



Northern Ireland
Assembly

Committee for Health, Social Services and Public Safety

Report on the Health and Personal Social Services (Amendment) Bill

Together with the Minutes of Proceedings of the Committee Relating to the Report,
Minutes of Evidence, Written Submissions and Other Papers

Ordered by the Committee for Health, Social Services and Public Safety
to be printed 3 February 2016

Report: NIA 293/11-16 (Committee for Health, Social Services and Public Safety)

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Powers and Membership

The Committee for Health, Social Services and Public Safety is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1988 and under Standing Order 48.

The Committee has the power to:

- Consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- Consider relevant secondary legislation and take the Committee stage of primary legislation;
- Call for person and papers;
- Initiate inquiries and make reports; and
- Consider and advise on any matters brought to the Committee by the Minister for Health, Social Services and Public Safety.

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The current membership of the Committee is as follows:

Ms Maeve McLaughlin (Chairperson)

Mr Alex Easton (Deputy Chairperson)

Mrs Pam Cameron

Mrs Jo-Anne Dobson

Mr Thomas Buchanan

Mr Kieran McCarthy

Ms Rosaleen McCorley

Mr Michael McGimpsey

Mr Daithí McKay

Mr Fearghal McKinney

Mr Gary Middleton

¹ With effect from 23 January 2012 Ms Sue Ramsey replaced Ms Michaela Boyle

² With effect from 06 February 2012 Ms Sue Ramsey replaced Ms Michelle Gildernew as Chairperson

³ With effect from 23 April 2012 Mr Conall McDevitt replaced Mr Mark Durkan

⁴ With effect from 02 July 2012 Ms Michelle Gildernew is no longer a Member

⁵ With effect from 10 September 2012 Ms Maeve McLaughlin was appointed as a Member

⁶ With effect from 15 October 2012 Mr Roy Beggs replaced Mr John McCallister

⁷ With effect from 04 September 2013 Mr Conall McDevitt resigned as a Member

⁸ With effect from 16 September 2013 Mr David McIlveen replaced Ms Paula Bradley

⁹ With effect from 16 September 2013 Ms Maeve McLaughlin replaced Ms Sue Ramsey as Chairperson

¹⁰ With effect from 30 September 2013 Mr Fearghal McKinney was appointed as a Member

¹¹ With effect from 04 July 2014 Mrs Jo-Anne Dobson replaced Mr Samuel Gardiner

¹² With effect from 23 September 2014 Ms Paula Bradley replaced Mr Jim Wells as Deputy Chairperson

¹³ With effect from 06 October 2014 Ms Rosaleen McCorley was appointed to the Committee

¹⁴ With effect from 06 October 2014 Mr George Robinson replaced Mr David McIlveen

¹⁵ With effect from 06 October 2014 Mr Michael McGimpsey replaced Mr Roy Beggs

¹⁶ With effect from 01 December 2014 Mr Paul Givan replaced Mr Gordon Dunne

¹⁷ With effect from 11 May 2015 Mr Alex Easton replaced Ms Paula Bradley as Deputy Chairperson

¹⁸ With effect from 03 June 2015 Mr Mickey Brady resigned as a Member

¹⁹ With effect from 14 September 2015 Mr Daithí McKay was appointed as a Member

²⁰With effect from 5 October 2015 Mr Thomas Buchanan replaced Mr Paul Givan

²¹With effect from 9 November 2015 Mr Gary Middleton replaced Mr George Robinson

Executive Summary

1. The two key purposes of the Bill are to update the Northern Ireland Social Care Council's (NISCC) regulatory systems, and to extend NISCC's powers to formally recognise the learning achievements of social workers in Northern Ireland. The Bill was welcomed by stakeholders.
2. Clause 2 of the Bill provides NISCC with an explicit power to disclose information about a registrant's fitness to practise. Given the importance of data protection, particularly in relation to personal or sensitive data, the Committee sought a Ministerial assurance that the powers contained in clause 2 are in line with a person's data protection rights under other pieces of legislation. The Minister provided that assurance.

