



# REGULATION OF CARE BILL 2012

## EXPLANATORY NOTES

*These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Hon Chris Robertshaw, MHK.*

### **INTRODUCTION**

These explanatory notes relate to the Regulation of Care Bill 2012. They have been prepared by the Department of Social Care in order to assist readers in understanding the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.

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**

#### **General**

The main legal basis for the present regulatory system of social care and non-NHS health 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 three Acts only cover the registration and regulation of a few social care and non-NHS health care services. The Nurses and Midwives Act 1947 covers the regulation of independent agencies for the supply of nurses. The Nursing and Residential Homes Act 1988 covers the regulation of independent sector residential homes and nursing homes. The Children and Young Persons Act 2001 covers the regulation of independent sector children's homes for more than 3 children, independent sector day care for children and childminders. All of the regulatory aspects of the legislation stated above are now largely out of date.

Most social care services and non-NHS care services are not regulated at all and there is no requirement for the Department's services to be inspected. This Bill will vastly extend the number and types of care services that will be required to be registered and regulated.

Also, unlike the NHS Health Service staff, there is presently no registration and regulation system for social care staff. This Bill will require the registration of specified social care staff.

The Bill is, therefore, intended to provide better protection for service users, many of whom are alone and vulnerable by:-

- Extending the registration and regulation of independent sector social care services and non-NHS health care services
- Modernising and standardising the regulatory system for social care services and non-NHS care services
- Monitoring and inspecting the Department's social care services to the same requirements and standards as the independent sector
- Introducing the compulsory registration and regulation of specified social care staff.

Effective regulation of care services and the social care workforce is essential if the public, service users and their carers are to be confident that the services they receive meet the required standards.

The Regulation of Care Bill will be backed by detailed regulations, policies, procedures, standards for each care service area, and detailed guidance notes for inspectors and care service providers.

### **Role of Registration and Inspection Team**

The regulatory system will continue to be carried out by the Registration and Inspection Team. The new focus of the work of the Registration and 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. At the same time, the Department will have an improved regulatory system and a greater range of powers to take appropriate enforcement action against those providers who consistently fail to meet standards.

### **Excluded Matters**

During the consultation for the Bill the Department of Health requested the Department of Social Care seek comments as to whether a limited form of registration of non-NHS healthcare professionals should be included in the Bill. This would include checking that the non-NHS healthcare professionals were registered with the relevant professional body in the UK. As well as seeking written comments, the two Departments held a joint stakeholder meeting to gather views from across the range of non-NHS healthcare professionals operating on the Isle of Man. However, after careful consideration the Department of Health have decided not to extend the regulation of non-NHS healthcare professionals via this Bill. They intend to review all the consultation responses and use this information to make appropriate changes to Health legislation in 2013/14.

The legal requirements in relation to a person's suitability to work with vulnerable children and adults were originally going to be included in this Bill. However, these issues are now fully covered by The Police Act 1997 (Criminal Records) (Isle of Man) Order 2010. This Order extends Part 5 of the Police Act 1997 to the Isle of Man, subject to the modifications specified in Schedules 1 and 3 to the Order. It, also, extends to the Isle of Man provisions of the Armed Forces Act 2006 and the Safeguarding Vulnerable Groups Act 2006 that contain amendments to Part 5, subject to the modifications specified in Schedules 2 and 3 to the Order.

### **Human Rights**

In the view of the Member moving the Bill, its provisions are compatible with the Convention rights under the Human Rights Act 2001.

# NOTES ON CLAUSES

This Bill consists of 10 Parts - divided into divisions and subdivisions for ease of reading - and 1 Schedule.

All transitional provisions are stated in Part 9. These will allow for a smooth transfer of presently registered or licensed care services without any re-registration requirements. Also, the Bill allows for a planned introduction of the registration and regulation of previously unregistered care services once resources become available. Until this time, the newly regulate services are only regulated to the extent of having to comply with the mandatory conditions and minimum standards.

## **PART 1 — OPENING PROVISIONS**

Part 1 of the Bill contains the opening provisions. The Part, mainly, covers the Bill's short title and commencement, definitions for certain key terms and general definitions, which can be found in the Schedule.

### **DIVISION 1 — INTRODUCTORY**

#### **Clause 1: Short title**

This clause states the title of the Bill.

#### **Clause 2: Commencement**

Three clauses commence by appointed day order. These are:-

- Clause 52 - which starts the process of the registration of care services under this Bill
- Part 5 - which starts the process of the registration of specified social care staff
- Clause 186 - which launches the registration of existing unregistered social care staff

The rest of the Bill commences on the announcement of Royal Assent to Tynwald.

#### **Clause 3: Purposes of Act**

This clause states the purposes of the Bill i.e. to protect service users by an improved system to regulate the care services included in this Bill.

#### **Clause 4: Achieving the purposes**

This clause states how the purposes are achieved by the legislation i.e. the registration, regulation and monitoring of care services including using clear disqualification criteria, and the registration and regulation of specified social care staff.

### **DIVISION 2 — BASIC DEFINITIONS**

#### **SUBDIVISION 1 — SOCIAL CARE, CARE SERVICES AND THEIR CATEGORIES**

#### **Clause 5: "Social care"**

This clause gives a clear definition of social care for the purposes of this Bill.

### **Clause 6: "Care service" and "category" of care service**

This clause explains that the definition of care service means an agency, establishment or childminding for the purposes of this Bill. Regulations may provide for subcategories for which a care service can be registered.

- Note:
  - For Example if the category registered is 'Adult Care Home' the subcategory may be 'mental illness'.
  - Providers can have more than one subcategory but will need to demonstrate in each case that they their staff have the competence and skill to care for such service users.

### **Clause 7: Agencies that are a care service**

Subsection (1) lists the agencies covered by this Bill.

Subsections (2) (3) and (4) provide clarity to registration requirements for an agency that has 2 or more separate branches. Whether or not a branch will require separate registration will depend upon the activities of that branch; what staff attend the branch and what activities are carried on there.

- Note: If one of the places of business is a private dwelling then the home owner will need to prove that he/she is allowed to run a business from that private dwelling.

### **Clause 8: Establishments that are a care service**

This clause lists the establishments that are a care service for the purposes of this Bill.

### **Clause 9: "Department care service"**

This clause defines a Department care service for the purposes of this Bill.

### **Clause 10: "Independent care service"**

Subsection (1) defines an independent care service for the purposes of this Bill.

Subsection (2) clarifies that if a care service is jointly carried out by a Government Department and the independent sector, then the independent sector care service will be registered and regulated.

- Note: This means the independent sector will require registration under Part 3. However, if the Department is undertaking some tasks (as opposed to merely providing finance or acting as an agent) then the Department's part will be monitored and inspected as any other Department care service would be under this Bill.

### **Clause 11: "Non-NHS health care service"**

This clause defines Non-NHS health care services for the purposes of this Bill.

### **Clause 12: "Child-related" care service**

This clause defines child-related care services for the purposes of this Bill.

### **Clause 13: Who "carries on" a care service**

This clause states the owner of the business is the person who carries on the care service. If a care service is run jointly between the Department and the independent sector then the independent sector is the owner of the business.

**Clause 14: Who "manages" a care service**

The clause defines the person who manages a care service i.e. a person directly and indirectly responsible for the day-to-day operation. This can either be the same person who owns the business or can be a separate person.

- Note: It is a matter for Registrations and Inspections to decide whether or not the person carrying on the service can also be the manager of the service. This depends on two criteria. Firstly the qualifications and experience of the person and secondly whether the person carrying on the service has other services and premises he/she is responsible for.

**Clause 15: Provision to put the term 'care service' in context in certain cases**

This clause clarifies the use of the term care service in parts of the Bill.

