Royal College of Nursing
Northern Ireland

Call for evidence by the Northern Ireland Assembly Committee for Health in respect of the Adult Protection Bill

Introduction

1 The Royal College of Nursing [RCN] is a trade union and professional organisation with a membership comprising registered nurses, nursing assistants and nursing students in all practice settings across Northern Ireland. The RCN represents nurses and nursing, promotes excellence in practice and shapes health policy.

2 The RCN welcomes the opportunity to provide written evidence to the Northern Ireland Assembly Committee for Health to help inform its current scrutiny of the Adult Protection Bill. As requested, we have sought to restrict our comments to the clauses of the draft legislation. Where no comment has been provided in relation to a specific clause, it may reasonably be assumed that this indicates general support for and/or acceptance of the extant wording. We hope that our observations and commentary below will be helpful to the Committee in informing its deliberations.

Background

3 In April 2021, the RCN responded to the Department of Health consultation on legislative options to inform the development of an Adult Protection Bill for Northern Ireland. In this submission, we made a number of critical comments, based upon feedback from RCN members. Whilst we supported the general intention and some of the specific proposals set out in the consultation document, we did not believe that the case for change had always been made with sufficient conviction and explained with sufficient clarity. We are pleased to note that many of the concerns raised in our submission have subsequently been addressed.

Commentary on specific clauses of the Adult Protection Bill

Clause 1: Principles for performing functions under this Part

4 The RCN notes that this clause details the principles for HSC trusts and social workers in relation to prevention, autonomy, empowerment, dignity, proportionality, partnership and accountability. We also note that these principles only apply to the carrying out of functions under Part 1 of the Bill.

Clause 2: Adult at Risk

5 The RCN notes that this clause provides the definition of an adult at risk, and that self-harm is excluded. Members of the RCN Northern Ireland Sexual Health Network have raised the issue of people in coercive and/or controlling relationships. We recognise, however that the Bill rightly does not and should not seek to define every potential variant of 'harm' or 'risk' and we assume, therefore, that this issue will be encompassed within sub-clause 2b (conduct of another person is causing (or is likely to cause) A to be harmed) and 3b (conduct which causes psychological harm (for example, by causing fear, alarm or distress).

Clause 3: Duty to make inquiries

6 The RCN notes that this clause provides a statutory duty on HSC trusts to make follow up inquiries into all cases where someone who is suspected of being an adult at risk is brought to its attention. We are supportive of this intention.

Clause 4: The duty to report and co-operate in inquiries

7 The RCN notes that this clause imposes a statutory duty to report and co-operate in inquiries upon a range of statutory bodies, including HSC trusts, the Public Health Agency, the Regulation and Quality Improvement Authority, those 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 (such as nursing homes) commissioned or contracted to provide health and social

care services. This duty involves reporting to the relevant HSC trust any cases where there is reasonable cause to suspect that an adult meets the criteria of an adult at risk. The RCN also notes that the defined organisations also have a statutory duty to co-operate with an HSC trust making inquiries about an adult, except where this would conflict with the exercise of their functions. Finally, we note that Clause 4(4) states that regulations may amend the list of bodies and persons. We support this provision. Whilst the RCN therefore endorses the wording of this Clause, the ways in which its provisions are implemented, interpreted and applied will require close scrutiny.

8 It is important to remember that registered nurses are required by the Nursing and Midwifery Council to "… raise and, if necessary, escalate any concerns [they] may have about patient or public safety, or the level of care people are receiving in [the] workplace or any other health and care setting and use the channels available to [them] in line with our guidance and [their] local working practices". The obligation upon registered nurses and other regulated health and social care professionals to report and take appropriate action in relation to patient safety and well-being concerns is, therefore, a professional responsibility rather than an option. This clause will need to be implemented sensitively and in parallel with other policy developments, particularly the Department of Health's emerging Being Open framework and any moves towards a statutory duty of candour across the HSC.

Clause 7: Medical examinations

9 The RCN welcomes the recognition that a person must be informed of the right to refuse to be examined before a medical examination is carried out (whether under this section or in pursuance of an assessment order, as outline at clause 10).

Clause 22: Guidance

10 The RCN notes and endorses the requirement for the Department of Health to prepare guidance about the performance of functions under the legislation by HSC trusts, social workers and other officers of HSC trusts, and health professionals. We also welcome the specification that the Department must review the guidance from time to time and may, following such a review, revise it through consultation.

Clause 26: Independent advocates

11 This clause provides that the relevant HSC trust must make arrangements to ensure that an independent advocate is available to support and assist adults at risk to be involved in and influence the decisions taken about their care. The regulations supporting the implementation and operation of this clause are critical in terms of remit and governance, as well as acting as a guarantee regarding implementation. The Mental Capacity Act (Northern Ireland) 2016 includes the specific and important role of the Independent Mental Capacity Advocate [IMCA]. However, when the Act was partially implemented in 2019, although IMCAs had an explicit role in terms of deprivation of liberty safeguards, they were excluded from the implementation phase. This provision remains dormant, almost seven years later. The RCN believes that the IMCA role is far too important to leave on the shelf in this way and must be implemented without further delay. The defined advocate role in respect of the Adult Protection Bill is also of vital importance and the arrangements to operationalise it must be initiated when the legislation is enacted and not delayed as in the case of the Mental Capacity Act (Northern Ireland) 2016.

Part 4: Regulation of CCTV systems on certain establishments

12 The reference to "a mental health unit" at Clause 43 should be made more explicit in order to specify that this will include dementia in-patient units and in-patient units that are specifically for patients with a learning disability. There is a risk that "a mental health unit" could be interpretated quite narrowly in this respect.

Part 5: General

13 With reference to Clause 48 (Regulations and orders), supporting regulations, guidance and associated training must provide clarity on the interfaces between this Bill and the Mental Capacity Act (Northern Ireland) 2016. Clauses 10, 11 and 12 of this Bill make reference to a person "consenting", which of course, some may lack the capacity to do. Clarity is therefore needed in this respect. The Mental Capacity Act (Northern Ireland) 2016 contains its own provisions in respect of ill-treatment or neglect and, once again, this interface will require clarification.

Concluding comments

14 As stated at the outset of this submission, the RCN supports in general terms the intended purpose of the Adult Protection Bill and, subject to the various comments referenced above, we are content in general terms that the current drafting of the legislation appropriately gives effect to this intended purpose. We are pleased that the Department of Health has clearly noted and addressed the various concerns that we notified in respect of the 2021 consultation on legislative options to inform the development of an Adult Protection Bill, especially those related to its potential application in the independent sector. We have consulted members of our two RCN networks in Northern Ireland for nurses and nurse managers practising within this sector (principally in nursing homes) and they have expressed their general support for the Bill. The RCN has also welcomed the engagement that has taken place with the Department of Health in preparation for the tabling of the draft legislation, particularly through inclusion in a stakeholder reference group.

15 Our only other general concern relates to the lack of information in relation to the timetable for implementing the legislation and the funding of its implementation. Whilst the RCN accepts that these issues cannot be addressed through the clauses of the legislation, we have significant concerns that the momentum created by the publication of the Bill will be dissipated through a protracted and fragmented implementation process and an absence of appropriate resourcing.

16 Nevertheless, the RCN hopes that the Northern Ireland Assembly Committee for Health will find this submission to be helpful. We wish the Committee well in its continuing consideration and scrutiny of the Adult Protection Bill.

September 2025