



# REGULATION OF HEALTH AND SOCIAL CARE BILL 2025

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## REGULATION OF HEALTH AND SOCIAL CARE BILL 2025

A **BILL** to regulate health care and social care; to repeal the Regulation of Care Act 2013 and to make amendments to certain other Acts; to create offences involving ill-treatment or wilful neglect and offences of administering certain substances to a child; to make provision in respect of social workers and health and social care support workers; and for connected purposes.

**BE IT ENACTED** by the King'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 Regulation of Health and Social Care Act 2025.

#### 2 Commencement

(1) This Act, apart from section 1 and this section, comes into operation on such day or days as the Department of Health and Social Care may by order appoint.

Tynwald procedure – laying only.

(2) An order under subsection (1) may include such consequential, incidental, supplemental, savings, transitional or transitory provision as the Department of Health and Social Care considers necessary or expedient.

#### 3 Interpretation

(1) In this Act —

“**Department**” means the Department of Health and Social Care;

“**enforcement officer**” has the same meaning as in section 85 (enforcement officers);

“**health care**” has the same meaning as in section 9(1) (definition of “health or social care”);

“**health care associated infection**” means any infection to which an individual may be exposed or made susceptible (or more susceptible) in circumstances where —

(a) health or social care is being, or has been, provided to that or any other individual; and

- (b) the risk of exposure to the infection, or of susceptibility (or increased susceptibility) to it, is directly or indirectly attributable to the provision of that care,

but, does not include an infection to which the individual is deliberately exposed as part of any health care;

“**health or social care**” has the same meaning as in section 9(3) (definition of “health or social care”);

“**inspector**” has the same meaning as in section 48 (inspectors);

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

“**registered manager condition**” has the same meaning as in section 14(3) (condition requiring registered manager);

“**registered person**” means a person registered under Part 2 as a manager or service provider in respect of a regulated activity;

“**regulated activity**” has the same meaning as in section 8 (regulated activities);

“**social care**” has the same meaning as in section 9(2) (definition of “health or social care”);

“**social work**” has the same meaning as in section 75(1) (meaning of “social work”, “social worker” and “registered social worker”);

“**social worker**” has the same meaning as in section 75(2);

“**registered social worker**” has the same meaning as in section 75(3);

- (2) In this Act, the registration of a person under Part 2 in respect of the carrying on of a regulated activity by that person is referred to as registration “as a service provider” in respect of that activity.
- (3) Any reference in this Act to a person who carries on a regulated activity includes a reference to a person who carries it on otherwise than for profit.
- (4) Any reference in this Act to the provision of health care or social care by a person includes a reference to the provision of that care by that person’s agent or sub-contractor.

## **PART 2 – REGULATION OF HEALTH AND SOCIAL CARE**

### **DIVISION 1 – THE DEPARTMENT’S FUNCTIONS AND OBJECTIVES**

#### **4 The Department’s functions**

In addition to its functions under other Manx legislation, the DHSC has the functions under this Act.

## 5 The Department's objectives

- (1) The Department must, so far as is reasonably practicable, perform its functions under this Part in a way —
  - (a) that is compatible with the objectives set out in subsection (2); and
  - (b) that the Department considers most appropriate for the purpose of meeting those objectives.
- (2) The objectives are —
  - (a) to protect and promote the health, safety and welfare of people who use health and social care services;
  - (b) to improve the quality and safety of all health and social care services;
  - (c) to focus on the needs and experiences of people who use health and social care services;
  - (d) to use resources effectively in the regulation of health and social care services;
  - (e) to standardise the regulation of health and social care services; and
  - (f) to promote transparency in the regulation of health and social care services.
- (3) In this Division “health and social care services” means the services to which the Department’s functions under this Part relate.