**SUBDIVISION 2 — BASIC DEFINITIONS FOR SOCIAL CARE AND CARE SERVICES****Clause 16: "Adult care home"**

This clause defines an adult care home and excludes certain establishments from the definition.

**Clause 17: "Adult day care centre"**

This clause defines an adult day care centre and excludes certain establishments from the definition.

**Clause 18: "Adult placement agency"**

This clause defines an adult placement agency but a business can be excluded by regulations. Adult placement Agencies are usually operated by a local authority and operate similar to fostering for children.

- Note: Currently there are no adult placement agencies on the Island.

**Clause 19: "Child care agency"**

This clause defines a child care agency but a business can be excluded by regulations. This is not fostering, which has its own regulatory framework, but is similar to a domiciliary care agency. It can provide care for children within their own home and/or provide transport to and from day centres.

**Clause 20: "Child day care centre"**

This clause defines a child day care centre. This is the same as is currently regulated under the Children and Young Persons Act - Nurseries, playgroups, after school clubs, crèches.

- Note: The clause applies to day care for children under 8 years old.

**Clause 21: "Childminding" and "Childminder"**

This clause defines childminding and excludes certain persons from the definition including nannies as spelled out in sub clause 2(b) and (c). This is the same as is currently regulated under the Children and Young Persons Act.

- Note:
  - The clause applies to childminding for children under 8 years old.
  - The definition of relative has been expanded from the previous legal definition to a "person connected to the child or children by whole blood, half blood or by marriage, civil partnership or some other affinity."

**Clause 22: "Childrens home"**

This clause defines a childrens home and excludes certain establishments from the definition.

- Note: It extends the current definition of a children's home as premises accommodating more than 3 children to children's homes of any size.

**Clause 23: "Child (secure accommodation) establishment"**

This clause defines a child (secure accommodation) establishment.

- Note: This covers the secure unit which is already regulated

**Clause 24: "Domiciliary care agency"**

This clause defines a domiciliary care agency but a business can be excluded by regulations.

**Clause 25: "Fostering agency"**

This clause defines a fostering agency.

**Clause 26: "Independent clinic"**

This clause defines an independent clinic and excludes certain services from the definition.

- Note:
  - We currently regulate those clinics that provide treatment using class 4 and class 3b lasers. This is commonly hair removal. These services come under the existing Nursing and Residential homes Act 1988.
  - Because independent clinics can cover a huge number and variety of services it was decided to make this a gateway clause. Regulations will then precisely specify which ones will be included.
  - Consultation will take place with relevant parties before a service is included.

**Clause 27: "Independent hospital"**

This clause defines an independent hospital and excludes certain establishments from the definition.

- Note:
  - Some services that are or liable to be registered as a nursing home or mental nursing home under current legislation will transfer to this category. The only one on the Island at the moment is the Hospice.
  - As a result of the consultation, the final definition of an independent hospital has been simplified. This allows the Department to expand the definition by regulation. Consultation will take place with relevant parties before another type of service is included in the definition.

**Clause 28: "Independent medical agency"**

This clause defines an independent medical agency and excludes certain establishments from the definition.

**Clause 29: "Nurses agency"**

This clause defines a nurses agency but an agency or business can be excluded by regulations.

- Note: There are currently two types of nurse agencies those that only provide an introductory service and simply keep a 'list' and those who offer a more in

depth service, for example placing nurses in a persons own home (equivalent to a domiciliary care agency).

**Clause 30: "Offender accommodation service"**

This clause defines an offender accommodation service but an establishment can be excluded by regulations.

- Note: This covers the current offender accommodation which is already regulated under the Nursing & Residential Homes Act.

**Clause 31: "Residential family centre"**

This clause defines a residential family centre but an establishment can be excluded by regulations.

**Clause 32: "Voluntary adoption agency"**

This clause defines a voluntary adoption agency.

Note: There is one on the Island which is currently not regulated and will come under this Act.

**DIVISION 3 — OTHER INTERPRETATIVE PROVISIONS**

**Clause 33: Other provisions**

This clause explains that the Schedule defines words except those used in Part 9. It, also, explains the various uses of the word function, and the use of examples or notes. Importantly, it states that the use of an example of the operation of a provision may extend the meaning of a provision.

**PART 2 – THE DSC'S FUNCTIONS FOR ACT**

Part 2 of the Bill states the Department's specific functions including the regulation of care services and the making of minimum standards for care services.

**Clause 34: General functions**

Subsection (1) states the key Department functions in relation to care services i.e. regulation of the independent sector, encouraging improvement in the quality of all care services and providing the public with information.

Subsection (2) states the Department's monitoring function i.e. compliance, ensuring (whenever they come to the Department's attention) that unregistered care services become registered or cease to operate, and monitoring Department care services (to the same requirements and standards as the independent sector).

Subsection (3) states the Department also has the function of promoting high standards for social care workers and their training.

**Clause 35: Power to make minimum standards**

This clause states the Department may make, after consultation, minimum care standards for each independent sector care services.

- Note:
  - The Department will be required to work to the same standards.
  - There are quality standards in place for all services currently regulated and for some we currently monitor by agreement, for example there have been standards in place for fostering for several years; these will be reviewed and consulted upon but effectively will only make minimal changes to what services currently provide.

- The main impact will be upon services new to regulation. But they will be consulted on the development of standards applicable to their service.

**Clause 36: Access to minimum standards**

The standards will be public documents.

**Clause 37 Effect of minimum standards**

Subsection (1) states the Department must, in carrying on or managing a Department care service or performing its functions under clause 34, consider the minimum standards.

Subsection (2) states the minimum standards must also be considered in the making of decisions under Part 3 and Part 4, Divisions 2 and 3; tribunal appeals; and proceedings for registration-related offences.

## **PART 3 - REGISTRATION OF INDEPENDENT CARE SERVICES**

Part 3 of the Bill requires persons who provide or manage a care service to be registered; states disqualification criteria; states conditions of registration; and the procedures for changing registration.

### **DIVISION 1 — GENERAL PROVISIONS**

#### **SUBDIVISION 1 — BASIC DEFINITIONS CONCERNING REGISTRATION**

**Clause 38: “Provider registration” and “registered provider”**

This clause defines the terms in the title.

**Clause 39: “Manager registration” and “registered manager”**

This clause defines the terms in the title.

- Note: Guidance notes will state when separate registrations will be required for the provider and the manager.

**Clause 40: “Registered person”**

This clause defines the term in the title.

**Clause 41: Registration concerning children**

This clause defines childminder registration, registered childminder and child-related registration.

**Clause 42: General references to “registration”**

Subsection (1) states the term registration on its own means any active provider registration or manager registration.

Subsection (2) states a reference to a person’s registration includes the registration conditions and any details of the registration.

#### **SUBDIVISION 2 — DISQUALIFICATION FROM REGISTRATION**

**Clause 43: Types of disqualification**

Subsections (1)(a) (b) and (c) state that a person is disqualified from registration if they are disqualified under clause 44, 45 or 46.

Subsection (1)(d) states a person is disqualified from provider registration (except childminding) if the person is, or has been, administered in insolvency; or for a body corporate, a member or officer of the body is being administered in insolvency.

- Note:
  - 1(d) a childminder is still allowed to operate if they have been made insolvent as they do not work in the same way as other care service businesses - they work from home and normally charge on a weekly or monthly basis.
  - The above applies unless as stated in (2) the person has been exempted under clause 47 and the exemption has not been withdrawn under clause 48.

#### **Clause 44: Total disqualification**

This clause lists the disqualifying circumstances for total disqualification namely - the individual has been convicted of, or cautioned for, a totally disqualifying offence (as stated in subsection(3)). If under section 3 of the Safeguarding of Vulnerable Groups Act 2006 of Parliament or similar British Islands Legislation the individual is barred from a regulated activity. If an order under the Sex Offenders Act 2006 or a similar British Islands Legislation has been made against the individual; or another prescribed circumstance applies to the individual.

