
MANX CARE BILL 2020

Explanatory Memorandum

1. This Bill is promoted jointly by the Cabinet Office and the Department of Health and Social Care.
2. *Clause 1* of the Bill provides for the short title of the resulting Act.
3. *Clause 2* provides for the commencement of the resulting Act.
4. *Clause 3* defines certain terms used in the Act.
5. *Clause 4* deals with the Department of Health and Social Care's ("the Department") duties in relation to the promotion of the health and social care service.
 - 5.1 Subsection (1) provides that the Department has the duty to continue to promote a comprehensive health and social care service in the Island. This continues the duty established in the National Health Act 1948 and continued in subsequent health Acts.
 - 5.2 Subsection (2) provides that in promoting a comprehensive health and social care service, the Department retains its existing duties under various Acts relating to health care and social services and carer support.
 - 5.3 Subsection (3) provides that the Department remains answerable to Tynwald for the provision of health services and social care services (including carer support).
6. *Clause 5* deals with the Department's duties in respect of the improvement in the quality of services.
 - 6.1 Subsection (1) provides that the Department must exercise its functions with a view to securing an improvement in the outcome of services in connection with treatment (in the round), public health and social care services and requires the Department to have regard to evidence-based practice.
 - 6.2 Subsection (2) specifies the outcomes in respect of which continuous improvement may be illustrated.
7. *Clause 6* imposes a duty on the Department to promote autonomy.
 - 7.1 Subsection (1) requires the Department to exercise its functions in a way which gives autonomy to any other person exercising functions related to the health and social care service.
 - 7.2 Subsection (2) provides that the duty to promote a comprehensive health and social care service prevails over this duty.

8. *Clause 7* imposes a duty on the Department, in exercising its functions to obtain advice from appropriately qualified persons.
9. *Clause 8* imposes a duty on the Department to promote public involvement and consultation.
 - 9.1 Subsection (1) provides that the duty relates to services provided by, or on behalf of, the Department.
 - 9.2 Subsection (2) imposes a duty on the Department to involve and consult the public in the planning, development and operation of such services.
 - 9.3 Subsection (3) is a definition provision.
10. *Clause 9* imposes a duty on the Department to promote education and training of those employed, or seeking to become employed in the health and social care service.
11. *Clause 10* imposes a duty on the Department to reduce inequalities in the access to services and the outcomes from services.
12. *Clause 11* imposes a duty of candour on the Department.
 - 12.1 Subsection (1) requires the Department to exercise its functions openly and transparently.
 - 12.2 Subsection (2) requires the Department to make regulations setting out when a service user should be notified about an incident affecting their safety and the information they are to be given.
 - 12.3 Subsection (3) provides that regulations made under subsection (2) may set out the procedure to be followed in “candour cases”.
13. *Clause 12* provides that Manx Care is established as a Statutory Board.
14. *Clause 13* sets out Manx Care’s general functions.
 - 14.1 Subsection (1) provides that where Manx Care is to discharge functions on behalf of the Department under a mandate, it must do so according to the mandate, applicable regulations and directions.
 - 14.2 Subsection (2) provides that in discharging Departmental functions, Manx Care must (like the Department) promote a comprehensive health and social care service in the Island and in doing so has the duties set out in this Act.
 - 14.3 Subsection (3) introduces Schedule 1 which deals with the composition and internal workings of Manx Care.
 - 14.4 Subsection (4) provides that functions of the Department discharged by Manx Care nevertheless remain the Department’s functions (there is no transfer of functions).
15. *Clause 14* deals with the mandate in general terms.
 - 15.1 Subsection (1) provides that the Department must, before the start of each financial year, publish the mandate and lay it before Tynwald.

- 15.2 Subsection (2) provides that the mandate must include the matters referred to in Schedule 2 and may include other matters.
- 15.3 Subsection (3) enables the Department to amend Schedule 2 by regulations.
- 15.4 Subsection (4) imposes a duty on Manx Care to seek to achieve the objectives of the mandate and comply with its requirements.
- 15.5 Subsection (5) provides that before specifying any objectives or requirements in the mandate, the Department must consult Manx Care and suitably qualified public health, and other, officials (where appropriate).
- 15.6 Subsection (6) requires the department to keep Manx Care's performance under the mandate under review.
16. *Clause 15* deals with revision to the mandate.
- 16.1 Subsection (1) enables the Department to make an "in-year" revision to the mandate if Manx Care agrees or where the Department considers there are exceptional reasons for doing so.
- 16.2 Subsection (2) states what revisions may consist of.
- 16.3 Subsection (3) provides that any revised mandate must be published and laid before Tynwald (together with an explanation for the revision).
17. *Clause 16* provides that Manx Care has a general power to do anything calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions under the Act.
18. *Clause 17* makes further provision in respect of Manx Care's powers.
- 18.1 Subsection (1) enables Manx Care to enter into arrangements with any other person to exercise (alone or with Manx Care) Manx Care's functions under the Act.
- 18.2 Subsection (2) provides that where Manx Care enters into such arrangements, it remains liable in respect of those functions.
19. *Clause 18* deals with Manx Care's powers in relation to private patients.
- 19.1 Subsection (1) enables Manx Care to make accommodation and services available to private patients.
- 19.2 Subsection (2) defines "private patients".
- 19.3 Subsection (3) provides that the Department shall determine the charges payable by private patients.
- 19.4 Subsection (4) allows a practitioner to make arrangements for the treatment of a private patient at a hospital if Manx Care agree.
- 19.5 Subsection (5) provides that Manx Care may only exercise powers in relation to private patients if the Department has given written approval and both it and the Department consider that making provision for

private patients would not interfere to any significant extent with Manx Care's functions under the Act and would not disadvantage non-private patients.

20. *Clause 19* gives Manx Care the power to run, manage or supervise facilities providing refreshments, consumables, gifts etc on hospital premises or grounds.
21. *Clause 20* imposes a duty on Manx Care to exercise its functions under the Act effectively, efficiently and economically.
22. *Clause 21* imposes a duty of candour on Manx Care and requires it to comply with regulations made under clause 11.
23. *Clause 22* imposes duties on Manx Care in respect of a clinical and social care governance framework.
 - 23.1 Subsection (1) requires Manx Care to establish, operate and promote a clinical and social care governance framework. It also requires any person with whom it has entered into arrangements under clause 17, to operate that framework or a framework of broad equivalence.
 - 23.2 Subsection (2) defines a clinical and social governance framework.
24. *Clause 23* imposes on Manx Care a duty to improve the quality of the services it provides equivalent to that imposed on the Department under clause 5.
25. *Clause 24* imposes on Manx Care a duty to reduce inequalities equivalent to that imposed on the Department under clause 10.
26. *Clause 25* imposes on Manx Care a duty to promote education and training equivalent to that imposed on the Department under clause 9.
27. *Clause 26* imposes on Manx Care a duty to promote autonomy equivalent to that imposed on the Department under clause 6.
28. *Clause 27* imposes on Manx Care a duty to promote the involvement (within available resources etc) of service users, their carers and representatives in decisions relating to the diagnosis and treatment of such users.
29. *Clause 28* deals with the exercise of functions by Manx Care.
 - 29.1 Subsection (1) states when the clause applies.
 - 29.2 Subsection (2) enables Manx Care to exercise its functions through its members and staff.
 - 29.3 Subsection (3) enables Manx Care to exercise its functions jointly with another person.
 - 29.4 Subsection (4) enables Manx Care's functions to be exercised by a joint committee.
 - 29.5 Subsection (5) enables Manx Care to determine the conditions on which it enters any arrangements with another person for the exercise of its functions.

