

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

2. Mr Butt to move:

*That the Regulation of Care Bill 2012 be now read a first time.*

**The President:** We now move to the Regulation of Care Bill 2012, and I call on Mr Butt to take the First Reading, please.

**Mr Butt:** Thank you, Madam President.

This is a lengthy Bill, as you can see, but with your consent we hope to take the clauses in grouped stages, and there will be some amalgamation of groups, which may shorten the process.

Madam President, the Regulation of Care Bill seeks to introduce a single comprehensive piece of legislation to deal with the regulation of social care on the Island and services which deliver care to many of the most vulnerable in our community.

There are currently four Acts which cover the current regulation of care services: the Nurses and Midwives Act 1947; the Nurses and Midwives (Amendment) Act 1984; the Nursing and Residential Homes Act 1988. The important elements of those Acts are contained within this Bill. As a consequence, those Acts will be repealed. Similarly, there are parts of the Children and Young Persons Act 2001 which are in this Bill and will consequently be repealed.

Madam President, there are a number of problems with the present regulatory system. In particular, those particular Acts I mentioned are outdated and no longer fit for the purposes they were... They no longer fully reflect the way care services are provided, and importantly, the Acts only regulate a few care services. Hence, several services are currently unregulated – for example, domestic care services, where people enter into people's private homes, fostering care and adoption.

Also, there is no requirement to inspect any of the Department of Social Care's own care services, and currently they are not inspected. The public need to be reassured that high-quality care services are provided, including the services by the Government and the Department of Social Care, particularly as many service users are vulnerable and the providers are entering the service users' homes.

Also, at present, there is no requirement for social workers to be professionally regulated, and this is addressed within the Bill.

As a result, our current legislation and regulation is considerably below the standards of most comparable jurisdictions and does not adequately protect the public. There are presently unregistered care providers in the private and third sector which need to be regulated and registered to reassure potential customers and their families.

There is also a significant demand for public release of inspection reports of service providers to help them make informed choices about which ones to choose to send their vulnerable people to, and this Bill will make it possible for the public to see inspection reports on registered premises and providers.

There is a risk to the Department of Social Care in leaving these services unregulated. Regulation of social care has come under the spotlight in recent years in the UK, where abuse has been revealed by staff at private hospitals. If similar cases come to light in the Isle of Man, it would be a significant risk to the Department and Government if we did not have plans underway to address the deficiencies in our current legislation.

All the surrounding jurisdictions now have regulatory care legislation in place, which presently leaves the Isle of Man vulnerable to attracting potential and actual abusers to own, manage and be involved in care service provision here. This situation will be rectified by the introduction of this Bill. Madam President, the Isle of Man legislation already lags behind the UK and we are at risk of falling further behind.

In addition, the Government's aspiration to review and change the scope of Government on the Island may well have direct consequences for the provision of social care. Through these changes, it becomes critical that the Government, as a commissioner of services, will be able to direct and manage the development of private services. With the increased introduction of private or third sector providers of care in all areas, it is essential that service users and beneficiaries are able to have complete confidence in the services they are paying for, and in particular those commissioned and provided by Government.

In summary, Madam President, what the Bill does is firstly incorporate all the elements of the present registration and inspection under the Acts I mentioned previously.

The Bill is divided into different sections and divisions. In part 1, it defines what social care is, and division 2 of part 1 defines what agencies are, what establishments are, and defines various types of care provider.

Part 2 defines the functions of the Department and gives the power to the Department to make minimum standards for care, and it will introduce minimum standards of care for all services that will be regulated. It also provides a comprehensive regulatory framework and reflects up-to-date regulatory legislation, UK case law and

tribunal outcomes in this area of work.

Part 3 details all aspects of the registration of care services. It defines disqualification and exemption from disqualification, and defines who is suitable to be a manager or supervisor. It also introduces a new approach to regulation and inspection of services, which concentrates on the improvement of service provision.

It allows for a new power to suspend registration. The additional power to allow for suspension of registration can be used when serious concerns come to the attention of the authorities. This is sometimes preferable to cancellation of registration, although it is possible that cancellation may eventually follow. It is therefore preferable, in some cases, to suspend someone's registration rather than cancel it, unless there are other significant concerns that show cancellation to be the only option.

