

FROM THE MINISTER OF HEALTH



Department of
Health

An Roinn Sláinte

Máinnystrie O Poustie

www.health-ni.gov.uk

Mr Colm Gildernew MLA
Chair of the Committee for Health
Room 410
Parliament Buildings
Stormont
Belfast
BT4 3XX

Castle Buildings
Stormont Estate
BELFAST, BT4 3SQ
Tel: 028 9052 2556
Email: private.office@health-ni.gov.uk

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committee.Health@niassembly.gov.uk

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Dear *Colm,*

Regarding my recent offer of pre-briefing on the Health and Social Care Bill, I understand that officials have been invited to brief the Committee on Thursday 4 March, 2021.

A briefing paper is attached which includes details of the officials due to attend, which I hope the Committee will find useful.

Robin Swann MLA
Minister of Health

DEPARTMENT BRIEFING FOR THE HEALTH COMMITTEE HEALTH AND SOCIAL CARE BILL

Purpose

1. The purpose of this paper is to provide the Health Committee with briefing on the Health and Social Care Bill which is due to be introduced to the Assembly on 8 March 2021. Officials attending the evidence session will be:
 - **Martina Moore**, Director of Organisational Change.
 - **John Millar**, Health and Social Care Bill Team Manager.

Introduction

2. The intention of the Health and Social Care Bill is to give effect to the decision to close the Health and Social Care Board. As the Health and Social Care Board was established through primary legislation, namely the Health and Social Care (Reform) Act (Northern Ireland) 2009), primary legislation is required to give effect to its closure.
3. The Bill provides for the transfer of responsibility for the functions to the Department and the transfer of its staff to the Business Services Organisation (BSO).
4. The new operating model to be introduced upon closure will see the staff of the HSCB continue to undertake its current functions albeit under the direction of the Department.
5. The staff will be employed by the BSO but will be led by a Senior Civil Servant Grade 3. Staff will retain their HSC terms and conditions through employment by the BSO. No HSCB staff will be made redundant as a result.
6. This approach whilst streamlining structures and reducing bureaucracy will provide for continuity of service thus minimising risk to the overall system.

7. The Bill relates solely to the Health and Social Care Board and will not have a material impact on any other HSC body.

Background

8. A review of commissioning arrangements was published in November 2015, in response to a recommendation in Sir Liam Donaldson's report "*The Right Time, The Right Place*".
9. The review identified a number of weaknesses in the current system including:
 - Current structures are seen as overly complex and bureaucratic, with a lack of clarity of accountability and decision making.
 - Responsibility – and therefore accountability – has not always been effectively shifted to delivery organisations.
 - The complexity of existing structures does little to foster strong, collaborative working relationships or support innovation and reform.
 - There is a perception of ineffective communication within and across organisations.
 - The annual nature of the financial and planning cycle inhibits long-term, strategic planning.
 - There is a need for greater stakeholder involvement in the planning and design of services.
10. Following the publication of the review, the then Minister for Health, Simon Hamilton, set out proposals on 4 November 2015 to reform the administration arrangements for the Health & Social Care sector (the HSC), including the closure of the HSCB.
11. A public consultation was conducted and the consultation report was published in March 2016. This affirmed the need for change highlighting that a full, competitive commissioning process is too complex and transactional for an area as small as Northern Ireland, and respondents felt that current arrangements are not lean or agile enough to respond quickly to the changing demands within health and

social care.

12. The consultation responses also highlighted that whilst changing structures would not be a panacea for the issues facing the Health and Social Care sector, as part of a broader strategy for transformation, having more effective structures will allow us to better focus resources, achieve transformation, and support the system to operate more effectively and innovatively.
13. The decision was re-affirmed by the then Minister for Health, Michelle O'Neill with the launch of '*Health and Wellbeing 2026: Delivering Together*' on 25 October 2016 which confirmed the closure of the Board as part of a wider transformation agenda. A decision which has been further endorsed by Minister Swann.
14. The policy position has remained consistent, the Health and Social Care Board should close and the administration structures are simplified with the closure of the Health and Social Care Board.
15. The challenges facing our health and social care system have never been greater. COVID-19 has compounded issues such as long and growing waiting lists, budget constraints and workforce pressures and whilst, the closure of the Health and Social Care Board is not a remedy for these issues, having a more streamlined structure in place will better focus resources and enable the system to operate more effectively.
16. The closure of the Health and Social Care Board is part of the wider transformation agenda, which will contribute to PfG Outcome 4 "We enjoy long healthy active lives". Further, New Decade, New Approach (January 2020) included an Executive commitment to deliver reforms on health and social care.
17. Subject to legislative provision the anticipated closure date of the Health and Social Care Board is 31 March 2022, with the new

arrangement coming into place from the 1 April 2022. These dates have been chosen to mitigate against a number of potential risks, such as complications associated with a closure part-way through a financial year, double running of systems and double accounting requirements. The proposed closure date will minimise any potential issues with governance and accountability arrangements.

Legislation

18. Department of Health officials have been engaging with the Office of Legislative Counsel (OLC) in an iterative process over the last two years to develop the necessary Bill to give effect to the closure of the HSCB. A final draft Bill and an Explanatory and Financial Memorandum were previously provided “In Confidence” to the Health Committee pending the Executive decision to approve introduction of the Bill to the Assembly. Copies of both are provided again separately for your convenience.

Bill Size

19. The Bill contains only 7 clauses, with the majority of the detail being contained in the first of 3 Schedules. High level detail is provided (**Annex A**).

Consultation

20. As previously mentioned, public consultation was undertaken between November 2015 and February 2016 with a consultation report having been published in March 2016. The draft Bill does not deviate from the policy intention outlined in the previous consultation and simply gives technical effect to the previously agreed policy approach agreed in turn by each of the two previous Health Ministers and Minister Swann.

Cross-cutting issues

21. There are no aspects of the proposed legislation that impact on functions of other Departments beyond addressing existing references to the Health and Social Care Board in non-health related Acts or

Orders.

22. During the scoping of the legislation Departmental officials identified references to the Health and Social Care Board in 24 Acts or Orders that fall within the responsibility of other NI Departments. Amendments in respect of these Acts or Orders all result in the removal of references to the Health and Social Care Board and substitute a reference to another relevant Health body where appropriate.
23. The respective Departments are aware of the legislative amendments in respect of their own Departments legislation. The necessary amendments will be progressed through this draft Bill.

Position in other jurisdictions

24. The draft Bill relates to arrangements specific to Northern Ireland. Health Departments in each of the other jurisdictions (UK and Republic of Ireland) are responsible for setting the strategic health priorities. Bodies such as NHS England, Clinical Commissioning Groups (England) and NHS Scotland, local health boards (Wales) and the Health Service Executive (Republic of Ireland) commission and plan services in respective jurisdictions.

Secretary of State's Consent

25. A further number of Westminster Acts have been identified that include reference to the Health and Social Care Board. Again amendments will result in the removal of references to the Health and Social Care Board and substitute a reference to another relevant Health body where appropriate. These amendments should be taken forward through Orders in Council.
26. Northern Ireland Office officials agreed that Secretary of States consent is not required for this Bill and further they will progress the necessary Orders in Council when this Bill has achieved Royal Assent.

Human Rights

27. The proposed legislation will not engage Convention Rights, in line with the initial findings of the Human Rights Impact Assessment which has been completed.

Equality Impact

28. The legislation does not affect equality of opportunity as between the groups listed in section 75 of the NI Act 1998. An initial screening took place with the original consultation and was screened out in terms of equality impact.

Regulatory Impact

29. Legislative provisions have no impact on employment and costs to business, charities, social economy enterprises and the voluntary sector, as reflected in the initial findings of the Regulatory Impact Assessment which has been completed.

Lifetime Opportunities

30. As part of the wider transformation agenda this legislation contributes to draft PfG Outcome 4 “We enjoy long healthy active lives” and as a consequence will contribute to the objective of reducing social exclusion and poverty.

Financial implications and budgetary cover

31. There are no significant Departmental cost implications of the proposed legislation. Any additional costs can be accommodated within current budgets.

Staffing implications

32. This legislation has no implications upon either civil service or public sector staffing levels. As indicated above existing employees of the Health and Social Care Board will transfer to the Business Services Organisation on the same terms and conditions as they currently have.

33. There has been regular engagement through the Staff Engagement Forum to keep staff and Unions sighted and involved in the development of the proposals. No major issues or concerns have been identified.