- 29.6 Subsection (6) provides that where Manx Care enters into arrangements with another person for the exercise of its functions, it remains liable for their exercise.
30. *Clause 29* deals with the Department's power to confer additional functions on Manx Care.
- 30.1 Subsection (1) enables the Department to impose additional functions on Manx Care by regulations.
- 30.2 Subsection (2) provides that the Department may only do so where the additional function is connected to an existing Manx Care function.
31. *Clause 30* deals with the consequences of a failure by Manx Care to discharge any of its functions
- 31.1 Subsection (1) provides that where the Department considers Manx Care to be "failing" or to have "failed" to comply with its obligations, the Department may direct Manx Care to take steps to rectify that failure and to prevent its recurrence.
- 31.2 Subsection (2) specifies (by way of illustration and not exhaustively) the things that may be included in a direction e.g. to engage experts to assist Manx Care, to provide periodic reports to the Department.
- 31.3 Subsection (3) provides that where Manx Care fails to comply with a direction and the Department considers that failure significant, the Department must notify the Council of Ministers of Manx Care's failure.
- 31.4 Subsection (4) provides that, following notification from the Department under this clause, the Council of Ministers may give Manx Care a direction.
- 31.5 Subsection (5) sets out what a direction given by the Council of Ministers may contain.
- 31.6 Subsection (6) provides that if Manx Care fails to comply with a direction given by the Council of Ministers, the Council may require the Department to discharge the function in question or require the Department to arrange for some other person to do so.
- 31.7 Subsection (7) provides that if the Council of Ministers gives a direction under this clause, it must publish its reasons for doing so.
- 31.8 Subsection (8) specifies what constitutes a failure to discharge a function for the purposes of the clause.
- 31.9 Subsection (9) provides that this clause displaces paragraph 12 of Schedule 2 to the Statutory Boards Act 1987 (directions, reports etc).
32. *Clause 31* requires Manx Care to have an "operating plan".
- 32.1 Subsection (1) requires Manx Care to publish an overview document setting out how it intends to comply with the mandate during the first two years of its existence.

- 32.2 Subsection (2) requires Manx Care to publish, in each year following the second year of its existence, an operating plan for the next 3 years.
- 32.3 Subsection (3) sets out what the operating plan referred to in subsection (2) must contain.
- 32.4 Subsection (4) provides that before publishing its operating plan it may consult such other persons as it considers appropriate.
- 32.5 Subsection (5) enables Manx Care to revise the operating plan.
- 32.6 Subsection (6) requires Manx Care must publish any revised plan.
- 32.7 Subsection (7) requires Manx Care to send a copy of the operating plan to the Department and anyone else Manx Care considers appropriate.
- 32.8 Subsection (8) requires the Department to lay a copy of the operating plan before Tynwald together with the mandate.
- 32.9 Subsection 10 provides that references in the clause to “plan” include a revised plan.
33. *Clause 32 deals with Manx Care’s annual report.*
- 33.1 Subsection (1) provides that Manx Care must publish an annual report covering how it has discharged its functions no later than six months after the end of each financial year.
- 33.2 Subsection (2) sets out what the annual report must contain.
- 33.3 Subsection (3) requires the Department, having considered the report, to provide Manx Care with a letter of assessment of Manx Care’s performance over the year in question.
- 33.4 Subsection (4) specifies what the letter of assessment must contain.
- 33.5 Subsection (5) requires the Department to publish the letter of assessment and lay it and Manx Care’s annual report before Tynwald.
34. *Clause 33 deals with Departmental requests for information.*
- 34.1 Subsection (1) provides that the Department may require Manx Care to provide it with information which is necessary, or reasonably incidental, for the purposes of the Department’s functions.
- 34.2 Subsection (2) requires Manx Care to provide that information by the date requested or provide an explanation for not doing so.
35. *Clause 34 deals with the sharing of information.*
- 35.1 Subsection (1) states when the clause applies – where information about a service user is held by a relevant person for the purposes of its functions under or by virtue of the mandate.
- 35.2 Subsection (2) requires such information to be provided in a timely manner to specified persons.

- 35.3 Subsection (3) provides that subsection (2) applies only so far as the relevant person considers that the disclosure is necessary for the provision to the service user of health services or care services and is in the best interests of the service user.
- 35.4 Subsection (4) sets out the grounds on which information need not be disclosed.
- 35.5 Subsection (5) provides that the clause does not permit disclosures that would be inconsistent with any provision of data protection legislation or any duty of care or confidence imposed by statute or otherwise.
- 35.6 Subsection (6) provides that the clause does not require a person to do anything which that person is required to do under a common law duty of care or confidence (and, accordingly, any such requirement is to be treated as arising under that common law duty and not under this clause).
- 35.7 Subsection (7) is a definition provision.
36. *Clause 35* introduces Schedules 3 and 4 which deal with transfer of interests, rights and liabilities of, or pertaining to, the Department and staff transfer schemes respectively.
37. *Clause 36* provides that references to the Department and officers of the Department in other legislation and documents are (unless the contrary is required) to be construed as references to Manx Care and its officers (or where Manx Care has entered into an arrangement with another person under clause 17, that person and that person's officers).
38. *Clause 37* amends Schedule 1 to the Statutory Boards Act 1987 to insert a reference to Manx Care.
39. *Clause 38* introduces Schedule 5 which makes consequential amendments to other legislation.
40. *Clause 39* makes general provision about regulations.
41. *Clause 40* makes general provision about directions.
42. *Schedule 1* makes general provision in relation to Manx Care. It consists of 3 parts. Part 1 deals with membership of Manx Care, Part 2 with Manx Care's organisation and staff and Part 3 with inspections of Manx Care.
- 42.1 Paragraph 1 deals with the membership of Manx Care and sets out the number of executive and non-executive members, disqualifications and cessation of membership.
- 42.2 Paragraphs 2 and 3 deal with the appointment and tenure of non-executive members.
- 42.3 Paragraph 4 deals with the appointment of executive members.
- 42.4 Paragraph 5 deals with quorum of Manx Care meetings and voting.

- 42.5 Paragraph 6 provides that Manx Care’s staff may consist of staff transferred under a staff transfer scheme, new employees of the Public Services Commission, transferred employees of the Public Services Commission and anyone else Manx Care appoints directly. It also deals with the terms and conditions of such staff.
- 42.6 Paragraph 7 deals with inspections of Manx Care undertaken in accordance with a schedule of inspections drawn up by the Department or otherwise arranged by the Department. It provides that —
- (a) each service provided under the mandate must be inspected at least once in every 5 years;
 - (b) inspectors are to be independent;
 - (c) inspections may be of any combination of Manx Care and any person Manx Care has entered into an arrangement with under clause 17;
 - (e) inspections are to be in respect of efficiency and effectiveness of the body being inspected and tested against agreed quality indicators.
- 42.7 Paragraph 8 deals with inspections of Manx Care and any person Manx Care has entered into an arrangement with under clause 17 which have been arranged by Manx Care itself. It provides that —
- (a) inspectors are to be independent;
 - (b) inspections are to be in respect of efficiency and effectiveness of the body being inspected and tested against agreed quality indicators.
- 42.8 Paragraph 9 deals with inspection reports and deals with their form, publication and required responses.
- 42.9 Paragraph 10 provides that the Department and Manx Care can withhold all or part of a report from publication where publication would jeopardise the safety of any person or breach the principles of data protection or confidentiality.
- 42.10 Paragraph 11 allows the Department to give Manx Care directions under clause 30 where a report shows that Manx Care is, or has failed, to discharge its functions.
43. *Schedule 2* deals with the mandate.
- 43.1 Paragraph 1 lists the things the mandate must contain (clause 14(2) provides that the mandate may also include other matters).
- 43.2 Paragraph 2 provides that the mandate must—
- (a) require Manx Care to establish and operate an internal complaints procedure in respect of the exercise of its functions under the mandate, and further requires that procedure to enable decisions made by Manx Care under it to form the basis of a complaint to

the Department for consideration under the Department's internal complaints procedure;

- (b) where Manx Care enters into an agreement with any person under clause 17, require that person to establish and operate an internal complaints procedure in respect of the services it provides under that agreement, and further requires that procedure to enable decisions made by that person under it to form the basis of a complaint to Manx Care for consideration under Manx Care's internal complaints procedure.

43.3 Paragraph 3 requires the mandate to include a statement of the steps that may be taken under the Act in respect of a failure by Manx Care to comply with all or part of its terms.

- 44. *Schedule 3* deals with the transfer of interests, rights and liabilities from the Department to Manx Care. It provides that the Department may make a transfer Scheme and specifies its effect and the provisions it may contain.
- 45. *Schedule 4* deals with the transfer of staff to Manx Care. It provides that the Department may make a staff transfer Scheme and specifies its effect and the provisions it may contain.
- 46. *Schedule 5* makes consequential amendments to other legislation.
- 47. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



Ellan Vannin

MANX CARE BILL 2020

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MANX CARE BILL 2020

- 1 **A BILL** to establish Manx Care; to confer duties on it in connection with the
 2 functions it discharges; 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:—

3 **PART 1 – INTRODUCTORY**

4 **1 Short title**

5 The short title of this Act is the Manx Care Act 2020.

6 **2 Commencement**

7 (1) This Act, apart from section 1 and this section, comes into operation on
 8 such day or days as the Department may by order appoint.

