

Regulation of Care Bill 2012 **Third Reading approved**

4.1. Mr Robertshaw to move:

That the Regulation of Care Bill 2012 be read the third time.

The Speaker: We turn now to Bill for Third Reading, Item 4, Regulation of Care Bill, and I call the mover, Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

First of all, I would like to thank Hon. Members for their contributions during the clauses stage.

As previously outlined, the Regulation of Care Bill introduces a single, comprehensive piece of legislation to deal with the regulation of the Island's social care and non-NHS care services that deliver care to many of the most vulnerable in our communities. The aims of the Bill are to: widen the regulatory remit to include services that were not around at the time when the existing legislation was written; ensure that service users and their families have complete confidence in the services being delivered; modernise and, in some areas, strengthen the current regulatory powers of the Department of Social Care; create an appropriate level of regulation by creating consistency in the regulation of social care and non-NHS care services – 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 their improvement; creating more appropriate enforcement, with a full spectrum of proportionate enforcement action; providing clear transitional arrangements which avoid issues that other jurisdictions had in introducing similar legislation; and creating more transparency by ensuring that all inspection reports are made available to the public.

Mr Speaker, during the clauses stage of the Bill, whilst most questions were dealt with, some issues were raised by the Hon. Member, Mr Quirk, and the Hon. Member for Douglas East, Mrs Cannell, that require more detailed information. I would like to take this opportunity to provide further clarity in relation to those issues.

The Hon. Member for Douglas East raised a point concerning clauses 43 and 44, which detailed disqualifying circumstances for registration, specifically in relation to why only British Isles legislation was referenced in relation to disqualifying circumstances for registration. This is because, if we were to extend the reference, then we would, potentially, require knowledge of how all countries operate, what their legislation is, if any, and how to interrogate their systems. This is a complex area and one which, unfortunately, cannot be resolved by this piece of legislation. However, the registration inspection team have detailed procedures in place, which continue under this legislation. The current criminal records bureau checks now extend to the Isle of Man. When it is a country outside the UK, then the applicant must provide a letter of good conduct from the authority in the country in which they lived. If this cannot be provided, then we may not register them.

Hon. Members raised questions in relation to clause 60, namely the power to impose registration conditions. In confirmation, a time limit may be imposed on a decided condition, but depends upon the condition being imposed. For example, referring to the issue of outside play space I used in my explanation, if it was a full daycare facility and there were some issues with outside play, such as perimeter fencing and the provider intended to use the outside space, we may well allow a registration with a condition that the space could not be used until fencing had been erected, this within a given timeframe. However, if there is no outside play area or an unsuitable play area that the provider had no immediate plans to use, then we might still add a condition that the area must not be used until deemed suitable by us. The standards allow for no outside play area by stipulating that the service must have adequate arrangements in place for children to be escorted to a local park or playgrounds on a regular basis. Under those arrangements, we would not need a timeframe in place, just a condition that said the area must not be used until deemed suitable.

The Hon. Member for Onchan raised a point in relation to clause 70, continuing suitability of premises, asking where elements are inspected by a registration inspection team and where other bodies are involved. The examples that I gave are all able to be examined by an inspector: namely, electrical safety requires a certificate from an approved contractor that states the premises meet the current wiring regulations. Lifts have to have a service report from an approved contractor and portable appliance testing has to be carried out by an approved contractor. The evidence is in the certification by that contractor. Inspectors know exactly what evidence they require but, when necessary, they will ask for an opinion from another agency, such as Health and Safety or the Fire Department. The registration inspection team are currently working on agreed protocols between these agencies. However, as we are the primary enforcing agency, other bodies mainly act as our agents.

Other agencies visit services and prepare reports for the registration and inspection team, as part of the registration process, although following registration, they do not inspect services as a matter of routine.

The Hon. Member for Onchan also queried a point on division 5, subdivision 1, amendments to registration, questioning whether other interested parties be given notice of a change of registration. The legislation requires

that we register services or people who make application and who can demonstrate they are suitable to operate or manage such a service. The law does not provide for any other person to be informed.

However, many services require planning permission and, under planning law, there is notification of planning applications and the public are able to object. Our procedures require that planning permission is granted before registration. Most changes to registration do not require additional planning permission, but where they do, this forms part of the re-registration process. Childminders do not require planning permission if they are not able to mind more than six children. As detailed in clause 107, registered services are a matter of public record and anyone can view the register which has, by law, to be kept available for inspection. It is also a matter of law that providers must display their registration certificate and it is an offence not to display this in a prominent position.