A further important change in the area of registration is that, under the Bill, the onus to prove fitness is placed upon the applicant, which reverses the current burden of proof, which is, at the moment, on the Department to prove unfitness.

Part 4 concerns the monitoring and enforcement of registration. The new focus of work of the inspection team will be on ensuring a targeted and proportionate system of regulation by concentrating their actions on where they can be most effective in improving services, protecting service users and promoting dignity and independence. The powers of entry of inspectors have been modified so they can only be with consent or with a warrant issued by the High Bailiff, and there will be guidelines of inspection issued by the Department, but under the Bill they will not take effect until they have been laid before Tynwald.

This part also gives a new power to issue improvement notices, which is a new and additional power. It has been introduced to provide a middle ground between the requirements made in an inspection report and the compliance notices when those requirements are not attended to. Essentially, it gives the provider a further opportunity to get it right. The improvement notice adds in an additional step before the compliance notice is issued.

Also in part 4, there is a creation of transparent reporting. One of the key provisions of the Bill is that inspection reports of the Department and the independent sector care services will become publicly available. This will meet a strategic requirement for a more open and transparent Government. Currently, the Department cannot release reports of service provision to anyone other than the registered persons. It is then up to the registered person to give the report out to their prospective customers or families, if they wish to do so, but this Bill provides a legal basis for the inspection reports to be written and then become publicly accessible to anyone within a given time frame.

Part 5 of the Bill defines a social care worker and a social worker, and for the first time will provide for the compulsory registration of social workers and other specified staff.

Part 6 deals with appeals against the decisions made under this Bill and it sets up a Care Services Tribunal, which will be appointed under the Tribunals Act.

Part 7 details the offences which can be committed.

Part 8 deals with how proceedings against those should be undertaken.

Part 9 gives the Department regulation-making powers and includes transitional powers.

The Bill, Madam President, is quite long, but a significant part of it will disappear once it is enacted, because the transitional provisions will give a period of grace to operators on the re-registration. It will allow for an easy transition of registration for presently registered service providers, providing they meet the mandatory conditions, and will allow for new care services to continue practising while they await registration, provided they meet mandatory conditions. The provisions in this Bill will avoid the problems the UK experienced and it should save the Department and existing care providers considerable cost.

Madam President, the Bill is quite long, as I stated, and is divided into a structure which should make it easy for us to understand when we come to the clauses stage – and I hope we will.

I can say, Madam President, on behalf of the Department, it has been the subject of a wide and extended public consultation, which included face-to-face engagement with all the persons concerned, and all the comments received have been addressed.

Madam President, I beg to move the First Reading of the Regulation of Care Bill 2012.

**The President:** The Hon. Member, Mr Crowe.

**Mr Crowe:** Were you, Mr Lowey...?

**Mr Lowey:** I beg to second and reserve my remarks.

**The President:** The Hon. Member, Mr Crowe.

**Mr Crowe:** Thank you, Madam President.

Can I thank the hon. Mover for bringing this forward. It has quite a long history of formulation, because in

my period with Mr Butt on DHSS, and later with the Department of Social Care, I have seen this Bill being formulated, being out for consultation, and it has now reached the point where what we have is a comprehensive regulatory framework with proper checks and balances to bring the legislation in this area up to date. So I will be supporting the Bill.

There was an interesting item on Manx Radio this morning, which I think might refer to clause 26, independent clinics, where a chiropractor from the Isle of Man mentioned that there was no regulation in this area and he was wondering... It allows people from the UK to come to the Island to practise as chiropractors, and the regulation seems to be absent. I am not sure if this Bill brings that into effect in clause 26, where it talks about independent clinics, or not.

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Thank you, Madam President.

I too will support this Bill. I think the way it is laid out is excellent. Although a weighty Bill, the way the sections are laid out, they seem very easy to follow, which I think is evidence of the way the drafters are now trying to... I think one of Mr Lowey's main campaigns has been let's write some law which people can actually understand.

A lot of the detail will come through regulations, as many of these things do, and hopefully the regulations that are produced, that will follow this Bill if it is enacted, will be as clear and easy for people to follow.

A query I do have is I notice that the negative procedure is used for the regulations under this Bill. I just wondered why and what provisions are in it that require that procedure to be used, rather than the approval procedure – if the mover could explain that.

