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## MANX CARE BILL 2020

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## MANX CARE BILL 2020

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

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**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:—

### PART 1 – INTRODUCTORY

#### 1 Short title

The short title of this Act is the Manx Care Act 20XX.

#### 2 Commencement

- (1) This Act, apart from section 1 and this section, comes into operation on such day or days as the Department may by order appoint.
- (2) An order under subsection (1) may include such supplemental, incidental, consequential and transitional provisions as appear to the Department to be necessary or expedient.

#### 3 Interpretation

In this Act —

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

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

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

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

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

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

“social care services” means services referred to in the *Social Services Act 2011* and the *Children and Young Persons Act 2001*.

## PART 2 – DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT

### 4 Promotion of comprehensive health and social care service

- (1) Without prejudice to the following provisions of this Act, the Department must continue to promote in the Island a comprehensive health and social care service to secure improvement in —
  - (a) the physical and mental health of people in the Island;
  - (b) the prevention, diagnosis and treatment of physical and mental illness;
  - (c) social care services and carer support of people in the Island.
- (2) For that purpose, the Department has the duties conferred on it by or under—
  - (a) the *National Health Service Act 2001* and the *National Health Service Act 2016*;
  - (b) the *Social Services Act 2011*;
  - (c) the *Children and Young Persons Act 2001*;
  - (d) the *Mental Health Act 1998*;
  - (e) this Act; and
  - (f) any other enactment (whenever passed).
- (3) The Department retains responsibility to Tynwald for the provision of health services and social care services comprising the health and social care service whether those services are provided in the Island or elsewhere.

### 5 Improvement in quality of services

- (1) The Department must exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with the following—
  - (a) the prevention, diagnosis or treatment of illness;
  - (b) the protection or improvement of public health;
  - (c) the assessment and provision of social care services.
- (2) In respect of the provision of those services, the Department must, in particular, —
  - (a) act with a view to securing continuous improvement in the outcomes that are achieved from their provision; and
  - (b) have regard to principles of generally accepted evidence-based practice.
- (3) Those outcomes include, in particular, outcomes which show—
  - (a) the effectiveness of the services;
  - (b) the safety of the services; and

- (c) the quality of the services.

## **6 Promotion of autonomy**

- (1) In exercising its functions, the Department must have regard to the desirability of securing, so far as consistent with the interests of the health and social care service—
  - (a) that any other person exercising functions in relation to that service or providing services for its purposes is free to exercise those functions or provide those services in the manner it considers most appropriate; and
  - (b) that unnecessary burdens are not imposed on any such person.
- (2) Where the Department considers that there is a conflict between the requirements under this section and those under section 4, it must give priority to the latter.

## **7 Obtainment of appropriate advice**

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

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

## **8 Public involvement and consultation by the Department**

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

## **9 Promoting education and training**

The Department must, in exercising its functions, have regard to the need to promote education and training for persons who are employed or, who are

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considering becoming employed, in an activity which involves or is connected with the provision of health services, or social care services or both in the Island

## 10 Reducing inequalities

The Department must, in the exercise of its functions, have regard to the need to—

- (a) reduce inequalities between service users with respect to their ability to access health and social care services; and
- (b) reduce inequalities between service users with respect to the outcomes achieved for them by the provision of health and social care services.

## 11 Candour

- (1) The Department must, in exercising its functions, act in an open and transparent way.
- (2) The Department must, by regulations, make provision as to provision of information in a case where an incident of a specified description or a prescribed degree of severity affecting a service user's safety occurs in the course of the service user being provided with a health service or a care service under or by virtue of this Act.
- (3) Regulations may set out the procedure to be followed in relation to the provision of information referred to in subsection (2).

Tynwald procedure —approval required.

