

Yours sincerely,

[REDACTED]

ADULT SAFEGUARDING UNIT

Copied to:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ANNEX A

CONVENTION RIGHTS MEMORANDUM - ADULT PROTECTION BILL

Assembly Legal Services

Clause	Issue Raised	Response
<p>Clause 2</p> <p>This clause defines the term 'adult at risk' for the purposes of the Bill and harm for the purposes of Part 1 of the Bill (all harmful conduct including physical, psychological or unlawful conduct, including harm by negligence or omission).</p> <p>Right engaged: Article 3</p>	<p>the Committee may wish to raise with the Department whether the definitions encompass the types of ill treatment envisaged by Article 3, particularly as the Explanatory and Financial Memorandum confirms that self-harm is not included.</p>	<p>Article 3 refers to inhuman or degrading treatment or punishment. It's very likely that this would constitute harm under the definition.</p> <p>The issue of self-directed harm and neglect was discussed when developing the Adult Safeguarding Prevention and Protection in Partnership policy for Northern Ireland (2015). The Care Act 2014 (England) and the Adult Support and Protection (Scotland) Act 2007 refer to responsibilities to provide both early intervention safeguarding to support an adult and protection interventions to intervene in an adult's life. However, the Adult Protection Bill only refers to the protection interventions that are required after assessment i.e. duty to report, make inquiry and protect.</p> <p>There are already existing Health & Social Care Trust systems and processes in place</p>

		<p>through strategies, policies and procedures that work in partnership with other sectors to support adults exhibiting self-neglect and self-harm. These are part of early intervention services to prevent an adult becoming increasingly susceptible to harm from others.</p> <p>The view from Health & Social Care Trusts is that these interventions are best carried out in the least restrictive and least intrusive manner i.e. what could be termed as self-neglect of an older person who now struggles with daily living tasks is a core role for social work and should be delivered through case management processes. In terms of self-harm, colleagues within mental health services have established services, such as the Self Harm Intervention Programme (SHIP), to provide specialist counselling and support. HSC Mental Health services will also provide this support as part of their core responsibilities.</p> <p>Learning from the independent review carried out by CPEA (September 2020) which examined the health and social care system's response to care failings, highlighted that protection resources should</p>
--	--	--

		<p>be targeted at those with the greatest protection needs and that the prevention and early intervention part of the safeguarding continuum continues to be strengthened and embedded as everyone's business in core services. If self-neglect / harm was referenced in the Adult Protection Bill, it would likely overwhelm the system and may result in a disproportionate and potentially unnecessary response to need in the context for Northern Ireland.</p>
<p>Clause 3</p> <p>This clause creates a duty on an HSC trust to make inquiries if the trust has reasonable cause to suspect the person is an adult at risk and that the trust might need to intervene. The HSC trust is to have regard to the importance of the provision of an independent advocate (defined by clause 26) to the adult if intervention is required.</p> <p>Right engaged: Article 8</p>	<p>The Committee will wish to be satisfied that any such interference is a proportionate means of achieving the protection of the individual. However, the Committee will note that, as public authorities, HSC trusts are under a discrete obligation to carry out their functions in a manner compatible with the Convention rights (section 6 of the Human Rights Act 1998 – ‘HRA’).</p>	<p>The Department believes this duty is a proportionate means of achieving protection for the individual. Trusts are required to carry out their functions in a manner compatible with ECHR.</p>
<p>Clause 4</p> <p>This clause places a duty on various public bodies to report to an HSC trust on any adult at risk who may require intervention to protect them from harm. The duty is placed on HSC trusts (since an adult may come to</p>	<p>The Committee will wish to be satisfied that any such interference is a proportionate means of achieving the protection of the individual. However, the Committee will note that the bodies on which the duty is placed under this clause are themselves public bodies with a</p>	<p>As above – see response to Clause 3 query.</p>

