

Order of the Day

3. BILL FOR SECOND READING

3.1. Safeguarding Bill 2017 – Second Reading approved

Mr Thomas to move:

That the Safeguarding Bill 2017 be read a second time.

The Speaker: Item 3, Bill for Second Reading, and I call on Mr Thomas to move the Safeguarding Bill 2017.

Mr Thomas: Thank you, Mr Speaker.

5 Hon. Members, I am pleased to move the Second Reading of the Safeguarding Bill 2017. For
some considerable time, there has been a clear political will to establish the Safeguarding
Children Board and the Safeguarding Adults Partnership in statute, as I stressed in the other
place, in the independent and Scottish Inspectorate reviews about Children and Family Services,
10 Social Care reports and action plans, last month. Specifically, the recommendations made
previously by the Commission of Inquiry into the Care of Young People, the Social Affairs Policy
Review Committee and the Scottish Care Inspectorate have all sought to strengthen the
safeguarding arrangements on the Island.

Hon. Members will be aware of a key outcome within the Programme for Government to
15 improve the quality of life for children, young people and families at risk. In supporting this
intention, the Council of Ministers made the commitment to place existing safeguarding bodies
on a statutory footing, through the introduction of a Safeguarding Bill. Bringing forward this Bill
signifies the high priority that this Government places on safeguarding, by establishing a single
Safeguarding Board and the legal framework within which it will operate.

20 This framework will provide the board with the requisite powers to ensure compliance with
safeguarding standards, policies and procedures from all partnership bodies. It will also bring
greater clarity to the relationship between the board and these bodies by defining the
responsibilities and accountabilities of the board and those of the independent chair.

Broadly, the remit of the board will deliver the current work of the existing safeguarding
25 bodies and, as a result, will be the overarching body responsible for taking a comprehensive and
strategic view on safeguarding practice. In addition, the Bill creates a statutory duty for those
who work with children and vulnerable adults to consciously consider the need to safeguard
when carrying out their work and a further duty for partnership bodies and the board to co-
operate with each other, when carrying out safeguarding functions.

30 The Bill also makes statutory provision for the membership, objectives and functions of the
board, providing greater visibility in terms of its composition, role, remit and functions. As part
of the discharge of its functions, the board is obliged to constitute three committees, being: the
action and implementation panel, the child death overview panel, and the serious case
management review panel. The membership procedures and functions of each committee will
be provided for within regulations. Provision is also made within this Bill for the board to
35 establish any additional committees and subcommittees as and when deemed necessary.

It is essential that the board's position in relation to data protection and information sharing
is clear. To that end, the Bill provides for the sharing of information with the board subject to
certain conditions being met.

40 Hon. Members will have noted that the board is not a public authority for the purposes of the
Freedom of Information Act 2015. This exclusion reflects the important public interest in
maintaining the integrity and confidentiality of the work undertaken by the board and to ensure
such public interest is promoted through robust scrutiny and challenge.

45 Turning briefly to governance arrangements, the Bill places a legal requirement on the board
to report annually and for the report to be laid before Tynwald. Regulations will define what
information must be included in this report.

Hon. Members, establishing a single Safeguarding Board in statute represents a significant
and important step forward in reinforcing the arrangements to safeguard and promote the
welfare of children and, at the same time, safeguard and protect vulnerable adults. The
Safeguarding Board will enhance the effectiveness of the current safeguarding arrangements
50 and unlock further opportunities for co-operation between all those who work with children and
vulnerable adults.

Mr Speaker, Hon. Members, I beg to move that the Safeguarding Bill 2017 be read for a
second time.

55 **The Speaker:** I call on the Hon. Member for Douglas South, Mrs Beecroft.

Mrs Beecroft: Thank you, Mr Speaker.

On behalf of the Department of Health and Social Care, I welcome the Safeguarding Bill and
its broad purpose of strengthening the safeguarding arrangements to better protect children
60 and promote the welfare of vulnerable adults on the Island. As Minister Thomas has said, this
Bill will create in statute a single Safeguarding Board that will co-ordinate and ensure the
effectiveness of the work carried out by those who work with children and vulnerable adults. It
will introduce a general duty of co-operation requiring the Safeguarding Board and safeguarding
bodies to work together and communicate with each other. It will also create in statute a duty
65 so that those who work with children or vulnerable adults must make arrangements to ensure
that when discharging their functions, they have due regard of the need to safeguard and
promote the welfare of children and the need to safeguard and protect vulnerable adults.

