



Isle of Man Government

Reiltys Ellan Vannin

REGULATION OF CARE (AMENDMENT) BILL 2019

EXPLANATORY NOTES

These Notes have been produced for the assistance of Members with the approval of the Member in charge of the Bill, Mrs. K Sharpe, MLC.

INTRODUCTION

1. These explanatory notes relate to the Regulation of Care (Amendment) Bill 2019. They have been prepared by the Department of Health and Social Care in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the Legislative Council.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

BACKGROUND

3. The Regulation of Care Act 2013 ("the Act") regulates care services and in doing so requires specified providers of such services to register with the Department of Health and Social Care ("the Department"). Providers of independent medical agencies and nurses' agencies are included within the list of providers that are required to register.
4. Section 52 (offence to carry on or manage without registration) of the Act then makes it is an offence for a person to carry on an independent medical agency or a nurses' agency unless they are registered with the Department of Health and Social Care (Department) in accordance with the provisions of the Act.

5. The Department is proposing to amend the definitions of 'independent medical agency' and 'nurses' agency' in the Act so that businesses that provide or supply doctors, nurses or midwives to the Department are excepted from this requirement to register.
6. The rationale behind the proposed change is to ensure that the Department has the continued ability to recruit temporary medical staff; thus enabling it to continue to provide essential health and care services. The requirement for such agencies to register with the Department and the associated fee is likely to deter such agencies from operating on the Island.
7. Given that there are no policy changes which might affect the public directly the Bill has not been the subject of a consultation.
8. In the opinion of the Member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

FINANCIAL EFFECTS OF THE BILL

9. There are no known likely financial effects of the amendments proposed by this Bill to sections 28 (independent medical agency) and 29 (nurses' agency) of the Act.
10. An Impact Assessment of the Bill has been prepared by the Department and it is attached as Appendix 1 to these Notes.

CLAUSE BY CLAUSE NOTES

Clause 1

11. This clause gives the short title to the Act which will, if enacted, result from the Bill.

Clause 2

12. This clause amends the following provisions of the Act:
 - a) Section 28. This section of the Act is being amended to exclude from the definition of an independent medical agency a business that supplies or introduces medical practitioners to work solely for the Department;

- b) Section 29. This section of the Act is being amended to exclude from the definition of a nurses' agency a business that supplies or introduces nurses or midwives to work solely for the Department;
- c) The definition of "medical practitioner" in the Schedule is being updated; and
- d) Grammatical corrections to the terms nurses' agency and nurses' agencies are effected throughout the Act.

Clause 3

- 13. This clause updates section 13(1)(a) by removing the reference to the Nurses and Midwives Act 1947 (repealed in its entirety by the Regulation of Care Act 2013) and replacing it with a reference to the Act.

DEPARTMENT:		
Health and Social Care		
IMPACT ASSESSMENT		
FOR A REGULATION OF CARE (AMENDMENT) BILL 2019		
Stage: 12 – Council approval to introduce legislation into Branches	Version: 3	Date: 09/10/19
Related Publications:		
Regulation of Care (Amendment) Bill 2019 (VO3), Explanatory Memorandum and Explanatory Notes		
Responsible Officer: Ben Bryan		
Email Address: Ben.Bryan@gov.im	Telephone: 685005	
SUMMARY: INTERVENTION AND OPTIONS		
Briefly summarise the proposal’s purpose and the intended effects		
<ol style="list-style-type: none"> 1. The Regulation of Care Act 2013 (Act) makes provision for the registration and regulation of care services. 2. Section 52 of the Act makes it is an offence for a person to carry on an independent medical agency or a nurses’ agency unless they are registered with the Department of Health and Social Care (Department) in accordance with the provisions of the Act. 3. The Department is proposing to amend the definitions of ‘independent medical agency’ and ‘nurses’ agency’ in the Act so that businesses that provide or supply doctors, nurses or midwives to the Department are excepted from this requirement to register. 		