<p>the attention of more than one trust), members of the police force and any Harbour or Airport police, the Regional Agency for Public Health and Social Well-being, the Regulation and Quality Improvement Authority ('RQIA'), the Probation Board, Northern Ireland Housing Executive, and persons providing primary medical services or health or social care services. The clause also contains a duty to co-operate.</p> <p>Right engaged: Article 8</p>	<p>discrete obligation to carry out their functions in a manner compatible with the Convention rights.</p>	
<p>Clause 5</p> <p>This provides that a social worker may enter any premises for the purpose of enabling or assisting an HSC trust conducting inquiries under clause 3 to decide if a person is an adult at risk and if intervention is required to protect that adult from harm.</p>	<p>The Committee will wish to be satisfied that any such interference is a proportionate means of achieving the protection of the individual.</p> <p>In this regard the Committee may wish to consider the provisions of clause 18, which provide further rules on the manner in which such visits are to be carried out, and specify that the social worker may not use force during, or in order to, facilitate a visit. The Committee will note that as employees of public authorities, social workers are under a discrete obligation to carry out their functions in a</p>	<p>As above – see response to Clause 3 query.</p>

	manner compatible with the Convention rights.	
<p>Clause 7</p> <p>This clause provides that where a social worker carrying out a visit under clause 5 is a health professional, or accompanied by a health professional, the health professional may, in private, conduct a medical examination of the adult at risk. The adult at risk can refuse to be examined.</p> <p>Right engaged: Article 8</p>	<p>Although the adult at risk is to be informed of their right to refuse an examination, the Committee may wish to raise with the Department issues around informed consent (i.e. how it is to be ensured that the social worker or health professional is in a position to know if the adult at risk is capable of understanding their right to refuse the examination).</p>	<p>Social workers and medical professionals work for organisations which are obligated to carry out their functions in a manner compatible with the ECHR. Both the social worker, as a trained Adult Protection Social Worker (APSW) and the healthcare professional as a trained doctor or nurse/appropriate professional, would have training to recognise as well as experience in dealing with people who do not have capacity to understand. Professionals will be required to judge whether the person has capacity to consent. Where they do not have capacity to consent, decisions would be made in the person's best interest. Warrants must be sought from magistrate.</p>
<p>Clause 8</p> <p>This clause provides that if a social worker has reasonable cause to believe that an adult is at risk then they can require any person holding health, financial or other records relating to the adult at risk to provide these. If the records are being held by a person other than the adult at risk, that person must consent. If consent is refused, or the person</p>	<p>The Committee will wish to be satisfied that any such interference is a proportionate means of achieving the protection of the individual.</p>	<p>The social worker must act in accordance with the ECHR. The Department believes this to be a proportionate engagement of the person's rights for the purpose of protecting adults at risk.</p>

<p>holding the records lacks capacity to consent, or if there is a failure to produce, the HSC trust can apply to a magistrates' court for a production order. 26.</p> <p>Where records are produced, they may be inspected by the social worker, or any other person the social worker considers appropriate for the purposes of determining whether the person is an adult at risk, and if so whether intervention is required to protect that person from harm.</p> <p>Right engaged: Article 8</p>		
<p>Clause 10</p> <p>This clause provides for assessment orders which authorise a social worker to take a specified person from the premises being visited in order to allow the social worker to interview them, arrange for a medical examination, or both. This is only permitted to enable the HSC trust to decide whether the person is an adult at risk and if intervention is necessary. 31.</p> <p>An assessment order is valid from the date specified in the order and expires seven working days after that date. Clause 10(3) sets out the matters of which the court must be satisfied to grant an assessment order.</p>	<p>The Committee may wish to raise with the Department the potential for Article 5 to be engaged - the starting point will be the adult at risk's concrete situation and the type, duration, effects and manner of implementation of the measure in question.</p>	<p>As above – see response to Clause 8 query.</p>

