

FROM THE MINISTER OF HEALTH



Department of  
**Health**

An Roinn Sláinte

Mánnystrie O Poustie

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Dear Keith,

**Adult Protection Bill – Delegated Powers Memorandum**

I am writing to provide the Committee for Health with the Delegated Powers Memorandum for the Adult Protection Bill. Please find attached at Annex A.

I should be grateful if you could provide to Committee members.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Mike Nesbitt'.

**Mike Nesbitt**  
**Minister of Health**

## **ADULT PROTECTION BILL**

### **DELEGATED POWERS MEMORANDUM**

**Prepared by the Department of Health**

#### **Introduction**

1. This memorandum sets out the delegated powers contained within the Adult Protection Bill, the justification for these powers, and the Assembly control to which they are subject. It should be read in conjunction with the Explanatory and Financial Memorandum accompanying the Bill.
2. The Bill provides the Department of Health with powers to make regulations.

#### **Background**

3. In January 2020, the Commissioner for Older People for Northern Ireland (COPNI) published 'Home Truths - A Report on the Commissioner's Investigation into Dunmurry Manor Care Home. Furthermore, in August 2020, an independent review of the leadership and governance at Muckamore Abbey Hospital was published. Subsequently, following the widely publicised safeguarding failings at Muckamore Abbey Hospital and Dunmurry Manor Care Home, it was recognised that there was a need to review and improve the Department's Adult Safeguarding policy.
4. In September 2020, the Minister of Health announced his intention to legislate, subject to the approval of the Northern Ireland Executive, to provide a statutory footing to the policy around Adult Safeguarding. The Adult Protection Bill introduces additional protections to strengthen and underpin the adult protection process and will bring Northern Ireland in line with other parts of the UK where such legislation already exists.
5. The Act has 51 clauses and contains four substantive parts. Part 1 (clauses 1 to 29) provides for the identification and protection of the adult at risk, including

provision for social workers to exercise certain powers conferred by the Bill or by court orders under the Bill. Part 2 (clauses 30 to 37) provides for the appointment and functions of the Adult Protection Board. Part 3 (clauses 28 to 42) creates new offences where there is ill-treatment or neglect by those who have the care of an adult. Part 4 (clauses 43 to 47) provides for the regulation of CCTV systems in certain establishments where adults are present.

### **Analysis of delegated powers by clause**

6. In this section we consider each of the delegated powers within the Bill in detail. The specific provisions for delegated legislation have been developed on the basis of the following considerations:
  - That the legislative framework must be clearly presented on the face of the Bill with secondary legislation used to provide the detail;
  - That, within that framework, the provisions must also support effective implementation and contain sufficient flexibility to respond to changing circumstances;
  - That the power to make secondary legislation must be narrowly drawn so that, although there are a number of regulation making powers, there is greater clarity of intention than would be the case with fewer but more general secondary legislation making powers; and
  - That operational, administrative and technical details are not normally set out in primary legislation as too much detail on the face of primary legislation risks obscuring the principal duties and powers from Assembly scrutiny.
  
7. In deciding what procedure is appropriate for the exercise of the powers in the Bill, the Department has carefully considered Legislation Guidance Note 15: *Executive Bill Procedures – Delegated Powers Memorandum* - which was developed in accordance with paragraph 18 of the *Guidance to Ministers and Departments on Dealing with Legislation*, whether the provisions enable the amendment by delegated legislation of primary legislation and/or the importance of the matter to be addressed.

## PART 1 - PROTECTION OF ADULTS AT RISK OF HARM

### Clause 4 (4) - The duty to report and co-operate in inquiries

Power Conferred on: Department of Health

Power exercised by: Regulations

Assembly Procedure: Draft Affirmative

#### Context and Purpose

8. Clause 4 provides a statutory duty on HSC trusts, members of the police force i.e. Police Service of Northern Ireland, and any Harbour or Airport Police, the Regional Agency for Public Health and Social Well-being, Regulation and Quality Improvement Authority, the Probation Board for Northern Ireland, and the Northern Ireland Housing Executive. The statutory duty will also be on persons providing primary medical services under Part 6 of the Health and Personal Social Services (Northern Ireland) Order 1972 or in accordance with arrangements made under Article 15B of that Order and independent providers commissioned or contracted to provide health and social care services to report to the relevant HSC trust any cases where they believe there is reasonable cause to suspect that an adult meets the criteria of 'an adult at risk'.
9. The organisations listed above also have a statutory duty to cooperate with a HSC trust making inquiries about an adult, except where doing so would conflict with the exercise of their functions.
10. Clause 4(4) states that regulations may amend the list of bodies and persons.

