

FROM THE MINISTER OF HEALTH



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Your Ref:

Our Ref: SUB-1116-2021

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Dear Colm,

I am writing to advise you that having taken into account the Health Committee's scrutiny report and the concerns within the report. I asked my officials to engage the Office of Legislative Counsel and develop suitable amendments to the Health and Social Care (Northern Ireland) (2021) Bill.

I have approved the following amendments but they will of course have to be tabled with the Executive for their consideration. The amendments will facilitate the following:

- Provision for legislative powers placing a statutory duty on my Department to bring forth regulations on Area Integrated Partnership Boards. The regulations must be laid in the Assembly and are subject to the draft affirmative procedure;
- The high level functions, duties and responsibilities of Area Integrated Partnership Boards that may be prescribed in regulations;
- A power for the Department to give Directions and provide guidance to Area Integrated Partnership Boards;
- Provision for the continuation of Local Commissioning Groups (LCGs) beyond the closure of the Health and Social Care Board. On the closure of the Health and Social Care Board LCGs will become statutory bodies and will remain in place until such time as my Department makes regulations in respect of the Area Integrated Partnership Boards. My Department can only make these regulations following the Assembly approval through the draft affirmative process;
- Provision to retain the LCGs functions and membership as they currently are. Provision to extend membership beyond an initial 6 months following the closure of the Health and Social Care Board and at 12 monthly intervals thereafter should that be necessary. Provision to disqualify and replace LCG members in line with existing regulations; and
- The necessary consequential and transitional provision to ensure existing references to LCGs in legislation are maintained and where necessary are extended to reflect its change of status from a Committee of the Health and Social Care Board to a statutory body following the closure of the Board .

I have attached a copy of the amendments to the Health and Social Care (Northern Ireland) (2021) Bill for your ease of reference. My officials will be available to brief you on the amendments if so required.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Robin Swann', written in a cursive style.

Robin Swann MLA
Minister of Health

New Clause

After clause 2 insert—

‘Duty to establish bodies for local areas

5 **2B.**—(1) After section 15A of the Health and Social Care (Reform) Act (Northern Ireland) 2009 insert—

*“Local area bodies***Duty to establish bodies for local areas**

15B.—(1) The Department must by regulations establish one or more bodies under this section.

10 (2) A body established under this section is to be called an “Area Integrated Partnership Board” or such other name as may be prescribed.

(3) Each Board is to exercise its functions for such area of Northern Ireland as may be prescribed; and the Department must ensure that there is a Board for each area of Northern Ireland.

15 (4) Each Board is to exercise such functions relating to the following matters as may be prescribed—

(a) the identification of the health and social care needs of the people in its area,

20 (b) the planning, delivery and management of health and social care for those people, and

(c) the facilitation and encouragement of co-operation between those responsible for planning, delivering or managing health and social care for those people.

(5) Each Board must exercise its functions with the aim of—

25 (a) improving the health and social well-being of the people in its area;

(b) reducing health inequalities between those people, and between those people and other people in Northern Ireland.

(6) The Department may by regulations—

30 (a) provide that Article 18 of the Order of 1972 is to apply to each Board with such modifications (if any) as may be prescribed, and

(b) require each Board to exercise its functions in accordance with any scheme having effect under that Article.

(7) The Department may by regulations—

35 (a) provide that each Board is established as a body corporate (and that section 19 of the Interpretation Act (Northern Ireland) 1954 applies to each Board with such modifications (if any) as may be prescribed);

40 (b) make provision for the constitution of Boards (including, in particular, their membership, general powers and proceedings);

(c) make provision for the payment of remuneration and allowances to members of Boards, and for the defraying of the expenses of Boards;

5 (d) make provision in relation to accounting, reporting and record-keeping by Boards;

(e) make such further provision in relation to Boards as the Department considers appropriate.

10 (8) Regulations under this section may apply (with or without modifications), amend or repeal any statutory provision whenever passed or made, including any provision of this Act.

(9) In this section—

“Board” means a body established under this section;

a reference to the area of a Board is to the area prescribed for that Board under subsection (3).

15 **Power of Department to give directions and guidance**

15C.—(1) The Department may give directions of a general or specific nature to a Board as to the carrying out by the Board of any of its functions.

20 (2) The Department may give guidance to a Board as to the carrying out by the Board of any of its functions.

(3) Before giving any directions to a Board under subsection (1) the Department must consult the Board.