<p>Clause 17 makes further provision for assessing the consent of the adult affected.</p> <p>Rights engaged: Article 5, Article 8, Article 1 of the First Protocol</p>		
<p>Clause 11</p> <p>Clause 11 concerns removal orders. An HSC trust may apply to a magistrates' court for a removal order to move a specified person to specified premises within 72 hours of the order being made. It allows the trust to take such reasonable steps as it thinks fit to protect the person from harm. Before making a removal order, a court must be satisfied that the person is an adult at risk who is likely to be seriously harmed if not moved and the premises are available and suitable. A removal order will last for 7 working days after the day on which the person is moved. Clause 17 makes further provision for assessing the consent of the adult affected.</p> <p>Rights engaged: Article 5, Article 8, A1P1</p>	<p>Removal orders may engage Article 5 but again seem likely to result in only a short-term deprivation of liberty. Again, the Committee may wish to raise with the Department the potential for Article 5 to be engaged, and also to consider the kind of 'specified premises' into which the adult at risk is likely to be removed.</p>	<p>Specified premises should be at the courts direction as the Trusts would not have the powers to remove someone without a magistrate's involvement.</p> <p>All avenues to engage with the adult to complete an assessment and to manage the risk identified would be exhausted at this point and the application for removal would be the last resort. In the application to the court, the Trust may identify reasonable 'specified premises' for the court to consider. This may be different in each case depending on the circumstances. It could be to a relative's home as the least intrusive approach, or it could be to a hospital if there is also a need for medical assessment. In some cases, given the known needs of the adult it may also be reasonable to propose an admission to a care home.</p>
<p>Clause 16</p>	<p>The Committee should be satisfied that the particulars of the offence of failure to</p>	<p>The Department is content that the particulars of the office of failure to comply</p>

<p>This creates an offence for failure to comply with a banning order or temporary banning order. A person guilty of this offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale (i.e. up to £1,000).</p> <p>Right engaged: Article 6</p>	<p>comply with a banning order are sufficiently clear. The Committee will note that the substance of the offence is set out at clause 12. Further, the offence is not committed if a person has a reasonable excuse for his or her behaviour. The offence is punishable only by a fine.</p>	<p>with a banning order are sufficiently clear as drafted and in line with legal advice.</p>
<p>Clause 23</p> <p>This clause provides for an offence where a person prevents or obstructs any other person from doing anything which the other person is entitled to do by any provision of Part 1 of the Bill. A person guilty of an offence under this clause is liable on summary conviction to a fine not exceeding level 3 and/or a term of imprisonment not exceeding 3 months.</p> <p>Notably, a refusal to allow a social worker, or any person accompanying a social worker, to carry out a visit which is not authorised by a warrant for entry does not constitute an offence under the clause. Additionally, nothing done by a person whose well-being or property another person is attempting to investigate or protect constitutes an offence under the clause.</p>	<p>The Committee should be satisfied that the particulars of the obstruction offence are sufficiently clear to enable the citizen, if necessary with legal advice, to regulate his or her conduct.</p>	<p>The Department is content that the particulars of the obstruction offence are sufficiently clear as drafted and in line with legal advice.</p>

<p>Right engaged: Article 6</p>		
<p>Clause 25</p> <p>This clause provides that there is no appeal against an application for a production order, an assessment order, a removal order or a warrant for entry. An appeal can be made to the county court against a decision in relation to a banning order or temporary banning order, or variation or revocation of such, but only with the leave of the magistrates' court. Clause 25(3) makes further provision for appeal against the county court. A banning order or temporary banning order may continue to have effect while an appeal is pending.</p> <p>Right engaged: Article 6</p>	<p>The Committee may wish to raise with the Department, the lack of appeal against the granting of an assessment order, a removal order or a warrant of entry.</p> <p>(However, the reason for the absence of appeal provisions for these orders is probably fairly self-explanatory, in that assessment and removal orders only have effect for a maximum of seven days, and warrants are valid only for 72 hours.)</p> <p>the Committee will note that production orders do not appear to be time limited and cannot be appealed and may wish to raise this with the Department.</p>	<p>The policy aim in all three cases is to allow the trust's inquiry to proceed as quickly as possible while allowing recourse to a court where those affected dispute the trust's approach. These orders should also only be undertaken with the person's consent (or, where the person does not have capacity, agreement by magistrate).</p> <p>The reason for not allowing an appeal against a production order is broadly the same as that in relation to removal and assessment orders, i.e. there is a time element which militates against an appeal. In the case of assessment and removal orders the time constraint is the short period for which the orders remain in force. In relation to production orders, the time constraint is that the production order (if it is to be enforceable) will have to specify a date or time by which the order has to be complied with.</p>
<p>Clause 38</p> <p>This clause provides that it is an offence for an individual who has the care of an adult by virtue of being a care worker to ill-treat or wilfully neglect an adult. The maximum penalty following conviction on trial by</p>	<p>The Committee will wish to be satisfied that the concepts of 'ill-treat[ment]' and 'wilful neglect' are sufficiently clear. In this regard it may be noted that 'ill-treat[ment]' is a fairly self explanatory term, and the term 'wilful neglect' communicates a well-</p>	<p>The supplementary information provided below the query in the middle column addresses this.</p>