## PART 3 — MANX CARE AND THE MANDATE

### 12 Establishment of Manx Care

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

### 13 Manx Care and its general functions

- (1) Manx Care is subject to the duty under section 4(1) concurrently with the Department and for the purpose of discharging that duty has the functions set out in this Act.
- (2) Such of the functions of the Department referred to in section 4 which are the subject of the mandate, must be discharged by Manx Care on behalf of the Department in accordance with the mandate as supplemented by any directions addressed to Manx Care.
- (3) For the purpose of discharging those functions of the Department referred to in subsection (2), Manx Care—
  - (a) has the functions of providing and arranging for the provision of services for the purposes of the health and social care service in the Island in accordance with this Act;
  - (b) must exercise the functions conferred on it by this Act so as to secure that services are provided for those purposes; and
  - (c) has the duties referred to in Part 4.
- (4) Schedule 1 makes further provision about Manx Care.
- (5) A function of the Department which is discharged by Manx Care or by a person with whom Manx Care has entered into an agreement under section 17, remains a function of the Department.

### 14 Mandate to Manx Care

- (1) Before the start of each financial year, the Department must publish and lay before Tynwald a document to be known as “the mandate”.
- (2) The mandate must include the matters specified in Schedule 2.
- (3) The Department may, by regulations amend Schedule 2.  
Tynwald procedure — approval required.
- (4) Manx Care must seek to achieve the objectives specified in the mandate, and comply with any requirements specified in it.
- (5) Before specifying any objectives or requirements in the mandate, the Department must consult and have due regard to the views of—
  - (a) Manx Care;
  - (b) in respect of public health, such persons whom it considers are suitably qualified to advise on such matters by virtue of their training or experience; and
  - (c) such other persons as the Department considers appropriate.

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- (6) The Department must keep Manx Care's performance in achieving any objectives or requirements specified in the mandate and in directions under review.
  - (7) Where the Department is satisfied that Manx Care —
    - (a) is failing to discharge or properly to discharge any of its functions, or comply with any directions; or
    - (b) has failed to comply or properly to comply with any directions ,  
it may direct Manx Care to take steps to rectify the failure.
  - (8) Directions under subsection (7) may (in particular) include directing Manx Care —
    - (a) to rectify the failure within a given period;
    - (b) to engage experts (named or otherwise) to assist in addressing and rectifying the failure; and
    - (c) to provide the Department with periodic reports on its progress in rectifying the failure.

## 15 Revision to the mandate

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

## 16 General power

Manx Care may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions under this Act.

## 17 Manx Care's powers: further provision

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



## PART 4 – MANX CARE’S DUTIES

### 18 Duty as to effectiveness, efficiency etc.

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

### 19 Duty of candour

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

### 20 Duty as to clinical and social care governance framework

- (1) In the exercise of its functions, Manx Care must —
  - (a) establish and operate a clinical and social care governance framework;
  - (b) require any person it has entered into an agreement with under section 17 to operate that framework in complying with that agreement; and
  - (c) promote that system generally.
- (2) “A clinical and social care governance framework” means a framework through which any provider of health services or social care services endeavours continuously to improve the quality of its care, and which safeguards high standards in the provision of those services by creating an environment in which excellence can flourish.

### 21 Duty as to improvement in quality of services

- (1) Manx Care must exercise its functions with a view to securing the continuous improvement in the quality of services provided under or by virtue of the mandate.
- (2) In discharging its duty under subsection (1), Manx Care must, in particular, act with a view to securing continuous improvement in the outcomes that are to be achieved in the provision of those services.
- (3) Those outcomes include, in particular, outcomes which show—
  - (a) the effectiveness of the services;
  - (b) the safety of the services; and
  - (c) the quality of the services.
- (4) The Department may by regulations impose requirements and standards in relation to Manx Care’s duty under subsection (1) with a view to securing that any services provided under or by virtue of the mandate are of an appropriate quality.

Tynwald procedure —approval required.

### 22 Duty as to reducing inequalities

Manx Care must, in the exercise of its functions, have regard to the need to—

- (a) reduce inequalities between persons with respect to their ability to access health and social care services; and
- (b) reduce inequalities between service users with respect to the outcomes achieved for them by the provision of health and social care services.

### **23 Duty as to promoting autonomy**

- (1) In exercising its functions, Manx Care must have regard to the desirability of securing, so far as consistent with the interests of the health and social care service—
  - (a) that any other person exercising functions in relation to the health and care service or providing services for its purposes is free to exercise those functions or provide those services in the manner it considers most appropriate; and
  - (b) that unnecessary burdens are not imposed on any such person.
- (2) Where Manx Care considers that there is a conflict between its duty under this section and its functions referred to in section 13, Manx Care must give priority to the latter.

