

Statutory Document No. 20XX/XXXX

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Manx Care Act 2021

NATIONAL HEALTH SERVICE ACT 2001 (SECTION 38) (AMENDMENT) REGULATIONS 2021

Approved by Tynwald:

Coming into operation in accordance with regulation 2

The Department of Health and Social Care makes the following Regulations under section 39 of the Manx Care Act 2021.

1 Title

These Regulations are the National Health Service Act 2001 (Section 38) (Amendment) Regulations 2021.

2 Commencement

If approved by Tynwald, these Regulations come into operation on [TBC]¹.

3 Amendment of section 38 of the National Health Service Act 2001

For section 38² (complaints procedure) of the National Health Service Act 2001 substitute –

«38 Complaints about health services

(1) The Department shall by regulations make provision about the handling and consideration of complaints made under the regulations about the provision of services under Part 2 (primary health services) or Part 3 (hospital and specialist services) by –

(a) the Department;

(b) Manx Care in discharging the functions the Department has under either of those Parts on behalf of the Department under section 13 of the Manx Care Act 2021; and

¹ Tynwald procedure – approval required under section 39 of the Manx Care Act 2021.

² Section 38 was amended by Schedule 5 to the Manx Care Act 2021.

- (c) any person or body other than the Department or Manx Care in discharging any of Manx Care's functions under the Manx Care Act 2021 in accordance with section 16 of that Act.
- (2) Regulations under subsection (1) shall provide for a complaint to be considered by —
 - (a) the Department;
 - (b) Manx Care; or
 - (c) another person or body.
- (3) The Department shall by regulations make provision about the handling and consideration of complaints made under the regulations—
 - (a) where persons are not satisfied with the outcome of an investigation of a complaint made under regulations made under subsection (1); and
 - (b) in other circumstances.
- (4) Regulations under subsection (3) shall provide for a complaint to be considered by the Health and Social Services Independent Review Body constituted under section 26A of the Social Services Act 2011.
- (5) Regulations under subsections (1) and (3) may, without prejudice to the generality of those subsections, make provision about —
 - (a) the persons who may make a complaint;
 - (b) the complaints which may, or may not, be made under the regulations;
 - (c) the persons to whom complaints may be made;
 - (d) complaints which need not be considered;
 - (e) the period within which complaints must be made;
 - (f) the procedure to be followed in making, handling and considering a complaint;
 - (g) matters which are excluded from consideration;
 - (h) the making of a report or recommendations about —
 - (i) a complaint or complaints;
 - (ii) the handling and consideration of complaints, and such a report may be required to be laid before Tynwald;
 - (i) the action to be taken as a result of the complaint;
 - (j) action which may be taken to improve —
 - (i) the handling and consideration of complaints; or

- (ii) the provision of services referred to in subsection (1), as a consequence of a complaint or otherwise.
- (6) Regulations under subsections (1) and (3) may require any person or body who handles or considers complaints under the regulations or any other person or body to make information available to the public about the procedures to be followed under the regulations.
- (7) The regulations may also—
 - (a) provide for different parts or aspects of a complaint to be treated differently;
 - (b) require the production of information or documents in order to —
 - (i) enable a complaint to be properly considered; or
 - (ii) monitor the handling and consideration of complaints;
 - (c) provide for a complaint made to one person or body to be referred to another person or body;
 - (d) authorise the disclosure of information or documents relevant to a complaint to a person or body—
 - (i) who is considering a complaint under the regulations;
 - (ii) to whom a complaint has been referred; or
 - (iii) for the purpose of monitoring the handling and consideration of complaints,and any such disclosure may be authorised notwithstanding any rule of common law that would otherwise prohibit or restrict the disclosure.
- (8) The regulations may make provision about complaints which raise both matters falling to be considered under the regulations and matters falling to be considered under other statutory complaints procedures, including in particular provision for—
 - (a) enabling such a complaint to be made under the regulations; and
 - (b) securing that matters falling to be considered under other statutory complaints procedures are treated as if they had been raised in a complaint made under the appropriate procedures;and in this subsection “statutory complaints procedures” means procedures established by or under any enactment.
- (9) Regulations under subsection (1) or (3) may make such supplemental, incidental, consequential, transitional or saving

provisions as are considered to be necessary or expedient by the
Department.».

MADE

Minister for Health and Social Care

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations substitute section 38 of the National Health Service Act 2001 with new section 38.

New section 38(1) requires regulations to be made about the handling and consideration of complaints about the provision of certain services under National Health Service Act 2001 by certain persons or bodies. Regulations under section 38(1) must also specify the persons or bodies who are to consider those complaints (see section 38(2)).

New section 38(3) requires regulations to be made about the handling and consideration of complaints: (a) where persons are not satisfied with the outcome of an investigation of a complaint made under regulations made under section 38(1) of that Act; and (b) in other circumstances. Regulations under section 38(3) of the National Health Service Act 2001 shall provide for such a complaint to be considered by the Health and Social Services Independent Review Body constituted under section 26A of the Social Services Act 2011.

The rest of new section 38 specifies other regulation-making powers in relation to complaints made under section 38(1) or (3).