9 (2) An order under subsection (1) may include such supplemental,
 10 incidental, consequential and transitional provisions as appear to the
 11 Department to be necessary or expedient.

12 **3 Interpretation**

13 (1) In this Act —

14 “**data protection legislation**” has the meaning given in regulation 5(1) of the
 15 GDPR and LED Implementing Regulations 2018¹;

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

17 “**financial year**”, in relation to Manx Care, means —

- 18 (a) the period beginning with the date on which Manx Care is
 19 established and ending with the following 31st March; and
 20 (b) each successive period of 12 months ending with 31st March;

¹ SD 2018/0145

1 “**health and social care service**” means the service of providing health services
2 and social care services and “**health and social care services**” shall be
3 construed accordingly;

4 “**health services**” means the services referred to in the *National Health Service*
5 *Act 2001*;

6 “**service user**” means an individual to whom, or in relation to whom, a health
7 service or social care service is provided;

8 “**social care services**” means social care services and carer support provided
9 under the *Social Services Act 2011* and social services provided under the
10 *Children and Young Persons Act 2001*.

11 (2) Any document which may or must be published by any person under
12 this Act must, unless otherwise stated, be published —

13 (a) without undue delay;

14 (b) electronically on an appropriate website if one exists or, where
15 electronic publication is not possible or appropriate, in such
16 manner as the person in question thinks appropriate.

17 **PART 2 – DUTIES AND RESPONSIBILITIES OF THE** 18 **DEPARTMENT**

19 **4 Promotion of comprehensive health and social care service**

20 (1) Without prejudice to the following provisions of this Act, the
21 Department must continue to promote in the Island a comprehensive
22 health and social care service to secure improvement in —

23 (a) the physical and mental health of people in the Island;

24 (b) the prevention, diagnosis and treatment of physical and mental
25 illness;

26 (c) the provision of social care services for people in the Island.

27 (2) For that purpose, the Department has the duties conferred on it by or
28 under—

29 (a) the *National Health Service Act 2001* and the *National Health Service*
30 *Act 2016*;

31 (b) the *Social Services Act 2011*;

32 (c) the *Children and Young Persons Act 2001*;

33 (d) the *Mental Health Act 1998*;

34 (e) this Act; and

35 (f) any other enactment (whenever passed).

36 (3) The Department retains responsibility to Tynwald for the provision of
37 health services and social care services comprising the health and social

1 care service whether those services are provided in the Island or
2 elsewhere.

3 **5 Improvement in quality of services**

4 (1) The Department must exercise its functions with a view to securing
5 continuous improvement in the outcome of services provided to
6 individuals for or in connection with the following—

- 7 (a) the prevention, diagnosis or treatment of illness;
8 (b) the protection or improvement of public health;
9 (c) the assessment and provision of social care services,

10 and in doing so must, in particular, have regard to principles of generally
11 accepted evidence-based practice.

12 (2) Those outcomes include, in particular, outcomes which show—

- 13 (a) the effectiveness of the services;
14 (b) the safety of the services; and
15 (c) the quality of the services.

16 **6 Promotion of autonomy**

17 (1) The Department must, in the exercise of its functions, have regard to the
18 desirability of securing so far as consistent with the interests of the health
19 and social care service—

- 20 (a) that any other person (P) —
21 (i) exercising functions in relation to that service; or
22 (ii) providing services for the Department's purposes,
23 is free to exercise those functions, or provide those services, in the
24 manner P considers most appropriate; and
25 (b) that unnecessary burdens are not imposed on P.

26 (2) Where the Department considers that there is a conflict between the
27 requirements under this section and those under section 4, it must give
28 priority to the latter.

29 **7 Obtaining of appropriate advice**

30 The Department must obtain advice appropriate for enabling it effectively to
31 discharge its functions from persons who (taken together) have a broad range of
32 professional expertise in—

- 33 (a) the prevention, diagnosis or treatment of illness;
34 (b) the protection or improvement of public health; and
35 (c) the provision or improvement of social care services.

1 8 Public involvement and consultation by the Department

- 2 (1) This section applies to any health services and social care services which
3 are, or are to be, provided by the Department or by a person with whom
4 the Department has entered into arrangements for that purpose
5 (“relevant arrangements”).
- 6 (2) The Department must make provision to secure that individuals to
7 whom services are being, or may be, provided are involved whether by
8 being consulted or provided with information in other ways —
- 9 (a) in the planning of the relevant arrangements by the Department;
- 10 (b) in the development and consideration of proposals by the
11 Department for changes in the relevant arrangements where the
12 implementation of the proposals would have an impact on the
13 manner in which the services are delivered to the individuals or
14 the range of health services and social care services available to
15 them; and
- 16 (c) in decisions of the Department affecting the operation of the
17 relevant arrangements where the implementation of the decisions
18 would, if made, have an impact.
- 19 (3) The reference in subsection (2)(b) to the delivery of services is to their
20 delivery at the point they are received by service users.

21 9 Promoting education and training

22 The Department must, in the exercise of its functions, have regard to the need to
23 promote education and training for persons who are employed or, who are
24 considering becoming employed, in an activity which involves or is connected
25 with the provision of either, or both, health services and social care services in
26 the Island.

27 10 Reducing inequalities

28 The Department must, in the exercise of its functions, have regard to the need to
29 reduce inequalities between service users with respect to —

30 (a) their ability to access health services and social care services; and
31 (b) the outcomes achieved for them by the provision of such services.

32 11 Candour

- 33 (1) The Department must, in the exercise of its functions, act in an open and
34 transparent way.
- 35 (2) The Department must, by regulations, make provision as to the
36 information to be provided in a case where an incident of a specified
37 description, or a prescribed degree of severity, affecting a service user’s

- 1 safety occurs in the course of the service user being provided with a
 2 health service or a social care service.
- 3 (3) Regulations may set out the procedure to be followed in relation to the
 4 provision of information referred to in subsection (2).
 5 Tynwald procedure – approval required.

6 **PART 3 – MANX CARE AND THE MANDATE**

7 **12 Establishment of Manx Care**

8 A Statutory Board known as Manx Care is established and Schedule 1 has effect.

9 **13 Manx Care and its general functions**

- 10 (1) Such of the functions of the Department referred to in section 4 which are
 11 the subject of the mandate, must be discharged by Manx Care on behalf
 12 of the Department in accordance with the mandate, applicable
 13 regulations and any directions given to Manx Care.
- 14 (2) In discharging those functions of the Department referred to in
 15 subsection (1) Manx Care must promote in the Island a comprehensive
 16 health and social care service, and in doing so has—
- 17 (a) the functions of providing and arranging for the provision of
 18 services for the purposes of the health and social care service in
 19 the Island in accordance with this Act; and
 20 (b) the duties referred to in Part 4.
- 21 (3) Schedule 1 makes further provision about Manx Care.
- 22 (4) A function of the Department which is discharged by Manx Care on its
 23 behalf or by a person with whom Manx Care has entered into an
 24 agreement under section 17, remains a function of the Department.

25 **14 Mandate to Manx Care**

- 26 (1) Before the start of each financial year, the Department must publish and
 27 lay before Tynwald a document to be known as “the mandate”.
- 28 (2) The mandate must include the matters specified in Schedule 2 (which has
 29 effect for that purpose) and may include other matters.
- 30 (3) The Department may by regulations amend Schedule 2.
 31 Tynwald procedure – approval required.
- 32 (4) Manx Care must seek to achieve the objectives specified in the mandate,
 33 and comply with any requirements specified in it.
- 34 (5) Before specifying any objectives or requirements in the mandate, the
 35 Department must consult and have due regard to the views of—

- 1 (a) Manx Care;
- 2 (b) in respect of public health, such persons whom it considers are
- 3 suitably qualified to advise on such matters by virtue of their
- 4 training or experience; and
- 5 (c) such other persons as the Department considers appropriate.
- 6 (6) The Department must keep Manx Care's performance in achieving any
- 7 objectives or requirements specified in the mandate, applicable
- 8 regulations and directions under review.

9 **15 Revision to the mandate**

- 10 (1) The Department may make a revision to the mandate in a financial year
- 11 only if—
- 12 (a) Manx Care agrees to the revision; or
- 13 (b) the Department considers that there are exceptional circumstances
- 14 that make the revision necessary.
- 15 (2) Revisions to the mandate may consist of adding, omitting or modifying
- 16 requirements.
- 17 (3) If the Department revises the mandate, it must—
- 18 (a) publish the mandate as so revised; and
- 19 (b) lay it before Tynwald, together with an explanation of the reasons
- 20 for making the revision.