For a body corporate, the disqualifying circumstance is that a member or officer of the body is totally disqualified.

#### **Clause 45: Additional Disqualifications for children**

Subsection (1) states that the following subsections provide for the disqualifying circumstances for disqualification for children.

Subsection (2) lists all the disqualifying for children circumstances.

Subsection (3) states it is also a disqualifying circumstance for an individual while the individual lives in the same private dwelling as a person disqualified for children or any part of premises at which a person disqualified for children is employed or engaged.

Subsection (4) explains that for a body corporate, the disqualifying circumstance is that a member or officer of the body is disqualified for children.

Subsection (5) provides definitions for this clause.

#### **Clause 46: Additional specific disqualifications**

Subsection (1) states that the following subsections provide for the disqualifying circumstances for specific disqualification for a category of care service.

Subsection (2) lists the disqualifying circumstances for a category of care service.

Subsection (3) states the recipient of a disqualification notice (as an unregistered childminder) is disqualified from childminding until either one year after the notice is given or the notice is earlier withdrawn.

- Note: See clause 138 for the details.

Subsection (4) explains that for a body corporate, the disqualifying circumstance is that a member or officer of the body is specifically disqualified for the category.

Subsection (5) provides definitions for this clause.

#### **Clause 47: Exemption from disqualification**

Subsection (1) explains that a person who is disqualified under subsection 43 (1) may apply for an exemption from that disqualification.

Subsection (2) explains that if an exemption application has been refused they can only reapply under the specified circumstances.

Subsection (3) explains the application requirements.

Subsections (4) and (5) state the criteria for the Department in considering the application for exemption.

Subsection (6) states that if the Department refuses an exemption application, it must give the applicant an appeal notice for the decision.

- Note:
  - An example of when a disqualification might be lifted is if a childminder is disqualified by virtue of someone in the household being unsuitable to be in the proximity of children. If that person leaves the household or the childminder goes to work in another childcare setting the disqualification could be lifted.
  - In addition, with the exception of the disqualification in subsection 2, which is time limited, an exemption is only granted for a specific circumstance.

#### **Clause 48: Withdrawal of disqualification exemption**

Subsection (1) states the criteria for the Department to withdraw a disqualification exemption.

Subsection (2) states that if the Department withdraws a disqualification exemption, it must give the applicant an appeal notice for the decision.

### **SUBDIVISION 3 — SUITABILITY FOR REGISTRATION**

#### **Clause 49: Who is a "suitable manager" or "suitable supervisor"**

Subsection (1) defines a "suitable manager" for a care service.

Subsection (2) defines a "suitable supervisor" for a care service.

Subsection (3) explains the disqualification criteria that will apply.

#### **Clause 50: Criteria for suitability to manage or supervise**

Subsection (1) states the criteria for suitability to manage or supervise the management of a care service.

Subsection (2) gives further clarity to the meaning of "integrity and good character."

Subsection (3) clarifies that suitability is, also, related to the category and size of a care service.

- Note: For example someone may be suitable to manage a small residential unit for physically frail elderly but may not have the knowledge and skills to manage a large unit accommodating service users with multiple needs including dementia.

Subsection (4) provides a definition for this clause.

#### **Clause 51: Who is "suitable for childminding"**

This clause defines the criteria to become a childminder.

### **DIVISION 2 — REQUIREMENT TO REGISTER INDEPENDENT CARE SERVICE**

#### **SUBDIVISION 1 — MAIN OFFENCE**

#### **Clause 52: Offence to carry on or manage without registration**

Subsections (1) (3) and (4) state it is an offence to carry on or manage an independent care service or carry on as a childminder unless the person has appropriate registration and the registration is not suspended (subject to exemptions from registration). Maximum penalty — (summary) of £20,000.

Subsection (2) states the offence if it was committed in a circumstance of aggravation. Maximum penalty is 6 months custody or a fine.

Subsection (5) provides definitions.

## **SUBDIVISION 2 — EXEMPTIONS FROM REGISTRATION REQUIREMENT**

### **Clause 53: Personal representatives**

This clause states the registration requirement does not apply to a personal representative carrying on a care service under clause 102.

### **Clause 54: Child day care at certain establishments**

This clause states the registration requirement does not apply to the specified establishments.

### **Clause 55: Occasional child day care centres**

This clause exempts persons applying for registration under child day care if the day care centre operates for 5 days or less a year. A notice will need to be given to the Department to confirm the situation.

## **DIVISION 3 — OBTAINING REGISTRATION**

### **SUBDIVISION 1 — APPLICATIONS**

#### **Clause 56: Who can apply for registration**

Subsection (1) states anyone may apply for provider registration or manager registration for a care service or proposed care service.

Subsection (2) states the exceptions to subsection (1).

Subsection (3) states an individual may apply for both provider registration and manager registration for the same care service.

Subsection (4) states a childminder need only apply for provider registration.

#### **Clause 57: How to apply**

Subsection (1) states the general requirements for making a registration application.

Subsection (2) states the additional requirements for a provider registration.

Subsection (3) states the requirements for a nominee (i.e. the care service's responsible person for a body corporate).

### **SUBDIVISION 2 — DECIDING APPLICATION AND TAKING EFFECT OF REGISTRATION**

#### **Clause 58 Registration criteria**

Subsection (1) states that the following subsections provide for the registration criteria.

Subsection (2) states the individual applying for provider registration must be a suitable supervisor for the care service unless certain exceptions apply.

Subsection (3) states the nominee of a body corporate must be a suitable supervisor for the care service.

Subsection (4) states a manager must be a suitable manager for the care service.

Subsection (5) clarifies the applicant must be able to comply with the mandatory conditions and comply with any other prescribed criteria.

Subsection (6) states everyone looking after children under 8 years old at the care service must be suitable for childminding.

Subsections (7) and (8) state the requirements for anyone living, or likely to be employed or engaged, at the care service.  
Subsection (9) states the requirements in relation to the care services premises and equipment.

**Clause 59: Deciding application**

Subsections (1) and (2) state the Department must meet obligations and comply with the procedural fairness requirements before making a decision on a registration application.

Subsection (3) states the criteria before the Department grants a registration application.

**Clause 60: Power to impose registration conditions**

Subsections (1) (2) and (3) state that the Department may set registration conditions in addition to mandatory conditions provided it has complied with the procedural fairness requirements.

Subsection (4) states that if the conditions are agreed then the Department does not have to comply with the procedural fairness requirements.

**Clause 61: Notice of decision**

Subsections (1) (2) and (3) state what the Department is required to do when it grants a registration application including when it must give an appeal notice.

**Clause 62: When registration takes effect**

Subsection (1) clarifies when a decision to grant a registration application takes effect.

Subsection (2) states that when the decision takes effect any nominee will become the care service's "responsible person".

**Clause 63: Registering successful applicant and any responsible person**

This clause states that when a decision to grant a registration application takes effect, the Department must record in the register the details of the applicant's registration and, if the applicant is a body corporate, the care service's responsible person; and give the applicant a registration certificate.

**Clause 64: Duration of registration**

This clause states that registration continues until it is surrendered, suspended or cancelled under this Part, or, if the sole registered person is an individual, the person dies.

**DIVISION 4 — MANDATORY CONDITIONS FOR REGISTRATION**

**Clause 65: Imposition of mandatory conditions**

This clause states a person's registration is subject to the stated conditions.

**Clause 66: Supervision and management duties: general**

Subsection (1) states that this clause does not apply to childminding.

Subsection (2) states a registered provider must ensure the care service has a registered manager who continues to manage it. If the registered provider is a body corporate then the person recorded on the register as the care service's responsible person must continue to supervise its management. If the responsible person dies or

otherwise ceases to so supervise, the body corporate must make an amendment application for a responsible person change.

