

# **Final Business and Regulatory Impact Assessment**

**The Health (Tobacco, Nicotine Etc. and Care)  
(Scotland) Bill**

**Provision of Communication Equipment**

**March 2016**

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## THE HEALTH (TOBACCO, NICOTINE ETC. AND CARE) (SCOTLAND) BILL

### PROVISION OF COMMUNICATION EQUIPMENT

#### **Purpose and intended effect**

#### **Background**

In 2007, a campaign led by the Royal College of Speech and Language Therapists (RCSLT), with support from Capability Scotland and Augmentative Communication in Practice Scotland, highlighted a range of difficulties encountered by individuals with communication needs who require to use Augmentative and Alternative Communication (AAC), including limited provision in many Scottish regions.

A Right to Speak,<sup>1</sup> the Scottish Government's strategy for provision of AAC, was launched in April 2012 in response to this and set out a vision for a Scotland where people who use AAC are fully included in society. It described four strategic aims; i. the communication needs of people who require to use AAC are universally recognised. ii. individuals who require to use AAC have equal access to quality AAC services at a level adequate to their needs at any point in their lives. iii. individuals who require to use AAC are supplied with appropriate equipment in a timely manner. iv. services supporting people who use AAC contribute to developing a robust evidence base for the effectiveness and cost-effectiveness of AAC. Eight recommendations were also made to meet those aims.

The Strategy was supported by new funding of £4m over three years, 2012 -2015. This funding was made available to Health Boards and NHS Education for Scotland (NES) to develop services and support and purchase equipment.

The Now Hear Me report<sup>2</sup> which was produced at the end of the Right to Speak implementation period concluded that whilst significant progress had been made, there was still work to be carried out before all of the aspirations set out in "A Right to Speak" report were fully realised. The report outlines actions which are still outstanding and makes recommendations for Scottish Government, NHS Education for Scotland (NES), Scotland's health boards, voluntary sector bodies, schools and social care organisations and people who use AAC and their families to take forward.

<sup>1</sup> A Right to Speak - Supporting Individuals who use Augmentative and Alternative Communication <http://www.gov.scot/resource/0039/00394629.pdf>

<sup>2</sup> Now Hear Me - Report on the implementation of the recommendations of A Right to Speak to support Alternative and Augmentative Communication (AAC) in Scotland <http://www.nowhearme.co.uk/wp-content/uploads/2015/07/Final-AAC-Report-24.06.15.pdf>

Following extensive campaigning and requests for the introduction of legislation, the Programme for Government 2015-2016 announced in September 2015 that the Scottish Government recognised that access to voice equipment is vital to children and adults who have lost their voice or find speaking difficult and that it will, therefore, bring forward an amendment to the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill to provide a statutory right to voice equipment when required.

The amendment will place a duty on Scottish Ministers to provide or secure the provision of communication equipment and in addition for Ministers to be under a duty to provide support or assistance to allow the recipient to take advantage of the equipment and use it properly. The provision is to be made to such extent as Ministers consider necessary to meet all reasonable requirements of the recipient of the equipment.

Whilst the duty is being placed on Scottish Ministers in the legislation; there is provision within the National Health Service (Scotland) Act 1978 (the 1978 Act)<sup>3</sup> which allows the Ministers' functions under the Act (like this new duty) to be delivered by Health Boards. Ministers have powers already in the 1978 Act to give directions to Health Boards about the way that they carry out their duties and functions which Health Boards must follow.

Directions in connection with the new duty are planned in the future. These will support operational improvement work in these services, for example in areas such as waiting times, procurement and pathways. The proposed amendment and associated operational improvement work will address a number of the recommendations set out in the "Now Hear Me" report (referred to above).

## **Objective**

The broad policy aims for the provision of communication equipment element of this Bill are:

- To ensure that individuals who require or use AAC are provided with the necessary and most appropriate equipment to meet their reasonable requirements and;
- Support and assistance is provided to allow the individual to take advantage of the equipment and be able use it properly enabling them to meet their needs

We recognise that many Scottish Health Boards already provide a communication equipment service and we are determined to build on that existing good practice to raise the profile of AAC by driving further performance improvements, promoting greater consistency and ensuring AAC remains a board priority.

Health Care in Scotland is devolved and there is no current comparative UK policy.

