

FROM THE MINISTER OF HEALTH



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Dear Colm,

Following the debate at the Second Stage Reading of the Health and Social Care Bill, I understand that officials have now been invited to brief the Committee on Thursday 15 April 2021.

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

Yours sincerely

A handwritten signature in blue ink, appearing to read "Robin Swann".

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 was introduced to the Assembly on 8 March 2021 and had second stage on 16 March. Officials attending the evidence session will be:
 - **John Millar**, Health and Social Care Bill Team Manager
 - **Gareth McKeown**, Migration to Closure Project Team Manager
 - **Allan Chapman**, Future Planning Model, Planning Team Lead.

Introduction

2. The intention of the Health and Social Care Bill is to give effect to the decision to close the Regional Health and Social Care Board (“the Regional Board”). As the Regional 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 core purpose of the Bill is the dissolution of the Regional Board and the transfer of its legislative functions. The Bill relates solely to the Regional Health and Social Care Board and will not have a material impact on any other HSC body.
4. The Bill has 7 clauses and 3 schedules. Overall, the clauses provide for the dissolution of the Regional Board and the transfer of its functions and require the Department to make transfer schemes for assets including its staff and its liabilities. A further clause provides for necessary transitional provisions. Finally the remaining clauses provide for interpretation, commencement and the short title of the Bill.

Detail

- Subject to the necessary legislative provision, it is the intent of the Bill to give effect to the closure of the Board and the transfer of responsibility of its functions to the Department and to enable transfer of its staff to the Business Services Organisation (BSO).
- In this first step in transforming how we plan and manage our services, staff will be supported as they transition to a new operating model. In order to minimise risk to service delivery there will be no fundamental reengineering of process at this time however opportunities for improved ways of working are being sought.

New Operating Model

- In the operating model to be introduced, the former staff of the Regional Board will, in the main, continue to carry out the same functions as before, albeit they will be working under the direction of the Department and not as an arm's length body.
- The staff will be transferred to the BSO ensuring they maintain their HSC terms and conditions but will be led in the daily undertaking of their duties by a Senior Civil Servant (Deputy Secretary). The diagram at ([TAB 1](#)) illustrates the staffing structure of the Department on Board closure.
- No former Regional Board staff will be made redundant as a result of its closure and there will be no movement/dispersal of staff to other parts of the Department, the Trusts or the Public Health Agency.

Transfer of functions to the Department

5. With the exception of Social Care and Children's Functions, the Department will be responsible for all other functions of the former Regional Board. This includes areas such as commissioning, performance management and funding. However, as highlighted above, these functions will continue to be carried out by the former Board staff who will continue to undertake the same roles and functions as before.

6. In this transfer the Department will now also be responsible for contracts with primary care providers (GPs, Dentists, Pharmacists, etc.).
7. Currently the Board makes decisions on issues such as the level of service provided by individual primary care providers. If the provider doesn't agree with the decision there is a right of appeal and, in most instances, the appeal is to the Department. In the new arrangements, it will be the Department that makes an initial decision.
8. It is the Department's view that a primary care provider should have access to an independent appeal mechanism should they wish to challenge a decision of the Department. The Bill therefore includes regulation making powers for the Department to give primary care providers access to an independent appeal process post closure of the Regional Board.
9. The appeal mechanism framework will include a legally qualified chairperson, appropriate medical professionals from the same profession as the appellant and lay people sitting to hear the appeal, all of whom will be independent of the Department.

Transfer of Functions to the Trusts

10. In relation to Social Care and Children's functions, responsibility for these are to be placed directly upon HSC trusts.
11. Whilst these functions are currently the responsibility of the Regional Board, the Regional Board delegates the exercise of them unto the HSC Trusts and therefore, the placing of the functions directly upon Trusts within this Bill will not affect any change in how these services are currently delivered.
12. A new Article 10A of the Health and Personal Social Services (Northern Ireland) Order 1991 is detailed in the Bill. This article provides a definition of what are social care and children's functions.