4. The rationale behind the proposed change is to ensure that the Department has the continued ability to recruit temporary medical staff; thus enabling it to continue to provide essential health and care services. The requirement for such agencies to register with the Department and the associated fee is likely to deter such agencies from operating on the Island.

Independent medical agencies

5. Section 28(1) of the Act defines what an independent medical agency is and subsection (2) excepts those that would otherwise be caught by the definition.

*"(1) An **"independent medical agency"** is a business that consists of, or includes, the provision of services by medical practitioners.*

(2) However, none of the following is an independent medical agency –

(a) an independent clinic;

(b) an independent hospital;

(c) a business mentioned in subsection (1) to the extent to which its services are provided under the NHS Act by medical practitioners; or

(d) an establishment prescribed not to be an independent medical agency."

6. Legal advice from the Attorney General's Chambers (**AGC's**), dated 1 March 2019, to the Department is that an independent medical agency situation exists for supply by an agency of medical practitioners to the NHS and there will be a need for registration.
7. The Department has, to date, not sought to rely on the regulation making powers in section 28(2)(d) to except agencies that supply or provide doctors to the Department from the definition of independent medical agency.

Nurses' agencies

8. Section 29(1) of the Act defines what a nurses' agency is and subsection (2) gives the Department the vires to make regulations to except agencies/businesses that would otherwise be caught by the definition.

*"(1) A **"nurses agency"** is 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.*

(2) However, an agency or business mentioned in subsection (1) is not a nurses agency if it is prescribed not to be a nurses agency"

9. The legal advice referred to in paragraph 6 above advises that the supply by, or through, an agency of nurses or midwives is always going to be a nurses agency requiring registration unless that agency is prescribed not to be a nurses agency.
10. The Department has not, to date, exercised its powers under section 29(2) to make regulations to except agencies that supply or provide nurses and midwives to the Department, from the definition of nurses' agency in subsection (1).

What are the options that have been considered

1. Option One – Maintain the status quo

By maintaining the status quo agencies that supply or provide doctors, nurses or midwives to the Department will continue to be required to register in accordance with the provisions of the Act.

The Department's position is that a requirement to register under the Act will deter agencies and businesses (particularly those incorporated in the United Kingdom) from operating on the Island – it is highly likely that this would affect the Department's ability to engage temporary professional staff and thus, potentially the Department's ability to provide essential health and care services.

2. Option Two – Amend sections 28 and 29 of the Act

Amend section 28(2) to except agencies that supply or provide doctors to the Department from being required to register under the Act.

Amend section 29(2) to except employment businesses and agencies that supply or provide nurses and midwives to the Department from being required to register under the Act.

Section 3 (purposes of act) makes provision as to the remit and the purposes for the Act, namely that the purposes of the Act are to do the following for social care and non-NHS health care services –

- a) protect people who need them;
- b) regulate how they are provided;
- c) standardise how they are regulated; and
- d) promote transparency.

Section 11 defines a non-NHS health care service, which includes independent medical agencies and nurses' agencies. The purpose of the Act is clear; to regulate care services, it is/was not intended to capture the regulation of NHS health care services that are provided under the National Health Service Act 2001.

Thus, by capturing agencies that supply or provide doctors, nurses and midwives to the Department for the purpose of it carrying out services in pursuance of the National Health Care Act 2001, sections 28 and 29 catch a situation which they were not

intended to do.

Given the adverse consequences (described above) that may result from requiring such agencies to register in accordance with the provisions of the Act the Department requires a change to the legislation to except them.

In respect of the legislative changes required, the Department, in consultation with the AGC's, has considered exercising its regulation making powers under sections 28 and 29 of the Act. Given the stated purposes of the Act, the AGC's have advised that the preferred option would be for the exceptions to be contained within the provisions of the Act.