Last week both Hon. Members sought some clarification on clause 130, reports and inspection. To clarify, the clause states the report may be made available in a way the Department considers appropriate. This is to allow the Department to publish reports in different formats – for instance, for service users who have learning disability – as well as in different methods i.e. in hard copy or online. It does stipulate that the information should not be made available, if it is considered to be detrimental to an individual's welfare.

In relation to the query about appeals against inspection reports, I can confirm that, due to the nature and process for report giving, there is no appeals process for this division. Inspection reports are based on evidence gained and reported at the time of the inspection. In addition, events throughout the year that are a matter of record can also be included in the report and form part of the evidence for judgements made about how the service is performing, such as the number of complaints that have been received since the last inspection. The inspector has to provide feedback at the end of the inspection visit and must mention all issues that will form the subject of a requirement or a recommendation. The provider should never receive a report that contains anything different. It is a 'no surprises report' policy.

Occasionally, the inspector might have written down something in the report in error, which is factually incorrect, and the provider is given the opportunity to have factual inaccuracies corrected. There is a sheet to return to the registration and inspection team, which they have to sign to state that they agree with the content, or, if not, what they disagree with. Furthermore, evidence for judgements made have to be triangulated. That means the inspector can only reach a judgement when three sources confirm that judgement, these being what the inspector read, what they observed and what they were told. For example, if a visitor said that there was insufficient staff on duty, this would only be upheld as being correct, if there was evidence from observation of rotas and staff records; the inspector's observations on the day of inspection; or a subsequent drop-in visit; and if staff and/or residents provide information which concurred with that.

If a provider disputes the evidence the inspector is relying on, then this will be re-examined, firstly by the inspector and, if not satisfied, by the manager of the registration and inspection team. Inspectors cannot give personal opinion. All evidence has to be based on professional opinion that is, in turn, based on accepted standardisation of good and best practice.

There has been a great amount of work carried out behind the scenes to bring this comprehensive and significant piece of legislation forward. I would like to thank the stakeholders, who have provided invaluable input into the drafting of the Bill, through both written comments and attendance at a number of public meetings held on the Bill. I would like to thank the Attorney General's Office for their advice and patience with the development of this legislation. I would like to thank the registration inspection team who have devoted their time to bringing this Bill forward, whilst also continuing their vital work in registering and inspecting current, regulated services.

I would also, Mr Speaker, like to break my own rule about not naming officers on the floor of this House and, on this occasion, for good reason. As already stated, this has been a major piece of work and, at every stage, our legislation officer, Sam McCauley, has shown diligence, total commitment, sheer hard work and patience and I wish to register my sincere appreciation of her important contribution. Finally, thank you to fellow Members of the Department for endlessly seconding me last week.

Mr Speaker, having outlined the aims of the Bill and clarified the issues raised during the clauses stage, I beg to move that the Regulation of Care Bill be read for a third time.

The Speaker: Mr Ronan.

Mr Ronan: I beg to second and reserve my remarks.

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

Mr Quirk: Thank you, Mr Speaker.

I am thanking the Minister for his comments, but I may get them in the wrong order and I hope he appreciates regarding conditions. The one where the Minister did indicate that a facility could be placed or built

with no outside area for play or activities, I think he said that. I feel that is quite strange when a facility is to be made, is to be constructed, sometimes in an urban area, but those facilities or the area for play and activities has to be part of the conditions there, which I am uncomfortable with, of not having that.

The other part, Mr Speaker, is reference to - I think he mentioned - which in our own constituency, the three of us here in Onchan, regarding planning, when a facility then grows and becomes *infinitum* which, in an urban area, can cause difficulty with neighbours, friends and the notification. There is notification in planning, but on a particular one which the Minister will be aware of, certainly the officers will be aware of, there was a missing link and it has caused some difficulties on that, so I was hoping that we could strengthen that particular one up.

The one, I think the Minister has missed off the register, as such, going down, I did ask regarding the cost of tribunals and the make-up of the tribunals and where the money was going to come from to organise these tribunals, which, if things are taken to appeal - and we know there will be an advocate involved, maybe chairing the appeal for strength - what the make-up of the appeals panel would be and how that would be independent from the operator and the Department itself and who it would be responsible back to, probably the Department, but seeing that independence there.