13. The oversight of the exercise of these functions is currently carried out by the Social Care and Children Directorate of the Regional Board.

Responsibility for this oversight function will transfer to the Department and will continue to be undertaken by the former staff of the Social Care and Children Directorate as an integral part of the Department.

Accountability

14. In terms of accountability within the new model:

- i. The Senior Civil Servant directing former Board Staff will be accountable to the Permanent Secretary for the delivery of the functions of the former Board staff. The Permanent Secretary is accountable to the Minister for the Department's performance;
- ii. Performance and accountability of the functions under the direction of Senior Civil Servant will be subject to the same scrutiny as the rest of the Department by the Departmental Board which includes two Non-Executive members
- iii. The Department's Audit and Risk Assurance Committee was established to advise the Accounting Officer, through the Departmental Board, on the quality of assurances they receive about strategic processes for risk management, governance, internal control and the integrity of financial statements. The Committee membership comprises the two Non Executives of the Departmental Board and a further two independent external members. The oversight of the Committee will extend to those former functions of the Board which are now under the direction of the Senior Civil Servant.
- iv. The Senior Civil Servant will be a member of the Department's Top Management Group (TMG) chaired by the Permanent Secretary which meets weekly to discuss the work of the Department.

The Health and Social Care Bill

Clause 1 - Dissolution of the Regional Health and Social Care Board

15. Clause 1 of the Bill provides for the dissolution of the Regional Board. The dissolution of the Regional Board in effect ends:

- a. the duty on the Regional Board to produce an annual commissioning plan in response to the Commissioning Plan Direction issued by the Department,
 - b. the duty on the Regional Board to consult the Public Health Agency and have regard to any advice provided by the Public Health Agency in respect of the commissioning of services,
 - c. the duty on the Regional Board to secure the Public Health Agency approval before it can publish a commissioning plan,
 - d. Local Commissioning Groups, and
 - e. the power of the Regional Board to give directions and guidance to HSC trusts as to the carrying out by a trust of any of its functions.
- The removal of the duties and powers detailed above is given effect by the omission of sections 7 to 11 of the Health and Social Care (Reform) Act (Northern Ireland) 2009 included at paragraph 232 of schedule 1 of the Bill.

Commissioning Plan

16. As the responsibility of the functions of the former Board will transfer to the Department the process of developing a Commissioning Plan in response to a Commissioning Direction is no longer practicable as both areas will now be Departmental responsibility.

17. This will not detract from the need to set the priorities and indeed the outcomes which the Health and Social Care system is expected to deliver and to plan services to meet these requirements. There is however now an opportunity to improve on the current process and work is ongoing with input from across the HSC to develop a more meaningful and responsive way of doing so.

18. The input, expertise and role of the PHA in the planning of services is recognised and will continue within the new operating model. The PHA is a key stakeholder in work being brought forward to enable the implementation of the new model and the development of a new process for setting strategic priorities.

Local Commissioning Groups

19. Subject to legislative provision, it is intended that the Regional Board will close on the 31 March 2022 and therefore Local Commissioning Groups will remain in place until that date.
20. The need for local input and intelligence in the planning of HSC services is widely recognised and valued. Whilst the Local Commissioning Groups as a committee of the Regional Board will cease to exist, work is ongoing to ensure the mechanisms are in place through which the local input remains a core component of the planning process.
21. The local commissioning teams which are staffed by Regional Board staff will continue in their role, albeit as part of the Department. This role includes the gathering, collation and input of local information to inform plans and, as a consequence, ensuring there is no degradation in the availability of local information to be considered in a commissioning cycle.
22. Furthermore, Minister has recently approved the commencement of a programme of work to develop a new way of planning services based on an integrated care approach.
23. An integrated care approach seeks to build on the lessons learned from the response to the first surge of Covid-19 and what can be achieved when traditional silos are broken down and partnerships are formed to achieve a common aim. Integrated care brings together partners within HSC but also beyond, including voluntary and community and local government to plan, manage and deliver services based on the needs of the local population.