Subsection (3) states that while a person continues to be a registered manager, the person must, unless the Department otherwise agrees, continue to manage the care service.

Subsection (4) states that a contravention of the supervision condition or management condition does not affect a leave entitlement of the responsible person or registered manager or a right or remedy that person has against the registered provider or anyone else.

#### **Clause 67: Supervision and management duties: exception**

Subsection (1) states the supervision condition and the management condition do not apply during any period of leave to which the responsible person or registered manager is entitled under the circumstances as specified.

Subsection (2) clarifies that maximum leave may be prescribed.

#### **Clause 68: Suitability and training conditions**

Subsection (1) states a registered provider that is a body corporate must ensure the care service's responsible person continues to be a suitable supervisor and has appropriate training.

Subsections (2) and (3) state if a registered provider is an individual and someone else is the care service's registered manager, the registered provider must continue to be a suitable supervisor. However, this does not apply for childminding.

- Note: See sub clause 56(4).

Subsection (4) states a registered manager must continue to be a suitable manager, have appropriate training and ensure the competency, qualifications and training of the care service's workforce.

Subsection (5) states a registered childminder must continue to be suitable for childminding.

#### **Clause 69: Duty of care, competence and skill**

Subsection (1) states a registered provider that is a body corporate must ensure the care service's responsible person supervises its management with sufficient care, competence and skill.

Subsection (2) states a registered manager must manage the care service with sufficient care, competence and skill.

Subsection (3) states a registered childminder must carry out childminding with sufficient care, competence and skill.

#### **Clause 70: Continuing suitability of premises and its equipment**

This clause states the continuing requirements in relation to the care services premises and equipment.

#### **Clause 71: Annual fees and costs under cost recovery notices**

This clause requires a registered person to pay the prescribed annual fee. A recipient of a cost recovery notice must pay the required amount within 14 days.

#### **Clause 72: Inspections and related matters**

Subsection (1) states a registered person must allow an inspector to enter and inspect the premises at which the care service is provided if the inspector meets specified criteria.

Subsection (2) states a registered provider must ensure clauses 125 and 128 are not contravened in relation to the care service.

Subsection (3) states subsection (2) applies whether or not anyone is charged or convicted in relation to any claimed contravention of clauses 125 or 128.

**Clause 73: Compliance with improvement notices**

This clause states the recipient of an improvement notice must comply with the notice.

- Note: Details of improvement notices are in clauses 132, 133 and 134.

**DIVISION 5 — CHANGING REGISTRATION ON THE REGISTERED PERSON’S INITIATIVE**

**SUBDIVISION 1 — AMENDMENTS**

**Clause 74: When registered person may apply to amend**

Subsection (1) states what a registered person may apply to amend an application.

Subsection (2) however, states an amendment notice can not be made if there is a current cancellation notice for the person.

Subsection (3) further clarifies the situation.

**Clause 75: How to apply**

Subsection (1) states the requirements for an amendment application.

Subsection (2) states the requirements for a responsible person change.

- Note: The new responsible person needs to be approved by the Department.

**Clause 76: Deciding application**

Subsections (1) and (2) state the Department must meet obligations and comply with the procedural fairness requirements before making a decision on an amendment application.

Subsection (3) states the criteria before the Department grants an amendment application.

**Clause 77: Notice and taking effect of decision**

Subsection (1) states the Department requirements if it decides to grant all or part of an amendment application.

Subsections (2) and (3) state when the decision takes effect. At that time any nominated replacement becomes the care service’s responsible person.

Subsections (4) and (5) state the Department requirements if it decides to refuse all or part of an amendment application including giving an appeal notice.

**SUBDIVISION 2 — SURRENDERS BY REGISTERED MANAGERS OR CHILDMINDERS**

**Clause 78: Surrender by notice**

This clause states the criteria for a surrender notice.

## **SUBDIVISION 3 — SURRENDERS BY REGISTERED PROVIDERS OTHER THAN CHILDMINDERS**

### **Clause 79: Application of Subdivision**

This clause states this subdivision applies to a registered provider other than a registered childminder.

### **Clause 80: Surrender only by application**

This clause states the criteria to surrender the provider's registration.

- Note:
  - Subject to clause 81 registered persons are able to surrender their own registration.
  - When it is a provider who wishes to surrender registration this usually means that they want to close down the service and in these circumstances they must meet certain criteria. For example having discussions with service users, their families, social workers and any other interested parties to ensure that individuals are moved to another service that meets their needs and that all are given sufficient time to prepare for the move and be involved in the decision.

### **Clause 81: Restriction on making surrender application**

This clause states the recipient of a current cancellation notice cannot make a surrender application for the registration.

- Note: This is to avoid any surrender of a registration before any proceedings have taken place.

### **Clause 82: How to apply**

This clause states the criteria for making a surrender application.

### **Clause 83: Deciding application**

This clause states the Department's obligations in determining whether appropriate arrangements need to be made for care service users before considering the surrender application.

### **Clause 84: Notice and taking effect of decision**

Subsection (1) states that on granting a surrender application the Department must give the applicant notice of the decision.

Subsection (2) states the surrender takes effect when the applicant is given the notice.

Subsection (3) states on refusing a surrender application the Department must give the applicant an appeal notice for the decision.

## **DIVISION 6 — AMENDMENTS, SUSPENSIONS OR CANCELLATION BY DSC**

### **Clause 85: Minor corrections**

This clause states the criteria for a minor amendment to a registration.

### **Clause 86: Amendments: general**

This clause states the criteria for the Department to amend a particular registration for a person. The Department must comply with the procedural fairness requirements unless the person has agreed in writing to the amendment.

**Clause 87: Suspensions: general**

This clause states the criteria to suspend a particular registration for a person. The Department must comply with the procedural fairness requirements.

**Clause 88: Cancellation: general**

This clause states the criteria to cancel a particular registration for a person. The Department must comply with the procedural fairness requirements.

**Clause 89: Urgent amendment, suspension or cancellation**

This clause states the criteria for the Department to do an urgent amendment, urgent suspension or an urgent cancellation of a person's registration. It clarifies how the notice is given, the content of the notice and when the notice takes effect. The notice must be accompanied by, an appeal notice. In this case the procedural fairness requirements do not apply.

**Clause 90: Effect of suspension or cancellation**

This clause clarifies a registration is ineffective while it is suspended, and ends and is ineffective when cancelled. This clause is subject to the tribunal's powers on appeal.

**Clause 91: Notice and taking effect of non-urgent decisions under Division**

This clause states the Department must give notice of a decision to the stated person for an amendment (except a minor correction), a suspension, or a cancellation. It states it must be accompanied by an appeal notice and clarifies when the decision notice takes effect.

**Clause 92: Recovery of DSC's expenses in certain cases**

This clause states that if the Department has amended, suspended or cancelled a person's registration because of the person's noncompliance with this Bill, a requirement under this Bill for obtaining registration, or a registration condition then the Department may decide to give the person a cost recovery notice. The Department must comply with the procedural fairness requirements. The cost recovery notice must state the amount of the costs and include an appeal notice. If the debt is not paid the Department may recover from the person the amount summarily as a debt.

**DIVISION 7 — OTHER PROVISIONS FOR APPLICATIONS OR CHANGING REGISTRATION****SUBDIVISION 1 — COMMON PROVISIONS FOR APPLICATIONS****Clause 93: Noncompliant applications**

Subsections (1) and (2) state the Department must refuse to receive or do anything to decide a registration or amendment application not made under the requirements under this Part unless the application substantially complies with the requirements. Subsections (3) (4) and (5) spell out the requirements.

- Note: There is currently no express power in the Interpretation Act 1976 to reject noncompliant applications that do not substantially comply with a form.