21 **16 General power**

22 Manx Care may do anything which is calculated to facilitate, or is conducive or

23 incidental to, the discharge of any of its functions under this Act.

24 **17 Manx Care's powers: further provision**

- 25 (1) The power conferred on Manx Care by section 16 includes, in particular,
- 26 power to enter into agreements with any person to exercise, whether
- 27 jointly with Manx Care or otherwise, its functions under this Act.
- 28 (2) An agreement made under this section does not affect the liability of
- 29 Manx Care for the exercise of any of its functions and Manx Care
- 30 remains liable under the mandate accordingly.

31 **18 Powers in relation to private patients**

- 32 (1) Manx Care may make either, or both, accommodation and services in
- 33 any hospital provided by the Department available to private patients.
- 34 (2) "Private patients" are patients who undertake, or in respect of whom an
- 35 undertaking is given, to pay such charges as the Department may
- 36 determine for the accommodation or services.

- 1 (3) The charges referred to in subsection (2) shall be calculated on any basis
2 which the Department considers to be appropriate.
- 3 (4) Manx Care may allow any medical practitioner to make arrangements
4 for the treatment of that practitioner's private patients at any hospital in
5 the Island.
- 6 (5) Manx Care may exercise the powers specified in this section only if, and
7 to the extent that, –
- 8 (a) the Department has given written approval; and
- 9 (b) both the Department and Manx Care are satisfied that anything
10 which Manx Care proposes to do –
- 11 (i) will not to a significant extent interfere with the
12 performance by Manx Care of any of its functions under
13 this Act; and
- 14 (ii) will not to a significant extent operate to the disadvantage
15 of persons seeking or afforded admission or access to
16 accommodation or services vested in the Department for
17 the purposes of the Department's functions under this or
18 any other Act or services provided by Manx Care on the
19 Department's behalf under this Act.

20 **19 Powers in relation to the management etc of facilities**

- 21 (1) Manx Care may run, manage or supervise one or more facilities on
22 hospital premises or grounds providing refreshments, newspapers,
23 magazines, periodicals, confectionery, gifts and similar items.
- 24 (2) “Hospital” has the same meaning as in the *National Health Service Act*
25 *2001*.

26 **PART 4 – MANX CARE'S DUTIES**

27 **20 Duty as to effectiveness, efficiency etc.**

28 Manx Care must exercise its functions under this Act effectively, efficiently and
29 economically.

30 **21 Duty of candour**

31 Manx Care must exercise its functions under this Act in an open and
32 transparent way and, in doing so, comply with regulations made under section
33 11.

34 **22 Duty as to clinical and social care governance framework**

- 35 (1) In the exercise of its functions, Manx Care must –

- 1 (a) establish and operate a clinical and social care governance
2 framework;
- 3 (b) require any person it has entered into an agreement with under
4 section 17 to operate in the performance of that agreement—
- 5 (i) Manx Care’s clinical and social governance framework; or
6 (ii) operate a framework of broad equivalence; and
- 7 (c) where paragraph (b)(i) applies, generally promote that
8 framework.

- 9 (2) “**A clinical and social care governance framework**” means a framework
10 through which any provider of health services or social care services
11 endeavours continuously to improve the quality of its care, and which
12 safeguards high standards in the provision of those services by creating
13 an environment in which excellence can flourish.

14 **23 Duty as to improvement in quality of services**

- 15 (1) Manx Care must exercise its functions with a view to securing the
16 continuous improvement in the outcome of services provided under the
17 mandate and in doing so must, in particular, have regard to principles of
18 generally accepted evidence-based practice.
- 19 (2) Those outcomes include, in particular, outcomes which show—
- 20 (a) the effectiveness of the services;
21 (b) the safety of the services; and
22 (c) the quality of the services.
- 23 (3) The Department may by regulations impose requirements and standards
24 in relation to Manx Care’s duty under subsection (1) with a view to
25 securing that any services provided under the mandate are of an
26 appropriate quality.
- 27 Tynwald procedure — approval required.

28 **24 Duty as to reducing inequalities**

- 29 Manx Care must, in the exercise of its functions, have regard to the need to
30 reduce inequalities between persons with respect to —
- 31 (a) their ability to access health and social care services; and
32 (b) the outcomes achieved for them by the provision of such services.

33 **25 Duty as to promoting autonomy**

- 34 (1) Manx Care must, in the exercise of its functions, have regard to the
35 desirability of securing so far as consistent with the interests of the health
36 and social care service—
- 37 (a) that any other person (P) —

- 1 (i) exercising functions in relation to the health and social care
2 service; or
- 3 (ii) providing services for Manx Care’s purposes,
4 is free to exercise those functions or provide those services in the
5 manner P considers most appropriate; and
- 6 (b) that unnecessary burdens are not imposed on P.
- 7 (2) Where Manx Care considers that there is a conflict between its duty
8 under this section and its functions referred to in section 13, Manx Care
9 must give priority to the latter.

10 **26 Duty as to promoting education and training**

11 Manx Care must, in the exercise of its functions, have regard to the need to
12 promote education and training for persons who are employed or, who are
13 considering becoming employed, in an activity which involves or is connected
14 with the provision of either, or both, health services and social care services in
15 the Island.

16 **27 Duty to promote involvement of service users**

17 Manx Care must, in the exercise of its functions, take reasonable steps to
18 promote the involvement of service users, their carers and representatives (if
19 any), in decisions which relate to—

- 20 (a) the prevention or diagnosis of illness in relation to service users
21 within available resources and subject to applicable guidelines; or
- 22 (b) the care or treatment of service users within such resources and
23 subject to such guidelines.

24 **PART 5 –FUNCTIONS: ADDITIONAL**

25 **28 Exercise of functions**

- 26 (1) This section applies to functions exercisable by Manx Care under this
27 Act.
- 28 (2) Manx Care may arrange for the exercise of any of its functions on its
29 behalf by—
- 30 (a) any of its executive or non-executive members (see paragraph 1 of
31 Schedule 1), or
- 32 (b) any member of its staff (see paragraph 6 of Schedule 1).
- 33 (3) Manx Care may also arrange for any of its functions to be exercised by or
34 jointly with another person or body.

- 1 (4) Where any functions are exercisable jointly by Manx Care and another
2 body, they may be exercised by a joint committee of Manx Care and the
3 other body.
- 4 (5) Arrangements under this section may be on such terms and conditions
5 including those as to payment as may be agreed between Manx Care and
6 the other party to the arrangements.
- 7 (6) Arrangements made under this section do not affect the liability of Manx
8 Care for the exercise of any of its functions and paragraph 3 of Schedule
9 2 to the *Statutory Boards Act 1987* does not apply.

10 **29 Power to confer additional functions on Manx Care**

- 11 (1) The Department may by regulations provide that Manx Care is to have
12 such additional functions in relation to the health and social care service
13 as may be specified in the regulations.
- 14 (2) A function may be specified in regulations under subsection (1) only if
15 the function is connected to another function of Manx Care under the
16 mandate.
- 17 Tynwald procedure — approval required.

18 **30 Failure by Manx Care to discharge any of its functions**

- 19 (1) Where the Department —
- 20 (a) considers (whether following an inspection referred to in
21 Schedule 1 or otherwise) that Manx Care—
- 22 (i) is failing or has failed to discharge, or properly discharge,
23 any of its functions; or
- 24 (ii) is failing or has failed to comply with any applicable
25 regulations or directions addressed to it by the
26 Department; and
- 27 (b) considers that the failure is significant,
28 it may direct Manx Care to take steps to rectify the failure and to prevent
29 its repetition.
- 30 (2) Directions under subsection (1) may (in particular) include directing
31 Manx Care —
- 32 (a) to rectify the failure within a given period;
- 33 (b) to engage experts (named or otherwise) to assist in addressing
34 and rectifying the failure; and
- 35 (c) to provide the Department with periodic reports on its progress in
36 rectifying the failure.
- 37 (3) Where Manx Care fails to comply with a direction given to it by the
38 Department, and the Department considers that the failure on the part of

- 1 Manx Care is significant, it must notify the Council of Ministers in
2 writing as soon as practicable.
- 3 (4) Where notified in accordance with subsection (3), the Council of
4 Ministers may give a direction if, and not otherwise, it considers that
5 there is a failure on the part of Manx Care and it agrees with the
6 Department's assessment that the failure is significant.
- 7 (5) A direction given by the Council of Ministers under subsection (4) may
8 direct Manx Care to discharge such of its functions, and in such manner
9 and within such period or periods, as may be specified in the direction.
- 10 (6) If Manx Care fails to comply with a direction given under subsection (4),
11 the Council of Ministers may direct the Department—
12 (a) to discharge the functions to which it relates; or
13 (b) make arrangements for any other person to discharge them.
- 14 (7) Where the Council of Ministers gives a direction under this section it
15 must publish the reasons for doing so.
- 16 (8) For the purposes of this section a failure to discharge a function properly
17 includes a failure to discharge it consistently with the mandate, any
18 applicable regulations or any directions addressed to Manx Care.
- 19 (9) In consequence of this section, paragraph 12 of Schedule 2 to the
20 *Statutory Boards Act 1987* does not apply.