The amendment does not have any wider EU or international implications.

<sup>3</sup> National Health Service (Scotland) Act 1978 (the 1978 Act - <http://www.legislation.gov.uk/ukpga/1978/29/contents>)

## **Rationale for Government intervention**

The express purpose of the Scottish Government is to make Scotland a more successful country, with opportunities for all to flourish.

Scottish Government recognises that access to voice equipment is vital to children and adults who have lost their voice or find speaking difficult.

The 'A Right to Speak' strategy reported that evidence from engagement with service providers and stakeholders suggests that provision across Scotland is still inconsistent and does not always meet the needs of all people with communication difficulties, particularly those requiring high-tech devices. Examples include:

- school children facing long delays before equipment is available;
- school leavers with broken equipment facing a year in work, at college or university unable to communicate before replacement equipment is purchased;
- people with progressive illnesses dying before the equipment becomes available.

The amendment and the proposed directions and operational improvement work aim to address these issues.

The amendment will contribute to three of the Scottish Government's five National Objectives that underpin its core purpose: Wealthier and Fairer; Healthier; and, Smarter Scotland. It will also contribute to nine of the sixteen national outcomes:

- We live longer, healthier lives.
- Our public services are high quality, continually improving, efficient and responsive to local people's needs.
- We have improved the life chances for children, young people and families at risk.
- We are better educated, more skilled and more successful, renowned for our research and innovation.
- Our young people are successful learners, confident individuals, effective contributors and responsible citizens.
- Our children have the best start in life and are ready to succeed.
- Our people are able to maintain their independence as they get older and are able to access appropriate support when they need it.
- We have tackled the significant inequalities in Scottish society.
- We take pride in a strong, fair and inclusive national identity.

## **Consultation**

### **Within Government**

The amendment has been developed collaboratively between the Scottish Government, other public bodies and business representatives through a dedicated working group.

The working group comprised Scottish Government officials and, amongst others, representatives from the following organisations, public and professional bodies.

- Royal College of Speech and Language Therapists
- Motor Neurone Disease (MND) Scotland
- Scottish Centre of technology for the communication impaired (SCTCI) and;
- NHS Education for Scotland (NES)
- NHS Scotland
- Call Scotland

We have consulted with and taken views from officials in other Scottish Government Directorates including the Chief Nursing Officer; Integration and Reshaping Care; Education Division; Access Support team and; Healthcare Quality and Strategy team.

### **Public Consultation**

Limited informal discussions have been undertaken given the challenging timescales from the Programme for Government announcement and the parliamentary journey required for this piece of legislation.

More extensive consultation will be carried out to inform future plans for any directions and operational improvement work.

### **Business**

The amendment places a duty on Health Boards, however due to the multi-agency nature of this service other partners, for example local authorities and third sector organisations, may be involved in the provision and support of the communication equipment.

As detailed above, the amendment has been developed collaboratively between the Scottish Government and other stakeholders.

Scottish Government met with a number of relevant organisations including NHS speech and language therapists and AAC leads, the Royal College of Speech and Language Therapists (RCSLT), MND Scotland, Scottish Centre of Technology for the Communication Impaired (SCTCI) and NHS Education for Scotland (NES).

Their initial concerns were:

- The importance of the amendment not just being about the provision of equipment but also about the support in the use of the equipment.
- The importance of the multi-agency aspect of the service continuing to be recognised.

These concerns have been taken into account and have been incorporated into the amendment.

## **Options**

The Scottish Government considered three options for promoting its agenda to improve the provision of communication equipment for individuals.

### **Option 1: Do Nothing.**

Health and care professionals are already required to make arrangements to such extent as they consider necessary for the purposes of the prevention of illness, the care of persons suffering from illness and the after-care of such persons as defined in the National Health Service (Scotland) Act 1978 (the 1978 Act).

### **Option 2: Introduce a duty.**

Introduce a duty to provide or secure the provision of communication equipment and provide or secure support in using that equipment to any person who has lost their voice or has difficulty communicating to such an extent considered necessary to meet all reasonable requirements of the person in receipt of that equipment. By introducing this specific duty, and consequently raising the profile of the service, Health Boards will be obliged to review their current AAC service, systems and processes.