**Clause 94: Request to applicant about application**

This clause states the additional information the Department may request in relation to a registration or amendment application.

**Clause 95: Refusing application for contravention of request notice**

This clause states the grounds when the Department may refuse an application.

**SUBDIVISION 2 — PROCEDURAL FAIRNESS REQUIREMENTS**

**Clause 96: Application of Subdivision**

This clause states this subdivision applies if, under this Part, the Department must comply with this Subdivision before finally deciding to refuse an application for a disqualification exemption, withdraw a disqualification exemption, impose registration conditions, amend a person's registration, suspend a registered person's registration, cancel a registered person's registration, or give a cost recovery notice.

**Clause 97: Notice of proposal**

Subsection (1) states who should receive a proposal notice.

Subsection (2) states what the proposal must contain.

Subsection (3) states when the Department can make a decision.

**Clause 98: Duty to consider any written submissions**

This clause states the Department must consider any written submissions within the submission timeframe before making a decision.

**Clause 99: Withdrawal notice**

If the Department decides not to proceed with the Department's proposal, it must give each interested person a notice stating the Department has withdrawn the proposal.

**DIVISION 8 — DEATH OF REGISTERED PROVIDER**

**Clause 100: Application of Division**

This clause states that this Division applies if a registered provider (other than a registered childminder) for a care service is an individual and the individual dies.

**Clause 101: Notification duties**

Subsection (1) states specified persons must inform the Department of a registered provider's death. If not there is a maximum penalty — (summary) of £2,500.

Subsection (2) states the personal representative must, within 28 days after the death, give the Department a notice stating the personal representative's intentions for the future carrying on of the care service. If not there is a maximum penalty — (summary) of £2,500.

**Clause 102: Carrying on care service for limited period after sole provider's death**

Subsections (1) – (4) give the details and timeframe for a deceased sole registered provider's personal representative in relation to them carrying on the care service without holding provider registration.

Subsection (5) states the representative must comply with the registration conditions that applied to the deceased immediately before the death. If not there is a maximum penalty — (summary) of £5,000.

Subsection (6) states this Bill applies to the representative, as if the deceased had not died and as if the representative was the care service's registered provider.

## **DIVISION 9 — GENERAL REGISTRATION-RELATED OFFENCES**

### **Clause 103: Making false statement in an application**

This clause states a person must not, in a registration application or amendment application, knowingly make a statement that is materially false or misleading. If they do there is a maximum penalty — (summary) of £5,000.

### **Clause 104: Failure to display registration certificate**

This clause gives requirements on the display of the person's registration certificate. Maximum penalty (summary) — for a first conviction — of £500; or for a second or subsequent conviction — of £10 for each day after the first conviction.

### **Clause 105: Contravening registration condition**

This clause states a registered person must not, without a reasonable excuse, contravene a registration condition. If they do there is a maximum penalty — (summary) of £20,000.

### **Clause 106: Falsely describing scope of registration conditions**

This clause states a person must not, without a reasonable excuse, falsely describe a care service if doing so would contravene a registration condition. If they do there is a maximum penalty — (summary) of £5,000. This applies even if the person is not a registered person for the care service.

## **DIVISION 10 — THE REGISTER**

### **Clause 107: Requirement to keep register**

This clause states the Department's requirements for keeping a register of details about registered persons and responsible persons for care services.

### **Clause 108: Access to register**

This clause states the Department's role regarding the access to (including restricted access) and fees in relation to the register.

## **DIVISION 11 — MISCELLANEOUS**

### **Clause 109: Service of registered person at care service**

This clause states that if the Department gives a registered person a notice or other document then their usual or last known place of abode or business is taken to be the address of the care service.

### **Clause 110: DSC's notification powers**

Subsections (1) and (2) state the circumstances when a disclosure notice is given to a statutory authority, relevant care recipient or the representative of a relevant care recipient.

Subsection (3) states the subject information provisions and non-disclosure provisions under the Data Protection Act 2002 do not apply to the giving of a disclosure notice.

Subsection (4) gives definitions for this clause.

## **PART 4 — MONITORING AND ENFORCEMENT**

Part 4 of the Bill gives information on the role of inspectors, procedures to require registered providers to improve care services, enforcement procedures for registered persons and a notice to disqualify unregistered childminders for a year.

### **DIVISION 1 — MONITORING**

#### **SUBDIVISION 1 — INSPECTORS**

##### **Clause 111: Appointment and functions**

This clause states the criteria for the Department to appoint appropriately qualified persons to help it perform its monitoring and regulatory functions.

##### **Clause 112: Issue of identity card**

This clause states the Department must issue an identity card to each inspector and the information to be placed on the card.

##### **Clause 113: Production or display of identity card**

This clause states the card must be shown before or displayed during the exercise of the inspector's monitoring and regulatory powers.

#### **SUBDIVISION 2 — INSPECTORS' ENTRY POWERS**

##### **Clause 114: General entry powers**

This clause explains the inspectors' rights of entry.

##### **Clause 115: Inspection of care premises under inspection guidelines**

This clause states the Department may make guidelines for inspectors to enter and inspect care premises. These guidelines do not take effect until they have been laid before Tynwald. They will be a public document and each registered provider will have access to a copy.

- Note:
  - There is a restriction in the Bill in regard to certain circumstances where inspectors have no right of entry. This is a restriction designed to meet the requirements of the Human Rights Act 2001.
  - Examples of this would be attending a childminder's house at times other than when childminding is being carried out/reasonable suspected of being carried out. Other occupiers of the house, such as a childminders husband, can legitimately deny entry.
  - Another example might be in a nursery where part of the premises is privately occupied as domestic premises, such as the providers own accommodation or a tenanted arrangement.

##### **Clause 116: Care premises: other entries**

This clause - subject to clause 117 - allows the inspector to enter premises if the inspector reasonably suspects the entry is necessary for the performance of the Department's monitoring function. However, the parts of clause 116 on non-entry still apply.

- Note: This clause relates to premises where an inspector reasonably suspects or has been given information that a care service is being provided without registration.

**Clause 117: Care premises: procedure for entry without consent or warrant**

This clause gives details on entry without consent or a warrant.

**SUBDIVISION 3 — POWERS AFTER ENTRY**

**Clause 118: Application of Subdivision**

This clause states this subdivision applies if, under subdivision 2 or a warrant, an inspector has entered particular premises.

**Clause 119: Who has a “role” for the premises entered**

This clause lists who has a role for the premises.

**Clause 120: General powers on entry**

This clause states the inspector's powers on entry.

**Clause 121: When service recipients can be medically examined**

This clause states the criteria for an inspector requesting a medical practitioner or nurse to medically examine a service recipient.

**Clause 122: Power to require documents or information on entry**

This clause states what the inspector can request from the person who has a role for the premises.

**Clause 123: Offence: contravention of requirement to give reasonable help**

This clause states the inspector may require a person who has a role for the premises to give the inspector reasonable help to perform the inspector's functions.

**SUBDIVISION 4 — OTHER PROVISIONS**

**Clause 124: Warrants**

Subsections (1) and (3) state a warrant may be applied for in order to authorise a constable to aid an inspector and helper enter premises and carry out any authorised powers. This can only be issued if the inspector or a helper has been, or is likely to be, prevented from exercising the powers.

Subsections (2) and (4) state the application must be sworn and details the information for obtaining the warrant.

Subsection (5) states what the warrant authorises any constable to do.

Subsections (6) to (9) give details on what must and cannot be done.

**Clause 125: Offence: obstruction of inspector**

Subsection (1) states a person must not intentionally obstruct an inspector from exercising a power under this Division. If they do there is a maximum penalty — (summary) of £5,000.

Subsection (2) states that if a person obstructs the inspector and the inspector decides to proceed with the exercise of the power, the inspector must give the person an offence warning.

Subsection (3) defines obstruct.