21 PART 6 – PLANS AND REPORTS

22 31 Operating plan

- 23 (1) In respect of the financial year in which Manx Care is established and the
24 financial year immediately following it (“the second financial year”),
25 Manx Care must publish an overview document setting out how it
26 intends to comply with the mandate in those years.
- 27 (2) Manx Care must in each financial year following the second financial
28 year publish an operating plan covering the next three consecutive
29 financial years.
- 30 (3) That operating plan must set out —
31 (a) how Manx Care proposes to exercise its functions and comply
32 with the mandate in the first of those three consecutive financial
33 years; and
34 (b) in outline, its proposals in relation to the exercise of its functions
35 in the following two financial years.
- 36 (4) Before publishing its operating plan, Manx Care may consult such other
37 persons as it considers appropriate.
- 38 (5) Manx Care may revise the operating plan.

- 1 (6) Manx Care must publish any revised operating plan.
- 2 (7) Manx Care must send a copy of the operating plan to —
- 3 (a) the Department, and
- 4 (b) such other persons as Manx Care considers appropriate.
- 5 (8) The Department must lay a copy of the operating plan before Tynwald
- 6 together with the mandate.
- 7 (9) References to “plan” in subsections (7) and (8) include a revised plan.

8 **32 Annual report**

- 9 (1) No later than six months after the end of each financial year, Manx Care
- 10 must publish an annual report on how it has exercised its functions
- 11 during the year.
- 12 (2) The annual report must, in particular, contain an assessment of—
- 13 (a) the extent to which Manx Care met any objectives or requirements
- 14 specified in the mandate for that year; and
- 15 (b) the extent to which it gave effect to the proposals in its operating
- 16 plan for that year.
- 17 (3) The Department must, having considered the annual report, set out in a
- 18 letter to Manx Care its assessment of Manx Care’s performance of its
- 19 functions in the financial year in question.
- 20 (4) The letter must, in particular, contain the Department’s assessment of the
- 21 matters mentioned in subsection (2).
- 22 (5) The Department must—
- 23 (a) publish the letter; and
- 24 (b) lay a copy of the letter and the annual report before Tynwald.

25 **33 Departmental requests**

- 26 (1) The Department may, by a request in writing, require Manx Care to
- 27 provide it with information which is necessary, or reasonably incidental,
- 28 for the purposes of the Department’s functions in relation to the health
- 29 and social care service.
- 30 (2) Manx Care must provide that information, or an explanation for not
- 31 doing so, by the date specified in the request and in accordance with the
- 32 request.

1 **PART 7 – MISCELLANEOUS AND SUPPLEMENTARY**

2 **34 Duty to share information**

- 3 (1) This section applies to information about a service user that is held by a
4 relevant person for the purposes of its functions under the mandate.
- 5 (2) A relevant person must ensure that the information is disclosed in an
6 appropriate and timely manner to—
7 (a) those working for that person; and
8 (b) any other relevant person with whom that person communicates
9 about the service user.

10 This is subject to subsections (3) to (6).

- 11 (3) Subsection (2) applies only so far as the relevant person considers that
12 the disclosure —
13 (a) is necessary for the provision to the service user of health services
14 or social care services; and
15 (b) is in the best interests of the service user.
- 16 (4) A relevant person need not comply with subsection (2) if that person
17 reasonably considers that one or more of the following apply—
18 (a) the service user objects, or would be likely to object, to the
19 disclosure of the information;
20 (b) for any other reason the relevant person is not reasonably able, or
21 should not be required, to comply with subsection (2).
- 22 (5) This section does not permit a relevant person to do anything which, but
23 for this section, would be inconsistent with—
24 (a) any provision of data protection legislation; or
25 (b) any duty of care or confidence imposed by statute or otherwise.
- 26 (6) This section does not require a relevant person to do anything which that
27 person is required to do under a common law duty of care or confidence
28 (and, accordingly, any such requirement is to be treated as arising under
29 that common law duty and not under this section).
- 30 (7) “**Relevant person**” means the Department, Manx Care and, where
31 appropriate, a person with whom Manx Care has entered into an
32 agreement under section 17.

33 **35 Transfer schemes**

- 34 (1) Schedule 3 has effect in respect of the transfer to Manx Care of interests,
35 rights and liabilities of, or pertaining to, the Department.
- 36 (2) Schedule 4 has effect in respect of the transfer to Manx Care of staff.

1 36 References to the Department

- 2 (1) All references to the Department or an officer of the Department, so far
3 as they relate to its functions which are the subject of the mandate but
4 not otherwise, in any statutory provision, agreement, deed, instrument,
5 licence, consent, application, notice or other document whatsoever shall,
6 unless the context otherwise requires, be construed —
- 7 (a) as references to Manx Care or an officer of Manx Care; or
8 (b) where Manx Care has entered into an agreement with any person
9 under section 17, as references to that person or an officer of that
10 person.
- 11 (2) Nothing in this section effects a transfer of the functions of the
12 Department which are the subject of the Mandate from it to Manx Care
13 or from it to any other person.

14 37 Amendment of Statutory Boards Act 1987

- 15 In Schedule 1 to the *Statutory Boards Act 1987* at the end insert —
16 | “Manx Care”.

17 38 Consequential amendments

- 18 The enactments specified in Schedule 5 are amended in accordance with that
19 Schedule.

20 39 Regulations

- 21 (1) The Department may by regulations make —
22 (a) any supplementary, incidental or consequential provision;
23 (b) any transitory, transitional or saving provision;
24 which it considers necessary or expedient for the purposes of, in
25 consequence of or for giving full effect to any provision of this Act.
- 26 (2) Regulations may modify, repeal or revoke any provision of any
27 enactment passed or made before or at the same time as this Act.
- 28 Tynwald procedure — approval required.

29 40 Directions

- 30 (1) Directions under this Act must be in writing.
- 31 (2) Without prejudice to any other provision of this Act, directions given to
32 Manx Care by the Department may —
33 (a) specify objectives to be achieved by Manx Care;
34 (b) specify the time frames for the achievement of objectives; and

1
2

- (c) suggest methods of achieving objectives (such suggestions are not binding).

1

SCHEDULE 1

2

[Section 12]

3

MANX CARE

4

PART 1- MANX CARE: MEMBERSHIP

5

1 Membership

6

(1) Manx Care is to consist of—

7

(a) the following non-executive members —

8

(i) a chair; and

9

(ii) at least four other non-executive members one of whom must hold the post of vice-chair; and

10

11

(b) the following executive members —

12

(i) a chief executive;

13

(ii) a director of finance;

14

(iii) two or more appropriately qualified persons.

15

This is subject to sub-paragraph (7).

16

(2) Where sub-paragraph (1) applies, the number of non-executive members must exceed the number of executive members.

17

18

(3) The following persons cannot be appointed as an executive member of Manx Care—

19

20

(a) a member of the Legislative Council; or

21

(b) a member of the House of Keys.

22

(4) The following persons cannot be appointed as a non-executive member of Manx Care—

23

24

(a) a member of the Legislative Council;

25

(b) a member of the House of Keys;

26

(c) an employee of the Public Services Commission; or

27

(d) an employee of a Department, an office of Government or a Statutory Board.

28

29

(5) An executive member of Manx Care who becomes a person referred to in sub-paragraph (3), ceases to hold the office of executive member upon doing so.

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32

(6) A non-executive member of Manx Care who becomes a person referred to in sub-paragraph (4), ceases to hold the office of non-executive member upon doing so.

