

## **Regulation of Care Bill 2012** **Second Reading approved**

4.1. Mr Robertshaw to move:

*That the Regulation of Care Bill 2012 be read the second time.*

**The Speaker:** Item 4, Bills for Second Reading. First of all is the Regulation of Care Bill, and I call on the mover, Mr Robertshaw, to move the Second Reading.

**Mr Robertshaw:** Thank you, Mr Speaker.

One of the three priorities of this Government is to protect the vulnerable. The Regulation of Care Bill seeks to support this by introducing a single comprehensive piece of legislation to deal with the regulation of social care and non-NHS care services on the Island which deliver care to many of the most vulnerable in our community.

The current basis for the regulation and social care and non-NHS care services is the Nurses and Midwives Act 1947, the Nursing and Residential Homes Act 1988, and parts of the Children and Young Persons Act 2001. These Acts only cover the registration and regulation of a few social care and non-NHS care services and are largely out of date.

This has resulted in a number of care services not being regulated at all – for example, Domiciliary Care, which is delivering care to large numbers of people across the Island. There is also no requirement in current legislation for the Department of Social Care’s own services to be regulated. Therefore, the main purpose of the Bill is to widen the regulatory remit not only to include services that were not around at the time that the existing legislation was written, but also to ensure that regulation can keep up with the changing care service market, which this Bill does by allowing new care services to be added on via secondary legislation.

Hon. Members will be only too aware of serious cases in other jurisdictions which highlight the need for robust regulation of services which are providing care for the most vulnerable in our community. Stakeholders demonstrated, through the consultation on the draft Bill, their support for regulation in this area with 100% of respondents agreeing that care services should be regulated to protect people using those services. This is because with the increase in private and third sector providers of care it is essential that service users and their families have complete confidence in the services being delivered.

Whilst the public and stakeholders have been supportive of regulation in this area, we have been determined to ensure regulation is appropriate.

The aim of this Bill is not to greatly increase the regulatory powers of my Department, but instead seeks to strengthen and modernise those already in place. The Bill creates an appropriate level of regulation by creating consistency in the regulation of social care and non-NHS care services, as previously adult services and children’s services were dealt with under different pieces of legislation; introducing a new approach to the registration and inspection of services, one which concentrates on service improvement; creating more appropriate enforcement with a full spectrum of proportionate enforcement action; providing clear transitional arrangements, which avoids issues that other jurisdictions had in introducing similar legislation; creating more transparency, ensuring that all inspection reports are available to the public.

The Bill is made up of 10 parts and a schedule: part 1 is the introduction and contains the key definitions; part 2 states the Department’s functions in relation to the Bill; part 3 details the registration process; part 4 details the monitoring and enforcement powers; part 5 deals with the registration of social care workers; part 6 is about appeals; part 7 deals with offences; part 8, proceedings; part 9 contains the closing provisions; and part 10 details the amendments of other legislation; the schedule contains the full definitions.

The Bill is unique to the Isle of Man and aims to create a comprehensive and transparent regulatory framework. Therefore, there is more information in the primary legislation, allowing for Members to fully debate the detail – for example, specifying the circumstances in which a person would be disqualified from registration.

Hon. Members may note its length; however, I would highlight that in introducing this Bill, two Acts – the Nurses and Midwives Act and the Nursing and Residential Homes Act – will be repealed, alongside parts of the Children and Young Persons Act. Therefore, it exceeds Government’s determination to ensure Acts are withdrawn from the statute rather than just adding more. Furthermore, its size will be reduced once amendments and transitional provisions drafted to ensure a smooth transition for currently regulated services expire, reducing its length from 105 to 79 pages. I believe this is fairly economical for such a far-ranging Bill.

The Bill is slightly longer than comparable legislation in other jurisdictions, but significantly shorter when you take into account the myriad of regulations that sit under those pieces of legislation, especially in England, which have been born out of deficiencies in their primary legislation which we have sought to address in this Bill.

The Bill has been the subject of a wide and extended public consultation, which included face-to-face engagement with stakeholders, and all comments received have been addressed.

Mr Speaker, I move the Regulation of Care Bill 2012 now be read for second time.

**The Speaker:** Hon. Member for Douglas North, Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and in doing so I would like to obviously support the Minister in his endeavours for moving this, this morning, but I do have some questions which I hope he can clarify when he responds to the debate.

