

Order of the Day

2. Regulation of Care (Amendment) Bill 2019 – Second Reading approved

Mrs Sharpe to move:

That the Regulation of Care (Amendment) Bill 2019 be read a second time.

The President: We turn now to Item 2, Regulation of Care (Amendment) Bill, Second Reading and I call on Mrs Sharpe, please.

Mrs Sharpe: Thank you, Mr President.

265 Hon. Members, I am pleased to move the Second Reading of the Regulation of Care (Amendment) Bill 2019.

I would like to first begin by thanking Hon. Members for the consideration given to the Bill at the First Reading.

270 The Bill seeks to correct an unintended anomaly in the Regulation of Care Act 2013. As the Act currently stands the requirement to register with the Department of Health and Social Care applies to independent medical agencies and nurses' agencies. This includes businesses which supply or introduce medical practitioners, nurses or midwives to work solely for the Department.

275 As stated in the First Reading, it was never the intention of the then Department of Social Care to require these types of agencies to register with it. Section 3 of the Act is clear on this point: the purpose of the Act is to regulate care services and it was not designed to capture the regulation of healthcare services provided for under the National Health Service Act 2001.

280 To ask such agencies to register would be a considerable risk to the Department's ability to continue to provide essential health and care services, it risks those agencies choosing to cease the supply or introduction of staff in order to avoid the registration process, and of course the associated fee.

Hon. Members, this Bill will ensure that agencies supplying or introducing doctors, nurses or midwives to work solely for the Department will be exempt from registering with the Department and thereby continuing the supply of essential health and care workers.

285 Mr President, I beg to move that the Regulation of Care (Amendment) Bill 2019 be read for the second time.

Mr Crookall: I beg to second, Mr President.

290 **The President:** Thank you, Mr Crookall.

I put the motion that the Regulation of Care (Amendment) Bill be read for the second time. Those in favour, say aye; against, no. The ayes have it.

Regulation of Care (Amendment) Bill 2019 – Clauses considered

The President: We turn now to the clauses.

Clause 1, Mrs Sharpe.

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Mrs Sharpe: Thank you, Mr President.

With your permission, I would like to move all clauses in this Bill together, if possible?

The President: And vote on separately? Is that agreed? (**Members:** Agreed.) Thank you.

300 Mrs Sharpe.

Mrs Sharpe: Clause 1 gives the Act resulting from the Bill its short title.

Clause 2 provides for the amendments to the Regulation of Care Act 2013. Specifically, clause 2(2) amends section 28(2) of the Act at subparagraphs (c) and (d).

305 Presently section 28(1) of the Act provides, for the purposes of the Act, a definition of an 'Independent Medical Agency' being, and I quote:

... a business that consists of, or includes, the provision of services by medical practitioners.

Section 28(2) goes on to provide exemptions for those businesses that would otherwise be caught by this definition and to provide the Department of Health and Social Care with a regulation-making power to prescribe businesses *not* to be Independent Medical Agencies.

310 Essentially, the amendments proposed by clause 2(2) are to section 28(2)(c) which is being split into subparagraphs (i) and (ii) to clarify, on the face of the Act, that businesses which supply or introduce medical practitioners solely to work for the Department are exempted from the definition of an independent medical agency.

315 Clause 2(3) also amends section 29 of the Act which defines a Nurses' Agency. At present section 29(1) provides, for the purposes of the Act, a definition as to what constitutes a nurses' agency being, and again I quote:

... an employment agency or employment business under section 12(1) of the Employment Agencies Act 1975 that consists of, or includes, providing or supplying nurses or registered midwives.

Section 29(2) then goes on to provide the Department with the *vires* to make regulations enabling it to prescribe agencies that would otherwise be caught by the definition *not* to be nurses' agencies.

320 The principal amendment to the definition of nurses' agencies is to again, on the face of the Act, provide for the exclusion from the definition those businesses supplying or introducing nurses or registered midwives to work solely for the Department. In addition, the Department is also taking the opportunity to clarify what constitutes a nurses' agency under section 29(1) by removing the cross-reference to the Employment Agencies Act 1975 and stating simply that a
325 nurses' agency is an employment agency or employment business being, in either case, a business that consists of, or includes, supplying or introducing nurses or registered midwives.

Clause 2(4) amends the definition of 'medical practitioner' in the Schedule to the Act, removing the reference to:

... a fully registered person under the Medical Act 1985

330 – an Act which has been repealed by the Health Care Professionals Act 2014, to substitute it with 'registered medical practitioner'.

'Registered' is defined in the Interpretation Act 2015 which, at section 28, states:

The definitions in paragraphs 1 and 1A of the Schedule apply to all Manx legislation.

'Registered' in the Schedule to the Interpretation Act 2015 reads:

... 'registered', followed by a reference to a medical practitioner, chiropractor, osteopath, nurse, midwife or other health professional regulated by the Health Care Professionals Act 2014, means a person of that description registered in the manner prescribed by that Act;

Therefore, 'fully registered person under the Medical Act 1985' has been changed to 'a registered medical practitioner'.