24. In line with the direction of travel set out in Delivering Together, an integrated care model is to be developed within the principles outlined below:
- Observes the principles of local decision making;
 - Sees the delegation of decision-making and funding, with the exception of specialised services;
 - Allows for planning, management and delivery of specialised services at a regional level; and
 - Is supported by an outcomes based approach underpinned by enhanced accountability processes.
25. The development of an integrated care system approach is a complex undertaking and one which will take time to develop. A phased approach has been adopted which will see in the initial phase the development of a framework which will support the creation of integrated care system partnerships across the five HSC regions over the coming year.
26. This approach will not only take account of the key learning from LCGs but also of the changed landscape in which we are now operating with the evolution of Community Planning Partnerships and how we can better align ourselves to achieve improved outcomes for our local populations.
27. The current LCGs will have a key role in both informing the design of the new system and in supporting its implementation.

Clause 2 - Transfer of Functions

28. The Regional Board's functions deriving from Health legislation will, with the exception of those identified as Social Care and Children functions, be transferred to the Department of Health.
29. Clause 2 introduces Schedule 1 which contains both the amendments providing for the transfer of the Regional Board's legislative functions and amendments consequential on the transfer of the Regional Board's functions.

30. Schedule 1 is the core of the Bill. It may seem as if the Bill is doing more than dissolving the Regional Board and transferring functions and staff. For example, at some points the Bill substitutes a reference to an HSC trust for an existing reference to the Department or Ministry or substitutes in a new reference in place of a reference to a Health and Social Services Board. The former looks like a transfer of a function or functions from the Department to the HSC trusts and the latter looks like the Bill is taking functions from bodies known as Health and Social Services Boards rather than from a single body known as the Regional Board.
31. The closure of the Regional Board has resulted in a need to tidy up any remaining references to its predecessor the Health and Social Services Boards that remained in legislation.
32. Nothing in the Schedule goes beyond the transfer of functions from the Regional Board to the Department or HSC trusts

Clause 3 - Transfer Scheme

33. In order to help effect the dissolution and transition in practical terms, clause 3 of the Bill places a duty on the Department to make one or more schemes for the transfer of the Board's assets (including staff) and its liabilities. Schedule 2 contains details about what must be provided in any scheme under clause 3.
34. The content of schedule 2 as it relates to transfer schemes is not new or novel, very similar provisions are evident in the Health and Social Care (Reform) NI Act 2009. The 2009 Act provided for the dissolution of a number of Health Bodies and the transfer of staff, other assets and liabilities to a number of new bodies.
35. Before making a scheme the Department must consult either employees or their representatives.
36. Schedule 2 states the staff transfer scheme must:

- i) in relation to each transferee, identify the transferring employees (whether by name or otherwise);
- ii) include provision securing pension protection for such employees;
- iii) include provision for procedures designed to resolve any grievances of such employees arising in relation to matters dealt with by the scheme; and
- iv) include provision for the payment of compensation by the Department to any such employee who suffers loss or detriment in consequence of the scheme.

A dedicated project work strand group is in place to manage this piece of work.

Clause 4 – Transitional Provisions

- 37. Clause 4, in conjunction with Schedule 3, makes transitional provision to ensure an ordered winding up of the Regional Board and the continued proper operation of the Health and Social Care system as it moves from a system that includes the Regional Board to one without it.
- 38. A power is included here to provide for regulations to be made if required, to address any non-alignment of existing legislation not already identified as a consequence of the closure of the Regional Board and commencement of the new arrangements.
- 39. This type of provision is not novel or contentious and was evident in the 2009 Reform Act which provided for the dissolution of a number of health bodies and the transfer of their legislative functions.
- 40. Schedule 3 places a duty on the Department to make arrangements for a statement of final accounts of the Regional Board, and together with a report from the Auditor and Comptroller General these must be laid with the Assembly.