It will come as little surprise that those questions that I pose to the Minister relate to my Questions that I could not ask previously in relation to chiropractors. What has this got to do with the Second Reading, Vainstyr Loayreyder? Quite simply, two to three years ago, I negotiated with the then Department of Health and Social Security, which encompassed Social Care, with the Minister of the day, with the heads of department of the section of Social Care – Mr Andrew Swithinbank and Mr David Gibson at that time – in a professional manner, where I raised serious concerns that were brought to me by chiropractic professionals who are registered with the British Council of Chiropractors and the General Chiropractic Council of Great Britain, or the United Kingdom I should say.

The concerns were these, Vainstyr Loayreyder, and I need to outline them, really, because it is quite important for the public to realise some of these points, in that the Isle of Man has no legislation whatsoever to regulate somebody who decides to set themselves up, stick a notice outside their house, and call themselves a chiropractor. I could do that tonight outside my house and begin to offer what, in my opinion, could be chiropractic services, and there is nothing to stop me, as far as I am aware, from doing so.

This was flagged up to me – and the reason for my concern, Vainstyr Loayreyder – because a constituent of mine, who was receiving chiropractic treatment from somebody who was not registered with the United Kingdom's recognised professional bodies and recognised by the United Kingdom government – they were partly registered somewhere else... administered 'chiropractic care' to this person and subsequently caused serious physical injury to that person. There was a subsequent court case and there was a subsequent payout, which is in the public records, and the individual who administered the chiropractic service has now left the Island. That is the result of no regulation here.

The other serious point that I need to put on the public record, connected with this Bill – because I had it agreed that this clause would go in – is the fact that not only can somebody suddenly put a brass plate outside their front door, offering chiropractic services when they might not be recognised by the UK professional bodies or government in their Chiropractic Act, but if they have on their premises where they are doing this from... if they can afford to set it up, they can also have X-ray facilities and perform ionising radiation there – X-rays – willy-nilly, at their own discretion.

In some cases it has been reported to me – and it is also a concern of the radiology department in Noble's Hospital, if anyone wishes to check – that we have a situation here where regular X-ray is being advertised, when in fact it is in breach of the United Kingdom professional radiographers' guidelines and it is in breach of the United Kingdom professional chiropractic guidelines – and this is going on, as I speak, Vainstyr Loayreyder. It has been reported to me, this advertisement of various care programmes and care packages and what these include, and at the minute this is totally unregulated.

I may point out, Vainstyr Loayreyder, that in the past shoe shops used to do completely unregulated X-rays and that was stopped on the safety grounds that I am talking about. We now have a situation where this re-emerged, to the consternation of every proper, registered UK professional that I have just talked about.

I raised this matter with the Department. It was negotiated, it was agreed, it was put into this particular Bill, and to my complete horror and consternation, and without anyone having the professional cordiality to lift the phone and say to me, 'Mr Henderson, I am sorry, we are taking your clause out that you negotiated with the Department's professionals and it is being moved elsewhere; we will not be moving this at this time within our care regulation Bill,' even though I negotiated that with the professionals at the time in a proper manner and it was agreed with the Department of Social Care at that time, or the section of it, could keep an eye on things and stop what I have just illustrated happening, and for anybody else in the future, such as my constituent, receiving a serious injury from somebody possibly setting up, calling themselves something which they clearly are not, or not fit to practise.

What I need to know from the Minister is why could somebody not have picked the phone up or spoken to me in the professional, cordial manner in which I addressed the original Department, explained to me what the reasons were, and then we could have moved forward.

I also want to know, as a matter of urgency, Vainstyr Loayreyder, in the Minister's response – and I am sorry to labour the point, but it is important and the public need to be aware that this situation is going on at the minute – where that clause is now going and will it be coming back somewhere else and fairly rapidly?

Otherwise, I can see I am going to have to introduce, as a matter of urgency, my own Private Member's Bill to cover this because of the serious Health and Safety points on the radiography I am talking about, and that somebody could practise what they are terming therapeutic techniques on somebody when they are not qualified and somebody could be seriously injured.

I would point out to the folks who have expressed concerns to me in the past that the UK recognised these very points, and in 1992 passed their own complete legislation on chiropractic services as a standalone piece of legislation. That is how important and that is how serious this is... least of all the professionals who are qualified with the recognised UK qualification, who have been coming to me, expressing their deep concerns. So I will be interested to see the Minister's response on these issues, Vainstyr Loayreyder.

Gura mie eu.

**The Speaker:** Hon. Member for Onchan, Mr Quirk.

**Mr Quirk:** Thank you, Mr Speaker.

I also wish to endorse the sentiments made by the Member for North Douglas on that. There has been some time that these organisations have not been regulated and I just wanted to rise and support the Member on this particular issue and hope that if it is not too late, maybe some insertion could take place within the Bill. It is up to the Minister to progress the Bill at whatever speed he wants to take it through the House, but one would hope that the Minister would take on those views.