#### Justification for taking the power

11. The use of regulations in this case would provide the necessary flexibility to add additional bodies and persons at Clause 4(4) with a duty to report and co-operate in inquiries without amending primary legislation. This is necessary as there may

be other bodies and persons who are subsequently deemed to have a responsibility to report concerns and co-operate in inquiries.

#### Justification for procedure

12. Clause 4(4) enables amendment of the text of the Act by adding to the list organisations which were not in the Act as passed by the Assembly. It is therefore considered appropriate that any regulations under clause 4(4) should be made by draft affirmative resolution to enable full scrutiny by the Assembly.

#### **Clause 26 (4) - Independent Advocates**

Power Conferred on: Department of Health  
Power exercised by: Regulations  
Assembly Procedure: Negative

#### Context and Purpose

13. Clause 26 provides that the HSC trust must make arrangements to secure that an independent advocate is available to provide support and assist adults at risk to be involved in and influence decisions taken about their care.
14. Clause 26 (4) states that Regulations may make provision about— (a) the arrangements that may be entered into by HSC trusts for the purposes of this section; (b) the assignment and functions of independent advocates.
15. Clause 26 (5) states that the regulations may in particular— (a) provide that a person may be assigned as an independent advocate only if the person meets prescribed conditions; (b) provide for the assignment of a person to be subject to prescribed conditions.
16. Clause 26 (6) states that the conditions that may be prescribed under subsection (5)(a) include— (a) a condition that the person is approved, or belongs to a description of persons approved, in accordance with the regulations; (b) a

condition that the person has prescribed qualifications or skills or has undertaken prescribed training.

Justification for taking the power

17. The use of regulations in this case would provide the necessary flexibility to determine the prescribed conditions for Independent Advocates, including qualifications, skills or training required to be an Independent Advocate without amending primary legislation.

Justification for procedure

18. This is a non-controversial and operational issue designed to ensure that Independent Advocates meet prescribed conditions. It therefore subject to negative Assembly control only.

**Clause 27 Exercise of functions of social worker, health professional and HSC trust**

Power Conferred on: Department of Health  
Power exercised by: Commencement orders  
Assembly Procedure: Negative

Context and Purpose

19. Clause 27 (5)(d) enables the Department to make regulations to prescribe an additional type of individual who would qualify as a “health professional”.

Justification for taking the power

20. This power provides flexibility for the Department to add other professions to those considered to be a “health professional” under this clause.

## Justification for procedure

21. The amendment of the list of professionals is an operational issue which would ensure the list is kept relevant and up to date. It is considered to be non-contentious and operational in nature and therefore is subject to negative procedure only.

## **Part 2 - the Adult Protection Board for Northern Ireland**

### **Clause 30 (6) Establishment of the Board**

Power Conferred on: Department of Health

Power exercised by: Regulations

Assembly Procedure: Negative

## Context and Purpose

22. Clause 30 – Establishment of the Board provides for the establishment of the Adult Protection Board for Northern Ireland (AAPBNI) and places a duty on the Department to establish the APBNI.
23. Clause 30 (2)(b) provides for the prescription of representatives of the persons or bodies specified in subsection (3).
24. Clause 30 (3)(f) provides for the prescription of other persons exercising functions or engaged in activities relating to the protection of adults at risk.
25. Clause 30 (6) states that regulations may make provision as to— (a) the appointment, tenure and vacation of office of a Chair and members of the Board (including the circumstances in which they cease to hold office or may be removed or suspended from office); (b) the procedure of the Board; (c) the staff, premises and expenses of the Board (including provision as to which person or body provides the staff and premises and meets the expenses).

### Justification for taking the power

26. The use of regulations in this case would provide the necessary flexibility to determine appropriate procedures for the appointment of the Chair, Board members, Board procedures, staff, premises and expenses of the Board without amending primary legislation.