41. Schedule 3 also provides that directions previously issued to the Regional Board by the Department and by the Regional Board to HSC trusts continue to have effect upon the closure of the Regional Board. If this provision was not in place every direction ever issued to the Regional Board would cease to have effect from the closure of the Board leading to potentially significant implications for ongoing service delivery.
42. An example of one such direction is the Additional Pharmaceutical Services (Emergency Supply Service during a Pandemic) Direction. If this direction was still needed and this legislation did not provide for its retention, the services provided for in the direction would have no legal basis.
43. In addition the Department may continue anything being done by or to the Board (including legal proceedings) following the closure of the Board. It is important to highlight this fact; anything that was commenced with the Regional Board before closure including legal action in relation to staff or assets and liabilities becomes the responsibility of the Department upon closure.

Clauses 5, 6 and 7 – Interpretation, Commencement and Short Title

44. Clauses 5, 6 and 7 are standard interpretation, commencement and short title clauses respectively.
45. Clause 5 provides interpretation for a number of references made in the draft Bill, for example, to what the terms “Department”, “Regional Board” “the 1972 Order” refer.
46. Clause 6 provides that the Department of Health may appoint on which day clauses of the Bill may come into force. Provisions within the Bill will come into operation either when Royal Assent or commence on a date to be decided by the Department.
47. Subject to successfully completing the legislative process, it is the Departments intention that Section 1 (Dissolution of the Regional Board) will

be effective from the 1 April 2022. The same applies in respect of Section 2 and Schedule 1 which includes the amendments providing for the transfer of the Regional Board's legislative functions and amendments consequential on the transfer of the Regional Board's functions. This date is however not stated in the Bill.

48. The alternative, a fixed date being made in legislation provides for an unnecessary element of risk. Risks to achieving full and effective transition to closure by a fixed legislative date could include unforeseen delays in legislative progression leading to the Bill not securing all necessary approvals (including Royal Assent) by the fixed date.

49. The planned commencement date for Clause 1 and 2 and schedule 1 has 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.

50. Clause 7 is the title by which the ensuing Act will be known. In this case, the title of the Act will be the Health and Social Care Act (Northern Ireland) 2021.

New Regulation Making Powers

51. The Delegated Powers memorandum previously provided to the Health Committee details in total 6 new departmental regulation making powers. The new regulation powers are sought to:

- Provide for regulations to be made (if necessary) to address the potential risk of any non-alignment of existing statutory instruments not already identified as a consequence of the closure of the Health and Social Care Board and commencement of new arrangements.
- Provide the Department with the power to make regulations to establish a body independent of the Department to deliver a transparent independent dispute resolution process in the event of

contract disputes arising in relation to Primary Medical providers such as GPs and Dentists etc.

- Provide a power for the Department to make regulations to amend the list of Social Care and Children functions conferred directly on the HSC trusts.
- Provide a power to the Department to make regulations so that the power of the Department to give directions and guidance, etc. to a HSC trust outlined in paragraph 6(2) to paragraph 8 of Schedule 3 may apply to a substituted body or person to whom the Department has directed to exercise Social Care and Children functions should the exercise of those functions be removed from a HSC trust.
- Provide the Department with a power to make regulations to amend any statutory provisions as may appear to the Department as necessary, to facilitate and safeguard the exercise of those Social Care and Children functions by a substituted body or person following the removal of Social Care and Children functions from a HSC trust, should that be necessary.
- Provide the Department with a power to make regulations to amend any statutory provisions as may appear to the Department necessary to facilitate the exercise of functions delegated to HSC trusts.

Conclusion

52. The Bill's objective is to provide for dissolution of the Regional Board and the transfer of its functions. It is relatively small and technical in nature

53. As a first step in transforming how services are planned and managed, it aims to see the closure of the Regional Board and its staff supported as they move to a new operating model where they will continue to undertake the same roles and functions as before but as an integral part of the Department and not as an Arm's Length Body. This will ensure continuity of service delivery and mitigate against any risk.

54. Building on this, work will be taken forward to look at how we can plan and manage our services differently, in a way that promotes collaboration, integration and service improvement.

Senior Management arrangements upon closure of the HSCB
as agreed by Oversight Board