**Clause 126: Inspector may require production of information**

This clause requires the registered person to give information, within a stated reasonable period, that is necessary for the inspector to perform the monitoring function. The registered person must be given an offence warning.

**Clause 127: Production of documents or information kept on computer**

This clause states if the information required under clause 126 is on a computer then the person must reproduce the material for the inspector to take away.

**Clause 128: Offence: contravention of production requirement**

This clause states a person to whom clause 126 applies must comply with the requirement, unless the person has a reasonable excuse. If they do not there is a maximum penalty — (summary) of £2,500.

**Clause 129: Compliance with production requirement**

Subsections (1) and (2) state it is not a defence to, or an excuse for, a proceeding for an offence against clause 128 that complying with the production requirement contravened might tend to incriminate the defendant. However, incriminating evidence is not admissible in evidence against the defendant in a civil or criminal proceeding, other than for the ill-treatment or neglect offence.

Subsection (3) states subsection (2) does not apply to a proceeding for an offence for which the falsity or misleading nature of the document is relevant.

Subsection (4) defines incriminating evidence.

- Note: This clause states the person has to comply, but they can't be prosecuted and the material can't be used against them except for a proceeding against them for the ill-treatment or neglect offence (the major offence under the Bill) or perjury (i.e. if they told the inspector lies).

**Clause 130: Reports about inspections**

This clause states the criteria for the preparation and publication of inspection reports.

- Note: All inspection reports will be available to the public.

**Clause 131: Protection from defamation for reports**

This clause clarifies the law of defamation in relation to the production of inspection reports under clause 130.

**DIVISION 2 — NOTICE TO REGISTERED PROVIDER TO IMPROVE CARE SERVICE****Clause 132: Power to give improvement notice**

This clause allows an inspector to give the registered provider an improvement notice requiring the provider to make the improvement within a stated reasonable period. Copies of the notice must, also, be given to the responsible person (if the registered provider is a body corporate) and the registered manager.

**Clause 133: Requirements for improvement notice**

This clause states the contents of the improvement notice including an appeal notice.

**Clause 134: Compliance with improvement notice**

This clause states the registered provider may, in order to comply with the notice, decide the steps to be taken to achieve the improvement unless the Department has stated or agreed the steps to be taken.

**DIVISION 3 — ENFORCING REQUIREMENTS OF REGISTERED PERSONS****Clause 135: Power to give notice requiring compliance**

This clause states the inspector may give the registered person a compliance notice requiring the person to, within a stated reasonable period, take stated steps to remedy the commission of an offence against this Bill or an adoption society offence or prevent it from happening or happening again.

**Clause 136: Requirements for compliance notice**

This clause states the contents of the compliance notice including an appeal notice.

**Clause 137: Offence: contravention of compliance notice**

This clause explains the recipient of a compliance notice must comply with the notice. If they do not there is a maximum penalty — (summary) of £20,000.

**DIVISION 4 — DISQUALIFYING UNREGISTERED CHILDMINDERS****Clause 138: Notice disqualifying for a year**

This clause states if an inspector reasonably believes a childminder who is not registered has contravened the registration requirement they may give the person a disqualification notice including an appeal notice. The content of the notice is stated in the clause including immediately stopping childminding.

- Note: Also, see sub clause 46(3).

**PART 5 — SOCIAL CARE WORKERS**

Part 5 of the Bill makes provisions for social care workers, including that certain social care workers must be registered.

- Note: the term Social Care Workers is an umbrella term for both qualified social workers and any individual who performs a care role in a service covered by this bill

**Clause 139: What is “social care work” and who is a “social care worker”**

This clause defines social care work and a social care worker.

**Clause 140: What is “social work” and who is a “social worker”**

This clause defines social work and a social worker.

**Clause 141: Offence: falsely using title ‘social worker’**

Subsection (1) states a person other than a registered social worker must not, with intent to deceive, use the title social worker. If they do there is a maximum penalty — (summary) of £ £5,000.

Subsection (2) provides definitions that apply to this clause.

**Clause 142: Offences concerning social care worker registration**

This clause states the details of when an offence is committed in relation to the carrying on of a business where the person needs to be registered under this Part or

the employment or engagement of specified staff that need to be registered under this Part; and the maximum penalty that can be incurred.

- Note:
  - Registration means with the appropriate professional council; currently the Department are negotiating with the newly merged Health Professional Care Council to continue registering Isle of Man workers.
  - This section will have a separate day order and will be enacted once the necessary agreements are in place.

## **PART 6 — APPEALS**

Part 6 of the Bill establishes the Care Services Tribunal for appeals and provides for its procedures.

### **Clause 143: Establishment and jurisdiction of tribunal**

This clause establishes The Care Services Tribunal.

### **Clause 144: Who comprises the tribunal**

This clause establishes the composition of the tribunal.

### **Clause 145: Right of appeal against decisions under Act**

This clause states the recipient of, or a person who is entitled under this Bill to be given, an appeal notice about a decision may appeal to the tribunal against the decision.

### **Clause 146: Tribunal's powers on appeal**

Subsections (1) and (2) state an appeal is about hearing a case anew and making a decision under the appeal rules. An appeal generally does not operate to stay the effect of the original decision pending the deciding of the appeal.

Subsection (3) states the tribunal must confirm the original decision; set aside the original decision and substitute another decision, or set aside the original decision and return the issue to the person who made the original decision with directions the tribunal considers appropriate.

Subsection (4) states if the tribunal substitutes another decision, the substituted decision is taken to be and to have always been the original decision.

### **Clause 147: Further High Court appeal on question of law**

This clause states a person may make a further appeal to the Staff of Government Division, under the High Court's rules, on a question of law from a decision of the tribunal.

## **PART 7 — GENERAL OFFENCES AND HUMAN RIGHTS ACT REMEDY**

Part 7 of the Bill provides for general offences. It, also, deems certain registered providers carrying out care services to be a "public authority" for the Human Rights Act 2001.

## **DIVISION 1 — DISQUALIFICATION OFFENCES**

### **Clause 148: Involvement with care service if disqualified**

This clause states for the different categories of disqualification, the offence and specified defence of either carrying on, having a financial interest in or being involved with a care service. If they do there is a maximum penalty — (on information) of 2 years custody or a fine or (summary) 6 months custody or £20,000.

### **Clause 149: Employing or engaging disqualified person**

This clause states the offence and defence for a person who carries on or manages a care service and employs or engages a specified disqualified person at the care service. If they do there is a maximum penalty — (on information) of 2 years custody or a fine or (summary) 6 months custody or £20,000.

### **Clause 150: Registration requirement not relevant to Division 1 offences**

This clause states that this Division applies to a person whether or not the registration requirement applies to the person or, for clause 150, the person employed or engaged.

## **DIVISION 2 — OTHER OFFENCES**

### **Clause 151: False descriptions about registration or Department care services**

This clause states the prohibited actions with intent to deceive. If it happens there is a maximum penalty — (summary) of £5,000.

### **Clause 152: Ill-treatment or neglect offence**

Subsections (1) and (2) state if a social care provider commits an ill-treatment or neglect offence then there is a maximum penalty — (on information) 2 years custody or a fine or (summary), 6 months custody or £20,000. Subsection (3) provides the definitions for this clause.

### **Clause 153: Liability of officers of body corporate**

This clause explains that if a registration-related offence or a care offence is committed by a body corporate; and it is proved an officer of the body authorised, permitted, participated in, or failed to take all reasonable steps to prevent, the commission of the offence, then the officer, as well as the body, commits the offence.

Subsection (3) defines officer of the body.

## **DIVISION 3 — HUMAN RIGHTS ACT REMEDY**

### **Clause 154: Human Rights Act 2001: certain persons perform a public function**

This clause states that the registered provider of an independent care service, other than childminding, is taken to be exercising a function of a public nature in carrying out the care service. Note: The consequence of this clause is that a contravention of Convention rights within the meaning of the Human Rights Act 2001 by the registered provider will be unlawful and proceedings and remedies under that Act will be available.