Introduction

1. The Health and Personal Social Services (Amendment) Bill (NIA 68/11-16) was introduced to the Assembly on 23 November 2015. At Introduction the Minister of Health, Social Services and Public Safety made the following statement under section 9 of the Northern Ireland Act 1998:
“In my view the Health and Personal Social Services (Amendment) Bill would be within the legislative competence of the Northern Ireland Assembly.”
2. The Bill passed its Second Stage on 1 December 2015 and was referred to the Committee for Health, Social Services and Public Safety on 2 December 2015.
3. The stated purpose of the Bill is to make provision about the Northern Ireland Social Care Council and other provision about social care workers.
4. During the period covered by this Report, the Committee considered the Bill and related issues at six meetings. Details of the meetings can be found at Appendix 1.
5. At its meeting on 2 December 2015 the Committee agreed a motion to extend the Committee Stage of the Bill to 5 February 2016. The motion to extend was supported by the Assembly on 11 January 2016.
6. The Committee had before it the Health and Personal Social Services (Amendment) Bill and the accompanying Explanatory and Financial Memorandum. On 3 December 2015 a public notice was placed in the Belfast Telegraph, Irish News and Newsletter seeking written evidence on the Bill by 17 December 2015.
7. A total of three organisations responded to the request for written evidence and details of the submissions received by the Committee are included at Appendix 3.
8. Prior to the introduction of the Bill, the Committee took evidence from officials from the Department of Health, Social Services and Public Safety,

accompanied by representatives from the NISCC on 23 September 2015. On 13 January 2016 the Committee took evidence from these same officials on the issues raised in both the written submissions and the second stage debate.

9. The Committee carried out its clause by clause scrutiny of the Bill on 27 January 2016. At its meeting on 3 February 2016 the Committee agreed its report on the Bill and that it should be printed.

Consideration of the Bill

Background

10. The Northern Ireland Social Care Council (NISCC) was established by the Health and Personal Social Services Act (NI) 2001. It is responsible for the regulation of the social work and social care workforce in Northern Ireland, and for the regulation of professional training courses for social workers.

11. The current model of regulation for the workforce has been in place since 2003. It is based on a determination of misconduct and allows NISCC to take action against registrants through admonishments, suspension and removal from the register. In contrast, other healthcare regulators have a greater range of sanctions available, such as placing conditions on a registrant which are often used to address issues relating to health or competency. Therefore, the first aim of the Bill is to update NISCC's regulatory systems, so that they are in line with best practice in terms of models of professional regulation across the UK.

12. The second objective of the Bill is to extend NISCC's powers to formally recognise the learning achievements of social workers in Northern Ireland. Presently, certificates can only be awarded to social workers for formal training courses. The proposed amendments in the Bill will permit NISCC to take account of a wider range of learning, such as in-service training provided by employers and e-learning programmes.

13. The Bill has 9 clauses.

Clause 1

14. Clause 1 provides NISCC with a broader range of measures which it can impose on registrants including conditions, undertakings, and giving advice or warnings.

15. The Northern Ireland Association of Social Workers (NIASW) welcomed clause 1 as providing more flexibility to NISCC in how it disposes of conduct

cases. The Northern Health and Social Care Trust (NHSCT) also supported clause 1 and viewed it as a move towards a “fitness to practise” approach, which would allow for capability issues to be dealt with through learning and development measures.

16. The Committee raised the issue of the nature of the advice and warnings referred to in clause 1. At an evidence session on 13 January 2016, officials explained:

“Advice is not a sanction. We envisage that it will be given in circumstances in which we are not taking a complaint any further – we may be closing a case – but, nevertheless, we may wish to remind registrants to abide by their code of practice, or draw their attention to that. That would be the tenor of a letter of advice . . .