### **24 Duty as to promoting education and training**

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

### **25 Duty to promote involvement of service users**

Manx Care must, in the exercise of its functions, take reasonable steps to promote the involvement of service users, their carers and representatives (if any), in decisions, within available resources and subject to applicable guidelines, which relate to—

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

## **PART 5 –FUNCTIONS: ADDITIONAL**

### **26 Exercise of functions**

- (1) This section applies to functions exercisable by Manx Care under or by virtue of this Act.
- (2) Manx Care may arrange for the exercise of any of its functions on its behalf by—
  - (a) any of its executive or non-executive members (see paragraph 1 of Schedule 1), or
  - (b) any member of its staff (see paragraph 6 of Schedule 1).

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

**27 Power to confer additional functions on Manx Care**

- (1) The Department may by regulations provide that Manx Care is to have such additional functions in relation to the health and social care service as may be specified in the regulations.
- (2) A function may be specified in regulations under subsection (1) only if the function is connected to another function of Manx Care under the mandate.

Tynwald procedure — approval required.

**28 Failure by Manx Care to discharge any of its functions**

- (1) Where the Department —
  - (a) considers that Manx Care—
    - (i) is failing or has failed to discharge any of its functions;
    - (ii) is failing or has failed properly to discharge any of its functions; or
    - (iii) is failing or has failed to comply with directions (if any) addressed to it by the Department; and
  - (b) considers that the failure is significant,  
it must, in writing, inform the Council of Ministers as soon as practicable.
- (2) The Council of Ministers may give a direction if, and not otherwise, it agrees with the Department's assessment that there is a failure on the part of Manx Care and that failure is significant.
- (3) A direction under this section may direct Manx Care to discharge such of its functions, and in such manner and within such period or periods, as may be specified in the direction.
- (4) If Manx Care fails to comply with a direction, the Council of Ministers may direct the Department—
  - (a) to discharge the functions to which it relates; or
  - (b) make arrangements for any other person to discharge them.
- (5) Where the Council of Ministers exercises a power under this section it must publish the reasons for doing so.

- (6) For the purposes of this section a failure to discharge a function properly includes a failure to discharge it consistently with the mandate and any directions addressed to Manx Care.
- (7) In consequence of this section, paragraph 12 of Schedule 2 to the *Statutory Boards Act 1987* does not apply.

## PART 6 – PLANS AND REPORTS

### 29 Operating plan

- (1) In respect of the financial year in which Manx Care is established and the financial year immediately following it (“the second financial year”), Manx Care must publish an overview document setting out how it intends to comply with the mandate in those years.
- (2) Manx Care must in each financial year following the second financial year publish an operating plan covering the next three consecutive financial years.
- (3) That plan must set out —
  - (a) how Manx Care proposes to exercise its functions and comply with the mandate in the first of those three consecutive financial years; and
  - (b) in outline, its proposals in relation to the exercise of its functions in the following two financial years.
- (4) Before publishing its operating plan, Manx Care may consult such other persons as it considers appropriate.
- (5) Manx Care may revise the plan.
- (6) Manx Care must publish any revised plan.
- (7) Manx Care must send a copy of the operating plan to —
  - (a) the Department, and
  - (b) such other persons as Manx Care considers appropriate.
- (8) The Department must lay a copy of the operating plan before Tynwald together with the mandate.
- (9) References to “plan” in subsections (7) and (8) include a revised plan.

### 30 Annual report

- (1) No later than six months after the end of each financial year, Manx Care must publish an annual report on how it has exercised its functions during the year.
- (2) The annual report must, in particular, contain an assessment of—
  - (a) the extent to which it met any objectives or requirements specified in the mandate for that year; and
  - (b) the extent to which it gave effect to the proposals in its business plan for that year.