## **PART 8 — PROCEEDINGS**

Part 8 of the Bill provides for evidentiary and other matters for proceedings.

### **DIVISION 1 — PROSECUTIONS**

#### **Clause 155: Attorney General’s consent required for certain prosecutions**

This clause states a proceeding for a registration-related offence or care offence may be commenced only by, or with the consent of, the Attorney General.

#### **Clause 156: Meaning of “maximum penalty” followed by a stated penalty etc**

This clause defines the meaning of maximum penalty.

#### **Clause 157: Time limit for summary proceedings**

This clause states the time limits that apply to a proceeding for a summary offence against this Bill.

### **DIVISION 2 — EVIDENTIARY PROVISIONS**

#### **Clause 158: Appointment and authority**

This clause states in a proceeding under or relating to this Bill a person’s appointment as an inspector and the Department’s or an inspector’s power to do anything under this Bill must be presumed, unless a party to the proceeding, by reasonable notice, requires proof of it.

#### **Clause 159: General evidentiary provisions**

This clause states the evidentiary provisions applying to a proceeding under or relating to this Bill.

## **PART 9 — CLOSING PROVISIONS**

Part 9 of the Bill provides for regulations, the repeal of certain existing legislation, savings and transitional provisions and other general matters. Existing registered care services, provided certain criteria are met, will be considered to be registered under this Bill.

A period of grace from registration is provided for those not currently regulated and for currently employed specified social care workers to allow for a smooth planned introduction of the registration and regulatory requirements. During the registration grace period, the newly regulate care services are only regulated to the extent of having to comply with the mandatory conditions and minimum standards.

### **DIVISION 1 — GENERAL**

#### **Clause 160: Forms**

This clause states the Department may make forms for use under this Bill.

#### **Clause 161: General regulation-making power**

This clause states the Department may make regulations for the purposes of this Bill and the topics on which regulations can be made.

**Clause 162: Tynwald approval for regulations**

This clause states an order under clause 2 and regulations must be approved by Tynwald.

**Clause 163: Repeal of Acts**

This clause states the acts that will be repealed.

**DIVISION 2 — SAVINGS AND TRANSITIONAL**

**SUBDIVISION 1 — PRELIMINARY**

**Clause 164: Definitions for division**

This clause states the definitions for this Division.

**SUBDIVISION 2 — CONVERSIONS TO THIS ACT FOR EXISTING REGULATED CARE SERVICES**

**Clause 165: Childrens homes under a repealed care law**

This clause allows for a present registration within the category of a children's home to be converted to a registration within the category of a children's home under this Bill provided certain criteria are met.

**Clause 166: Childminders under a repealed care law**

This clause allows for a present registration within the category of a childminder to be converted to a registration within the category of a childminder under this Bill provided certain criteria are met.

**Clause 167: Child day care centres under a repealed care law**

This clause allows for a present registration within the category of day care for children to be converted to a registration within the category of a child day care centre under this Bill provided certain criteria are met.

**Clause 168: Nursing and residential homes under a repealed care law**

This clause allows for a present registration within the category of a nursing home or residential home to be converted to a registration within the category of an adult care home under this Bill provided certain criteria are met.

**Clause 169: Mental nursing homes under a repealed care law**

This clause allows for a present registration within the category of a mental nursing home to be converted to a registration within the category of an adult care home under this Bill provided certain criteria are met. However, the registered provider may give an election notice choosing the category of independent hospital only if, before giving the notice, the Department has agreed in writing that the registered provider complies with the registration criteria for that category.

**Clause 170: Nurses agencies under a repealed care law**

This clause allows for a present registration within the category of an agency for the supply of nurses to be converted to a registration within the category of nurses agency under this Bill provided certain criteria are met.

**Clause 171: Application of Act to converted registrations**

This clause states the converted registered provider or registered manager registration is subject to this Bill, including the mandatory conditions. However, a care service need not have a registered manager or a responsible person if a manager was not required for it under the relevant repealed care law. The conditions of the registration under the repealed care law for which the person became a registered provider become decided conditions of the provider registration. However, if any of the conditions conflict with a mandatory condition, the mandatory condition prevails to the extent of the inconsistency.

**Clause 172: Registers and registration certificates during registration grace period**

This clause states that until the end of the registration grace period the Department may continue to keep registers under a repealed care law to record the registration under this Bill of converted registrants. Until the Department gives a converted registrant a registration certificate under this Bill for the provider registration, any certificate issued under a repealed care law continues in force for the registration under this Bill.

**SUBDIVISION 3 — OTHER CARE SERVICES DURING REGISTRATION GRACE PERIOD**

**Clause 173: Application of Subdivision**

This clause states that this subdivision applies to a provider or manager who is not a converted registrant for the care service.

**Clause 174: Offence: notification requirement for care service**

This clause requires the provider and manager to give the Department a care service notice as soon as practicable after the registration grace period for the care service starts. If they do not there is a maximum penalty — (summary) of £5,000.

- Note: A Care Service Notice provides the Department with the necessary information about what the service provides; what registration category they wish to register for and in respect of that category that the service meets mandatory conditions and minimum standards. (see clause 178)

**Clause 175: Deferral of registration requirement if notice given**

Subsections (1) and (2) state that the deferral of provider or manager registration applies during the registration grace period if the provider or manager has given a care service notice for the care service.

However, subsection (3) clarifies that sub clause 34(2)(b) and Part 4 apply as if the provider and the manager were subject to the registration requirement for the care service.

Subsection (4) states this clause ceases to apply if the person becomes registered for the care service or is refused registration for the care service.

**Clause 176: Requirements of provider and manager during the period**

This clause clarifies that during the registration grace period for the care service, the provider and manager must comply with the mandatory conditions and the minimum standards. If they do not there is a maximum penalty — (summary) of £20,000.

## **SUBDIVISION 4 — REGISTRATION APPLICATIONS DURING REGISTRATION GRACE PERIOD**

### **Clause 177: Registration applications during the period**

This clause states that if a person wishes to make a registration application during the registration grace period and no regulations have been made then the Department can decide the information, documents and fee. The Department may, also, decide or defer considering the application until the registration grace period ends.

- Note: It is unlikely the Department will need to use this clause as all required regulations should be in place in time.

## **SUBDIVISION 5 — OTHER TRANSITIONAL PROVISIONS**

### **Clause 178: Provisions for disqualification**

This clause states that if consent was given by the Department for a disqualified person to be employed in relation to a disqualification relating to a category of care service under the Children and Young Persons Act 2001 then it will be taken to be a disqualification exemption under this Bill for that category. Also, for a proceeding for an offence against Part 7, Division 1 about anything done during the registration grace period concerning a care service; it is a defence for the defendant to prove the circumstances constituting the disqualification in question under this Bill did not amount to a disqualification under the Children and Young Persons Act 2001.

### **Clause 179: Amendment of converted conditions**

This clause states that an amendment of the registration conditions under a repealed care law is taken to be necessary or desirable if the Department wishes to amend them to make them compatible with this Bill or impose decided conditions to make the carrying on of the care service compatible with this Bill.

### **Clause 180: Existing applications, decisions and appeals**

This clause states how registration applications and appeals are dealt with if they have been made but undecided before the enactment of this Bill. Also, a decision made under a repealed care law about a converted registrant continues in operation but as the corresponding decision under this Bill.

### **Clause 181: Existing inspectors and authorised persons become inspectors**

This clause states a previously appointed inspector for the Department becomes an inspector under this Bill, subject to the terms and conditions of the old authorisation. Their identity card will be valid until they are issued with a new card under this Bill or the card expires.