The Speaker: Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker.

I am not sure if I misheard the Minister, when he was moving Third Reading. I cannot remember which clause he was talking about, but he did say we do not inspect as a matter of routine. I would like him to clarify that. My understanding of this legislation is upon application for a licence to operate such a facility that an inspection will be taken, will be undertaken and, thereafter, there would be regular, annual inspections. If the Minister could clarify that, to ensure that the premises are staying fit for purpose.

In respect of reports, which is a first for the Isle of Man, that reports will be made and published. The criteria for publishing them still seem a little bit woolly to me, if the Minister can clarify that. I understand, if the reports contain any personal information, then clearly that section ought to be redacted, as happens in a lot of reports these days, to protect the individual's identity, but I would have thought that the report should be accessible to anybody who wants to have a look at a report prior to, perhaps, placing their loved one in a facility. They want to ensure that it does dot all the i's and cross all the t's.

He said, in respect of the report's publication, there is no appeals process, as such, and that there will be a 'no surprises report' policy. It is all very well, Mr Speaker, may I say to the Minister, to have policies of behaviour and consideration of certain matters in particular ways, but a policy can easily be broken, perhaps by misunderstandings and misinterpretation by staff. It might be the Minister's intention that there be no surprises, but I would have thought that would be very hard to achieve, unless you get a situation where the inspector does the inspection, produces a report and then lets the person inspected have a look at the draft report. That could go on for weeks, before the person having been inspected agrees that all the findings in the report are accurate, as they recall. It seems a bit woolly... the process to me seems a bit woolly, so if the Minister can clarify that further, I would appreciate it.

The Speaker: Mover to reply. Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

Turning to Mrs Cannell's points first. The inspections process, for clarity, does have to take place at the initial application and then regularly thereafter. I am sorry if I gave any other impression, but that is the position.

As far as the reports are concerned, I would like to reassure the Hon. Member that stakeholders welcome reports; any professional organisation that is satisfied and proud of its performance will want it promulgated and, as a hotelier, I remember very well in classification and grading that those who were anxious to promulgate their performance were happy to see publication of reports. It is part of the professional approach and I am satisfied that stakeholders in this area have exactly the same view. They wish to be separated from those who may have lesser standards. So the reports are most welcome by the stakeholders.

I cannot concur with the Hon. Member's comments about deviating from process on inspections. I am perfectly satisfied that those will be rigorous and consistent and they will be, as I have explained, I hope in my earlier comments, will follow a process before the report's inspection finally comes to public knowledge. Of course, she mentioned redaction; of course, elements will be redacted as appropriate.

Turning to Mr Quirk's points. It is in certain... first of all, play areas, I am sure that it is very likely that if there was a facility custom-built in today's environment that it would be in the interests of the provider to make the facilities as comprehensive as possible, if they were going to enjoy customer support, effectively, but as it quite reasonably points out, there are circumstances, often in urban areas, where the full range of facilities are not available, but inspection process is very clear on this, that if there is not a play area facility immediately adjacent to the property, other arrangements must be put in place and those other provisions will be tested

rigorously.

With regard to planning, I am disinclined to want to start addressing a particular point, which I know the Hon. Member is particularly interested in and I have made the point very clearly, that planning issues must be dealt with prior to the registration process and that is really all I can say on that matter.

Finally, on his point on tribunals, the cost set out on the impact assessment is £3,000 per year. The chairperson is set out under the Tribunal Act and the other two members will be set out by the Department and consist of representatives from the inspection side and the operations side and I hope that satisfies the Hon. Member.

With that, Mr Speaker, I beg to move.

The Speaker: Hon. Members, I put the question that the Regulation of Care Bill be read for the third time. Those in favour, please say aye; against, no. The ayes have it.

A division was called for and electronic voting resulted as follows:

FOR	AGAINST
Mr Hall	Mr Quirk
Mr Karran	
Mr Ronan	
Mr Crookall	
Mr Anderson	
Mr Bell	
Mr Singer	
Mr Teare	
Mr Cannan	
Mr Cregeen	
Mr Houghton	
Mr Henderson	
Mrs Cannell	
Mr Robertshaw	
Mr Shimmin	
Mr Corkish	
Mr Cretney	
Mr Watterson	
Mr Skelly	
Mr Gawne	
The Speaker	

The Speaker: The motion carries, 21 votes for, 1 against.