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Director of Disability and Older People



Department of
Health

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Date: 13 March 2026

Dear Keith,

The Committee for Health met on 10 February 2026 and submitted a number of queries to the Department regarding the Adult Protection Bill. As the Minister is out of the country at present he asked me to respond on his behalf. Please see responses below:

- **Clause 25: The Committee requested that the Department share any interaction with the Commissioner for Older People, specifically around a right to appeal not being provided for production orders, assessment orders, removal orders and warrants for entry.**

The Bill Team has met regularly with COPNI to provide updates on the Adult Protection Bill. It set out its position on the issue of appeals with COPNI representatives at a meeting on 14 January 2026. The policy aim with the orders and the warrant for entry 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). The reason for not allowing an appeal against these orders is that 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. A Warrant for Entry expires 72 hours after it is granted.

- **Clause 26: For the Department to seek advice from the Bill drafter on the wording of this Clause being that a Trust must “*make arrangements to secure*” that an Independent Advocate is “*available*” and any reasons it is worded in this way.**

OLC has advised that the current structure of Clause 26 reflects the Mental Capacity (NI) Act 2016 which covers the assignment of independent mental capacity advocates - section 86. The reference to the Trust making “arrangements” allows for the Trust to make the arrangements by itself providing advocates or by entering into arrangements with others for the provision of advocacy services. The purpose of the wording in Clause 26(1) is to require the Trust to make the arrangements which will provide an adequate number of suitably qualified advocates who are available to be assigned as advocates. This will enable the assignment of an advocate from the group of advocates created by the “arrangements” to an individual who is subject to the exercise or proposed exercise by the trust of its functions under the Bill. This will be guided by regulations under subsection (3)(b) which will deal with the assignment and functions.

The Committee will wish to note that OLC has now provided draft amendments in respect of Independent advocates which would alter the wording of Clause 26, including the specific wording to which this query relates.

Independent Advocates – Proposed Amendments

The Department had provided a response to a question from the committee in relation to strengthening wording in relation to independent advocates in relation to Clauses 5-8 (**Corr 0383 2026**). Our response outlined that the offer of an Independent Advocate at clauses 5-8 could place the safeguarding process on hold until an advocate was available – this would be unsafe as any

delay to assessment could increase the risk of harm, delay interventions or appropriate actions due to the assessment not proceeding and information not being known. It would also prevent immediate interim protection planning. Not every person will want access to an advocate, but they have the option to change their view during the protection process.

The Department has sought advice from OLC on how the wording in relation to Independent Advocates could be strengthened and clarified in the Bill and which would not cause unintended delays in protecting adults at risk from harm. The proposed amendments are set out below and the formal text for the proposed amendments, as drafted by OLC, is included at **Annex A**.

1. **Remove Clause 3(2)**, which says: “If, after making inquiries under this section, an HSC trust considers that it needs to intervene as mentioned in subsection (1)(b), the trust must have regard to the importance of the provision of an independent advocate to the adult concerned.”

2. **To Clause 18, add new text:** “(1A) While visiting any premises to exercise a function under this Part in relation to an adult, a social worker must make the offer referred to in section 26(1) (assignment of independent advocate) unless an independent advocate has already been assigned to the adult.”

3. **Remove the current Clause 26 (1)-(5)** which reads:

26.—(1) Each HSC trust must make arrangements to secure that an independent advocate is available to be assigned to represent and provide support to an adult in relation to the exercise, or proposed exercise, by the trust of any functions under this Part in relation to the adult.

(2) Arrangements under subsection (1) may include provision for payments to be made to, or in relation to, persons carrying out functions by virtue of the arrangements.

(3) In this Part “independent advocate” means a person who has been assigned to act as such in accordance with arrangements under this section.

(4) 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.

(5) 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) 1 provide for the assignment of a person to be subject to prescribed conditions.

4. This text will be replaced with:

‘(1) An HSC trust must offer to assign an independent advocate to represent and provide support to an adult in relation to the exercise, or proposed exercise, by a trust of any functions under this Part in relation to the adult.

(2) An HSC trust must make arrangements to secure that sufficient numbers of persons are available for assignment under subsection (1); and such arrangements may include provision for payments to be made to, or in relation to, persons carrying out functions by virtue of the arrangements.

(3) In this Part references to an independent advocate are to a person who has been assigned to act as such under subsection (1).

(4) Regulations may make provision about independent advocates and in particular may make provision –

(a) about the arrangements that may be made by an HSC trust under subsection (2) and the process for the assignment under subsection (1) of persons made available under those arrangements;

(b) about the functions of independent advocates;

- (c) for the purpose of ensuring the independence of advocates;
- (d) ensuring that a person may be assigned as an independent advocate under subsection (1) only if the person meets prescribed conditions;
- (e) for the assignment of a person under subsection (1) to be subject to prescribed conditions.'