### **Option 3: Issue future directions in addition to the introduction of a duty.**

Introduce a duty to provide or secure the provision of communication equipment and support (see option 2) as well as issue directions in the future. By introducing this specific duty, and consequently raising the profile of the service, Health Boards will be obliged to review their current AAC service, systems and processes. By also issuing directions, Health Boards will be required to follow these and make specific improvements to strengthen how AAC services, systems and processes are delivered.

## **Sectors and groups affected**

The new duty will apply to Health Boards and, consequently, any agencies they might work with to help deliver this duty.

## **Benefits**

### **Option 1:**

Health Boards would continue to have the flexibility to continue to work as they are currently. Outcomes for individuals who use AAC are likely to remain unchanged from the present.

### **Option 2:**

Given that this service has a potential to have an impact on around 26,500 individuals in Scotland and is always going to be competing with other priorities affecting more of the population, the main benefit would be in raising the profile of this service, ensuring it remains a health board priority. Health Boards will be obliged in some instances to introduce improved operational procedures. A statutory duty should also reduce variation in access across Scotland. There will be benefits to patients from the reduction in variation in access and the expected operational improvements, reducing the distress and discomfort associated with communication difficulties. There will also be a benefit to carers associated with the stress of caring when communication is more difficult than necessary. Outcomes for individuals who use AAC overall should improve.

### **Option 3:**

By issuing future directions as well as introducing the duty, Health Boards will be required to follow the instructions laid out within the directions which will make improvement to operational procedures. This will reduce the variation in access across Scotland and improve outcomes for individuals who use AAC.

## **Costs**

### **Option 1:**

There would continue to be a variation in services across Scotland. The profile of this service will remain low and no centrally-directed and supported improvement plans would be introduced.

**Option 2:**

The financial costs of the introduction of the duty are expected to be cost neutral as Health Boards already have this duty and are currently providing this service to individuals who have been assessed as requiring communication equipment: the current Health Board allocations make provision for delivery of this service. Health Boards are already impacted by differing degrees dependent on the demand (demand could be high in one board area and low in others) and it is not anticipated that the introduction of this duty will create a surge in demand.. This is also a bespoke service which is tailored to each individual's requirements and financial costs for equipment will vary dependent on the specification. No two individual's requirements are exactly the same, and each individual will have a different set of support needs. Health Boards will be obliged in some instances to introduce operational improvements to support this duty which may require future changes to their systems and processes. There would also be a requirement for awareness raising activities with the workforce to be incorporated into any improvement work.

**Option 3:**

See Option 2 for the financial costs of the introduction of the duty. The operational improvement work and associated directions will need to be carefully considered: directions must contain the correct level of detail, therefore will be developed in consultation with stakeholders. The financial costs of the operational improvement work that will be included within the directions will be defined as part of this work in the future. In the first instance, Scottish Government-funded operational improvement support will be offered to help inform the associated directions as detailed above.

**Scottish Firms Impact Test**

The amendment puts a duty on Scottish Ministers who will use Health Boards in Scotland to discharge the duty, therefore, the greatest impact will be on Health boards in Scotland. Due to the multi-agency nature of the service, there may be a consequent impact for local authorities and third sector organisations.

This proposal has been designed to raise the profile of this service and to ensure that Health Boards consider this service as a priority.

There has been minimal informal discussions with Health Boards who will be most affected by these proposals due to the challenging timescales between the Programme for Government announcement and the parliamentary journey required for this piece of legislation.

Scottish Government did however meet with a number of relevant organisations including NHS speech and language therapists and AAC leads, the Royal College of Speech and Language Therapists (RCSLT), MND Scotland, Scottish Centre of Technology for the Communication Impaired (SCTCI) and NHS Education for Scotland (NES) to gain insight into current issues and concerns which have been incorporated into the amendment

It should be noted that the proposals place no duties on any other business other than Health Boards.

## **Competition Assessment**

### **Will the measure directly or indirectly limit the number or range of suppliers?**

The proposal will not directly or indirectly limit the number or range of suppliers. The amendment will apply to all Health Boards. It does not constitute a barrier to the entry of suppliers.

### **Will the measure limit the ability of suppliers to compete?**

The amendment will apply to Health Boards in Scotland. It will have no impact on competition and will not limit the ability of suppliers to compete.

### **Will the measure limit suppliers' incentives to compete vigorously?**

The amendment will apply to Health Boards in Scotland. It will have no impact on competition and will not limit the ability of suppliers to compete vigorously.