The Department is doing an awful lot of work in modernising various provisions, and this is certainly one of them. I think the presentation we had was excellent. It was clear, and certainly the Minister gave a very good presentation to enable us to understand. Obviously, the mover said there had been a lot of consultation going on, so hopefully the industries which are going to be operating under these provisions will fully understand what is happening.

Having spoken many times over the years in here, in Council, Hon. Members will know that I am not a fan of overregulation, but I think we have to balance up that when we are dealing with certain services that result in the care of people, many of whom will be vulnerable... and the word 'vulnerable' is quite interesting, because it conjures up a certain image, but of course vulnerable could be quite simply a child going to nursery. They are vulnerable in that they are being placed in the care of somebody else, so it is very important, I think, that where we are in a time where costs are very much on the mind of everybody, costs do not mean that some of these facilities cut corners and reduce the care.

Therefore, the provisions here and the powers the Department needs to oversee these services are vitally important. I think there are so many factors that are going on in the world around us that require this regulation, and as somebody who is not a fan of regulation, I can see the benefits in many of the provisions that are here.

The principle of what we have before us I fully support. I just have the query at this stage about the regulation procedure, because that is where most of the operational aspects are going to flow out from, so if the mover could just explain the reasoning behind that method I would much appreciate it, and I am supporting the Bill.

**The President:** The Hon. Member, Mr Lowey.

**Mr Lowey:** I think the Bill is long overdue and I think it is accepted that the standards we have had in the past are wanting and have been found to be wanting in a whole raft of areas. I think the Department has at least attempted...

Can I just flag up one or two areas which I still have some concerns about? Firstly, great play is made that we have consulted with lots of people. We have consulted lots of providers, but have we consulted the people who use the facilities? I do not think so, or at least I have not been told of any that we have actually used the people who use this, but we have consulted with the providers.

Secondly, I am not over keen when we say we have got a tribunal – at the end of the day, if we have got complaints, my word, 'we have set up a tribunal, that's okay, our problems are solved'. They are not. I hope the tribunal never sits. That is what we all hope.

The other thing that I had a concern with when the mover moved his presentation to us, was entry by consent. It seems to me that if you have to inspect premises only by consent – in other words, the people know you are coming – you can rest assured that there is a spring clean. We have all seen it, whether it is in a factory or whether it is... there is always the attempt to... I am a great believer in inspectors dropping in unannounced, and I think that is a safeguard, which I hope is not going to be removed.

I believe we, first of all, have got to bring up our standards of registration of people dealing with vulnerable

people. Our policy now is to keep as many people in... I say residential homes – in their homes; that is the best residence to be residential in – and that means a lot of pressure on people who then have the ability to go into people's homes. They need to be regulated, and I accept all of that.

I think this Bill is very good work and we have learnt by errors made in other jurisdictions, so I am happy enough with that, as far as it goes. But at the end of the day, we have... We started residential homes here... I can remember the first one – it shows you how long ago. Southlands was one of the first residential homes that was actually formed in the Isle of Man. It was not minimum standards there; they were excellent standards, where you would think, 'Well, I wish I would put a few years on and I could move in tomorrow.' Well, that time has arrived! Not for me to pop in – I have no wish to, although Southlands is still a good place. The reality is that is the standard we have. But we have moved on and we have moved into the private sector, and they have their own priorities: they are a business, they need to make money etc. I know these controls are dealing with that, but are they tight enough? Are they flexible enough? Not for the owners, but for the people who use that service, and I think we take our eye off the real vulnerable, and part of our policy of Government now is to protect the vulnerable.

When you go into a residential home or a nursing home, which is the next step after that, you are vulnerable, and therefore I think these regulations, while they may seem harsh to the people who run the homes... I think the onus should always be for Government to look after those who are using those facilities. I think the Bill goes a long way towards this – I am supportive of the Bill – but I do think... and the other thing that alarmed me was the speed with which this Bill has got its parliamentary passage so far. I hope this Council – and I will warn the mover – gives it very close scrutiny. It needs to be scrutinised, because the very people we are looking after and want to look after are those who actually operate within it... that they feel confident that they have got standards that they have to apply for the people who are receiving that service who are in a vulnerable position.