33

34

- 1 (7) A member of Manx Care ceases to be such a member on ceasing to hold
2 the office specified in sub-paragraph (1).
- 3 (8) Manx Care may determine that its composition should be other than as
4 referred to in sub-paragraph (1).
- 5 (9) Any determination by Manx Care under sub-paragraph (8) —
6 (a) must result in the number of non-executive members being
7 greater than the number of executive members; and
8 (b) is subject to the approval of the Department.
- 9 (10) “**Appropriately qualified person**” means a person whom the Public
10 Services Commission or, as the case may be, Manx Care considers to be
11 suitable to be appointed as an executive member of Manx Care by reason
12 of their experience or expertise in either, or both, clinical and
13 professional services.

14 *Non-executive members*

15 **2 The non-executive members: appointment**

- 16 (1) The non-executive members are to be appointed by the Department
17 subject to the approval of Tynwald.
- 18 (2) In appointing the non-executive members the Department must have
19 regard to the need for Manx Care to include members who, by virtue of
20 their qualifications, experience or otherwise, are fitted to participate in its
21 functions.

22 **3 Non-executive members: tenure**

- 23 (1) A non-executive member holds office in accordance with that member’s
24 terms of appointment (and accordingly section 3 of the *Statutory Boards*
25 *Act 1987* does not apply).
- 26 (2) A non-executive member’s term of appointment shall be for a fixed term
27 of not less than 3 years and not more than 5 years.
- 28 (3) A non-executive member may at any time resign from office by giving
29 written notice to the Department.
- 30 (4) The Council of Ministers may at any time remove a non-executive
31 member from office on any of the following grounds—
32 (a) incapacity;
33 (b) misbehaviour; or
34 (c) failure to carry out the duties of that office.
- 35 (5) A member who retires is eligible for re-appointment.

1

Executive members

2

4 Executive members: appointment

3

(1) The chief executive and the director of finance are to be appointed by the Public Services Commission under the *Public Services Commission Act 2015*.

4

5

6

(2) An appropriately qualified person referred to in paragraph 1 may be appointed as an executive director by —

7

8

(a) the Public Services Commission under the *Public Services Commission Act 2015*; or

9

10

(b) by Manx Care on such terms and conditions as it should determine.

11

12

(3) An appointee referred to in sub-paragraph (2) may be a person assigned or transferred to Manx Care under the *Public Services Commission Act 2015* or transferred to it under a staff transfer scheme referred to in Schedule 4.

13

14

15

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Quorum

17

5 Quorum

18

(1) At a meeting of Manx Care —

19

(a) the quorum shall be determined by the members but it must not be less than 3 and paragraph 2(3)(c) of Schedule 2 to the *Statutory Boards Act 1987* does not apply;

20

21

22

(b) the number of non-executive members present must exceed the number of executive members present; and

23

24

(c) at least one of the executive members present must be an appropriately qualified person referred to in paragraph 1(1)(b)(iii).

25

26

27

(2) Decisions shall be taken by a vote of all those members present at the meeting.

28

29

(3) In the event of a tie, the chair shall have a second casting vote.

30

PART 2 — ORGANISATION AND STAFF

31

6 Manx Care's staff

32

(1) Manx Care's staff may consist of —

33

(a) persons transferred to it under a staff transfer scheme referred to in Schedule 4;

34

- 1 (b) new employees of the Public Services Commission (within the
2 meaning of section 7 of the *Public Services Commission Act 2015*)
3 who are assigned to Manx Care as the stationed employer;
- 4 (c) existing employees of the Public Services Commission (within the
5 meaning of section 7 of the *Public Services Commission Act 2015*)
6 who are, pursuant to the exercise of the Commission's functions
7 under section 5 of that Act, transferred to Manx Care as the
8 stationed employer; and
- 9 (d) such persons as it appoints.
- 10 (2) Persons transferred to Manx Care under sub-paragraph (1)(c) are
11 employed on the same terms and conditions as those on and subject to
12 which they were employed prior to the transfer.
- 13 (3) Persons appointed by Manx Care under sub-paragraph (1)(d) are
14 employed on such terms and conditions as Manx Care may determine.
- 15 (4) Any question —
- 16 (a) whether a person is employed as mentioned in sub-paragraph
17 1(b) or (c); or
- 18 (b) as to the terms and conditions on, and subject to which, that
19 person was so employed ,
- 20 shall be referred to and determined by the Public Services Commission.
- 21 (5) References in any enactment to members of staff of Manx Care are
22 (unless the context otherwise requires) references to persons referred to
23 in sub-paragraph (1).

24 PART 3 - INSPECTIONS

25 7 Inspections arranged by the Department

- 26 (1) This paragraph applies to a service provided by a relevant service
27 provider under the mandate.
- 28 (2) The Department must in each year draw up —
- 29 (a) a schedule specifying the service or services (or a specific matter
30 connected to such a service) in respect of which an inspection will
31 be undertaken in that year (a “scheduled inspection”); and
- 32 (b) a list of services which the Department is minded to arrange an
33 inspection of in each of the next two successive years.
- 34 (3) The Department must satisfy itself that each service provided under the
35 mandate is subject to an inspection at least once in every five years
36 whether it is an inspection arranged by the Department under this
37 paragraph or an inspection arranged by Manx Care under paragraph 8.

- 1 (4) Subject to not unreasonably impeding a relevant service provider in
2 discharging their functions or in providing services under the mandate,
3 the Department may (in addition to a scheduled inspection) arrange for a
4 non-scheduled inspection to be conducted.
- 5 (5) A scheduled inspection shall take place on the date agreed between the
6 relevant service provider and the Department.
- 7 (6) Where no reasonable agreement is reached in accordance with sub-
8 paragraph (5), the Department must notify the relevant service provider
9 in writing of the date of the inspection.
- 10 (7) Sub-paragraphs (5) and (6) notwithstanding, the Department may
11 arrange for an inspection to be conducted without the prior agreement
12 the relevant service provider.
- 13 (8) An inspection must be conducted by one or more appropriate
14 independent persons or bodies (“inspectors”) appointed by the
15 Department.
- 16 (9) In conducting an inspection the inspectors must —
17 (a) conduct a review of the provision of the services which are, or the
18 specific matter which is, the subject of the inspection against
19 quality indicators and requirements agreed beforehand with the
20 Department; and
21 (b) report on the efficiency and effectiveness of the relevant service
22 provider against those indicators and requirements.
- 23 (10) It is the duty of a relevant service provider to —
24 (a) assist inspectors undertaking an inspection; and
25 (b) provide such information which is required by the inspectors for
26 the proper performance of the inspection.
- 27 (11) “**Relevant service provider**” means —
28 (a) Manx Care where it provides the services in question under the
29 mandate;
30 (b) a person with whom Manx Care has entered into an agreement
31 under section 17 of this Act and who is based, and provides those
32 services in the Island;
33 (c) both Manx Care and such a person or persons where the services
34 in question are provided by them jointly.

35 8 Inspections arranged by Manx Care etc

- 36 (1) Manx Care may arrange for an inspection of a service provided under
37 the mandate by —
38 (a) Manx Care;
39 (b) a section 17 provider; or

- 1 (c) both jointly.
- 2 (2) An inspection is to be conducted by one or more appropriate
3 independent persons or bodies (“inspectors”) appointed by Manx Care.
- 4 (3) An inspection must not unreasonably impede a section 17 provider in
5 discharging its functions or in providing services under the mandate.
- 6 (4) In conducting an inspection the inspectors must—
- 7 (a) conduct a review of the provision of the services which are, or the
8 specific matter which is, the subject of the inspection against
9 quality indicators and requirements agreed beforehand with
10 Manx Care; and
- 11 (b) report on the efficiency and effectiveness of (as the case may be)
12 Manx Care, a section 17 provider or both against those indicators
13 and requirements.
- 14 (5) It is the duty of a section 17 provider to —
- 15 (a) assist inspectors undertaking an inspection; and
- 16 (b) provide such information which is required by the inspectors for
17 the proper performance of the inspection.
- 18 (6) “**Section 17 provider**” means a person with whom Manx Care has
19 entered into an agreement under section 17 of this Act and who is based,
20 and provides those services in the Island.

