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SAFEGUARDING BILL 2017

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Explanatory Memorandum

1. This Bill is promoted by
2. *Part 1* of the Bill (comprising *clauses 1 to 5*) contains provisions setting out the short title of the resulting Act (*clause 1*), providing for its commencement (*clause 2*) and defining key terms in the Act (*clauses 3 to 5*). *Clause 3* deals with general definitions, *clause 4* defines “relevant safeguarding body” and *clause 5* defines “vulnerable adult”.
3. *Part 2* (comprising *clauses 6 to 14*) contains provisions about the Safeguarding Board and bodies associated with the Board.
4. *Division 1 (clauses 6 to 11)* deals with the Board. *Clause 6* establishes the Safeguarding Board and makes provision about its constitution. *Clause 7* specifies the Board’s objectives and *clause 8* its functions. *Clause 9* provides for the establishment of committees and subcommittees of the Board and their relationship with it. *Clause 10* makes provision about directions by the Cabinet Office (referred to below and in the Bill as “the Department”) to the Board. *Clause 11* makes provision about the production of an annual report by the Board, which the Department is to lay before Tynwald.
5. *Division 2 (clauses 12 to 14)* deals with the Board’s relations with other bodies, in particular (*in clause 12*) in connection with the sharing of information for the purposes of the functions of the Board, a committee or subcommittee *Clause 13* enables the Board to make recommendations to relevant safeguarding bodies with which they must comply or provide an explanation for not doing so. *Clause 14* imposes duties on the Board and on its committees and subcommittees to co-operate with relevant safeguarding bodies, and on those bodies to co-operate with the Board and its committees and subcommittees.
6. *Part 3 (clause 15)* requires a relevant person (a relevant safeguarding body or a person specified in regulations made by the Cabinet Office) to make arrangements to promote safeguarding of children and vulnerable adults.
7. *Part 4 (clause 16)* enables the Department to make regulations for the purposes of the Bill which are subject to Tynwald approval.
8. The Bill is expected to have no impact on Government expenditure.
9. In the opinion of the member moving the Bill, its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

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SAFEGUARDING BILL 2017

A BILL to establish a Safeguarding Board to support the safeguarding of children and vulnerable adults, and to promote such safeguarding; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1 – INTRODUCTORY

1 Short title

The short title of this Act is the Safeguarding Act 2017.

2 Commencement

- (1) This Act comes into operation on such day or days as the Cabinet Office may by order appoint.
- (2) An order under subsection (1) may include such consequential, incidental, supplementary, transitional and transitory provisions as appear appropriate to the maker of the order.

3 Interpretation

In this Act—

“**the Board**” has the meaning given by section 6(1);

“**child**” means a person under the age of 18;

“**the Department**” (without more) means the Cabinet Office;

“**prescribed**” means prescribed by regulations;

“**regulations**” means regulations made by the Department;

“**relevant safeguarding body**” has the meaning given in section 4;

“**vulnerable adult**” has the meaning given in section 5.

4 Relevant safeguarding bodies

The following are relevant safeguarding bodies for the purposes of this Act—

- (a) the Department of Education and Children;
- (b) the Department of Health and Social Care;
- (c) the Department of Home Affairs;
- (d) the Department of Infrastructure;
- (e) the Isle of Man Constabulary;
- (f) any other person providing services for children or vulnerable adults; and
- (g) such other persons as may be prescribed.

Tynwald procedure for regulations under paragraph (g) – approval required.

5 Meaning of “vulnerable adult”

SI2007/1351/art. 3

- (1) For the purpose of this Act, a person (P) is a **vulnerable adult** if P —
 - (a) has attained the age of 18,
 - (b) is in need of care and protection, and
 - (c) satisfies one or more of the conditions of subsection (2).
- (2) The conditions are that—
 - (a) P is in residential accommodation,
 - (b) P is in an adult care home,
 - (c) P receives domiciliary care,
 - (d) P receives any form of health care,
 - (e) P has been the victim of violence or abuse;
 - (f) P is detained in lawful custody,
 - (g) P is by virtue of an order of a court under supervision by a probation officer,
 - (h) P receives a welfare service of a prescribed description,
 - (i) P receives any service or participates in any activity provided specifically for persons who fall within subsection (1),
 - (j) P requires assistance in the conduct of P’s own affairs.

Note: The fact that a person is a vulnerable adult for the purposes of this Act does not mean that they are necessarily entitled to the provision of social care services under the *Social Services Act 2011* or under any other enactment relating to social care.

- (3) The following provisions of this section have effect for defining terms used in subsection (2).

- (4) Residential accommodation is accommodation provided for P in connection with any care or nursing P requires.
- (5) “Adult care home” is to be construed in accordance with section 16 of the *Regulation of Care Act 2013*, disregarding subsection (3) of that section.
- (6) Domiciliary care is care of any description or assistance falling within subsection (7) whether provided continuously or not which P receives in a place where P is, for the time being, living.
- (7) Assistance falls within this section if it is (to any extent) provided to P by reason of P’s age or health or any disability which P has.
- (8) Health care includes treatment, therapy or palliative care of any description.
- (9) P is in lawful custody if —
 - (a) P is a detainee within the meaning of the *Custody Act 1995*; or
 - (b) P is detained in accordance with the Immigration Acts (of Parliament) by order of the Governor.
- (10) In this section “welfare service” —
 - (a) includes any service providing support, assistance, advice or counselling to individuals with particular needs; but
 - (b) does not include social care provided by the Department of Health and Social Care.
- (11) P falls within this subsection if—
 - (a) P has particular needs because of his or her age;
 - (b) P has any form of disability;
 - (c) P has a physical or mental problem of such description as is prescribed;
 - (d) P is an expectant or nursing mother in receipt of care under the National Health and Care Service;
 - (e) P is a person of a prescribed description not falling within subparagraphs (a) to (d).
- (12) P requires assistance in the conduct of P’s own affairs if—
 - (a) an enduring power of attorney (within the meaning of the *Powers of Attorney Act 1987*) in respect of P is registered in accordance with that Act or an application is made under that Act for the registration of an enduring power of attorney in respect of P;
 - (b) an order under section 99, 100 or 103 of the *Mental Health Act 1998* has been made by the High Court in relation to P or P’s property or affairs, or such an order has been applied for; or

- (c) a representative is or is to be appointed to receive payments on P's behalf in pursuance of regulations made under the Social Security Administration Act 1992 (of Parliament)¹.
- (13) The Department may by order provide that a person specified in the order, or of a description so specified, who falls within subsection (1) is not to be treated as a vulnerable adult.

Tynwald procedure for regulations under subsection (8)(e) and orders under subsection (11) – approval required.

PART 2 – THE SAFEGUARDING BOARD AND ASSOCIATED BODIES

DIVISION 1 – THE SAFEGUARDING BOARD

6 Safeguarding Board

NI2011/7/1

- (1) There is established a body corporate to be known as the Safeguarding Board (referred to in this Act as “**the Board**”).
- (2) The Chief Secretary must appoint the chair of the Board.
- (3) The Chief Secretary must also appoint two other members of the Board.
- (4) In exercising the powers conferred by subsections (2) and (3), the Chief Secretary is to act independently and is not subject to the direction of Tynwald, its Branches, the Council of Ministers or a Minister.
- (5) The persons appointed under subsections (2) and (3) (“**the independent members**”) must be persons who—
- (a) neither are employed by, nor hold office in any of the relevant safeguarding bodies mentioned in paragraphs (a) to (e) of section 4; and
 - (b) possess such qualifications, knowledge or experience as may be prescribed.
- (6) The other members of the Board are—
- (a) the Chief Executives of the Departments of Education and Children, Health and Social Care and Home Affairs;
 - (b) the Director of Public Health; and
 - (c) the Chief Constable.
- (7) The *Statutory Boards Act 1987* applies to the Board to such extent as may be specified in an order made by the Department (but not otherwise).

¹ 1992 c. 5: applied to the Island by SD 506/94

For the sake of clarity, the power conferred by this subsection may not be exercised so as to displace the provisions of subsections (2) to (4).

- (8) Before it makes an order under subsection (7), the Department must consult the Board.

Tynwald procedure for orders under subsection (1) or (7) – approval required.

7 The Board's objectives

- (1) The objectives of the Board are –
- (a) to co-ordinate the work done by relevant safeguarding bodies for the purposes of safeguarding and promoting the welfare of children and safeguarding and protecting vulnerable adults; and
 - (b) to ensure the effectiveness of the work done by each of those authorities for those purposes.

- (2) The Department may by order amend the objectives in subsection (1) for the purpose of –

- (a) safeguarding and promoting the welfare of children; or
- (b) safeguarding and protecting vulnerable adults.

Tynwald procedure – approval required.

- (3) Before making an order under subsection (2), the Department must consult the Board.

8 Functions

NI 2011/7/3 (excluding ss (6) of that section).

- (1) The Board must develop policies and procedures for safeguarding and promoting the welfare of children and for safeguarding and protecting vulnerable adults.
- (2) The Board must promote an awareness of the need to safeguard and promote the welfare of children and of the need to safeguard and protect vulnerable adults.
- (3) The Board must keep under review the effectiveness of what is done by relevant safeguarding bodies –
 - (a) to safeguard and promote the welfare of children; and
 - (b) to safeguard and protect vulnerable adults.
- (4) For the purpose of identifying lessons to be learnt and applying those lessons in future cases the Board must –
 - (a) undertake such case management reviews as may be prescribed in such circumstances as may be prescribed;
 - (b) review such information as may be prescribed in relation to deaths of children or vulnerable adults in the Island in such circumstances as may be prescribed.

- (5) The Board must promote communication between —
 - (a) the Board on the one hand, and
 - (b) children or vulnerable adults on the other.
- (6) The Board must make arrangements for consultation and discussion in relation to safeguarding and promoting the welfare of children or protecting vulnerable adults.
- (7) The Board may —
 - (a) compile and analyse information concerning safeguarding and promoting the welfare of children or safeguarding and protecting vulnerable adults;
 - (b) provide advice or information on any matter concerning safeguarding and promoting the welfare of children or safeguarding and protecting vulnerable adults;
 - (c) subject to consultation with the Department, publish any matter concerning safeguarding and promoting the welfare of children or safeguarding and protecting vulnerable adults.
- (8) The Board may also engage in any other activity that facilitates, or is conducive to, the achievement of its objectives.
- (9) The Board must, in exercising its functions, have due regard to any guidance given to it for the purpose by the Department.

9 Committees and sub-committees

NI2011/7//7 and 8(3)

- (1) The Board must establish in accordance with this section —
 - (a) a committee to be called “the Child Death Overview Panel”;
 - (b) a committee to be called “the Case Management Review Panel”;
 - (c) a committee to be called “the Safeguarding Panel”.
- (2) The Board may also establish in accordance with this section one or more other committees.
- (3) The Board or a committee may establish in accordance with this section one or more sub-committees.
- (4) 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; and
 - (c) the functions of committees and sub-committees.

- (5) Each committee and sub-committee must, in exercising its functions, have due regard to any guidance given to it for the purpose by the Department or the Board.
- (6) Regulations may provide that committees and sub-committees must include such representatives of such relevant persons as may be prescribed or such other persons as may be prescribed.
- (7) Members of—
 - (a) committees may be persons who are not members of the Board;
 - (b) sub-committees may be persons who are not members of the Board or of a committee which established the sub-committee.
- (8) Proceedings of committees or of sub-committees are not invalidated by any vacancy in membership or by any defect in a member's qualifications or appointment.

Tynwald procedure for regulations under subsections (4) and (6) – approval required.

10 Directions

- (1) The Department may give directions of a general or specific nature to the Board as to the exercise by the Board of any of its functions.
- (2) Before giving any directions to the Board under subsection (1) the Department must consult the Board.
- (3) If the Department is of the opinion that because of the urgency of the matter it is necessary to give directions under subsection (1) without consulting the Board—
 - (a) subsection (2) does not apply; but
 - (b) the Department must as soon as reasonably practicable give notice to the Board of the grounds on which the Department formed that opinion.
- (4) The Board must comply with any directions given to it under subsection (1).
- (5) Any directions given to the Board by the Department under subsection (1) may be varied or revoked by any subsequent directions so given.

11 Annual report

NI 2011/7/6

- (1) The Board must, within such period after the end of each financial year as the Department may direct, prepare and send to the Department a report in such form, and containing such information, as may be prescribed.
- (2) The Department must lay a copy of the report before Tynwald.