3. **Option Three – Except businesses and agencies under the regulation making powers in sections 28 and 29 of the Act**

Sections 28(2)(d) and 29(2) give the Department the vires to make regulations excepting businesses that supply or provide doctors, nurses or midwives to the Department, from being required to register in accordance with the provisions of the Act. To date the Department has not exercised its regulation making powers under sections 28(2)(d) or 29(2).

For the reasons stated under 'Option Two' above the Department's preferred option, in line with the advice of the AGC's, is for a short amending Bill, to amend sections 28 and 29 of the Act.

Link to Government Strategic Plan

One of the 5 main themes of the Programme for Government 2016-2021 is a Healthy and Safe Island, two outcomes of which are to improve services for people who really need care in hospital and to work to ensure that everyone receives good value health and social care services.

Link to Department Aims and Objectives

In the Department's 'Health and social care in the Isle of Man – the next five years' the third strategic goal is to improve services for people who really do need care in hospital and the fifth strategic goal is to ensure people receive good value health and social care.

Responsible Departmental Member

Ann Corlett, MHK

Ministerial sign off

I have read the Impact Assessment and I am satisfied that the balance between the benefit and any costs is the right one in the circumstances.

Signed by the Minister

Date:

SUMMARY: ANALYSIS AND EVIDENCE

IMPACT OF PROPOSAL

Resource Issues - Financial (including manpower) [Note C]

Statement

Excepting agencies that supply doctors to work solely for the Department to register under the Act

No additional financial resource, including manpower would be required.

Excepting agencies that supply nurses and midwives to work solely for the Department to register under the Act

No additional financial resource, including manpower would be required.

Likely Financial Costs

There are no known likely financial costs associated with the amendments proposed to sections 28 and 29 of the Act.

Likely Financial Benefits

Not known

If the proposal introduces provisions that will require another Department, Board, Office or Body to take on additional work or responsibility please ensure that they have been consulted with early on in your considerations. Please provide a brief statement as to who they are and the consultation that has taken place.

No.
<p>Are there any costs or benefits that are not financial i.e. social</p> <p>The benefit in excepting agencies that supply doctors, nurses and midwives to the Department from the requirement to register is to help secure the Department's ability to engage temporary professional staff; necessary to provide essential health and care services.</p>
<p>Which Business sectors/organisations will be impacted, if any, and has any direct consultation taken place?</p> <p>Employment agencies and businesses that supply doctors, nurses and midwives to the Department won't be required to register in accordance with the provisions of the Act.</p>
<p>Does the proposal comply with privacy law? Please provide a brief statement as to any issue of privacy or security of personal information.</p> <p>The proposed amendments have no affect or impact with regards to privacy law.</p>
<p>Has Treasury Concurrence been given for the preferred option [Note G]</p> <p>The Bill does not carry any cost implications, thus the Department is not required to seek Treasury concurrence for the Bill to be submitted to the Council of Ministers for the introduction of the Bill into the Branches.</p>
<p>Key Assumptions / Sensitivities / Risks [Note H]</p> <p>The Department's intention is for the Bill to be introduced into the Legislative Council on 22 October 2019. To meet this target the Department is dependent upon the legislative drafting team at the Attorney General's Chambers, Departmental approval of the Bill and the consent of the Council of Ministers.</p>
<p>Approximate date for legislation to be implemented if known</p> <p>On the assumption that the Bill is introduced into the Branches on 22 October 2019 and the Bill progresses through the Legislative Council and the House of Keys as anticipated, Royal Assent should be announced in February/March 2020.</p>
<p>SUMMARY: CONSULTATION</p>
<p>Consultation in line with Government standard consultation process</p> <p>In accordance with the direction of the Council of Minister's, given that there are no policy changes which might affect the public directly no public consultation was undertaken.</p>
<p>Date N/a</p>

Summary of Responses:

N/a

EVIDENCE BASE

Review of the Regulation of Care Act 2013 and secondary legislation made under that Act.