335 Clause 2(5) deals with the addition of an apostrophe in nurses' agency and nurses' agencies.

Clause 3 amends section 13(1)(a) of the Employment Agencies Act 1975. Presently, section 13(1)(a) confirms that the Employment Agencies Act 1975 does not apply to, and I quote:

... any agency for the supply of nurses as defined in section 11(1) of the Nurses and Midwives Act 1947;

340 Pursuant to section 168 (Repeal of Acts) of the Regulation of Care Act 2013 the Nurses and Midwives Act 1947 was repealed in its entirety. Thus reference to the Nurses and Midwives Act 1947 has been substituted with reference instead to a nurses' agency under the Regulation of Care Act 2013. I therefore beg to move that clauses 1 to 3 do stand part of the Bill.

The President: Mr Crookall.

345 **Mr Crookall:** I beg to second, Mr President.

The President: Your opportunity now to debate the clauses in detail.

Mrs Poole-Wilson: Thank you, Mr President.

350 Just a question, really, on the implications of the change that is caught by section 2(2) in the Bill. My understanding of the effect of this is now to mean that medical practitioners who were introduced solely to work for the DHSC will not need to be registered. I wondered whether therefore there is any regulation still required to prescribe businesses which should not be an independent medical agency.

355 So does the amendment to say that if you are provided solely to work for the DHSC, deal entirely with the problem? Or will there still be a practical issue where some agencies will need to be caught by (2)(d) and set out in regulations as prescribed not to be an independent medical agency? And if there are, what types of businesses would they be; or are there any specific businesses caught?

360 **The President:** Thank you.
Mrs Sharpe.

Mrs Sharpe: Thank you to the Hon. Member for raising this question.

365 In answer the question, agencies which are supplying staff solely to the DHSC must still register with the DHSC, with Registration and Inspections. And I suspect this is under the NHS Act. But to be absolutely certain I could with your permission, Mr President, ask our legislative team whether they know precisely which Act this would be.

370 **The President:** Now, if the mover does wish to ask an officer to come forward, if they would come forward please? (*Interjections*)

Okay, if you could just take the microphone, please. Thank you.

If I could ask you to identify yourself, please; and then I will invite Mrs Sharpe to clarify the information that she wishes.

375 **Mrs Kewley:** My name is Sarah Kewley; I am a legislation officer at the Attorney General's Chambers.

380 **The President:** Thank you.
Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

Can you please confirm to me if possible, Mrs Kewley, what piece of legislation would it be which would capture agencies wishing to supply staff solely to the DHSC?

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Mrs Kewley: The Health Care Professionals Act 2014 covers medical practitioners working on the Isle of Man in whatever field and it would be this Act, as far as I am aware, that would cover these situations.

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Mrs Sharpe: Thank you.

The President: Thank you, Mrs Sharpe.

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Mrs Sharpe: Can I ask, Mr President, if the Hon. Member would repeat the second part of her question?

The President: Yes.

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Mrs Poole-Wilson: Thank you. And thank you for that clarification on where medical practitioners would still register. The question is that under the Regulation of Care Act as amended now by this Bill, there is provision still for independent medical agencies to be businesses prescribed *not* to be, suggesting that there would be regulations brought forward perhaps listing businesses that are prescribed not to fall within the definition of independent medical agency. My question really is practically are their businesses, are there regulations currently? And are there businesses for which we would need to prescribe that they should be excluded from this definition?

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The President: Mrs Sharpe.

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Mrs Sharpe: Thank you, Mr President.

I did ask that question myself to the Department and I was satisfied that there are currently not any businesses which are prescribed not to be businesses or agencies – to be precise, independent medical agencies under this Act. But I can, if the Hon. Member would like, double check with our legislative team to see if they disagree.

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The President: Yes, Mrs Sharpe.

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Mrs Sharpe: Mrs Kewley, do you have any further information? I am quite assured by the Department that, as yet, there have been no other agencies which have been excluded.

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Mrs Kewley: I have with me Catriona Bradley, the head of the Registration and Inspection Department and there are not currently any businesses of this description, and there are no plans to bring in any regulations of any sort at the moment. But the *vires* is there in the event that we did need to do so.

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Mrs Sharpe: Thank you.

The President: Mrs Poole-Wilson.

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Mrs Poole-Wilson: Thank you, Mr President; and thank you for that explanation.

I suppose just one further supplemental question then is: having provided for the *vires* to be there, and I recognise the *vires* was already within the underlying Act described as an establishment rather than a business and that has been changed. But I just wondered whether

435 there is any thought about what situation could arise where we need to prescribe regulations to exempt certain businesses?

If there is any information on that it would be helpful, please.

The President: Mrs Sharpe.

440 **Mrs Sharpe:** Thank you, Mr President.

I do not know, is the answer. But I could ask that hypothetical question to the Department and get an answer to the Hon. Member if she so desires.

Mrs Poole-Wilson: Well it would be helpful, please.

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The President: Does any other Hon. Member wish to contribute to the clauses stage? Mrs Sharpe, you have the right of reply if you wish.

Mrs Sharpe: Thank you, Mr President.

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I would just like to thank Hon. Members for their understanding. I know that this is slightly out of the ordinary to start a Bill in Legislative Council and the Department is very appreciative of Hon. Members allowing this to happen on this occasion.

Thank you.

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The President: Hon. Members, I put the question that clause 1 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

That clause 2 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

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And finally that clause 3 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Thank you, Hon. Members, that concludes the formal business this morning. The Council will now stand adjourned until our next sitting, 5th November.

The Council adjourned at 11.07 a.m.