- (3) The Department must, having considered the annual report, set out in a letter to Manx Care the Department's assessment of Manx Care's performance of its functions in the financial year in question.
- (4) The letter must, in particular, contain the Department's assessment of the matters mentioned in subsection (2).
- (5) The Department must—
  - (a) publish the letter to Manx Care; and
  - (b) lay it and the annual report before Tynwald.

### **31 Departmental requests**

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

## **PART 7 – MISCELLANEOUS AND SUPPLEMENTARY**

### **32 Duty to share information**

- (1) This section applies to information about a service user that is held by a relevant person for the purposes of its functions under or by virtue of the mandate.
- (2) A relevant person ("A") must ensure that the information is disclosed to—
  - (a) persons working for A; and
  - (b) any other relevant person with whom A communicates about the service user.

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

- (3) Subsection (2) applies only so far as the relevant person considers that the disclosure —
  - (a) is necessary for the provision to the service user of health services or care services; and
  - (b) is in the best interests of the service user.
- (4) The relevant person need not comply with subsection (2) if that person reasonably considers that one or more of the following apply—
  - (a) the service user objects, or would be likely to object, to the disclosure of the information;
  - (b) for any other reason the relevant person is not reasonably able, or should not be required, to comply with subsection (2).
- (5) This section does not permit the relevant person to do anything which, but for this section, would be inconsistent with—
  - (a) any provision of the *Data Protection Act 2018*; or

- (b) any duty of care or confidence imposed by statute or otherwise.
- (6) This section does not require the relevant 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 section).
- (7) “**Relevant person**” means the Department, Manx Care and, where appropriate, a person with whom Manx Care has entered into an agreement under section 17.

### 33 Regulations

- (1) The Department may by regulations make—
  - (a) any supplementary, incidental or consequential provision;
  - (b) any transitory, transitional or saving provision;which it considers necessary or expedient for the purposes of, in consequence of or for giving full effect to any provision of this Act.
- (2) Regulations may modify, repeal or revoke any provision of any enactment passed or made before or at the same time as this Act.
- (3) “**Modify**” includes amend, add to or remove.  
Tynwald procedure —approval required.

### 34 Directions

- (1) Directions under this Act must be in writing.
- (2) Without prejudice to any other provision of this Act, directions given to Manx Care by the Department may—
  - (a) specify objectives to be achieved by Manx Care;
  - (b) specify the time frames for the achievement of objectives; and
  - (c) suggest methods of achieving objectives (such suggestions are not binding).

### 35 Transfer schemes

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

### 36 References to the Department

- (1) All references to the Department, so far as they relate to its functions which are the subject of the mandate and not otherwise, in any statutory provision, agreement, deed, instrument, licence, consent, application, notice or other document whatsoever shall, unless the context otherwise requires, be construed as references to Manx Care or, where Manx Care has entered into an agreement with any person under section 17, that person.

- (2) Nothing in this section effects a transfer of the functions of the Department which are the subject of the Mandate from it to Manx Care or any other person.

**37 Amendment of Statutory Boards Act 1987**

In Schedule 1 to the Statutory Boards Act 1987 at the end insert —  
“Manx Care”.

Stat Brd Model

## SCHEDULE 1

## PART 1- MANX CARE: MEMBERSHIP

## 1. Membership

- (1) Manx Care is to consist of—
  - (a) The following non-executive members —
    - (i) a chair; and
    - (ii) at least four other non-executive members one of whom must hold the post of vice-chair; and
  - (b) the following executive members —
    - (i) a chief executive;
    - (ii) a director of finance;
    - (iii) two or more appropriately qualified persons.

This is subject to sub-paragraph (7).
- (2) The following persons cannot be appointed as an executive member of Manx Care—
  - (a) a member of the Legislative Council; or
  - (b) a member of the House of Keys.
- (3) The following persons cannot be appointed as a non-executive member of Manx Care—
  - (a) a member of the Legislative Council;
  - (b) a member of the House of Keys;
  - (c) an employee of the Public Services Commission; or
  - (d) an employee of a Department, an office of Government or a Statutory Board.
- (4) An executive member of Manx Care who becomes a person referred to in sub-paragraph (2), ceases to hold the office of executive member upon doing so.
- (5) A non-executive member of Manx Care who becomes a person referred to in sub-paragraph (3), ceases to hold the office of non-executive member upon doing so.
- (6) A member of Manx Care ceases to be such a member on ceasing to hold the office specified in sub-paragraph (1).
- (7) Manx Care may determine that its composition should be other than as referred to in sub-paragraph (1).
- (8) Any determination by Manx Care under sub-paragraph (7) —
  - (a) must result in the number of non-executive members being greater than the number of executive members; and
  - (b) is subject to the approval of the Department.
- (9) “**Appropriately qualified person**” means a person employed by the Public Services Commission or Manx Care in a post or office—



- (a) because of their experience or expertise in clinical or professional services (or both); or
- (b) in which they gained such experience or expertise.

*Non-executive members*

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

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

**3 Non-executive members: tenure**

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

*Executive members*

**4 Executive members: appointment**

- (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*.
- (2) An appropriately qualified person referred to in paragraph 1 may be appointed as an executive director by-
  - (a) the Public Services Commission under the *Public Services Commission Act 2015*; or
  - (b) by Manx Care on such terms and conditions as it should determine.
- (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.

## 5 Quorum

- (1) At a meeting of Manx Care —
  - (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* shall not apply;
  - (b) the number of non-executive members present must exceed the number of executive members present; and
  - (c) at least one of the executive members present must be an appropriately qualified person referred to in paragraph 1(1)(b)(iii).
- (2) Decisions shall be taken by a vote of all those members present at the meeting.
- (3) In the event of a tie, the chair shall have a second casting vote.

## PART 2 — ORGANISATION AND STAFF

### 6 Manx Care's staff

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

## PART 3 - INSPECTIONS

### 7 Inspections of Manx Care

- (1) In accordance with the following provisions of this paragraph —
  - (a) the Department; or
  - (b) Manx Care,may arrange for an inspection to be conducted by one or more appropriate persons or bodies (“inspectors”).
- (2) There must be at least one inspection every three years.
- (3) An inspection may be of —
  - (a) Manx Care;
  - (b) a relevant service provider; or
  - (c) both.
- (4) An inspection may be a general one or in relation to a specific matter.
- (5) An inspection shall take place at such time and date as is agreed between —
  - (a) the Department and Manx Care;
  - (b) the Department and the relevant service provider; or
  - (c) the Department and both Manx Care and the relevant service provider.
- (6) Where no reasonable agreement is reached in accordance with sub-paragraph (5), the Department must notify Manx Care, the relevant service provider or both (as the case may be), in writing of the time and date of the inspection.
- (7) Sub-paragraphs (5) and (6) notwithstanding, the Department may arrange for an inspection to be conducted without the prior agreement of Manx Care, a relevant service provider or, as the case may be, both of them.
- (8) The inspectors must —
  - (a) conduct a review of the exercise by —
    - (i) Manx Care;
    - (ii) a relevant service provider; or
    - (iii) both,of their functions under or pursuant to this Act based on quality indicators and requirements agreed beforehand with the Department, and
  - (b) report on the efficiency and effectiveness of Manx Care, the relevant service provider or both against those indicators and requirements.
- (9) Where an inspection is in respect of a particular matter, the report of the inspectors shall be in respect of the efficiency and effectiveness of Manx Care, the relevant service provider or both based on quality indicators and requirements agreed beforehand with the Department in respect of that matter.

- (10) It is the duty of Manx Care and a relevant service provider to —
  - (a) assist inspectors undertaking an inspection; and
  - (b) provide all such information which is required by the inspectors for the proper performance of the inspection.
- (11) “**Relevant service provider**” means a person —
  - (a) with whom Manx Care has entered into an agreement under section 17 of this Act; and
  - (b) who is based, and provides services under that agreement, in the Island.