5. The effect of the above will mean that the current Clause 26(6) will become Clause 26(5). Within Clause 26(5), there is a technical amendment to replace the current text “(5)(a)” with “(4)(e)”, which reflects the changes above.

6. Clause 26: add a new (6) which reads: “Nothing in this section or regulations under subsection (4) authorises or requires an HSC trust to delay the exercise, or proposed exercise, by the trust of any function under this Part pending the assignment of an independent advocate for an adult where the trust is of the opinion that such a delay might place the adult at risk, or increased risk, of harm.”

- **Clause 33: The Committee would like further context on the rationale for why this Clause is included in the Bill. Members expressed concern that a Clause which allows for the Department to give instructions to the Board which it is obligated to follow could mean that the Board cannot be truly independent.**

All Arms' Length Bodies are accountable to the Department, and the power of direction is a standard provision found in legislation establishing statutory bodies. For example, The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 6 (2) states *The Department may give directions to the Regulation and Improvement Authority with respect to the exercise of its functions and the Regulation and Improvement Authority must comply with them.* Clause 4 of the Safeguarding Board Act (NI) 2011 also states *The Department may give directions of a*

general or specific nature to the Safeguarding Board as to the exercise by the Board of any of its functions. The Department has only used the power at Clause 4 on one occasion in 2013, when the Minister gave a Direction to SBNI to carry out a thematic review of case Management Reviews which related to child exploitation of Looked After Children. This existence of the power (rather than its exercise) defines the relationship with the Department. If difficulties ever arise in that relationship the absence of such a power could be a cause for criticism. Given the fairly limited functions of the Board, the need for directions may be fairly limited.

When the Board is established the Board and the Department will work collaboratively to develop a Partnership Agreement which will set out an overall governance framework within which the Board will operate, and further define the roles and responsibilities of each organisation to each other.

- **Clause 40: The Committee agreed to seek sight of any advice the Department received from the Department of Justice which informed the levels of the sanctions set out at Clause 40, given that some stakeholders have perceived them to be lenient compared to the sanctions at Clause 38.**

The Department provided details on the proposed criminal sanctions offences and penalties (including in relation to care providers) in the Adult Protection Bill to the Offences and Penalties Branch of the Department of Justice on the 20 December 2022. The Head of the Criminal Law Branch in the Department of Justice confirmed on the 22 December 2022 that he was content with the proposed offences and that they are consistent, proportionate and will not have a detrimental impact on the justice system. The approval correspondence with DoJ is included at **Annex B** and the document setting out the detail on the proposed Criminal Sanctions Offences and Penalties in the Adult Protection Bill and returned to the Offences and Penalties Branch in DoJ is included at **Annex C**.

- **Clause 42: the Committee requested further context on which appears to remove state that an individual cannot be found liable for “*aiding, abetting, counselling or procuring the commission of an offence under section 39.*”. Further understanding of why this is included with any examples would be useful.**

Clause 42(1) expressly excludes secondary liability for the care provider offence. It means that an individual cannot be convicted of aiding, abetting, counselling or procuring the commission of the care provider offence, or of encouraging or assisting in the commission of that offence. OLC has confirmed that the intention of the wording is to ensure that the care provider offence focuses on the behaviours and actions (or failures to act) by the care provider organisation as a whole, rather than creating a route for the focus to be diverted towards a single individual within the care provider’s management hierarchy. Secondary liability does apply in relation to the care worker offence at Clause 38.

I hope the Committee finds this information helpful.

Kind regards,

A large black rectangular redaction box covering the signature of the Director of Disability & Older People.

Director of Disability & Older People

Proposed Amendments - independent advocates – OLC Text

Clause 3, Page 2, Line 26

Leave out subsection (2)

Clause 18, Page 11, Line 24

At end insert–

‘(1A) While visiting any premises to exercise a function under this Part in relation to an adult, a social worker must make the offer referred to in section 26(1) (assignment of independent advocate) unless an independent advocate has already been assigned to the adult.’

Clause 26, Page 15, Line 36

Leave out subsections (1) to (5) and insert–

‘(1) An HSC trust must offer to assign an independent advocate to represent and provide support to an adult in relation to the exercise, or proposed exercise, by a trust of any functions under this Part in relation to the adult.

(2) An HSC trust must make arrangements to secure that sufficient numbers of persons are available for assignment under subsection (1); and such arrangements may include provision for payments to be made to, or in relation to, persons carrying out functions by virtue of the arrangements.