I do not want us to be over confident that, just because we have a tribunal that will deal with complaints at the end of the day, that somehow is the cure. It is not. We hope that they will never have to use it.

The Regulation of Care Bill 2012... I have attended a couple of the presentations, but that is no substitute for scrutiny of this legislation round this table.

With that, I support the Bill and I will be supporting most of the recommendations, and I am sure my good friend will be able to reassure me on some of the points that I have raised.

**Mr Butt:** Certainly.

**The President:** The Hon. Member, Mr Callister.

**Mr Callister:** Thank you, Madam President.

I do not think anyone could not support this Bill, in fact, and I am confident that the gentleman who will be here moving it will move it in a most appropriate way. Nevertheless, there is a lot to look at in it, and I think when we move on to that there will be quite a lot of time taken.

At a recent presentation by the Hon. Minister, Mr Robertshaw, he used, as an analogy, a railway track to illustrate how the legislation would proceed. I did speak to him about this because I suggested to him he would have to avoid the situation that was depicted in the Wallace and Gromit movie, 'The Wrong Trousers', in which they found themselves having to lay the track rapidly in front of an approaching train because they were being shot at, and no doubt there will be people shooting at the Minister in some areas of this as it progresses. However, it seems to me that the track is laid with this legislation. If the Minister is going to be the engine driver, he will have to make sure he keeps it on the rails.

Nevertheless, it does have one or two concerns for me. I think, first of all, this avowed plan to reduce bureaucracy that the Chief Minister keeps telling us about will have to go by the board here, because I can see this increasing bureaucracy, not decreasing. It might involve greater cost to the Department, and I wonder to what extent they have assessed what that would mean. It might involve, also in that element, more staff to be employed, and I do believe it will involve that.

I would be interested to hear from the mover if there were any dissenters in the consultation process.

Thank you, Madam President.

**The President:** The Hon. Member, Mr Wild.

**Mr Wild:** Thank you, Madam President.

Just to say I welcome what I believe is robust and practical legislation which modernises and brings together, I suppose, a range of historical legislation. I appreciated the Minister's – I felt, comprehensive – presentation on 15th January and thank his officers, because they followed up on my questioning re the fees structure with some additional information, which I welcomed.

I do agree with my hon. colleague, Mr Turner – just to ask for clarification about how the regulations come

into play, but that is a clarification point for the mover.

Otherwise, in my view, this is long-awaited, good legislation which has my support.

**The President:** The mover to reply.

**Mr Butt:** Thank you, Madam President.

Thank you to everyone who has responded to this and obviously shown some interest in it – enjoyed reading it, no doubt, for many nights. (**Mr Wild:** Many!)

I will respond, first of all, to Mr Crowe. I do remember in our time in DHSS together, I think in 2007, there was a genesis of this Bill coming through and it was quite well advanced at that stage, but lots of complications came forward. We finally do have it, and I think that is down to the expertise of the Department.

We have in the Chamber today, the Council today, Mrs Diana Gordon and Sam McCauley, who have put a lot of work into this Bill over the last few years, and I will be possibly relying on them at the clauses stage to perhaps give any detail on any of the finer points which we might need to discuss. So I am grateful for their support.

Mr Crowe mentions about chiropractors and other associated health workers, in effect. This is a Bill about the regulation of care and care provision. There was a plan, at one stage, to include in this Bill podiatrists, chiropractors etc, who are health workers, in effect. It was decided it was too complicated and it would have made too big a Bill to include those as well, because they are not care providers, as such; they are health providers.

There is a Bill coming forward from the Department of Health – it is in genesis at the moment; it should be here with us within a few months – which will be a Health Bill, which will cover chiropractors and other operators who work and use X-ray machines, matters which are to do with the health of patients rather than the care of patients. There will be a separate Bill which will cover that. This is purely concentrated on care, and it is perhaps as well that it is kept separate as a Care Bill – it does not then get confused with other issues. There are definitions of independent clinics and medical clinics, which we will come to during the clauses and I will explain what they are under this Bill.