A warning is a sanction, obviously. That would arise in a case in which you discovered that someone had committed misconduct, albeit at a very low level. You would give that individual a warning. It is similar to admonishments that we use now. A warning could be placed on someone's registration for a period of one to five years, and that would be commensurate with the view of the council, or the committee of the council, on what it feels is appropriate as a warning to be placed on that individual's registration”. (Appendix 2)

17. The Committee was content with this explanation.

Clause 2

18. Clause 2 provides NISCC with powers to obtain information when making a determination about a person’s fitness to practise. It further provides NISCC, in instances when it is in the public interest, with a power to publish information relating to a person’s fitness to practise.

19. The NIASW supported the powers to obtain information set out in clause 2, as this should allow investigations to be better informed. The NHSCT held a similar view, and advised that it already requires its employees to provide witness statements and evidence at hearings, if deemed necessary, in terms of staff who have been referred to NISCC for investigation. However, it recommended that NISCC reviews its current guidance for witnesses at

hearings. The Department's response to this point was contained in a letter dated 8 January 2016 (Appendix 4). It advised that the NHSCT's recommendation that the current guidance and support to witnesses is reviewed is welcomed, and that NISCC will work with the NHSCT and other organisations to consider the issues and how support to witnesses might be best provided and by whom.

20. In terms of NISCC's powers to disclose information about an individual, the NIASW stated that these needed to be more fully rehearsed and should also be explicitly referenced to data protection considerations. The Department's response to this point was contained in a letter dated 8 January 2016 (Appendix 4). It advised that NISCC currently manages the disclosure of information in relation to a registered person's fitness to practise in line with its Information Disclosure Policy, and that clause 2 will not change current practice. The Department further stated that NISCC will continue to redact information of a sensitive nature and which is not in the public interest when releasing information following the determination of a registrant's fitness to practise.

21. Given the importance of data protection, the Committee agreed to write to the Minister to seek a written assurance that the powers contained in clause 2 to disclose information about a person's fitness to practise, are in line with a person's data protection rights under other pieces of legislation. A Ministerial assurance was subsequently received in a letter dated 19 January 2016 (Appendix 4).

22. The Committee sought clarification on why a 14 day limit had been chosen as the deadline for sending information to NISCC. At an evidence session on 13 January 2016, officials explained:

"If the employer, for example, does not respond within the time frame that we have set, we can, within 14 days, seek a County Court order to require it to provide the information. It is a similar time limit to that in the Medical Act 1983 for the General Medical Council.

I have to say, though, that it is a power that we want to use judiciously. We work very closely with employers and stakeholders through engagement and

are very clear about the information that we require when working with people. Nevertheless, it would be helpful to have a power that might assist employers to understand their requirements to release information, and, equally, if we do meet resistance, it would be helpful for us to have the power to take some action". (Appendix 2)

23. The Committee was content with this explanation.

Clause 3

24. Clause 3 places a requirement on social workers and social care workers who work in Northern Ireland to be registered with NISCC. Registration of the social care workforce is a devolved matter, and arrangements, standards and requirements for registration are set by each jurisdiction.

25. The NIASW welcomed this requirement, and suggested that it would be helpful if arrangements between the various UK regulatory councils were developed to facilitate ease of registration across devolved boundaries. The NHSCT made the point that regulators across jurisdictions need to share information regarding misconduct and fitness to practise, given workforce mobility.

26. The Committee sought clarification on the position regarding workers registered with CORU in the Republic of Ireland. At an evidence session on 13 January 2016, officials stated:

" Clause 3 concerns social workers who are registered with other regulatory bodies in the UK . . . The provision does not apply to social workers from the Republic of Ireland who are registered with CORU. They are covered by the provisions of the EU directive, which is about freedom of mobility for professionals within the European Union. It sets out the requirements for social workers from any other European country to register with the Social Care Council, should they wish to work in Northern Ireland. Therefore, the provision is very much about social workers in the UK being registered with the Northern Ireland Social Care Council, as there is a loophole in current legislation".
(Appendix 2)

27. The Committee was content with this explanation.

Clause 4

28. Clause 4 provides NISCC with a power to make rules relating to the standard of proficiency to be attained by social workers and the ways in which those standards can be recognised.