(3) In this Part references to an independent advocate are to a person who has been assigned to act as such under subsection (1).

(4) Regulations may make provision about independent advocates and in particular may make provision –

(a) about the arrangements that may be made by an HSC trust under subsection (2) and the process for the assignment under subsection (1) of

persons made available under those arrangements;

(b) about the functions of independent advocates;

(c) for the purpose of ensuring the independence of advocates;

(d) ensuring that a person may be assigned as an independent advocate under subsection (1) only if the person meets prescribed conditions;

(e) for the assignment of a person under subsection (1) to be subject to prescribed conditions.'

Clause 26, Page 16, Line 12

Leave out '(5)(a)' and insert '(4)(e)'

Clause 26, Page 16, Line 16

At end insert–

'(6) Nothing in this section or regulations under subsection (4) authorises or requires an HSC trust to delay the exercise, or proposed exercise, by the trust of any function under this Part pending the assignment of an independent advocate for an adult where the trust is of the opinion that such a delay might place the adult at risk, or increased risk, of harm.'

Annex B

From: [REDACTED] <[REDACTED]@justice-ni.gov.uk>

Sent: 22 December 2022 10:36

To: [REDACTED] <[REDACTED]@health-ni.gov.uk>

Cc: [REDACTED] <[REDACTED]@health-ni.gov.uk>; [REDACTED]

[REDACTED]@health-ni.gov.uk>; DOJ Offences and Penalties

[REDACTED]@justice-ni.gov.uk>; [REDACTED] <[REDACTED]@justice-ni.gov.uk>

Subject: RE: DoH Adult Protection Bill: DOJ scrutiny of new Offences and Penalties

Dear [REDACTED]

Thank you for your email of 20 December, in which you provided advice in relation to proposed new offences and penalties to be included in the Adult Protection Bill.

Having considered the information provided, I am happy to confirm that I am content at official level that the proposed offences are consistent, proportionate and will not have a detrimental impact on the justice system.

I am therefore happy for the offences to be taken forward in the Bill as proposed.

Kind regards

[REDACTED]

Head of Criminal Law Branch

Department of Justice

Email [REDACTED]@justice-ni.gov.uk

From: [REDACTED] [REDACTED] <[REDACTED]@health-ni.gov.uk>

Sent: 20 December 2022 13:03

To: [REDACTED]@justice-ni.x.gsi.gov.uk

Cc: [REDACTED] <[REDACTED]@health-ni.gov.uk>; [REDACTED]
[REDACTED]@justice-ni.gov.uk>; [REDACTED] <[REDACTED]@health-ni.gov.uk>

Subject: Criminal Sanctions Offences and Penalties

Please find attached for your consideration, completed documentation in relation to Offences/Penalties in the Adult Protection Bill.

Regards

[REDACTED]

[REDACTED] | Adult Safeguarding Unit
Department of Health | Castle Buildings

**Document completed by Adult Protection Bill team and returned to DOJ
Offences and Penalties Branch – December 2022**

Adult Protection Bill - Criminal Sanctions Offences and Penalties

Offences and Penalties – an overview for NI Departments

Where it is proposed to create new or amend existing offences or penalties, NICS colleagues are reminded that Criminal Law Branch, DOJ, should be consulted at an early stage of your policy development.

This is on the basis that the inclusion of offences and penalties makes it ‘cross-cutting’ and therefore a matter for the Minister of Justice, as well as invoking Executive procedure.

Early engagement can ensure that Ministerial approval is achieved quickly during the Executive process.

In the absence of the Assembly / Executive please contact DoJ or your DALO for procedural guidance.

Upon receipt of the information below, we will:

- consider your offences and penalties at official level to ensure that they are proportionate and in line with the overall framework of criminal law in Northern Ireland; and
- liaise with colleagues in the Northern Ireland Courts and Tribunals Service, Office of the Lord Chief Justice and other criminal justice partners to determine whether your proposals will have an impact on the criminal justice system.

What information do we need from you?

- What is your policy and where do the offences and penalties fit in?
The Adult Protection Bill. Within the Bill there are several provisions, namely breach of a banning order, obstruction, offences by body corporate, ill-treatment

or neglect – care worker offence, ill-treatment or neglect – care provider offence and offences around CCTV issues.

- What is your timetable?
DoH officials are liaising with OLC and DSO in terms of the drafting instructions. It is intended that the Bill will be introduced to the Assembly during the current mandate.

- Provide a summary of the offences and the proposed penalties.
Offences and proposed penalties are detailed below.
To note ‘Breach of a Banning Order’ has already been considered and agreed by DoJ in February 2022 and it was agreed that this breach may be liable to a summary conviction of a fine not exceeding level 3.