Mr Turner agreed the Bill is well set out and easily understood. In fact, one of the reasons it is quite a long Bill is because the intention was to try to include in the main Bill and the primary legislation as much information as possible as to the legislation and the regulation. A lot of it is in here. The amount of regulations that will be made under this will be less than in normal Bills. It is here for us, as legislators, as Members, to be able to scrutinise in this form, rather than in Tynwald, just nodding through a regulation which we cannot have any influence on. Here we have a Bill we can influence in every clause, if we need to. It has been deliberately made this way so that the meat of it is in this Bill, not in the regulations.

As to the negative procedure in the codes of practice and the regulations, which we will go through, it is a negative resolution, but it is laid before Tynwald. It can, of course, be picked up by a Member and then debated, if necessary. I will find out for the next reading why it is that way, but there is still merit in doing it that way. It still can be picked up by Members and discussed and debated.

Mr Turner also mentions about who are the vulnerable people. I think clause 5 actually defines actually who we are talking about here. It is people who are being cared for because of:

- (a) their young age;
- (b) abuse, neglect or risk of harm;
- (c) past or present illness;
- (d) past or present dependency on alcohol or a drug; or
- (e) mental disorder, physical disability or infirmity.'

– and it also includes child minding. So I think we can say those are the vulnerable groups of people which this covers, and it is quite clearly defined in section 5 there.

Mr Lowey, I thank for his support. The public consultation was widespread. I think we were issued with the documentation as well, where every member of the public was able to consult, and I believe that users of residential homes and care homes were also consulted and people in nursery education and care were also consulted over this Bill.

As to whether there have been any negative comments, I am not sure at the moment, but whatever has been commented on has tried to be incorporated within the Bill in some of the changes that were made, and I have been aware of that.

Concerning the standards which might be imposed on here, the intention is, because the resources are limited and because this does actually increase the resources needed, the current inspection team will be better focused on how they inspect premises. All visits which are inspection visits will be unannounced. That is the plan; they will be unannounced visits. Of course, there will be some consultation with providers in other circumstances, but the actual visits will be unannounced, and they will be focused on the areas where there is most concern. In

other words, better directed resources, not just the normal twice-a-year inspection as a matter of routine, but more directed responses. Because of resource issues, that will have to be done. I am sure, from my consultations on the Bill, that the standards will be as high as they have always been, and perhaps stronger, bearing in mind the recent history of events in the UK, and some of the public concerns about care.

You mentioned about nursing homes and then residential care. One of the benefits of this Bill is that, currently, providers, if they are providing a residential care service, have to register as residential care. Then, if they provide nursing, they have to register for nursing as well. This Bill actually reduces bureaucracy, in that they can register for one and have a subdivision of registration for residential care or nursing care, whichever is the priority. So it makes the bureaucracy a bit simpler in this case.

Mr Callister says he is confident that I am going to take this Bill through very well. Well, I am not quite so confident, because the more I read this, the more I learn, and I am still learning, I am afraid. Some of the detail is quite complex, which is why I am glad I have assistance at the clauses stage.

He mentions that we are on the right track etc, and are we going to be laying the tracks as we go along. I think the beauty of this Bill is that when the UK brought in similar legislation, they had three major Bills of hundreds of pages and they made some fairly fundamental mistakes, in particular in the transition provisions, which they did not have. I think we have learned, or the Department has learned from the experience of the UK over the last few years, to make a Bill that actually is going to function in a better way. I am fairly sure from my consultations that they have expunged all the mistakes the UK made, or most of the mistakes they have made, and we should have a much smoother run along the track with this Bill.

Bureaucracy is reduced, to a certain extent, and the teams, as I say, will be better focused, and I think that was a point you made, Mr Callister, that this will require more staff. It may do in the long term, as more and more premises become regulated, but at present we hope to make do with the present inspection team better focused.

As to whether there are any dissenters to that, I do not think there have been, but I will find out and consult for the next reading.

Mr Wild, thank you for your support as well. The regulations, as I said in Mr Turner's case, are of a negative nature, but there will be fewer regulations with this Bill than with most other Bills, because the meat of it, as I say, is in the main Bill.

Madam President, with that, I beg to move the First Reading of the Regulation of Care Bill.

**The President:** The motion is that the Bill be read a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes our business for this morning, Hon. Members. The Council will now adjourn until 12th February, and I invite Council now to sit in private.