## 6 Matters to which the Department must have regard

In performing its functions under this Part the Department must have regard to —

- (a) the views expressed by or on behalf of members of the public about health and social care services;
- (b) the experiences of people who use health and social care services and their families and friends;
- (c) the views expressed by any prescribed organisations about the provision of health and social care services;
- (d) the need to protect and promote the rights of people who use health and social care services;
- (e) the need to ensure that action by the Department in relation to health and social care services is proportionate to the risks against which it would afford safeguards and it is targeted only where it is needed;
- (f) any developments in approach to regulatory action; and
- (g) best practice among persons performing functions comparable to those of the Department under this Part (including the principles under which regulatory action should be transparent, accountable and consistent).

## 7 Minimising conflicts between regulatory and other functions

- (1) The Department must make arrangements for —

- (a) minimising the risk of conflicts between the exercise of its regulatory functions and any of its other functions; and
  - (b) managing any conflicts that arise.
- (2) In this section, “regulatory functions”, in relation to the Department, means the Department’s functions under this Part.

## DIVISION 2 – REGISTRATION, ENFORCEMENT AND MONITORING

### SUBDIVISION 1 - INTRODUCTORY

#### 8 Regulated activities

- (1) Subject to the provisions of this section, “regulated activity” means an activity specified in schedule 1 (regulated activities).
- (2) An activity which is ancillary to, or is carried on wholly or mainly in relation to, a regulated activity shall be treated as part of that activity.
- (3) An activity is only a regulated activity if it is carried on in the Island.
- (4) The Department may by regulations amend schedule 1 to modify the activities which constitute regulated activities by –
  - (a) modifying the scope of such activities;
  - (b) adding activities;
  - (c) deleting activities; or
  - (d) specifying exceptions to such activities.

Tynwald procedure – approval required.

- (5) An activity may be included in schedule 1 only if the activity involves, or is connected with, the provision of health or social care in, or in relation to, the Island.
- (6) For the purposes of subsection (5), activities connected with the provision of health or social care include, in particular –
  - (a) the supply of staff who are to provide such care;
  - (b) the provision of transport or accommodation for those who require such care;
  - (c) the provision of advice in respect of such care.
- (7) The activities specified in Schedule 2 are not regulated activities.
- (8) The Department may by regulations amend Schedule 2 to modify the activities that are not regulated activities by –
  - (a) modifying the scope of such activities;
  - (b) adding activities;
  - (c) deleting activities; or
  - (d) specifying exceptions to such activities.

Tynwald procedure – approval required.



## 9 Definition of “health or social care”

- (1) “Health care” includes –
  - (a) all forms of health care provided for individuals, whether relating to physical or mental health, and also includes procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition;
  - (b) all forms of non-surgical cosmetic procedures provided for individuals whether or not such procedures are provided in connection with a medical condition; and
  - (c) all forms of complimentary and alternative therapies provided for individuals whether or not such therapies are provided in connection with a medical condition.
- (2) “Social care” includes all forms of personal care, personal support and practical assistance provided for individuals who by reason of age, abuse, neglect, risk of harm, illness, mental disorder, disability, pregnancy, childbirth, dependence on alcohol or drugs, criminal activity or any other similar circumstances, are in need of such care, support or other assistance.
- (3) “Health or social care” means health care or social care.
- (4) The Department may by regulations amend the definition of “health care” in subsection (1) and the definition of “social care” in subsection (2).

Tynwald procedure – approval required.
- (5) Before making regulations under this section the Department must consult such persons as the Department considers appropriate.
- (6) Consultation undertaken by the Department before the commencement of this section is as effective for the purposes of this section as consultation undertaken after that time.

### SUBDIVISION 2 – MONITORING COMPLIANCE

## 10 Monitoring compliance

The Department must monitor and secure compliance with this Part (and any statutory documents made under it) by any person carrying on a regulated activity in the Island.

### SUBDIVISION 3 - REGISTRATION

## 11 Requirement to register as a service provider

- (1) Any person who carries on a regulated activity without being registered under this Part in respect of the carrying on of that activity is guilty of an offence.

Maximum penalty –

- (a) (summary) – 12 months’ custody or a fine; or

- (b) (information) – 12 months custody or a fine.
- (2) Where Manx Care carries on a regulated activity in discharging the functions of the Department under the mandate provided for in the Manx Care Act 2021, Manx Care is to be regarded as the person who carries on the regulated activity.
- (3) The Department may by regulations make provision for determining, in relation to a regulated activity carried on by two or more persons acting in different capacities, which of those persons is to be regarded as the person who carries on the activity.

## **12 Applications for registration as a service provider**

- (1) A person seeking to be registered under this Part as a service provider must make an application to the Department.
- (2) An application under subsection (1) must be made in such form, and contain or be accompanied by such information and documents, as the Department requires.
- (3) In such cases as the Department may determine, a person seeking to be registered as a service provider in respect of two or more regulated activities may make a single application in respect of them.

## **13 Grant or refusal of registration as a service provider**

- (1) Subsections (2) to (4) apply where an application under section 12 has been made in accordance with the provisions of this Part with respect to a regulated activity.
- (2) The Department must not grant the application unless the Department is satisfied that –
  - (a) the requirements of regulations under section 23 (regulation of regulated activities); and
  - (b) the requirements of any other Manx legislation which appears to the Department to be relevant,  
are being and will be complied with (so far as applicable) in relation to the carrying on of the regulated activity.
- (3) The application may be granted either unconditionally or subject to such conditions as the Department thinks fit.
- (4) On granting the application, the Department must issue a certificate of registration to the applicant.
- (5) The Department may at any time –
  - (a) vary or remove any condition for the time being in force in relation to a person's registration as a service provider; or
  - (b) impose any additional condition.
- (6) Subsections (3) to (5) have effect subject to section 14 (condition requiring registered manager).

#### **14 Condition requiring registered manager**

- (1) The registration under this Part of a person (“S”) as a service provider in respect of a regulated activity must in prescribed cases be subject to a registered manager condition.
- (2) In deciding whether to impose a registered manager condition under section 13(3) or (5), in a case where subsection (1) does not require such a condition to be imposed, the Department must have regard to any prescribed matters.
- (3) For the purposes of this Part, a registered manager condition is a condition that the activity as carried on by S, or the activity as carried on by S at or from particular premises, must be managed by an individual who is registered under this Part as a manager in respect of the activity, or the activity as carried on at or from those premises.

#### **15 Applications for registration as a manager**

- (1) A person seeking to be registered under this Part as a manager in respect of a regulated activity in respect of which a registered manager condition has, or is to have, effect must make an application to the Department.
- (2) An application under subsection (1) must be made in such form, and contain or be accompanied by such information and documents, as the Department requires.
- (3) In such cases as the Department may determine, a person seeking to be registered as a manager in respect of two or more regulated activities carried on by a person registered as a service provider may make a single application in respect of them.

#### **16 Registered manager – amendment of registration**

- (1) This section applies if –
  - (a) an individual (“M”) is registered under this Part as a manager in respect of a regulated activity in respect of which a person is registered under this Part as a service provider and in respect of which a registered manager condition has effect (an “existing registration”); and
  - (b) “M” wants to be registered as a manager in respect of the same regulated activity but in respect of which a different person is registered under this Part as a service provider (“S”) and in respect of which a registered manager condition has effect.
- (2) “M” must make an application to the Department for M’s existing registration to be amended so that “M” is registered under this Part as a manager in respect of the same regulated activity but in respect of S.
- (3) An application under subsection (2) must be made in such form, and contain or be accompanied by such information and documents, as the Department requires.
- (4) An application under subsection (2) is deemed to be an application for registration as a manager in respect of a regulated activity under section 15 and, if granted, “M’s”

existing registration is deemed to have been cancelled under section 22 (applications by registered persons).