25 (4) Where the Department is of the opinion that because of the urgency of the matter it is necessary to give directions under subsection (1) without consulting the Board concerned—

(a) subsection (3) does not apply; but

(b) the Department must as soon as reasonably practicable give notice to the Board of the grounds on which the Department formed that opinion.

30 (5) Where the Department is of the opinion that (for any reason other than the urgency of the matter) it is not reasonably practicable to comply with subsection (3)—

(a) that subsection does not apply; but

35 (b) the Department must as soon as reasonably practicable give notice to the Board concerned of the grounds on which the Department formed that opinion.

(6) It is the duty of a Board—

(a) to comply with any directions given to it under subsection (1);

(b) to have regard to any guidance given to it under subsection (2).

40 (7) In this section “Board” means a body established under section 15B.

(8) This section does not affect the Department’s powers to give directions or guidance apart from this section.”.

(2) In section 29 of that Act—

(a) after subsection (1) insert—

“(1A) No regulations are to be made under section 15B unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.”;

5

(b) in subsection (2), for “this Act” substitute “any provision of this Act other than section 15B”.’

New Clause

After clause 2 insert—

‘Continuation of Local Commissioning Groups

5 **2A.—**(1) Despite the dissolution of the Regional Board, the Local Commissioning Groups appointed under section 9 of the Health and Social Care (Reform) Act (Northern Ireland) 2009 are to continue in existence as unincorporated bodies.

(2) Schedule [*Local Commissioning Groups*] contains provision about the Local Commissioning Groups as so continued, including provision for their dissolution.’

Amendments

Clause 6, page 2, line 31, at end insert—

- 5 ‘() section [*Continuation of Local Commissioning Groups*] and Schedule
[*Local Commissioning Groups*];’.

Schedule 1, page 42

- 10 Leave out line 35 and insert—

‘232. Omit sections 7 and 8 and the italic heading before section 7.

232A. In section 9, omit subsections (1), (3)(b), (6)(b) and (7).

232B. Omit sections 10 and 11.’

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Schedule 1, page 43

Leave out line 13 and insert—

‘239. In Schedule 1 omit—

(a) paragraphs 1 to 7;

- 20 (b) paragraphs 8 to 11(1), except so far as those paragraphs apply to, or
relate to, the Local Commissioning Groups and their members;

(c) paragraph 11(2);

(d) paragraphs 12 to 21.’

25

Schedule 1, page 43

Leave out lines 38 and 39 and insert—

‘(3) In section 3(6)—

- 30 (a) for “the Regional Health and Social Care Board” substitute “the
Department”;

(b) omit “and Local Commissioning Groups”.’

New Schedule

After Schedule 1 insert—

‘SCHEDULE 1A

Section [Continuation of Local Commissioning Groups]

5 LOCAL COMMISSIONING GROUPS

Statutory provisions to continue to operate in relation to Groups as continued

1.—(1) The following provisions continue to apply to or in relation to Local Commissioning Groups and their members—

- 10 (a) section 9(2), (3)(a), (4), (5) and (6)(a) and (c) of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (“the 2009 Act”);
- (b) paragraphs 8 to 11(1) of Schedule 1 to the 2009 Act, so far as those paragraphs apply to, or relate to, committees of the Regional Board and their members;
- 15 (c) regulations 1, 2(2) and 3 of, and the Schedule to, the Local Commissioning Groups (Number, Area and Functions) Regulations (Northern Ireland) 2009 (S.R. 2009/99);
- (d) the Local Commissioning Groups (Membership) Regulations (Northern Ireland) 2009 (S.R. 2009/395) (the “Membership Regulations”), except regulation 3(1) to (3) (appointments);

20 but this is subject to the modifications made by sub-paragraph (2).

(2) The provisions applied by sub-paragraph (1) are modified as follows—

- (a) the power conferred by paragraph 9 of Schedule 1 to the 2009 Act is conferred on the Department, and in that paragraph the words “Without prejudice to section 19(1)(a)(v) of the Interpretation Act (Northern Ireland) 1954 (c. 33)” are omitted;
- 25 (b) in the Membership Regulations—
- (i) references (however expressed) to employment by the Regional Board are to be read as references to employment by the Department or the Regional Business Services Organisation;
- 30 (ii) other references to the Regional Board are to be read as references to the Department.

2. Paragraph 1 does not affect the continued operation of any other statutory provision that applies to, or relates to, Local Commissioning Groups.