<p>indictment is five years or an unlimited fine (or both) and on summary trial imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both).</p> <p>Right engaged: Article 6</p>	<p>established legal concept, used in multiple statutes.</p>	
<p>Clause 46</p> <p>Clause 44 provides that regulations may, in relation to a day care setting, a nursing home, a residential care home or a mental health unit, make provision about the installation and use of a CCTV system on those premises for the purpose of safeguarding adults at risk who reside in, or use the services provided in those premises.</p> <p>The content of regulations is not a matter for the Committee at this stage, because section 24 of the Northern Ireland Act 1998 prevents the Department from making any regulations incompatible with the Convention. However, clause 46 of the Bill deals with the role of the RQIA as regards such premises, and the powers conferred on the RQIA by the Bill may be considered by the Committee at this stage.</p> <p>Clause 46(1) details that it is a function of the RQIA to monitor and enforce compliance with</p>	<p>The Committee will wish to be satisfied that, should such regulations be made, the enforcement powers of the RQIA in enforcing compliance with such regulations represent a proportionate means of achieving a legitimate aim. The Committee may wish to inquire of the Department the purposes for which these powers are conferred on the RQIA, but the extent of the compliance and enforcement powers appear orthodox, and the offence of non-compliance may only be dealt with summarily.</p>	<p>In terms of the purposes for these powers being conferred on RQIA, it seemed to the Adult Safeguarding Transformation Board that they were the obvious choice. Given their inspection role it seemed natural that it would be the organisation charged with inspecting whether care settings were correctly complying with CCTV regulations. Additionally, the RQIA have published current guidance around the use of CCTV in care settings and therefore have existing ties to this matter.</p>

<p>regulations under clause 44. Clause 46(4) provides the RQIA with the power to require information from a responsible authority relevant to the exercise of its functions under clause 46(1). Clause 46(5) authorises the RQIA to enter and inspect premises of an establishment as long as it is not wholly or mainly used as a private dwelling. If it is a private dwelling the occupier must consent.</p> <p>Clause 46(8) states that a person from the RQIA entering and inspecting such premises must, if required, produce an authenticated document showing their authority to exercise their power. Clause 46(9) provides that it an offence to obstruct or fail to comply with a requirement under the clause. Clauses 49(10)-(12) details that a person authorised under the clause may inspect premises, seize relevant material, take photographs, and inspect computer records.</p> <p>Rights engaged: Article 8, A1P1</p>		
<p>Clause 47</p> <p>This clause provides restrictions on the disclosure of confidential information obtained as part of inspections carried out under clause 46. A person is not required to provide confidential information unless consent is obtained, it is anonymised</p>	<p>The Committee will wish to be satisfied that provision for the use of confidential information represent a proportionate means of achieving a legitimate aim.</p>	<p>The Bill builds in the requirement for the consent of the adult at risk to be sought. As with other clauses, the Department believes that this is a proportionate interaction with the ECHR.</p>

<p>information, or, if the information cannot be anonymised, the RQIA believe there is a serious risk to the health or safety of any person and due to the urgency of the matter consent cannot be obtained. Clause 47(2) also provides that a person is not required under clause 46 to provide information the disclosure of which is prohibited under another statutory provision. Clause 47(4) defines 'confidential information' as 'information which is held subject to a duty of confidence'</p> <p>Right engaged: Article 8</p>		
---	--	--