### **Will the measure limit the choices and information available to consumers?**

The amendment will apply to Health Boards in Scotland. It will not limit the choices and information available to consumers.

### **Test run of business forms**

No new forms for business are anticipated.

## **Legal Aid Impact Test**

The Scottish Government assesses that the changes proposed in the amendment should not result in possible expenditure from the legal aid fund. The proposals should not have any implications for individuals' right to access to justice through legal aid. They should not have implications for civil and criminal legal aid. The amendment will not introduce any new court procedures nor any new right of appeal.

## **Enforcement, Sanctions and Monitoring**

The new duty which the bill creates is framed as a duty on Scottish Ministers. Our intention however will be that the Ministers will confer the duty on Health Boards – which reflects the way in which the NHS is organised. In carrying out their duties and functions in connection with the provision of a health service, health boards must act in accordance with directions given by the Ministers. It is our intention that the Ministers will issue directions in relation to the performance of this new duty by health boards.

Individuals will be able to enforce their rights or raise any challenges to the extent that this amendment makes through the Health Boards complaints process. Individuals can then escalate any complaints through the Scottish Public Services Ombudsman (SPSO) or take their case to judicial review if necessary.

Monitoring will be carried out using existing Health Boards performance management mechanisms. In addition, the proposed operational improvement work will include evaluation.

### Implementation and delivery plan

The overarching aim of the duty to provide communication equipment is to provide or secure the provision of communication equipment and provide or secure support in using that equipment to any person who has lost their voice or has difficulty communicating to such an extent considered necessary to meet all reasonable requirements of the person in receipt of that equipment. Boards are already providing a service through functions within the 1978 Act therefore the duty will aim to bring this service to the forefront of priorities within Health Boards.

Health Boards will be responsible for implementing the new duty and to put in place plans to deliver their responsibilities under the legislation.

The Scottish Government will continue to work with Health Boards to support the implementation of the duty.

### Summary and recommendation

Option 3 is being recommended: 'Issue future directions in addition to the introduction of a duty' The Scottish Government is committed to any person who has lost their voice or has difficulty speaking (both children and adults) receiving the necessary provision of equipment and support that will meet all of their reasonable requirements.

- **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	Health Boards would continue to have the flexibility to continue to work as they are currently.	There would continue to be a variation in services across Scotland.  The profile of this service will remain low and no improvement plans will be introduced.
2	To raise the profile of this service, ensuring it remains a board priority.  Health Boards will be obliged in some instances to introduce improved operational procedures.  A statutory duty should also reduce	The financial costs are expected to be cost neutral as Health Boards are currently providing this service to individuals who have been assessed as requiring communication equipment.  This is a bespoke service which is

	<p>variation in access across Scotland.</p> <p>Outcomes for individuals who use AAC overall should improve.</p>	<p>tailored to each individual's requirements and financial costs for equipment will vary dependent on the specification.</p> <p>Health Boards will be obliged in some instances to introduce operational improvements which may require future changes to their systems and processes. This may result in additional future costs for Health boards which are yet to be defined.</p> <p>There would be a requirement for awareness raising activities with the workforce to be incorporated into any improvement work.</p>
3	<p>Health Boards will be required to follow the instructions laid out within the directions which will make improvement to operational procedures.</p> <p>Will reduce the variation in access across Scotland.</p> <p>Outcomes will be improved for individuals who use AAC</p>	<p>The financial costs in relation to the duty are expected to be cost neutral as Health Boards are currently providing this service to individuals who have been assessed as requiring communication equipment.</p> <p>This is a bespoke service which is tailored to each individual's requirements and financial costs for equipment will vary dependent on the specification.</p> <p>There would be a requirement for awareness raising activities with the workforce to be incorporated into any improvement work.</p> <p>The financial costs of the operational improvement work that will be included within the directions will be defined in the future during consultation with stakeholders on the operational improvement requirements</p>

**Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**

**Date:**

**Maureen Watt  
Minister for Public Health**

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Any enquiries regarding this publication should be sent to us at  
The Scottish Government  
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Edinburgh  
EH1 3DG

ISBN: 978-1-78652-197-2 (web only)

Published by The Scottish Government, March 2016

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS68406 (03/16)

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