**The Speaker:** Hon. Member for Douglas East, Mrs Cannell.

**Mrs Cannell:** Thank you, Mr Speaker.

I wonder if the Hon. Minister can advise the House on who participated in the consultation exercise, who was invited to consult, who submitted responses and where those responses in fact might be published, bearing in mind that it is primary legislation that we are considering this morning, which comes under the Chief Secretary's code on matters of public consultation.

I just do not recall, Mr Speaker, having seen the outcome of that public consultation exercise, so I am just wondering if the Minister can offer some guidance on that.

In view of what has been raised in the House this morning by the Hon. Member for North Douglas, would the Minister seriously consider accepting an amendment at clauses stage to insert the very clause with which Mr Henderson is referring, which I think the majority of us would agree is in fact very important and essential?

Thank you.

**The Speaker:** Hon. Member for Onchan, Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, obviously any move that improves the services for the most vulnerable in our society, we should congratulate. I know when we brought in the original Nursing and Residential Homes, in 1988, that was a landmark improvement as far as the elderly were concerned.

One of the things I am concerned about by the Minister is when it talks about the establishment of a tribunal, as far as the Bill is concerned. I am very concerned about making sure there is proper independent audit. My viewpoint has always been that in the likes of his Department there should have been a Social Services committee, which was independent with a totally different electoral college, as one of the checks and balances when we are given great power.

I think a recent experience that I had in my own constituency is where we end up with a situation where his own... under this existing power, under existing legislation, if the staff break their own law and there is no recompense as far as that issue is concerned.

When we look at the likes of the Children and Young Persons Act, that... I have not got it in front of me now, have I? Yes, the requirement as far as the younger aged... the Children and Young Persons Act, the situation is that they break their own laws so they are supposed to take into cognisance the issue as far as planning of this is concerned, but it is all 'Tally-ho! We are all friends together,' so we end up with a situation where the legitimate concerns of the neighbours, where they think that there is the planning restriction applied, and then I think – and don't quote me on the exact number – it is 75 that your Department has given them, when the fact is that part of the regulations under the Act they have to abide by planning law, but because it is Government and because it is the small individuals, there is little or no recall as far as that issue is concerned.

People outside Government would be prosecuted for such breaches, but because it is inside Government we have this cosy arrangement where we do not prosecute people, which we thought we had beaten 20-odd years ago, with issues the likes of Litt's, when we had the policy changed.

So one of the things I am concerned about is the deficit within this piece of legislation, that independence, and whilst it recognises the Human Rights Act, I just feel that that is one of the issues that needs to be addressed

as far as accountability and about holding people to account as far the public servants are concerned. We have got all this power and not have the checks.

One of the things that I feel that maybe we do need to be looking at is creating some sort of structure, when we are talking about the elderly, where we have some sort of buddy scheme that I tried to get them to do when I was on the DHSS, whenever it was... 15 years ago, where we had lay people who can actually hold the inspectorate to account as far as the homes are concerned, and that needs to be made up of the interested organisations that have an interest in the likes of the elderly.

I am tempted to try and move some amendments on this point in this piece of legislation, but my concern is making sure that the powers that we give to our public officials are accountable and when we create legislation that I do not find a situation where they break their own care legislation under the Children and Young Persons Act by saying they have to enforce the planning law, but then they unilaterally give a higher level than the planning law and there is no accountability as far as the issue is concerned. So we are quietly meeting together and we just change the situation for that.

So I think, Vainstyr Loayreyder, the Bill is a good thing. The Bill needs to be supported. What I am concerned about is its independent audit as far as that issue is concerned and I think that issues on the inspection, whilst it was revolutionary in 1988 – trying to bring in some sort of independent inspection into residential homes – you need something in there just to keep people on their toes when we are dealing with very vulnerable people.

Obviously, I will be supporting the Second Reading of this Bill, but I do think there are glaring deficiencies as far as trying to hold people to account and not just keep the ever long march of creating more and more powerful officials with no accountability for those officials, even in this political structure here today as Members of Tynwald, and being a member of the Oltey y Chiare as Feed.

I do feel that the Minister needs to take it on board and, before he uses the block vote of the Government system, listen to what people have to say, if we decide it is worth our while even attempting to bring about that rebalance.

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

**Mr Robertshaw:** Thank you, Mr Speaker, and may I thank the Member for North Douglas for seconding the motion. I am most grateful to him. I think it is very important to address his concerns with regard to the removal of elements, as he clearly outlined in his words.

The Department has been made aware, through correspondence with the Hon. Member, that an agreement to include the regulation of chiropractors was made under the former Department of Health and Social Security, before the functions of Health and Social Security split.

The Department of Social Care welcomed the request to insert a section within the Regulation of Care Bill to enable chiropractors to be regulated and has worked closely with the Department on this issue. However, it became clear as the Bill developed and consultation with stakeholders took place that the best way forward for the regulation of healthcare professionals, such as chiropractors, was to recognise the regulatory powers of the various professional bodies as the most appropriate form of regulating this group. This is different to the provision of the Regulation of Care Bill, which is about the full registration and inspection by the Department of Social Care and focuses on the regulation of care services, rather than individual professions. I think it is a very important point to make.

The Department of Health, as lead Department, therefore felt that rather than continuing to use the Regulation of Care Bill as a legislative vehicle for introducing regulation chiropractors, it was more appropriate for chiropractors to come under legislation that they are bringing forward, which will include provisions to regulate a wide range of healthcare professionals, not just chiropractors, using existing professional bodies.

So before the Hon. Member feels he wishes to start moving amendments to return ‘chiropractor’ into this Bill, I would ask him to consider the Department of Health’s position on this and that it would fundamentally change the nature of this Bill which is focused on issues of care, rather than governing professional bodies; but I do fully understand his sentiments and I hope I have gone some way to ameliorate his concerns.

So he asked, and the second part of his commentary was, ‘Where has it gone?’ It is now with the Department of Health and they are maturing a Bill in their Department to ensure it covers the area in a holistic and detailed way on a variety of professional bodies which do not currently come under regulation.

I thank the Member for Onchan, Mr Quirk, and recognise his concern and the concerns of all Members over this matter and I hope that he also is somewhat reassured by my words.

**Mr Henderson:** Point of order, Vainstyr Loayreyder, and I am sorry to interrupt proceedings, but could the Minister answer why the sponsoring Member for the amendment was not informed? Does he know it was my query, if and when this Health Service legislation might hit the floor of the Keys?

**The Speaker:** I am not treating that as a point of order. I am treating it as an intervention, which is possible under our Standing Orders.

Minister.

**Mr Robertshaw:** Mr Speaker, I am happy to accept it as an intervention.

This Bill, which my Department has been working very hard on, over the last year, has – as he knows, I think – been around for a long time and first came into being, I think, in 2007, in its early formation. I would put it to him that his discussions were with, and agreements, effectively, were with the original Department.

**Mr Henderson:** They *were* agreements.

**Mr Robertshaw:** Yes, agreements with the original Department. The Department has now split into two and his agreement, effectively, is now with the Department of Health.

**Mr Henderson:** It is with the Social Care Minister.

**Mr Robertshaw:** It was with the Department of Health and Social Security. (*Interjection*) I think that is a fact.

**The Speaker:** Keep the debate through the Chair, please, not to each other. (*Laughter*)

**Mr Robertshaw:** That is the answer to the intervention. If I can proceed, Mr Speaker? (**The Speaker:** Yes.) Thank you.

With regard to Mrs Cannell's comment, she asks what the response to the consultations were. She again reiterates her concern about chiropractic issues.

I am pleased to advise the Hon. Member for Douglas East that every registered service provider was consulted during the process and all those who will come under registration were also consulted. The outcome was actually published in September and circulated to all Members and is available on the Department of Social Care website. I can reassure the Member that a considerable amount of extended consultation went on, on the part of my officers, to go out and to meet and discuss the proposals in great detail with those who will be affected.

If I can turn now to the Hon. Member for Onchan, Mr Karran's comments, and he again has stood up today and reiterated his concerns about transparency and about openness and about accountability. I would ask the Member to – and I thank him for his support in his indication of voting in favour of the Second Reading – appreciate that the heart of this Bill is about openness and transparency. What we are actually doing in this Bill is taking the process that my Department goes through and putting it under registration inspection and then along with everyone in the private and third sector, who will also be covered, effectively producing public reports on those inspections. So this is a very, very major step forward. It provides and is a coherent move towards open and transparent Government. I think it is an important step forward and I hope he appreciates that that is the spirit of it.

Mr Speaker, again, reiterating my thanks to the Member for Douglas North, Mr Henderson, for seconding the motion, and I beg to move.

**The Speaker:** Hon. Members, the motion before the House is that the Regulation of Care Bill be read for the second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.