Given the recent Scottish Care Inspectorate Progress Review, following a joint inspection
entitled 'Services for Children and Young People in the Isle of Man', dated June 2016, the fact
70 that the Bill has reached this stage is most timely. This Bill is an important piece of legislation.

Originally the intention was for this Department to establish a safeguarding board in statute
and provide for its legislative framework by amending the Social Services Act 2011. Discussions
were held between officers of this Department and the legislative drafting team at the Attorney
General's Chambers, and the conclusion reached that a stand-alone Safeguarding Bill would be a
75 much more appropriate vehicle.

Given, of course, the proposed objectives and functions of the Safeguarding Board, it was
also felt inappropriate for this Department to have the power under the Safeguarding Bill to
establish the board or to have powers in respect of what the board does and how it should do it.
Further, it raised the question as to who should be promoting this important piece of legislation
80 and in discussions with the Cabinet Office, it is quite right that they have, with our full support,
promoted this Bill, and I beg to second.

The Speaker: I turn to the Hon. Member for Ayre and Michael, Mr Baker.

85 **Mr Baker:** Thank you, Mr Speaker.

I rise to support the principles of this Bill, which I think is very timely and very important. To
recap, the two key elements are establishing the Safeguarding Board on a statutory footing and
imposing a safeguarding duty, which based on the explanatory notes that were issued with the
Bill, is for those who work with children or vulnerable adults to give due regard to the need to
90 safeguard and promote their welfare, which sounds absolutely correct and fully supportable.

My concerns with this are not about the principles; they are about the detail and I have shared these thoughts with the Hon. Minister for Policy and Reform. When we look at the detail of the Bill, essentially this is thrown so wide that it covers everybody. There is no definition of services. It only talks about those who provide services – ‘any other body providing services for children or vulnerable adults’. That is clause 4(e) of the draft Bill.

Effectively, every person or organisation who provides any services to any child or vulnerable adult could be covered by this Bill, other than there is a carve-out in section 16 around private individuals going about their day-to-day activities. I am not convinced that that drafting is right and it is something that I would hope to see would be changed in the clauses stage, because it is imposing a duty on everybody, but there is no sense of risk or proportionality.

The Bill defines various bodies starting with the Department of Education and Children, Department of Health and Social Care, Department of Home Affairs and the Isle of Man Constabulary, which are all eminently sensible, but then it goes on to say ‘any other body providing services for children or vulnerable adults.’ That is not just a Government body; that is anybody.

In discussion with the Minister, that includes small organisations, commercial organisations, it could conceivably include people who are providing services just in the normal run of day-to-day life – hairdressers, cafés, bus services, sweet shops, sports clubs. These are all being imposed the same duty in terms of safeguarding as the Department of Education and Children, the Department of Health and Social Care, etc. Clearly, there is no proportionality in that.

But if we do accept that everybody has a duty – it is a bit like promoting world peace; everybody has got a duty to do it – what does it actually mean? What are the consequences for failure to do it? How do we know what to do? Who is going to police it?

Potentially, we create something that is unworkable or unenforceable, if we are not careful. Potentially, we create obligations on people who frankly are then not equipped to actually carry those out. The alternative is we create a huge industry behind this, which may be disproportionate potentially to the issues that are being addressed.

So I have got concerns about the detail around this and I would hope that the Minister for Policy and Reform will take away some of those thoughts and look at the definition. I think it is perfectly capable of being fine-tuned in terms of the definition of what is in here and maybe some degrees of proportionality and risk assessment being brought into the draft legislation. But as it stands at the moment, whilst I am fully supportive of the intentions behind the Bill, I am concerned about the implications that it brings.

Thank you.

A Member: Hear, hear.

The Speaker: Hon. Member for Garff, Mrs Caine.

Mrs Caine: Thank you, Mr Speaker.

I am pleased to see this piece of legislation before the House today. It is, however, surprising for a seemingly straightforward Bill of only 17 pages that it has taken the Isle of Man more than 10 years to bring it before Members for consideration.

The requirement for the Safeguarding Board to be put on a statutory footing was strongly supported in the public consultation and indeed, in all my conversations wearing my Children's Champion hat, there was much frustration that it had not been established under law more than a decade after the Commission of Inquiry into the Care of Young People recommended the establishment of a safeguarding board on a statutory footing.