21 9 Inspection reports

- 22 (1) Where an inspection has been undertaken at the behest of the
23 Department in accordance with paragraph 7, the report of the inspectors
24 must be in such form as the Department specifies.
- 25 (2) The Department must —
- 26 (a) arrange for the report referred to in sub-paragraph (1) to be
27 published; and
- 28 (b) send a copy of it to the Manx Care.
- 29 (3) Where an inspection has been undertaken at the behest of Manx Care in
30 accordance with paragraph 8, the report of the inspectors must be in such
31 form as Manx Care specifies.
- 32 (4) Manx Care must —
- 33 (a) arrange for report referred to in sub-paragraph (3) to be
34 published; and
- 35 (b) send a copy of it to the Department.
- 36 (5) Manx Care must —
- 37 (a) compile its observations on, and responses to, any published
38 report referred to in sub-paragraphs (1) or (3); and

- 1 (b) prepare a written statement (an “action plan”) of—
2 (i) how it proposes to give effect to the recommendations
3 made in the report and the period within which it proposes
4 to do so; and
5 (ii) any other action which it proposes to take in the light of
6 such a report and the period within which it proposes to
7 do so,
8 and send them to the Department.
- 9 (6) The Department must publish the material sent to it by Manx Care under
10 paragraph (5).
- 11 (7) The Department must keep Manx Care’s performance in complying with
12 a report, giving effect to the recommendations of a report or, as the case
13 may be, taking action in the light of a report, under review.

14 **10 Exclusions from publication**

- 15 (1) The Department may exclude from publication under paragraph 9 any
16 part of a report or anything it receives from Manx Care under that
17 paragraph if, in its opinion, its publication —
18 (a) could jeopardise the safety of any person; or
19 (b) would breach data protection legislation or an obligation of
20 confidence imposed by statute or otherwise.
- 21 (2) Manx Care may exclude from publication under paragraph 9 any part of
22 a report if, in its opinion, publication of that part —
23 (a) could jeopardise the safety of any person; or
24 (b) would breach data protection legislation or any duty of care or
25 confidence imposed by statute or otherwise.

26 **11 Directions in respect of reports**

- 27 The Department may issue directions under section 30 where a report under
28 paragraph 9 shows that Manx Care is failing or has failed to discharge (properly
29 or at all) any of its functions under this Act.
30

SCHEDULE 2

[Section 14]

THE MANDATE

1 The mandate must specify —

- 2 (a) the objectives that the Department considers Manx Care should
3 seek to achieve in the exercise of its functions during that financial
4 year and such subsequent financial years as the Department
5 considers appropriate;
- 6 (b) the services that Manx Care must provide, or secure the provision
7 of, during that financial year and such subsequent financial years
8 as the Department considers appropriate;
- 9 (c) the amount of funding that the Department will allocate to Manx
10 Care for the provision of the services referred to in sub-paragraph
11 (b);
- 12 (d) how the amount referred to in sub-paragraph (c) has been
13 determined,
- 14 (e) the service levels and quality standards which Manx Care must
15 comply with in the exercise of its functions under this Act;
- 16 (f) whether generally or specifically, information which is to be
17 provided by Manx Care to the Department for the purpose of the
18 exercise of the Department's functions under this Act;
- 19 (g) any requirements, including (but not limited to) compliance with
20 or regard to specified standards and guidance, the use of
21 government shared services and the entering into of service level
22 agreements, that the Department considers it necessary to impose
23 on Manx Care for the purpose of ensuring that it achieves the
24 objectives referred to in sub-paragraph (a);
- 25 (h) how concerns about the performance of others under government
26 shared services and service level agreements may be raised with
27 the Department for resolution;
- 28 (i) the matters by reference to which the Department proposes to
29 assess Manx Care's performance under the mandate;
- 30 (j) the procedure to be followed in the event of a dispute between the
31 Department and Manx Care;
- 32 (k) when charges may be made in respect of the provision of services
33 provided by Manx Care or any other person in accordance with
34 this Act, including such matters as the determination of the
35 amount of such charges, their remission, repayment and methods
36 of recovery;
- 37 (l) the schedule of inspections of each service (or a specific matter
38 connected to such a service) provided under the mandate drawn
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1 up by the Department in accordance with paragraph 7 of
2 Schedule 1.

3 2 The mandate must —

4 (a) require Manx Care to establish and operate an internal complaints
5 procedure in respect of the exercise of its functions under the
6 mandate and that procedure must make provision enabling a
7 person aggrieved by a decision of Manx Care under its complaints
8 procedure to complain about that decision to the Department for
9 consideration under the Department's complaints procedure; and

10 (b) where Manx Care enters into an agreement with any person
11 under section 17 (P), require P to establish and operate an internal
12 complaints procedure in respect of the services it provides under
13 that agreement and that procedure must make provision enabling
14 a person aggrieved by a decision of P under P's complaints
15 procedure to complain about that decision to Manx Care for
16 consideration under Manx Care's complaints procedure.

17 3 The mandate must also include a statement of the steps that may be taken under
18 this Act in respect of a failure by Manx Care to comply with all or any of its terms.

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SCHEDULE 3

[Section 35]

TRANSFER OF RIGHTS AND LIABILITIES

1 Transfer scheme

- (1) The Department may make a scheme providing for the transfer to Manx Care of any interests, rights or liabilities of the Department.
- (2) Such a transfer scheme may —
- (a) create interests and rights, or impose liabilities, in relation to rights transferred by virtue of the scheme;
 - (b) provide for anything done by or in relation to the Department in connection with any interest, rights or liabilities transferred by the scheme to be treated as done, or to be continued, by or in relation to Manx Care;
 - (c) apportion interests, rights and liabilities; and
 - (d) make provision about the continuation of legal proceedings.

2 Effect of scheme

Where a scheme provides for the transfer of interests, rights or liabilities, or for their creation —

- (a) at the time when the scheme is made, the interests, rights or liabilities vest, without further assurance, in the transferee; and
- (b) the provisions of the scheme in relation to those interests, rights or liabilities have effect from that time.

3 Supplementary provisions

- (1) A scheme may make such incidental, supplemental, consequential and transitional provision in connection with a transfer to be made in accordance with the scheme as the Department considers appropriate.
- (2) In particular, a scheme may make provision, in relation to a transfer in accordance with it —
- (a) for the transferee to be treated as the same person in law as the transferor;
 - (b) for agreements made, transactions effected or other things done by or in relation to the transferor to be treated, so far as is necessary for the purposes of or in connection with the transfer, as made, effected or done by or in relation to the transferee;
 - (c) for references in an agreement, instrument or other document to the transferor, or to an employee or office holder of the transferor,

- 1 to have effect, so far as is necessary for the purposes of or in
2 connection with a transfer, with such modifications as are
3 specified in the scheme; and
- 4 (d) for proceedings commenced by or against the transferor to be
5 continued by or against the transferee.
- 6 (3) Sub-paragraph (2)(c) does not apply to references in an enactment or in
7 subordinate legislation.
- 8 (4) In this paragraph references to a transfer in accordance with a scheme
9 include references to the creation of an interest, right or liability in
10 accordance with a scheme.
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SCHEDULE 4

[Section 35]

TRANSFER OF STAFF

1 Staff transfer scheme

The Department may make a scheme (a “staff transfer scheme”) providing for designated persons who are employed by, or hold an office, with a Department, a Statutory Board or an office of Government but who are not employees of the Public Services Commission within the meaning of section 7 of the *Public Services Commission Act 2015*, to become members of Manx Care’s staff.

2 Effect of scheme

A person referred to in a staff transfer scheme under paragraph 1 shall, on the day the scheme is made, become employed by Manx Care without further appointment on and subject to the like terms and conditions (including those relating to pensions, allowances and gratuities) as those on and subject to which that person was employed immediately before that day.

3 Supplementary provisions of schemes

- (1) A staff transfer scheme may make such incidental, supplemental, consequential and transitional provision in connection with a transfer to be made in accordance with the scheme as the Department considers appropriate.
- (2) In particular, a staff transfer scheme may make provision, in relation to a transfer in accordance with it –
 - (a) for the transferee to be treated as the same person in law as the transferor;
 - (b) for agreements made, transactions effected or other things done by or in relation to the transferor to be treated, so far as is necessary for the purposes of or in connection with the transfer, as made, effected or done by or in relation to the transferee;
 - (c) for references in an agreement, instrument or other document to the transferor, or to an employee or office holder of the transferor, to have effect, so far as is necessary for the purposes of or in connection with a transfer, with such modifications as are specified in the scheme;
 - (d) for proceedings commenced by or against the transferor to be continued by or against the transferee;
 - (e) for a period before a person became a member of Manx Care’s staff to count as a period during which that person was a member

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of Manx care's staff (and for the operation of the scheme not to be treated as having interrupted the continuity of that period).

