹⁰ of The Reform Act to enable the DHSSPS to prescribe that the *Chair* of the Regional HSC Board, Regional Public Health Agency and the Regional BSO must satisfy prescribed conditions or hold a post of a prescribed description.

Currently, The Reform Act provides the DHSSPS with the power to prescribe that members of the Regional HSC Board, *excluding the Chair*, must satisfy prescribed conditions or hold a post of a prescribed description. The Regional HSC Board (Membership) Regulations (NI) 2009 prescribe the conditions that would disqualify someone from appointment to the Board. Similar conditions are also included in the Regulations for the Public Health Agency and the BSO.¹¹

⁶ Health and Social Care (Amendment) Bill: DHSSPS Briefing, Committee for HSSPS, Official Report (Hansard), 15 May 2013

⁷ Health and Social Care (Amendment) Bill: DHSSPS Briefing, Committee for HSSPS, Official Report (Hansard), 15 May 2013

⁸ The Health and Social Care (Amendment) Bill, Proposals for a Draft Bill, Consultation Document, February 2013, Commentary on Clauses.

⁹ Report on the Health and Social Care Reform Bill, NIA 21/07, 10/08/09, Committee for HSSPS, Executive Summary, paragraph 19, http://archive.niassembly.gov.uk/health/2007/mandate/reports/report10_08_09r.htm

¹⁰ The constitutions of the Regional HSC Board, the Regional Agency for Public Health and Social Wellbeing, and the Regional Business Services Organisation

¹¹ Health and Social Care (Amendment Bill): DHSSPS Briefing, Committee for HSSPS, Official Report (Hansard), 12 June 2013

The disqualifications are in line with those for appointments to other ALBs of the DHSSPS and also to those that apply to persons applying for appointment to similar bodies in other parts of the UK.¹²

The fact that the Reform Act does not allow the DHSSPS to prescribe conditions in respect of the appointment of the Chair is not in line with the Department's public appointments policy and hence the need for the amendments. The DHSSPS officials advised the Committee for HSSPS in an evidence session on 12th June 2013 that,

*these particular amendments were not included as part of the consultation on the proposed Bill, as we only became aware of the need for them in about mid-March, which was close to the end of the process. However, as the proposed amendments do not represent a shift in the original policy intent and are intended to regularise an existing anomaly in the Reform Act, it was not felt necessary to go out to further consultation on them.*¹³

In an evidence session on 15th May 2013 with the DHSSPS, the Committee for HSSPS requested further clarification on this particular issue. At a follow-up evidence session on 12th June 2013, the Committee were satisfied that the amendment would ensure consistency across the public appointments process for Chairs of the ALBs.¹⁴

In the second stage debate on 24th September 2013, Jim Wells MLA highlighted that since the Review of Public Administration (concerning the health and social care service) the role of Chair of an ALB had become an increasingly important one, so it is prudent that the appointment of all such Chairs falls within the Code of Practice for such Public Appointments.

2.4 The Schedule

The Schedule of the Bill is described as including amendments that should have originally been included in Schedule 6 to the Reform Act but were not included in Schedule 6 at that time.¹⁵

The amendments listed in the Schedule refer to:

- The renaming of the 'NI Health Personal Social Services Regulation and Improvement Authority' to the 'Health and Social Care Regulation and Quality Improvement Authority' (RQIA), by section 1(2) of the 2009 Reform Act;
- The *Commissioner for Complaints (NI) Order 1996 (NI 7)* – in Schedule 2 the omission of the term the 'NI Health Personal Social Services Regulation and Improvement Authority' and replacing this with the new name – 'the Health and Social Care Regulation and Quality Improvement Authority'; and

¹² Health and Social Care (Amendment Bill): DHSSPS Briefing, Committee for HSSPS, Official Report (Hansard), 12 June 2013

¹³ Health and Social Care (Amendment Bill): DHSSPS Briefing, Committee for HSSPS, Official Report (Hansard), 12 June 2013

¹⁴ Health and Social Care (Amendment Bill): DHSSPS Briefing, Committee for HSSPS, Official Report (Hansard), 12 June 2013

¹⁵ Health and Social Care (Amendment) Bill, Explanatory and Financial Memorandum, paragraph 8

- In the *Carers and Direct Payments Act (NI) 2006 (NI 6)* in section 8, subsection (2)(a) for ‘*personal social service*’ substitute ‘*social care service*’. Also the insertion of a new subsection (8) giving a definition of ‘*social care service*’.

3. Other Issues

3.1 Financial Effects

It is not anticipated by the DHSSPS that there will be any need for additional financial resources to implement the Bill, and that any resources will be met from within existing budgets.¹⁶

3.2 Equality and Human Rights Issues

As the Bill is amending the 2009 Reform Act, it is the DHSSPS view that the amendments were, in practice, subject to the Equality Impact Assessment as part of the original policy consultation in 2008 and that “*they are believed to be compatible with the Convention on Human Rights, and with statutory obligations, including equality and overarching Government policy. It is not considered that the proposals will have any adverse impact on any of the Section 75 groups*”.¹⁷

3.3 Regulatory Impact Assessment

The DHSSPS highlight that the main purpose of the Bill is to clarify the original policy position in relation to the services and functions of the BSO, as specified in the 2009 Reform Act, “*It is not anticipated that the amendments will have any impact on the business or voluntary and community sector*”.¹⁸

¹⁶ The Health and Social Care (Amendment) Bill, Proposals for a Draft Bill, Consultation Document, February 2013, paragraph 13

¹⁷ The Health and Social Care (Amendment) Bill, Proposals for a Draft Bill, Consultation Document, February 2013, paragraph 14

¹⁸ The Health and Social Care (Amendment) Bill, Proposals for a Draft Bill, Consultation Document, February 2013, paragraph 15