It is worthwhile reflecting that the inquiry highlighted shortcomings in the Island's safeguarding provisions, not least in having a clear process for the investigation of the deaths of two young people in care. Although it has taken too long to get to this point, I acknowledge the considerable progress made by the Island's non-statutory regarding boards and recognise that

this Bill will give greater strength to the single board to require that information on vulnerable people is provided to it in a timely manner. That is very welcome.

145 What concerns me somewhat is the amount safeguarding structures that will be left to regulations. For instance, regulations may provide that committees and subcommittees must include such representatives of such relevant persons as may be prescribed or such other persons as may be prescribed. I would ask the Minister to please clarify why the Island has not followed more closely the UK safeguarding legislation, particularly in respect of the process over
150 the death of a child known to Social Services.

This Bill enables the Safeguarding Board to undertake such case management reviews as may be prescribed in such circumstances as may be prescribed.

Also in the Functions, section 8(4), it will also:

review such information as may be prescribed in relation to deaths of children or vulnerable adults in the Island in such circumstances as may be prescribed.

The required safety structures need to be fully in place from the date that primary legislation
155 is in force. Surely our job in the Keys is to ensure that happens.

Also, once the Bill receives Royal Assent, how soon after that will the regulations be in place and will they require parliamentary approval? The timescale for a fully functioning board appears to be elastic.

Like the Hon. Member for Ayre and Michael, I too fully support the principles behind the Bill
160 but I think that we might need greater clarity in the detail.

Thank you, Mr Speaker.

The Speaker: I call on the mover to reply, Mr Thomas.

165 **Mr Thomas:** Thank you very much, Mr Speaker, and to Hon. Members – particularly the Hon. Members for Garff and the Hon. Member for Ayre and Michael for their contributions, which in a way are helpfully juxtaposed at either end of the spectrum of views on the Safeguarding Bill.

Dealing first with the Hon. Member for Garff, yes, I share, as do many other people in this House, the frustration that this took 10 or 12 years or so to be in this House. It would have been
170 much better if we had had a statutory basis for our safeguarding arrangements earlier than now; but with this Bill we can finally have them.

The Children's Champion also makes a very important point, which I want to reiterate, that in the interim the arrangements have been established on a non-statutory basis and the progress made by the Children's Board and the Adults Partnership and other arrangements that the Hon.
175 Member for Garff, the Children's Champion, knows much about as she is part of them. They have improved and they are building blocks which can be absorbed into the statutory board once it is established.

Some specific questions asked of me from the Hon. Member for Garff, which I will address now provisionally, are that I think it is quite clear in the legislation that all of the regulations will
180 be laid for approval in Tynwald, except for the appointed day order. I believe it would make sense for those regulations to be made before the Act is fully brought into force, but I will speak further about that at the clauses stage as necessary.

I also think it is perfectly rational to have regulations in place – to have these arrangements put in place through secondary regulations rather than in the primary law, because the Isle of
185 Man is not the United Kingdom. We have got size and resource issues to deal with, and the very point that the Hon. Member for Ayre and Michael makes is a good one. We do not want to be overly bureaucratic and red-tape-oriented in this. We want to make a system that is appropriate for the Isle of Man, so it seems to me perfectly reasonable to understand more about those regulations, and I will see what I can do at the clauses stage and at the Third Reading to talk
190 more about the expectations in respect of some of those regulations.

Moving to the Hon. Member for Ayre and Michael's comments, I appreciate the support for the principles. I also appreciate the very good dialogue between officers myself and the Hon. Member in the last couple weeks and I welcome that continuation.

195 However, at this point, I wanted to say that it is my strong view that safeguarding needs to be extended across the piece. Why would it be the case that private entities and sports clubs and so on would not have the obligation to keep vulnerable adults and children safe? Of course the system has to be proportional. Of course it has to be risk adjusted and that will be reflected, I am sure, in the regulations that come forward. So I hope at the appropriate stage in the clauses and the Third Reading and then as we go through the Legislative Council, I hope, stages of this
200 Bill, perhaps we can put in place further information.

Because what is absolutely crucial in this and what the Hon. Member for Ayre and Garff has expressed very clearly is that now, as this takes on a statutory footing, we need to make it quite clear. We need to make people aware what obligations are, how they are affected and we need to make sure that those obligations and the impact is proportional and risk-adjusted, so it is
205 different for serving children in a shop from operating inside an institution that regularly comes across these arrangements. I am sure that will be put in place through the regulations.

Hon. Members, Mr Speaker, I beg to move.

The Speaker: The question is that the Safeguarding Bill 2017 be read for a second time. All
210 those in favour, please say aye; against, no. The ayes have it. The ayes have it.