## 8 Inspection reports

- (1) Where an inspection has been undertaken in accordance with paragraph 7(1)(a) or (7), the report of inspectors must be in such form as the Department specifies.
- (2) The Department must arrange for such a report to be published in such manner as it considers appropriate.
- (3) The Department must send a copy of the published report to the Manx Care.
- (4) Where an inspection has been undertaken in accordance with paragraph 7(1)(b), the report of inspectors must be in such form as Manx Care specifies.
- (5) Manx Care must arrange for such a report to be published in such manner as it considers appropriate.
- (6) Manx Care must send a copy of the published report to the Department.
- (7) Manx Care must —
  - (a) prepare comments on any published report referred to in subparagraphs (2) and (4); and
  - (b) prepare a written statement (an “action plan”) of—
    - (i) how it proposes to give effect to the recommendations made in the report and the period within which it proposes to do so; and
    - (ii) any other action which it proposes to take in the light of such a report and the period within which it proposes to do so,and send them to the Department.
- (8) The Department must arrange for the comments of Manx Care and any action plan which it receives under this paragraph to be published in such manner as it considers appropriate.
- (9) The Department must keep Manx Care's performance in complying with a report, giving effect to the recommendations of a report or, as the case may be, taking action in the light of a report, under review.

**9 Exclusions from publication**

- (1) The Department may exclude from publication under paragraph 8 any part of a report or anything it receives from Manx Care under that paragraph if, in its opinion, its publication —
  - (a) could jeopardise the safety of any person; or
  - (b) would breach the *Data Protection Act 2018* or an obligation of confidence imposed by statute or otherwise.
- (2) Manx Care may exclude from publication under paragraph 8 any part of a report if, in its opinion, publication of that part —
  - (a) could jeopardise the safety of any person; or
  - (b) would breach the *Data Protection Act 2018* or any duty of care or confidence imposed by statute or otherwise.

**10 Directions in respect of reports**

- (1) Where a report under paragraph 8 shows that Manx Care —
  - (a) is failing to discharge or properly to discharge any of its functions; or
  - (b) has failed to discharge or properly to discharge any of its functions, and the Department considers that the failure is significant, it may direct Manx Care to take steps to rectify the failure.
- (2) Directions under sub-paragraph (1) may (in particular) include directing Manx Care —
  - (a) to rectify the failure within a given period;
  - (b) to engage experts (named or otherwise) to assist in addressing and rectifying the failure; and
  - (c) to provide the Department with periodic reports on its progress in rectifying the failure.



## SCHEDULE 2

### THE MANDATE

1. The Mandate must specify —
  - (a) the objectives that the Department considers Manx Care should seek to achieve in the exercise of its functions during that financial year and such subsequent financial years as the Department considers appropriate;
  - (b) the services that Manx Care must provide, or secure the provision of, during that financial year and such subsequent financial years as the Department considers appropriate;
  - (c) the amount of funding that the Department will allocate to Manx Care for the provision of the services referred to in paragraph (b);
  - (d) how the amount referred to in paragraph (c) has been determined,
  - (e) the service levels and quality standards which Manx Care must comply with in the exercising its functions under this Act;
  - (f) whether generally or specifically, information which is to be provided by Manx Care to the Department for the purpose of the exercise of its functions under this Act;
  - (g) any requirements, including (but not limited to) compliance with or regard to specified standards and guidance, the use of government shared services and the entering into of service level agreements, that the Department considers it necessary to impose on Manx Care for the purpose of ensuring that it achieves the objectives referred to in paragraph (a);
  - (h) how concerns about the performance of others under government shared services and service level agreements may be raised with the Department for resolution;
  - (i) the matters by reference to which the Department proposes to assess Manx Care's performance under the mandate;
  - (j) the procedure to be followed in the event of a dispute between the Department and Manx Care;
  - (k) when charges may be made in respect of the provision of services provided by Manx Care or any other the person in accordance with this Act, including such matters as the determination of the amount of such charges, their remission, repayment and methods of recovery.
2. 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
  - (b) where Manx Care enters into an agreement with any person under section 17, require that person to establish and operate an internal complaints procedure in respect of the services it provides under that agreement.

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

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### SCHEDULE 3

#### 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;
  - (d) make provision about the continuation of legal proceedings.

##### 2 Effect of scheme

Where an order 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, 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; and
  - (d) for proceedings commenced by or against the transferor to be continued by or against the transferee.
- (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.

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**SCHEDULE 4****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 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 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 an order.