### **Clause 182: References to repealed care law**

This clause explains a reference to a repealed care law.

### **Clause 183: Interim appeal rules**

This clause applies if no appeal rules have been made. The version of the draft model rules electronically numbered 140508 and held by the Department of Home Affairs will be taken to be the rules. However, if appeal rules are made before the enactment of this Bill as defined under clause 166, this clause will expire on the enactment of this Bill. Otherwise, this clause will expire when the appeal rules are made.

**Clause 184: Existing unregistered social care workers**

This clause states that if immediately before clause 143 comes into operation, a person was employing or engaging a person to perform designated work or was carrying on a business involving the performance of that type of work by the person, then the clause does not apply to the person until 3 months after the enactment of this Bill. Also, if, within the 3 months, the worker or the person applies for registration then this clause does not apply to the person until the application is finally decided or withdrawn.

- Note: The registration process can take some time, hence the clause refers to applying for registration.

**Clause 185: Transitional regulation-making power**

This clause states a regulation may provide for a matter relating to the transition from a repealed care law to this Bill or the coming under this Bill of a newly regulated care service about which the Department considers this Division does not make provision or sufficient provision.

**SUBDIVISION 6 — EXPIRY**

**Clause 186: Expiry of parts of Division about registration grace period**

This clause states this Division (other than the Division heading and clauses 180 to 187) expires on the day on which all newly regulated care services have been prescribed under paragraph (b) of the definition of “registration grace period” under clause 166.

**PART 10 — AMENDMENTS OF LEGISLATION**

Part 10 of the Bill amends legislation including the Adoption Act 1984, the Education Act 2001 and the Children and Young Persons Act 2001. This includes amending the Children and Young Persons Act 2001 in order to formalise the provision of fostering services by or for the Department.

**DIVISION 1 — ADOPTION ACT**

**Clause 187: Act amended**

This Division amends the Adoption Act.

**Clause 188: Section 14 amended - adoption service**

This amends section 14 of the Adoption Act.

**Clause 189: Section 22 amended - meaning of “protected child”**

This amends section 22(2)(c) of the Adoption Act.

**DIVISION 2 — CYPA 2001**

**Clause 190: Act amended**

This Division amends the Children and Young Persons Act 2001.

**Clause 191: Long title amended**

This clause states in the long title, for “children’s homes, fostering, child minding and day care”, substitute «fostering».

**Clause 192: Section 24A inserted—fostering service**

This clause inserts in the Children and Young Persons Act 2001 permission for the Department to provide or secure a fostering service.

Part 7 in that Act will, also, apply to a Departmental provided or secured fostering service. Also, the clause states the Department must ensure no child is fostered under the service to someone who, under section 58 (disqualifications) is disqualified from fostering a child privately.

- Note: This was required to allow fostering inspection and regulation to be covered under this Bill.

**Clause 193: Section 26 amended—manner of accommodation**

This clause amends section 26(1)(c) of the Children and Young Persons Act 2001.

**Clause 194: Section 47 inserted—warrants: emergency protection orders**

After section 47 the Children and Young Persons Act 2001 is inserted -

47A Warrants for emergency protection orders

Subsections (1) and (3) state an authorised person may apply to the High Bailiff for a warrant authorising any constable to help the person enter premises and exercise powers under an emergency protection order. This can only be issued if the person has been, or is likely to be, prevented from exercising the powers.

Subsections (2) and (4) state the application must be sworn and details the information for obtaining the warrant.

Subsection (5) states what the warrant authorises any constable to do.

**Clause 195: Part 6 repealed—childrens homes**

This clause states Part 6 of the Children and Young Persons Act 2001 is repealed.

**Clause 196: Part 7 amended—fostering, child-minding and day care**

This clause amends Part 7 the Children and Young Persons Act 2001. In particular, it extends the disqualification criteria for fostering children privately; amends the definition for when a person ceases to be treated as fostering and is taken to be carrying on a children's home; and extends Part 4, Division 1 (other than clauses 134 and 135) of this Bill to privately fostering a child.

**Clause 197: Sections 98 and 99 repealed—inspections and search warrants**

This clause repeals sections 98 and 99 in the Children and Young Persons Act 2001.

- Note: These sections are now covered in this Bill.

**Clause 198: Section 102 amended - interpretation: general**

This clause amends some definitions in the Children and Young Persons Act 2001.

**Clause 199: Schedules 6 and 7 repealed - registration: childrens homes and childminders**

This clause repeals schedules 6 and 7 of the Children and Young Persons Act 2001.

- Note: The topics are now covered in this Bill.

**Clause 200: Schedule 11 amended - transitional provisions**

This clause inserts under Schedule 11 in the Children and Young Persons Act 2001 that section 61(8) as amended under this Bill applies for a child fostered at any time whether before or after that amendment commenced.

## **DIVISION 3 — EDUCATION ACT**

### **Clause 201: Act amended**

This clause states this Division amends the Education Act 2001.

### **Clause 202: Section 48 substituted - welfare of children**

This clause substitutes section 48 in the Education Act 2001 with -

#### **PART 5A - WELFARE OF CHILDREN ACCOMMODATED IN SCHOOLS OR COLLEGES**

##### **48 Welfare duties**

Subsection (1) states this clause applies for any child who is accommodated at a school or college.

Subsections (2) and (3) clarify whose duty it is to safeguard and promote the child's welfare (the "welfare duty").

Subsections (4) and (5) state the Department of Social Care must take reasonably practicable steps to allow it to decide if the welfare duty is being complied with and if it considers it is not then it must notify the Department of Education and Children.

##### **48A Functions of inspectors under care Act apply**

Subsection (1) states an inspector under this Bill may, at any time, enter premises that are, or are to be, premises of a school or college to help the performance of the Department of Social Care function.

Subsection (2) states Part 4, Division 1 of this Bill applies for an inspector acting under subsection (1) as they would for a care service under this Bill. Any reference to the registered person or person with a role for the premise in the Division will be considered in this case to be the person with the welfare duty.

##### **48B Care Act inspector's duty to notify the Department**

This clause states that if the inspector finds there has been a contravention of the welfare duty or a child accommodated at a school or college is suffering, or is likely to suffer, significant harm then they must notify the Department of Education and Children.

##### **48C Annual fee for DSC function**

This clause states the Department of Social Care may charge an annual fee for performing the Department of Social Care function and the criteria in relation to the payment of the fee.

##### **48D Accommodation in school or college: minimum standards by DSC**

This clause states the Department of Social Care may make minimum standards for safeguarding and promoting the welfare of children accommodated in a school or college. In particular, the Department must consult before making the minimum standards. Also, the minimum standards must be taken into account in deciding whether or not the welfare duty has been contravened.

- Note: King Williams College is already inspected by agreement and there are minimum standards for boarding schools in place. These will be reviewed in consultation with King Williams College.

### **Clause 203: Section 58 amended—subordinate legislation**

This clause amends section 58(1) of the Education Act 2001 to allow regulations to be made by the Department of Social Care under clause 48C ( annual fee).

### **Clause 204: Section 59 amended - interpretation**

This clause adds definitions to the interpretation section of the Education Act 2001.

## **DIVISION 4 — CONSEQUENTIAL AMENDMENTS, REPEALS AND REVOCATIONS**

### **Clause 205: Amendments, repeals and revocations**

This clause states the consequential amendments and revocations.

## **DIVISION 5 — EXPIRY OF CERTAIN PROVISIONS**

### **Clause 206: Expiry**

This clause states that clause 163 and this Part expire on the day after the Promulgation of this Act. However, the expiry does not revive any Act this Part amended as the Act operated before the amendment commenced; revive anything not in operation or not existing when the amendment took effect; or affect the continuing operation of the amendment.

## **SCHEDULE**

The schedule contains the definitions used in the Bill.