Title	Detail	Penalty	Enforced
Obstruction	A person will commit an offence if, without reasonable excuse, that person prevents or obstructs an other person from doing anything which the other person is authorised or entitled to do by virtue of (a) an assessment order, (b) a removal order, (c) a banning order, (d) a temporary banning order, (e) a warrant for entry, or (f) any provision of Part One of the Bill.	Person guilty of an offence under this section is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding 3 months (or both).	PSNI
Offences by bodies corporate	Where an offence under this Part has been committed by a body corporate or an unincorporated association and it is proved that the offence was committed with the consent or connivance of or was attributable to any neglect on the part of a relevant person or a person purporting to act in	That person as well as the body corporate or, as the case may be, unincorporated association is guilty of the offence and is liable to be proceeded against and punished accordingly,	PSNI

	<p>the capacity of a relevant person, that person as well as the body corporate or, as the case may be, unincorporated association is guilty of the offence and is liable to be proceeded against and punished accordingly.</p>		
<p>Ill-treatment of neglect: care worker offence</p>	<p>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 to neglect that adult.</p>	<p>An individual guilty of an offence under this section is liable on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both), on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both).</p>	<p>PSNI</p>
<p>Ill-treatment or neglect: care provider offence</p>	<p>A care provider commits an offence if (a) an individual who has the care of an adult by virtue of being part of the care provider's arrangements ill-treats or wilfully neglects that adult, (b) the care provider's activities are managed or organised in a way which amounts to a gross breach of a relevant duty of care owed by the care provider to the adult who is ill-treated or neglected, and (c) in absence of the breach, the ill-treatment or wilful neglect would not have occurred or would</p>	<p>A person guilty of an offence under this section is liable on conviction on indictment to a fine, on summary conviction to a fine not exceeding the statutory maximum. A court before which a person is convicted of an offence under this section may (whether instead of or as well as imposing a fine) make either or both (a) a remedial order (b) a publicity order.</p>	<p>PSNI</p>

	have been less likely to occur.		
Regulation of CCTV on certain establishments	Regulations may, 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.	A person guilty of an offence, shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale. Proceedings in respect of an offence under this section must not, without the consent of the Director of Public Prosecutions for Northern Ireland, be taken by any person other than RQIA.	RQIA

- Are the offences new, or updates of existing offences?
The offences will be new to Northern Ireland.
- Are there equivalent provisions in other jurisdictions?
*In terms of Obstruction – there are similar breaches in Scottish Legislation, where that it is an **offence** to prevent or obstruct any person from doing anything they are authorised or entitled to do under the Act, without reasonable excuse. It is also an offence to refuse, without reasonable excuse, to comply with a request to provide information. A person found guilty of the offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale; and/or imprisonment for a term not exceeding 3 months.*
In terms of care worker offence and care provider offence – there are similar offences in the Care Act 2014, upon which these offences are based. A person under Section 92 of the Care Act 2014 is liable (a) on summary conviction to a fine; (b) on conviction on indictment, to imprisonment for not more than two years or a fine (or both).
In terms of CCTV – These offences will be new although there are similar offences in the Health and Personal Social Services (Quality, Improvement and

Regulation) Northern Ireland Order 2003. Within the 2003 Order a person guilty of an offence shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale. Transformation Board members have concluded that they wish to state the liability similar to the rest of the offences in the Bill and therefore wish for this offence to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- Who will enforce these? (e.g. PSNI, Departmental, council, agency enforcement officers or another governing body)
Those who will enforce these, are detailed in the table above.
- What is the expected volume of court cases? (based on prosecutions for current or near equivalent offences, here or elsewhere)
In relation to obstruction, Scottish officials have advised that an estimated total Power of Entry and related protection order applications are 352 per annum. The number of these which will be additional protection orders (assessment, removal and banning order) where obstruction may apply would be approximately 50% therefore 176 per annum. Obstruction will not apply to all of these and therefore numbers would be low.
In terms of care worker offence and care provider offence as mentioned above, these are similar to Care Act 2014. We have contacted England colleagues and they have advised that data shows an almost two-fold increase in the number of guilty verdicts and sentencing, although total numbers still remain low, due to a low number of prosecutions.
In terms of CCTV, there is nothing similar elsewhere that these could be compared to.
- If you have a copy of the Justice Impact Test Form (MoJ – please send us a copy of this)
Full JIT is not required for NI.
- Costs for DoJ / Criminal Justice System – if these prove excessive; the Minister may seek to recover these from the sponsoring Department’s budget.
Still to be confirmed.

Contact details:

