

# **ADULT PROTECTION BILL**

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## **EXPLANATORY AND FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. This Explanatory and Financial Memorandum has been prepared by the Department of Health (the Department) in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and neither is it meant to be, a comprehensive description of the Bill. Where a clause or part of a clause does not seem to require an explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. In January 2020, 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. 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 would introduce additional protections to strengthen and underpin the adult protection process and would bring Northern Ireland in line with other parts of the UK where such legislation already exists.
4. In September 2020, the Minister of Health confirmed plans to stand down the Northern Ireland Adult Safeguarding Partnership (also known as NIASP) in a move towards the establishment of an Independent Adult Protection Board, at arm's length from the Department. This was a key recommendation of the independent review.
5. "Replace the NIASP with a Northern Ireland Independent Safeguarding Board (Adult) with clearly defined duties, such as making an annual report (for example, reporting on trends and topics and identifying best practice and areas for improvement or for greater scrutiny in the coming year) to the Permanent Secretary and Ministers. The Northern Ireland Independent Safeguarding Board (Adults) should publish annual plans and reports to inform the HSC system's annual reporting cycle".
6. The core functions of the Independent Adult Protection Board would be, to publish a strategic plan each year; to publish an annual report; and to make arrangements and have responsibility for serious case reviews. (Serious case reviews are multi-agency reviews

- that look into the circumstances surrounding thine death of, or serious harm to, an adult at risk. Their purpose is to establish whether there are lessons to be learned from a case about the way in which agencies and professionals work together; and to action change as a result).
7. The Adult Protection Bill will introduce a statutory provision for Independent Advocates who can assist adults at risk to be involved in and influence decisions taken about their care. The Bill will include a regulation making power to provide for any future requirements in respect of independent advocacy, including eligibility criteria.
  8. The Adult Protection Bill will see the introduction of several principles, duties and powers.
  9. There will be the introduction of seven principles namely, prevention, autonomy, empowerment, dignity, proportionality, partnership and accountability which have all been incorporated into clause one of the Bill.
  10. There will be a duty to make inquiries meaning that the duty will be 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. There will be the introduction of a duty to report and to co-operate, where the duty will be on several bodies and establishments to report to the relevant HSC trust in cases where they believe there is reasonable cause to suspect that an adult meets the criteria of an adult at risk.
  11. The Adult Protection Bill will include a number of new powers for the HSC trusts, which will facilitate their duty to investigate. These are the power of entry, which will allow the entry into the home of a suspected adult at risk to enable them to be interviewed in private. Following the power of entry there are three protection orders, namely the assessment order, removal order and banning order. There will also be a power to access records available which includes health, financial or other records.
  12. The Adult Protection Bill will also see the introduction of two new offences of ill-treatment and wilful neglect. There will be two tiers of offence of ill-treatment and wilful neglect namely the care worker offence and the care provider offence.

## **CONSULTATION**

13. A consultation on the proposed Adult Protection Bill ran for a period of 16 weeks from 17 December 2020 to 8 April 2021 where during this time there was 19 stakeholder sessions, and 89 responses were received.
14. A range of stakeholders were involved in the consultation and engagement sessions, including Health and Social Care trusts (HSC trust); care homes; service users; charity and voluntary organisations; government Departments; professional bodies such as the Royal College of Nursing; political parties; and members of the public.

## **OPTIONS CONSIDERED**

15. A number of options were considered and have been detailed below.

**Option 1 – Do nothing (Business as usual).**

16. The first option is the baseline option although not a viable option as it meets none of the recommendations outlined in the Home Truths report. It would also see the current system, under which the problems at Dunmurry Manor and Muckamore Abbey Hospital occurred, retained increasing the likelihood of similar issues arising again.
17. There would be limited costs associated with this option, beyond the continued funding of Adult Safeguarding Gateway Protection Teams currently in operation in each of the HSC trust areas.

**Option 2 – Do minimum approach.**

18. The second option would see a review of the current 2015 Adult Safeguarding: Prevention and Protection in Partnership policy leading to an amended version of the policy being brought into effect, with changes made on the basis of the review.
19. There would be a negligible increase in recurrent funding related to this option. There would still be a need for non-recurrent funding to help provide regional training related to any changes introduced as part of an updated safeguarding policy which would be carried out across the first few years.

**Option 3 – Introduce an Adult Protection Bill in Northern Ireland inclusive of ‘core’ key service requirements.**

20. The third option would see an Adult Protection Bill introduced for Northern Ireland, meeting one of the key recommendations of the Home Truths report by putting adult protection into legislation.
21. There would be funding made available for the ‘core’ service requirements under the Bill only. The service requirements deemed to be key to the Bill’s effectiveness are the continued funding of the HSC trusts’ Adult Safeguarding Gateway Protection Teams; the introduction of a ‘duty to make inquiries’ upon the HSC trusts, placing a legal obligation on them to investigate any safeguarding issue that is raised with them that meets the required threshold; funding of any appropriate medical assessments; the introduction of an Adult Protection Board for Northern Ireland to oversee and review the implementation of adult safeguarding; the introduction of serious case reviews and the regional training for all social workers (including adult protection social workers) and organisations (such as PSNI, Ambulance Service and Probation Board) that will be expected to implement/abide by the new legislation.

**Option 4 – Introduce an Adult Protection Bill inclusive of ‘core’ and ‘desirable’ key service requirements.**

22. The fourth option again would see an Adult Protection Bill introduced for Northern Ireland, meeting one of the key recommendations of the Home Truths report by putting adult protection into legislation.
23. There would be funding made available for the ‘core’ and ‘desirable’ service requirements under the Bill only. Option 4 would see the inclusion of everything detailed

at option 3 as well as funding for the introduction of two new offences under the Bill namely the care worker offence and the care provider offence.

**Option 5** – Introduce an Adult Protection Bill inclusive of ‘core’, ‘desirable’ and ‘optional’ key service requirements.

24. This option would see the implementation of The Adult Protection Bill into legislation along with all the associated powers that were recommended in the Home Truths Report. This would be the preferred option.
25. The costs associated with this option would include all specifics detailed at option 3 and 4 with the addition of increased resourcing of independent advocacy services.
26. Although this is the most expensive option, it also best resources the HSC trusts, in terms of funding and new powers/resources made available to them. This along with the most significant resourcing of training would make it the most effective option for improving the protection of adults in Northern Ireland and ensuring the most consistent application of the new duties and powers being created as part of the new legislation.

## **OVERVIEW**

27. The Bill has 51 clauses. A commentary on the provisions follows below. Comments are not given where the wording is self-explanatory.
28. The Bill contains four substantive parts.
29. Part 1 (clauses 1 to 29) provides for the identification and protection of adults in need, including provision for social workers to exercise certain powers conferred by the Bill or by court orders under the Bill.
30. Part 2 (clauses 30 to 37) provides for the appointment and functions of the Adult Protection Board.
31. 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.
32. Part 4 (clauses 43 to 47) provides for the regulation of CCTV systems in certain establishments where adults are present.

## **COMMENTARY ON CLAUSES**

### **Part 1 – Protection of adults at risk of harm**

#### **Clause 1: Principles for performing functions under this Part**

This clause details the principles for HSC trusts and social workers, namely prevention, autonomy, empowerment, dignity, proportionality, partnership and accountability. These principles only apply to the carrying out of functions under Part 1 of the Bill.

## **Clause 2: Adult at Risk**

This clause provides the definition of an adult at risk. Readers should note that self-harm is excluded.

## **Clause 3: Duty to make inquiries**

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.

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

This clause 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’. 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. Clause 4(4) also states that regulations may amend the list of bodies and persons.

## **Clause 5: Visits by social worker**

This clause provides that a social worker will be permitted to enter the home (or other relevant premises) for the purpose of enabling or assisting the HSC trust conducting inquiries to determine if intervention is required in order to protect an adult at risk from harm.

## **Clause 6: Interviews**

This clause provides that a social worker will be permitted to interview an adult in private on premises entered under clause 5.

## **Clause 7: Medical Examinations**

This clause provides that when a social worker is visiting premises under clause 5 and has reasonable grounds to believe that the person visited is an adult at risk, a health professional who is accompanying the social worker may conduct a medical examination of the person if the conditions set out are met.

### **Clause 8: Examination of records**

The clause details that a social worker may access health, financial or other records of the individual who they believe to be an adult at risk, including access to any relevant financial records where there is suspected financial abuse. This clause also enables a magistrates' court to make an order (production order) requiring records to be produced to a social worker and sets out what conditions need to be met to allow examination of records to take place.

### **Clause 9: Applications for production orders: procedure**

The clause details the procedures to be followed in relation to the application for a production order.

### **Clause 10: Assessment orders**

This clause details that a social worker may (as the HSC trust) apply to a magistrates' court for an order to take the adult from premises to a more suitable location to carry out an interview. There are a number of conditions that have to be met before the assessment order will be granted. The assessment order would, under normal circumstances, only be able to be used where the adult at risk has consented.

### **Clause 11: Removal orders**

This clause provides that a social worker may (as the HSC trust) apply to a magistrates' court for an order to remove the adult from the premises to another location for up to seven days if the adult is likely to be seriously harmed. There are a number of conditions that have to be met before the removal order will be granted. The removal order would, under normal circumstances, only be able to be used where the adult at risk has consented.

### **Clause 12: Banning orders**

This clause provides that a social worker may (as the HSC trust) apply to a magistrates' court for a banning order which would ban a person from being in a specified location for up to six months if the adult is being or is likely to be seriously harmed by that person. There are a number of conditions that have to be met before the banning order will be granted. The banning order would, under normal circumstances, only be able to be used where the adult at risk has consented.

### **Clause 13: Temporary banning orders**

This clause provides that temporary banning orders may be granted by the magistrates' court pending determination of an application for a banning order. The temporary banning order may include any provision which may be included in a banning order.

### **Clause 14: Right to apply for banning order**

This clause provides detail on the conditions that must be satisfied before the HSC trust can apply for a banning order.

**Clause 15: Variation or revocation of banning order**

This clause provides that a banning order or temporary banning order may be varied or revoked by a magistrates' court, if the variation or revocation of the order is justified.

**Clause 16: Offence: failure to comply with banning order or temporary banning order**

This clause explains that a person who fails to comply with a banning order or temporary banning order will be committing an offence. A person guilty of this offence will be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Clause 17: Consent of affected adult**

This clause explains that a protection order must not be made or carried out if the person or the magistrates' court knows that the affected adult at risk has refused to consent to the granting of the order. Although a refusal of consent may be ignored if the magistrates' court or person reasonably believes that the affected adult at risk has been unduly pressurised to refuse consent.

**Clause 18: Visits: supplementary**

This clause provides the conditions that must be met by the social worker in terms of the visit that is taking place.

**Clause 19: Warrants for entry: visits under clause 5 or 11(5)**

This clause explains that when an assessment order is granted by the magistrates' court a warrant for entry must also be granted in relation to the visit of the premises from which a person may be taken in pursuance of the assessment order. This clause also provides detail on the warrant of entry.

**Clause 20: Applications: procedure**

This clause provides the procedures that must be followed in relation to any application for an assessment order, a removal order, a banning order, a temporary banning order or the variation or revocation of a banning order or temporary banning order.

**Clause 21: Legal aid: production orders and protection orders**

This clause brings various applications under Part 1 of the Bill within the scope of legal aid legislation.

**Clause 22: Guidance**

This clause explains that the Department must prepare guidance about the performance of functions under Part 1 of the Bill for HSC trusts, social workers, and other officers of HSC trusts and health professionals.

### **Clause 23: Obstruction**

This clause provides that a person will commit an offence if, without reasonable excuse, that person prevents or obstructs any other person from doing anything which the other person is authorised or entitled to do relating to an assessment order, a removal order, a banning order, a warrant for entry or any other relevant provision.

### **Clause 24: Offences by bodies corporate, etc**

This clause details what will occur if an offence has been committed by a corporate body or an unincorporated association.

### **Clause 25: Appeals**

This clause provides the processes around appealing a banning order or temporary banning order, or for the variation or revocation of such an order. No appeal lies against the granting of an assessment order, a removal order, or a warrant for entry.

### **Clause 26: Independent advocates**

This clause 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.

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

This clause provides the requirements of the HSC trust in relation to the appointment of a sufficient number of social workers and health professionals and the requirements of them for the purpose of performing the functions set out in the Bill. This clause also provides clarification on which functions are exercisable only by specially qualified adult protection social workers.

### **Clause 28: Involvement by HSC trust of relevant persons**

This clause provides that the HSC trust must, as reasonably practicable, establish and have regard to the views of relatives, carers and other interested persons, as well as keep them informed on the HSC trust actions in terms of the adult at risk.

### **Clause 29: Interpretation of this Part**

This clause provides explanations of a number of definitions used throughout this Part.

## **Part 2 – The Adult Protection Board for Northern Ireland**

### **Clause 30: Establishment of the Board**

Provides for the establishment of the Adult Protection Board for Northern Ireland (APBNI) and places a duty on the Department to establish the APBNI.



### **Clause 31: Objective of the Board**

This clause 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.

### **Clause 32: Functions of the Board**

This clause provides details on a number of functions that the APBNI must do for the protection of adults at risk. This includes undertaking serious case reviews.

### **Clause 33: Directions to the Board**

This clause provides a power for the Department to give directions (either general or specific) to the APBNI as to how the APBNI should carry out its functions. The Department is also required to consult with the APBNI before issuing directions. This clause also provides for the Department to give directions without consulting in cases where the urgency of the matter necessitates it but requires the Department, in cases where the duty to consult has been set aside because of the urgency of the matter, to report retrospectively to the APBNI with reasons for taking this course of action.

### **Clause 34: Annual Report**

This clause places a duty on the APBNI to produce an annual report for the Department in such form, and containing such information, as may be prescribed. The Department must lay a copy of the report before the Assembly.

### **Clause 35: Committees and sub-committees of the Board**

This clause 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.

### **Clause 36: Supply of information requested by Board**

This clause places a duty on bodies or persons to supply information requested by the APBNI but sets out the specific conditions to be satisfied before such requests for information can be met.

### **Clause 37: Consequential amendments**

This clause makes minor or consequential amendments to other legislation so that they will apply in relation to APBNI.

## **Part 3 – Offences involving ill-treatment or wilful neglect**

### **Clause 38: Ill-treatment or neglect: care worker offence**

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. An individual guilty of an offence under this section would be liable on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both); or on summary

conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both). The clause also details who qualifies as a care worker.

**Clause 39: Ill-treatment or neglect: care provider offence**

This clause provides that it is an offence if 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, 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 in the absence of the breach, the ill-treatment or wilful neglect would not have occurred or would have been less likely to occur. The clause also provides further detail on what a care provider means, as well as further information on definitions used within the clause.

**Clause 40: Care provider offence: penalties**

This clause provides the penalties linked to the care provider offence. Namely that a person guilty of an offence under clause 39 will be liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding the statutory maximum. In addition, the court may also make, instead of or in addition to imposing a fine, a remedial order or a publicity order. The clause provides further detail on the definition of these orders and consequences of such.

**Clause 41: Care provider offence: application to unincorporated associations**

This clause provides the relevant procedures around bringing a case to court where the offence is alleged to have been committed by an unincorporated association.

**Clause 42: Care provider offence: liability for ancillary and other offences**

This clause provides the liability of an individual for ancillary and other offences.

**Part 4 – Regulation of CCTV systems on certain establishments**

**Clause 43: Establishments to which this Part Applies**

This clause provides that this Part applies to the following establishments – a day care setting, a nursing home, a residential care home, and a mental health unit.

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

This clause 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.

**Clause 45: Contravention of regulations under clause 44**

This clause provides that contravention of regulations under clause 44 is an offence.

#### **Clause 46: Enforcement powers of RQIA**

This clause details that it is a function of RQIA to monitor and enforce compliance with regulations under clause 44.

#### **Clause 47: Restrictions on disclosure of information under clause 46**

This clause provides restrictions on disclosure of confidential information under clause 46.

### **Part 5 - General**

#### **Clause 48: Regulations**

This clause contains provision about the required procedures for making subordinate legislation under the Act.

#### **Clause 49: Interpretation**

This clause provides explanations of a number of definitions used throughout the Bill.

#### **Clause 50: Commencement**

This clause provides that Part 5 will come into operation on the day after the Act receives Royal Assent. This clause also details other provisions of the Act come into operation on a later day as appointed by the Department.

#### **Clause 51: Short title**

This clause states that the Act may be cited as the Adult Protection Act (Northern Ireland) 2025.

### **FINANCIAL EFFECTS OF THE BILL**

33. The costs of the Bill are approximately £12 million per year. In total the approximate additional cost of the Bill across 10 years as outlined in the Business Case is £120.8 million. However, we are aware of the financial challenges at present and as such we have collated the Business Case to include Option 5a, which would allow us to progress the legislation through the Assembly at this stage without the budget.
34. Currently the existing funding for the Adult Protection Gateway Teams situated within each trust totals £17.1 million. This funding will continue to be made available.

### **HUMAN RIGHTS ISSUES**

35. The Bill has been screened for ECHR compliance and the Department is of the opinion that the Bill is compliant.

### **EQUALITY IMPACT ASSESSMENT**

36. The policy has been assessed for equality impact and has been screened out.

## **SUMMARY OF THE REGULATORY IMPACT ASSESSMENT**

37. The policy has been assessed for regulatory impact and has been screened out.

## **DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN**

38. The policy has been screened for data protection impact and a full impact assessment was required. The lawful basis for processing under UK GDPR article 6 (Lawfulness of processing) will be as follows:
39. Part a – Consent. Under article 6 it states at part ‘a’ ‘the data subject has given consent to the processing of his or her personal data for one or more specific purposes’. The Bill includes that a magistrates’ court must not make a protection order unless the court reasonably believes that the affected adult has given consent to the making of the order.
40. ‘A person must not take any action for the purposes of carrying out or enforcing a protection order unless the person reasonably believes that the affected adult has given consent to the action’. The protection orders, including the assessment order which may involve the gathering of personal data can only be completed with the consent of the individual involved. However, lack of consent can be ignored if ‘the affected adult lacks capacity to give consent and that it is in the best interests of the adult for the order to be made or the action to be taken’ or ‘The affected adult has been unduly pressurised to refuse to give consent and that there are no steps which could reasonably be taken with the adult’s consent which would protect the adult from the harm which the order or action is intended to prevent.
41. Part d – Vital interests. Under article 6 it states at part ‘d’ ‘processing is necessary in order to protect the vital interests of the data subject or of another natural person’. The fact that the assessment order’s purpose is to determine if a person at risk needs to be protected from harm should be sufficient to warrant the collection of data under GDPR.
42. Part e – Public interest. Under article 6 it states at part ‘e’ ‘processing is necessary for the performance of a task carries out in the public interest or in the exercise of official authority vested in the controller’. The purpose for collecting personal data under the Bill is the protection of adults at risk. It is clear that this is in the public interest.
43. The proposed scenarios for collecting and processing personal data under the Bill meet several of the lawful bases as outlines in article 6 of the UK GDPR.
44. Under UK GDPR article 9 (Processing of special categories of personal data) both Part a – Consent - and Part c – Vital interests - will be relevant to the Bill for reasons detailed above.

## **RURAL NEEDS IMPACT ASSESSMENT**

45. The policy has been assessed for rural needs impact and has been screened out.

## **LEGISLATIVE COMPETENCE**

46. At Introduction the Minister of Health had made the following statement under section 9 of the Northern Ireland Act 1998:

*“In my view the Adult Protection Bill would be within the legislative competence of the Northern Ireland Assembly.”*







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