Legislative Competence

34. The Attorney General confirmed on 2 February 2021 that the Bill is within the Assembly's legislative competence.

Legislative Timeline

35. Pending a response from the Speaker we hope to see the draft Bill introduced to the Assembly on the 8 March 2021.

Health and Social Care (Northern Ireland) (2021) Bill – Detailed Content

Clauses

The measures contained within the draft Bill are detailed below:

- **Clause 1 – Dissolution of the Health and Social Care Board.** This clause provides for the dissolution of the Health and Social Care Board and its respective committees including local commissioning groups. There remains a statutory duty on the Department of Health to secure the commissioning of health services.
- **Clause 2 – Transfer of the Health and Social Board Legislative Functions.** This clause states that Schedule 1 of the draft Bill contains amendments providing for the transfer of the Health and Social Care Board functions to other health bodies (including the Department of Health) and amendments that are required as a consequence of the transfer of those functions.
- **Clause 3 – Schemes for Transfer of Assets and Liabilities.** This clause places a duty on the Department of Health to make one or more schemes for the transfer of all the assets and liabilities (including employed staff) of the Health and Social Care Board to another relevant health body. The detail is to be included in Schedule 2 of the draft Bill.
- **Clause 4 – Transitional Provisions.** Clause 4 points to Schedule 3 of the draft Bill which contains the transitional provisions necessary to mitigate potential risks arising from the closure of the Health and Social Care Board.
- **Clause 5 – Interpretation.** This clause provides interpretation for a number of references made in the draft Bill.
- **Clause 6 – Commencement.** This clause provides that the Department of Health may by order appoint on which day clauses of the Bill may come into force.
- **Clause 7- Short title of the Act.** The title of the draft Bill is the Health and Social Care (Northern Ireland) 2021.

Schedule 1

The main changes delivered by the amendments to existing legislation contained within Schedule 1 of the Draft Bill are:

- The closure of the Health and Social Care Board (HSCB) and as a consequence its committees (including Local Commissioning Groups);
- The end of the statutory requirement by the HSCB to prepare and publish each financial year a commissioning plan in respect of Health and Social Care. The Department of Health duty to secure the commissioning and development of programmes and initiatives remains in place;
- A programme of work has also begun to look at how Health and Social Care services are planned and managed moving forward which will take into account the changes resulting from the closure of the HSCB. In line with the direction of travel set out in Delivering Together this work will look at a partnership approach both across the HSC and beyond, which moves away from competition towards collaboration, integration and improvement.
- Responsibility for the exercise of functions identified as Social Care and Children Functions will be placed directly on HSC trusts
- The Department of Health will have responsibility for oversight of the exercise of Social Care and Children functions following closure of the HSCB;
- Each HSC trust will have a duty at least annually to provide details of how they exercise (via a formal scheme) all Social Care and Children functions. This will require the approval of the Department of Health before a Trust can put a scheme into operation;
- The Department of Health may remove a HSC trusts power/duty to exercise Social Care and Children functions and have them exercised elsewhere;
- Responsibility for contracts with and providers lists of GPs, Dentists, Pharmacists and Ophthalmic will transfer to the Department of Health ;
and

- All other non-social care and children legislative functions previously delegated by the HSCB to HSC trusts will now be delegated by the Department to HSC trusts.

Schedule 2 – Transfer of Assets and Liabilities

- The Department is given a power to make schemes for the transfer of the Regional Boards assets, liabilities and staff upon its closure in clause 3 of the draft Bill.
- This schedule details what the Department may do and must do in developing the content of the schemes and interaction with staff.
- Provision is also made within this schedule for continuity. Anything that was commenced with the HSCB before closure including legal action in relation to staff or assets and liabilities becomes the responsibility of the transferee (the Department) upon closure.

Schedule 3 – Transitional Provisions

- This schedule places a duty on the Department to produce a statement of accounts and a final report upon closure of the HSCB. These are to be shared with the Auditor and Comptroller General and he is to provide a report
- The final accounts, final report and the Auditor and Comptroller report is to be laid before the Assembly
- Schedule 3 also includes a number of general transitional provisions and specific transitional provisions to ensure continuity of provisions with the transfer of functions.