### Justification for procedure

27. This is a non-controversial issue focused on determining effective procedures for the operation of the APBNI. It is therefore subject to negative Assembly control only.

### **Clause 31(2) Objective of the Board**

Power Conferred on:	Department of Health
Power exercised by:	Regulations
Assembly Procedure:	Draft Affirmative

### Context and Purpose

28. Clause 31 provides the main objective of the APBNI, which is to co-ordinate and ensure the effectiveness of what is done by each person or body represented on the Board for the purposes of protecting adults at risk.
29. Clause 31(1) states that the objective of the Board is to co-ordinate and ensure the effectiveness of what is done by each person or body represented on the APBNI (by virtue of section 30(2)(b) and (5)) for the purposes of protecting adults at risk.
30. Clause 31 (2) states that regulations may amend the objective specified in subsection (1) (whether by adding to, removal of or substitution of any part of that objective) for the purposes of protecting adults at risk.

Justification for taking the power

31. The use of regulations in this case would provide the necessary flexibility to amend the objective of the APBNI to respond to new and emerging issues related to protecting adults at risk, without amending primary legislation.

Justification for procedure

32. Clause 31(2) enables the core objectives of the Adult Protection Board to be amended. As such, it enables amendment of the objectives as agreed by the Assembly when passing the Act. It is therefore considered appropriate that any regulations under clause 31(2) should be made by draft affirmative resolution to enable full scrutiny by the Assembly.

**Clause 32 Functions of the (Adult Protection) Board**

Power Conferred on:	Department of Health
Power exercised by:	Regulations
Assembly Procedure:	Negative

Context and Purpose

33. Clause 32 (5) confers power to make regulations which define the circumstances under which serious case reviews should be undertaken. Serious case reviews will be one of the core functions of the APNI.

Justification for taking the power

34. This is a standard provision enabling the Department to commence various provisions as it may appoint.

Justification for procedure

35. This clause is a standard non-contentious clause which concerns the operational function of serious case reviews. Therefore it is subject to negative procedure only.

### **Clause 34 Annual Report**

Power Conferred on: Department of Health  
Power exercised by: Regulations  
Assembly Procedure: Negative

#### Context and Purpose

36. Clause 34 places a requirement on the Department to lay in the Assembly a copy of the annual report prepared by the Adult Protection Board. The annual report will include details on the implementation of the APBNI's strategic plan, including an assessment of the effect of the plan and information on the activities carried out in pursuance of the plan. The APBNI are required to compile the report after the end of each financial year.

#### Justification for taking the power

37. This is a standard provision enabling the Department to fulfil its function in laying the annual report of the Adult Protection Board in the Assembly.

#### Justification for procedure

38. This is a standard non-contentious clause which concerns the operational function of the Adult Protection Board, and is therefore subject to negative procedure only.

### **Clause 35 (3), (4), (8), (10) Committees and sub-committees of the (APBNI) Board**

Power Conferred on: Department of Health  
Power exercised by: Regulations  
Assembly Procedure: Negative

## Context and Purpose

39. Clause 35 enables the APBNI to establish one or more committees. It gives a power to the APBNI or a committee to establish one or more sub-committees.
40. Clause 35 (3) states that regulations may make provision as to— (a) the appointment, tenure and vacation of office of Chairs and members of committees and sub-committees (including the circumstances in which they cease to hold office or may be removed or suspended from office), (b) the procedure of committees and sub-committees, (c) the functions of committees and sub-committees, and (d) the staff, premises and expenses of committees and sub-committees (including provision as to which person or body provides the staff and premises or meets the expenses).
41. Clause 35 (4) states that regulations may provide that committees and sub-committees must include such representatives of such persons or bodies as may be prescribed or such other persons as may be prescribed.
42. Clause 35 (8) states that regulations may make provision as to the exercise by committees or sub-committees of any of their functions (including provision as to further duties to be imposed, procedures to be followed and the manner in which a committee or sub-committee is to exercise its functions).
43. Clause 35 (10) enables the Department to prescribe by Regulations the form and information to be contained in annuals reports made by committees or sub-committees to the Board.

## Justification for taking the power

44. The use of regulations in this case would provide the necessary flexibility to determine the most effective procedures for running APBNI committees and sub-committees including chairing, membership, committee functions and procedures, committee support and expenses without amending primary legislation.

### Justification for procedure

45. This is a non-controversial clause designed to ensure effective procedures for the operational function of APBNI committees and sub-committees. It is therefore subject to negative Assembly control only.

## **PART 4 – REGULATION OF CCTV SYSTEMS ON CERTAIN ESTABLISHMENTS**

### **Clause 44 Regulation of CCTV systems in establishments to which this Part applies**

Power Conferred on: Department of Health

Power exercised by: Regulations

Assembly Procedure: Draft Affirmative

### Context and Purpose

46. Clause 44 provides that regulations may, in relation to the establishments to which this Part applies, make provision about the installation and use of a CCTV system on the premises of the establishment for the purpose of safeguarding adults at risk who reside in, or use the services provided in those premises.
47. Clause 44 (2) states that regulations may make provision— (a) for prescribed assessments and other procedures to be carried out before a CCTV system is installed on any premises; (b) about the need to inform and seek the consent of those residing or accommodated in, or using the services provided in, those premises (including provision about cases where consent is refused or a person lacks capacity to consent); (c) prohibiting or restricting the installation or use of a CCTV system in areas or locations of a prescribed kind or description; (d) for the publication of information about any CCTV system installed on the premises of an establishment; (e) about the use and maintenance of the CCTV system; (f) about the use and processing of information obtained by the system and access to and disclosure of that information; (g) for the issue by the Department of guidance about the content of the regulations.

48. Clause 45 provides that contravention of regulations under clause 44 is an offence. Clause 45 (2) states that a person guilty of an offence under the regulations is liable on summary conviction to a fine not exceeding level 3 on the standard scale. Clause 45 (3) states that proceedings in respect of an offence under the regulations must not, without the consent of the Director of Public Prosecutions for Northern Ireland, be taken by any person other than RQIA. Clause 45 (4) states that proceedings for an offence under the regulations may be brought within a period of 6 months from the date on which evidence sufficient in the opinion of the prosecution to warrant the proceedings came to its knowledge; but no proceedings may be brought by virtue of this subsection more than 3 years after the commission of the offence.
49. Clause 46 (1) in relation to Enforcement powers of RQIA also states that it is a function of RQIA to monitor and enforce compliance with regulations under Clause 44.

#### Justification for taking the power

50. The use of regulations in this case would provide the necessary flexibility to determine the most appropriate procedures that must be followed in relation to the installation and use of CCTV in premises for the purpose of safeguarding adults at risk who reside in, or use the services provided in those premises, without having to amend primary legislation.

#### Justification for procedure

51. The inclusion of a power to make regulations regarding CCTV was not included in the policy consultation which informed the draft Bill. The issue was raised by some stakeholders to the Bill Team and was added after due consideration by the Transformation Board overseeing the development of the Bill, taking into account appropriate legal advice. It is recognised that the views of the general public more widely were not canvassed in relation to this issue. Due to this, the

inclusion of these clauses was agreed on the condition that the content of the draft Regulations would be subject to full public consultation, and that they would be subject to draft affirmative resolution by the Assembly, enabling the highest possible level of Assembly scrutiny for regulations.

52. It is therefore considered appropriate that any regulations under clause 44 should be made by draft affirmative resolution to enable full scrutiny by the Assembly.

## **PART 5 – GENERAL**

### **Clause 50 Commencement**

Power Conferred on: Department of Health  
Power exercised by: Regulations  
Assembly Procedure: Negative

### Context and Purpose

53. Clause 50 (2) provides that all parts of the Bill aside from Part 5 will come into operation on such day or days as the Department appoints by way of commencement order. This provision allows each part of the Bill to be commenced individually and at the appropriate time. This is a standard provision. The exceptions to this is Part 5 of the Bill, which includes Clauses 48, 49, 50 and 51, which come into operation the day after the Act receives Royal Assent.

### Justification for taking the power

54. This is a standard provision enabling the Department to commence various provisions as it may appoint.

### Justification for procedure

55. This is a standard non-contentious clause and is therefore subject to negative procedure.