DIVISION 2— THE BOARD'S RELATIONSHIP WITH OTHERS

12 Supply of information requested by Board

NI2011/7/11

- (1) If the Board requests a person to supply information specified in the request to—
 - (a) the Board or a committee or sub-committee (as the case may be),
or
 - (b) another person specified in the request,the request must be complied with as soon as reasonably practicable after receipt of such a request if the first and second conditions are met and either the third or the fourth condition is met.
- (2) The first condition is that the request is made for the purpose of enabling or assisting the Board or a committee or sub-committee to exercise its functions.
- (3) The second condition is that the request is made to a person whose functions or activities are considered by the Board to be such that the person is likely to have information relevant to the exercise of a function by the Board or a committee or sub-committee.
- (4) The third condition is that the information relates to—
 - (a) the person to whom the request is made,
 - (b) a function or activity of that person, or
 - (c) a person in respect of whom a function is exercisable, or an activity is engaged in, by that person.
- (5) The fourth condition is that the information—
 - (a) is information requested by the Board from a person to whom information was supplied in compliance with another request under this section, and
 - (b) is the same as, or is derived from, information so supplied.
- (6) The information may be used by the Board or a committee or sub-committee, or other person to whom it is supplied under subsection (1), only for the purpose of enabling or assisting the Board or a committee or sub-committee to exercise its functions.

13 Recommendations

- (1) The Board may make recommendations to a relevant safeguarding body in respect of any arrangements made by such a body in connection with the performance of that body's functions so far as they relate to —
 - (a) safeguarding and promoting the welfare of children; and
 - (b) safeguarding and protecting vulnerable adults.

- (2) A relevant safeguarding body must comply with any recommendation made to it or provide a written explanation to the Board (within a reasonable time) for not doing so.

14 Duty to co-operate

NI2011/7/10

- (1) The Board and each committee and sub-committee must co-operate with the relevant safeguarding bodies in the exercise by the Board or a committee or sub-committee of its functions.
- (2) Relevant safeguarding bodies must co-operate with the Board, committees and sub-committees—
 - (a) in the exercise by the Board or a committee or sub-committee of its functions; and
 - (b) in the exercise by the body concerned of any of its functions relating to safeguarding and promoting the welfare of children or safeguarding and protecting adults.
- (3) The disclosure of information to or by the Board or a committee or sub-committee in pursuance of a duty of co-operation under subsection (1) or (2) does not breach any restriction on the disclosure of information (however imposed); but this subsection does not authorise a disclosure of information which contravenes the *Data Protection Act 2002*.

PART 3 — PROMOTING SAFEGUARDING

15 Arrangements to safeguard children and vulnerable adults

NI 2011/7/12 (adapted)

- (1) This section applies to relevant persons.

Relevant persons are relevant safeguarding bodies and such other persons as may be prescribed.

Tynwald procedure — approval required.
- (2) Each relevant person must make arrangements for ensuring that—
 - (a) the relevant person's functions are exercised having due regard to—
 - (i) the need to safeguard and promote the welfare of children; and
 - (ii) the need to safeguard and protect vulnerable adults;
 - (b) any services provided by another person pursuant to arrangements made by the relevant person in the exercise of the relevant person's functions are provided having due regard to that need.

- (3) Each relevant person must, in exercising the relevant person's duty under this section, have due regard to any guidance given to that person for the purpose by the Department.

PART 4 – REGULATIONS

16 Regulations

- (1) Regulations may make provision as to the exercise by the Board of any of its functions (including provision as to further duties to be imposed, procedures to be followed and the manner in which the Board's functions are to be exercised).

Tynwald procedure – approval required.

- (2) Regulations under subsection (1) may among other things and to the extent that they are not inconsistent with this Act—
- (a) provide for the appointment and removal of members of the Board (including the independent members);
 - (b) require the Board to produce such reports, plans and projections of activity and expenditure as may be prescribed;
 - (c) provide for the sharing of information by the Board with such persons as may be prescribed (and may, in particular, provide that such information may be so shared despite any rule of law to the contrary); and
 - (d) make provision about such other matters and information as the Department considers necessary or expedient.