## **17 Grant or refusal of registration as a manager**

- (1) Subsections (2) to (4) apply where an application under section 15 or section 16 has been made in accordance with the provisions of this Part with respect to a regulated activity in respect of which a person is registered under this Part as a service provider and in respect of which a registered manager condition has effect.
- (2) The Department must not grant the application unless the Department is satisfied that —
  - (a) the requirements of regulations under section 23 (regulation of regulated activities); and
  - (b) the requirements of any other Manx legislation which appears to the Department to be relevant,  
are being and will be complied with (so far as applicable) in relation to the carrying on of the regulated activity.
- (3) The application may be granted either unconditionally or subject to such conditions as the Department thinks fit.
- (4) On granting the application, the Department must issue a certificate of registration to the applicant.
- (5) The Department may at any time —
  - (a) vary or remove any condition for the time being in force in relation to a person's registration as a manager; or
  - (b) impose any additional condition.

### **SUBDIVISION 4 – FURTHER PROVISIONS ABOUT REGISTRATION**

## **18 Regulations about registration**

The Department may make regulations for the purposes of this Part about —

- (a) the keeping by the Department of registers;
- (b) the making of applications for registration as a service provider or manager;
- (c) the registration of persons as a service provider or manager; and
- (d) the notification by a registered person to the Department of an address for service of documents.

## **19 Temporary registration of service providers**

- (1) If the Department believes that an emergency has occurred, is occurring or is about to occur and the Department considers it is reasonable to do so, the Department may register under this section —

- (a) a person as a service provider in respect of a regulated activity, if the Department considers that the person is a fit, proper and suitably experienced person to be registered as a service provider in respect of that activity with regard to the emergency;
  - (b) an individual as a manager in respect of a regulated activity in respect of which a person is registered under paragraph (a) as a service provider and in respect of which a registered manager condition has effect, if the Department considers that the individual is a fit, proper and suitably experienced individual to be registered as such a manager with regard to the emergency.
- (2) A person seeking to be registered under this section must make an application to the Department and any such application must be made in such form, and contain or be accompanied by such information and documents, as the Department requires.
- (3) The registration of a person under this section as a service provider or manager in respect of a regulated activity has effect subject to any conditions imposed by the Department; and the Department may at any time vary or remove any such condition or impose any additional condition.
- (4) A person's registration under this section as a service provider or manager in respect of a regulated activity ceases to have effect if cancelled by the Department; and the Department —
  - (a) must cancel the registration if the circumstances that led the Department to have the belief that an emergency has occurred, is occurring or is about to occur referred to in subsection (1) no longer exist;
  - (b) may at any time cancel the registration for any other reason, including where the Department suspects that a person's fitness to act as a service provider in respect of a regulated activity or to act as a manager in respect of a regulated activity may be impaired.
- (5) If a person's registration under this section is cancelled under subsection (4)(a), the registration ceases to have effect at the end of the period of 14 days beginning with the date on which it is cancelled, or such longer period as the Department may consider reasonable.
- (6) If a person's registration under this section is cancelled under subsection (4)(b), the registration ceases to have effect immediately.
- (7) Subject to subsection (8), this Part shall apply to a person registered as a service provider or manager in respect of a regulated activity under this section.
- (8) The following provisions of this Part do not apply to a person registered under this section —
  - (a) section 13 (grant or refusal of registration as a service provider);
  - (b) Section 14 (condition requiring a registered manager), other than subsection (3);
  - (c) section 17 (grant or refusal of registration as a manager);
  - (d) section 18 (regulations about registration);

- (e) sections 20 and 21 (cancellation and suspension of registration);
  - (f) section 22 (applications by registered persons);
  - (g) sections 27 to 35 (registration procedures).
- (9) The Department may by regulations —
- (a) amend subsection (8) to modify which provisions of this Part apply or do not apply to persons registered under this section;
  - (b) provide for provisions of this Part to apply to persons registered under this section with specified modifications.
- Tynwald procedure – approval required.
- (10) If a person breaches a condition to which the person’s registration as a service provider or manager under this section is subject, anything done by the person in breach of the condition is to be treated as not being done by a person registered under this Part.
- (11) For the purposes of this section, “emergency” means an emergency of the type described in section 2A(1)(a) of the *Emergency Powers Act 1936* (meaning of “emergency”), read with subsection (2)(a) and (b) of that section.