- (3) Sub-paragraph (2)(c) does not apply to references in an enactment or in subordinate legislation.
- (4) In this paragraph references to a transfer in accordance with a scheme include references to the creation of an interest, right or liability in accordance with a scheme.

SCHEDULE 5

[Section 38]

CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENT OF ACTS

Local Government Act 1946

1 In section 24 of the *Local Government Act 1946* (inspection) after “the Department” insert “or, as the case may be, Manx Care (a Statutory Board established under the *Manx Care Act 20XX*)”.

Criminal Justice Act 1963

2 In section 2(1) of the *Criminal Justice Act 1963* (probation) for the words “Provided” to the end substitute —

“Unless the Department of Health and Social Care, or as the case may be, Manx Care (a Statutory Board established under the *Manx Care Act 20XX*) consent a probation order shall not place a child or young person under the supervision of a person other than an officer designated for that purpose by the Department, or as the case may be, Manx Care.”

Misuse of Drugs Act 1976

3 In Schedule 3 (tribunals, advisory bodies and professional panels) in paragraph 12, for subparagraph (b) substitute —

“(b) another shall be a medical practitioner appointed by the Governor from a list of such practitioners compiled by a Government Department;”.

Jury Act 1980

4 In Schedule 1 to the *Jury Act 1980* (non-jurors), at the end of the list under “Group E others”, add —

“The Chief Executive of Manx Care.”.

Road Traffic Act 1985

5 In Schedule 3 (driving licences etc), in paragraph 10A(2)(c) after “the Department of Health” insert “or, as the case may be, of Manx Care (a Statutory Board established under the *Manx Care Act 20XX*)”.

1 *Access to Health Records and Reports Act 1993*

2 6 The *Access to Health Records and Reports Act 1993* is amended as follows.

3 7 In section 1(2)(a)(ii) (“health record” and related expressions) after “the
4 Department” insert “, or as the case may be, Manx Care”.

5 8 In section 6 (duty of Department etc to take advice) —

6 (a) in subsection (1) after “The Department” insert “, or as the case
7 may be, Manx Care”;

8 (b) in subsection (2) after “the Department” (5 times) insert “, or as
9 the case may be, Manx Care”;

10 (c) in subsection (3) after “the Department” (twice) insert “, or as the
11 case may be, Manx Care”.

12 9 In section 10 (interpretation) at the appropriate place insert —

13 | “**Manx Care**” means the Statutory Board established under the *Manx*
14 | *Care Act 20XX*”.

15 *Custody Act 1995*

16 10 In Schedule 2 (early release of detainees), in paragraph 8(4)(a) after “the
17 Department of Health and Social Care” insert “, Manx Care (a Statutory Board
18 established under the *Manx Care Act 20XX*)”.

19 *Criminal Justice Act 2001*

20 11 The *Criminal Justice Act 2001* is amended as follows.

21 12 In section 35(10)(b) (reparation orders) after “Social care” insert “or, as the case
22 may be, Manx Care (a Statutory Board established under the *Manx Care Act 20XX*)”.

23 13 In Schedule 5 (curfew orders) in paragraph 8(1) after “Social care” insert “or, as
24 the case may be, Manx Care (a Statutory Board established under the *Manx Care Act*
25 *20XX*)”.

26 *Residence Act 2001*

27 14 In section 7(2) of the *Residence Act 2001* (access to official records) after “Social
28 Care” insert “Manx Care (a Statutory Board established under the *Manx Care Act*
29 *20XX*)”.

30 *National Health Service Act 2001*

31 15 The *National Health Service Act 2001* is amended as follows.

32 16 In section 2 (consultative and executive bodies) —

- 1 (a) in subsection (1)(a) after “this Act” insert “and the *Manx Care Act*
2 *20XX*”;
- 3 (b) in subsection (2) after “this Act” insert “and the *Manx Care Act*
4 *20XX*”;
- 5 (c) in subsection (3) after “this Act” insert “and the *Manx Care Act*
6 *20XX*”.

7 17 In section 38 (complaints procedure) —

- 8 (a) in paragraph (a) after “Part 3” insert “and under the mandate
9 entered into between the Department and Manx Care under the
10 *Manx Care Act 20XX*”;
- 11 (b) after paragraph (a) insert —
12 “(aa) arrangements to be made by the Department for dealing
13 with complaints made by or on behalf of persons who are
14 or have been provided with services under a mandate
15 referred to in the *Manx Care Act 20XX*”;
- 16 (c) in paragraph (b) after “(a)” insert “and paragraph (aa)”.

17 *Education Act 2001*

18 18 Section 30 of the *Education Act 2001* (education supervision orders) is amended
19 as follows.

20 19 In subsection (1) after “DHSC” insert “ or, as appropriate, Manx Care”.

21 20 In subsection (3) after “DHSC” insert “or, as the case may be, Manx Care”.

22 21 In subsection (4) after “DHSC” insert “or, as the case may be, Manx Care”.

23 22 After subsection (5) insert —

- 24 | “(6) “Manx Care” means the a Statutory Board established under the
25 | *Manx Care Act 20XX*.”.

26 *Social Services Act 2011*

27 23 After section 26(1) of the *Social Services Act 2011* (complaints about social care
28 functions), insert —

- 29 | “(1A) A decision referred to in subsection (1) includes a decision of the
30 | Department relating to the provision of social care services or
31 | carer support by —
32 | (a) Manx Care under the mandate entered into by the
33 | Department and Manx Care under the *Manx Care Act 20XX*
34 | and in respect of which all internal complaints procedures
35 | established by Manx Care have been exhausted; and

- 1 (b) by a person with whom Manx Care has entered into an
 2 agreement under section 17 of the *Manx Care Act 20XX* and
 3 in respect of which all internal complaints procedures
 4 established by both that person and Manx Care have been
 5 exhausted..”.

6 *Health and Care Professionals Act 2014*

- 7 24 After section 5(2) of the *Health Care Professionals Act 2014* (appointment of
 8 responsible officers), insert –

- 9 “(2A) Where subsection (1) would otherwise apply in respect of a
 10 function of the Department which is to be discharged by Manx
 11 Care under the *Manx Care Act 20XX*, the references to “the
 12 Department” in subsections (1) and (2) are to be read as references
 13 to “Manx Care”.”

14 *Regulation of Care Act 2013*

- 15 25 The *Regulation of Care Act 2013* is amended as follows.

- 16 26 In section 5(1) (“social care”) after “Department” insert “, Manx Care”.

- 17 27 In section 13 (who “carries on” a care service) after subsection (3) insert –

- 18 “(4) Manx Care “carries on” a care service if it does so in discharging
 19 the functions of the Department of Health and Social Care under
 20 the mandate provided for in the *Manx Care Act 20XX*.”.

- 21 28 In section 44(2) (total disqualification) after “body corporate” insert “or Manx
 22 Care”.

- 23 29 In section 45(4) (additional disqualifications for children) after “body corporate”
 24 insert “or Manx Care”.

- 25 30 In section 46(4) (additional specific disqualifications) after “body corporate”
 26 insert “or Manx Care”.

- 27 31 In section 57(2) (how to apply) –

- 28 (a) after “body corporate” where it first appears insert “or Manx
 29 Care”;
 30 (b) in paragraph (a) after “body corporate” insert “or, as the case may
 31 be, Manx Care,”.

- 32 32 In section 58(3) (registration criteria) after “body corporate” insert “or Manx
 33 Care”.

- 34 33 In section 66(2)(b) (supervision and management duties: general) after “body
 35 corporate is” insert “or Manx Care”.

- 1 34 In the Schedule (definitions), at the appropriate place insert —
2 | “**Manx Care**” means the Statutory Board established under the *Manx*
3 | *Care Act 20XX*”.

4 *Freedom of Information Act 2015*

- 5 35 In Schedule 1 to the *Freedom of Information Act 2015* (public authorities) after
6 paragraph 15 insert “15A Manx Care”.

7 **PART 2**

8 AMENDMENT OF STATUTORY DOCUMENTS

9 *Health Services Consultative Committee Constitution Regulations 2012*

- 10 36 In regulation 13(1) of the Health Services Consultative Committee Constitution
11 Regulations 2012 (responsibilities of members) after “Act” insert “or, where applicable,
12 provided under the mandate under the Manx Care Act 20XX”.

IN THE KEYS

MANX CARE BILL 2020

A BILL to establish Manx Care;
to confer duties on it in
connection with the functions it
discharges; and for connected
purposes.

Approved by the Council of Ministers
for introduction in the House of Keys.

MR ASHFORD

23 JUNE 2020