Appointments and terms of office

35 3.—(1) Any person who is a member of a Local Commissioning Group immediately before the dissolution of the Regional Board is to continue to be a member of that Group; but this is subject to the following provisions of this paragraph.

40 (2) The term of office of a person who is a member of a Group by virtue of sub-paragraph (1) is to end six months after the date on which the Regional Board is dissolved.

(3) The Department may direct in writing that the term of office under sub-paragraph (2) is to be extended by such period, not exceeding 12 months, as may be specified in the direction.

5 (4) The Department may exercise the power conferred by sub-paragraph (3) more than once.

4.—(1) In the event of any vacancy in the membership of a Local Commissioning Group (as determined in accordance with regulation 2 of the Membership Regulations), the Department may appoint a person to fill the vacancy.

10 (2) The terms of appointment under sub-paragraph (1) must comply with the Membership Regulations, but otherwise are to be determined by the Department.

(3) A person who has ceased to be a member of a Group is eligible for re-appointment.

15 5. Paragraphs 3 and 4 are subject to regulations 3(4) to (9) and 4 to 6 of the Membership Regulations (cessation of membership in certain circumstances, disqualification, resignation and removal).

Other provision about the Groups as continued

20 6. The Department may pay to members of a Local Commissioning Group who are not employees or officers of the Department or the Regional Business Services Organisation such remuneration and allowances as the Department may determine.

7. In the 2009 Act—

- (a) section 2(3)(h) (duty of Department to monitor and hold to account) applies in relation to Local Commissioning Groups;
- 25 (b) the duty in section 5 (preparation of framework document) applies as if a Local Commissioning Group were a health and social care body;
- (c) section 6 (power of Department to give directions) applies in relation to Local Commissioning Groups;
- (d) a Local Commissioning Group is a relevant body for the purposes of section 15 (RBSO support services);
- 30 (e) sections 17 to 19 (Patient and Client Council and public involvement) apply to Local Commissioning Groups.

8.—(1) The Department may give guidance to a Local Commissioning Group as to the carrying out by the Group of any of its functions.

35 (2) It is the duty of a Local Commissioning Group to have regard to any guidance given to it under sub-paragraph (1).

(3) Section 29(3) of the 2009 Act applies to guidance given under sub-paragraph (1).

9. References in the following provisions to a health and social care body are to be treated as including a Local Commissioning Group—

- 40 (a) Article 67 of the 1972 Order (duty of various bodies to co-operate with one another);

(b) section 3(8) of the Health and Social Care (Control of Data Processing) Act (Northern Ireland) 2016 (code of practice on processing of information);

5 (c) sections 14(2)(a) and 15(1) of the Public Services Ombudsman Act (Northern Ireland) 2016 (matters which the Ombudsman may investigate).

Continuity

10 10.—(1) Any document made or other thing done by the Regional Board in relation to the Local Commissioning Groups, if in effect immediately before the dissolution of the Board, continues to have effect to the same extent and subject to the same provisions.

(2) Sub-paragraph (1)—

(a) does not apply if the context requires otherwise, and

(b) is subject to any power conferred on the Department by paragraphs 1 to 9 to make other provision.

15 *Power of Department to dissolve the continued Groups*

11.—(1) The following provisions cease to have effect on such day as the Department may by regulations appoint—

(a) section 9(2), (3)(a), (4), (5) and (6)(a) and (c) of the 2009 Act;

20 (b) paragraphs 8 to 11(1) of Schedule 1 to the 2009 Act, so far as those paragraphs apply to, or relate to, the Local Commissioning Groups and their members;

(c) section [*Continuation of Local Commissioning Groups*] and this Schedule;

(d) the Local Commissioning Groups (Number, Area and Functions) Regulations (Northern Ireland) 2009;

25 (e) the Membership Regulations.

(2) Accordingly, on the day appointed under sub-paragraph (1), the Local Commissioning Groups are dissolved.

30 (3) The Department may not make regulations under sub-paragraph (1) unless the Department makes, or has made, regulations under section 15B(1) of the 2009 Act, as inserted by section [*Duty to establish bodies for local areas*](1) of this Act (establishment of local area bodies).

(4) Regulations under sub-paragraph (1) are subject to negative resolution.

35 (5) But sub-paragraph (4) does not apply if a draft of the regulations (whether alone or with other provision) has been laid before, and approved by a resolution of, the Assembly.’