29. The NIASW welcomed this power, and advised it would be keen to work with NISCC in developing the detail of the rules. The NHSCT also supported this clause and stated that it ties in with its commitment to evidence-informed practice and excellence within the workforce.

30. The Royal College of Nursing (RCN) voiced concerns in relation to the mechanism of using rules:

“The RCN is inherently suspicious of this type of “catch-all” provision being inserted into legislation and we urge the Committee to require that full and open public consultation is conducted in advance of this power being exercised”. (Appendix 4)

31. The Department’s response to this point was contained in a letter dated 8 January 2016 (Appendix 4). It advised that any changes to Rules governing standards of proficiency will be subject to the scrutiny and approval of the Department. The Committee was content with this clarification.

32. The Committee queried whether clause 4 provided NISCC with the power to charge social workers fees for the awarding of a certificate. At an evidence session on 13 January 2016, officials clarified the position:

“Clause 4 includes a provision that the council, through rules, may charge fees for the assessment of social workers against the agreed standards of proficiency. That has been included as a future-proofing of the legislation. There is currently no policy intent to introduce such fees, but the clause will allow the council to do that, should it decide to introduce them”. (Appendix 2)

33. The Committee was content with this explanation.

Clause 5

34. Clause 5 provides the Care Tribunal with increased flexibility in responding to appeals, by being able to place a condition on a registrant's practice which would require the person to take action to improve their fitness to practise.

35. The NIASW and the NHSCT welcomed this clause.

Clause 6

36. Clause 6 makes minor or consequential amendments to other legislation as a result of the Bill.

37. There were no comments received on this clause.

Clause 7

38. Clause 7 provides definitions for specific terms used throughout the Bill.

39. There were no comments received on this clause.

Clause 8

40. Clause 8 provides that all the clauses will come into operation on Royal Assent.

41. There were no comments received on this clause.

Clause 9

42. Clause 9 specifies the name of the Bill.

43. There were no comments received on this clause.

Clause by Clause Scrutiny of the Bill

44. The Committee undertook its clause-by-clause consideration of the Bill on 27 January 2016.

45. **Clause 1 - Additional powers in respect of registered persons**

Agreed: the committee is content with Clause 1 as drafted.

46. **Clause 2 - Powers to obtain and disclose information etc**

Agreed: the Committee is content with Clause 2 as drafted.

47. **Clause 3 - Social workers etc to be registered in Northern Ireland register**

Agreed: the Committee is content with Clause 3 as drafted.

48. **Clause 4 - Recognition of attainment of standards by social workers**

Agreed: the Committee is content with Clause 4 as drafted.

49. **Clause 5 - Appeals to the Care Tribunal**

Agreed: the Committee is content with Clause 5 as drafted.

50. **Clause 6 - Minor and consequential amendments**

Agreed: the Committee is content with Clause 6 as drafted.

51. **Clause 7 - Interpretation**

Agreed: the Committee is content with Clause 7 as drafted.

52. **Clause 8 - Commencement**

Agreed: the Committee is content with Clause 8 as drafted.

53. Clause 9 - Short title

Agreed: the Committee is content with Clause 9 as drafted.

Links to Appendices

Minutes of Proceedings can be viewed [here](#)

Minutes of Evidence can be viewed [here](#)

Written submissions can be viewed [here](#)

Correspondence from the Department of Health, Social Services and Public Safety can be viewed [here](#)

Research papers can be viewed [here](#)

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Committee for Health, Social Services and Public Safety
Dr Kathryn Aiken
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

Telephone: 028 90 520481

Email: committee.hssps@niassembly.gov.uk

ISBN 978-1-78619-127-4