## 20 Cancellation of registration

- (1) The Department may at any time cancel the registration of a person (“R”) under this Part as a service provider or manager in respect of a regulated activity —
- (a) on the ground that R has been convicted of, or admitted, a relevant offence;
  - (b) on the ground that any other person has been convicted of any relevant offence in relation to the regulated activity;
  - (c) on the ground that the regulated activity is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements;
  - (d) on the ground that R has failed to comply with a requirement imposed by or under Division 4 of this Part (miscellaneous and general);
  - (e) on any prescribed ground.
- (2) The Department must cancel the registration of a person under this Part as a manager in respect of a regulated activity if —
- (a) no-one is registered under this Part as a service provider in respect of the activity; or
  - (b) the registration of a person under this Part as a service provider in respect of the activity ceases to be subject to a registered manager condition.
- (3) For the purposes of this section, the following are “relevant offences” —
- (a) an offence under this Act (including under regulations under this Act);
  - (b) any other offence which appears to the Department to be relevant.
- (4) In this section, “relevant requirements” means —
- (a) any requirement or condition imposed by or under this Division; and

- (b) the requirements of any other Manx legislation which appears to the Department to be relevant.

## 21 Suspension of registration

- (1) The Department may at any time suspend a person's registration under this Part as a service provider or manager for a specified period.
- (2) Except where the Department gives notice under section 32 (urgent procedure for suspension, variation etc.), the power conferred by subsection (1) is exercisable only on the ground that —
  - (a) the person is the subject of any proceedings which might lead to a conviction for a relevant offence;
  - (b) the regulated activity is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements; or
  - (c) the person has failed to comply with a requirement imposed by or under Division 4 of this Part (miscellaneous and general).
- (3) The suspension of a person's registration does not affect the continuation of the registration (but see sections 37 (offences relating to suspension or cancellation of registration) and 39 (false description of concerns, premises etc.) as to offences).
- (4) A period of suspension may be extended under subsection (1) on one or more occasions.
- (5) In this section "relevant offences" and "relevant requirements" have the same meaning as in section 20.

## 22 Applications by registered persons

- (1) A person registered under this Part as a service provider or manager ("R") may apply to the Department —
  - (a) for the variation or removal of any condition for the time being in force in relation to the registration, other than a registered manager condition required by section 14(1) (condition requiring registered manager);
  - (b) for the cancellation of the registration; or
  - (c) for the cancellation of, or the variation of the period of, any suspension of the registration.

This is subject to subsections (2) to (11).

- (2) R may not apply under subsection (1) where either subsection (3) or (4) applies.
- (3) This subsection applies where —
  - (a) the Department has given R notice under section 27 (notice of proposals) of a proposal to cancel the registration; and
  - (b) the Department has not decided not to take that step.
- (4) This subsection applies where —

- (a) the Department has given R notice under section 29 (notice of decisions) of its decision to cancel the registration; and
  - (b) either the time within which an appeal may be brought has not expired or, if an appeal has been brought, it has not yet been determined.
- (5) R may not apply under subsection (1)(a) for the variation of a condition where either subsections (6) or (7) applies.
- (6) This subsection applies where —
  - (a) the Department has given R notice under section 27 (notice of proposals) of a proposal to make that variation (or a variation which would have substantially the same effect as that variation); and
  - (b) the Department has not decided not to take that step.
- (7) This subsection applies where —
  - (a) the Department has given R notice under section 29 (notice of decisions) of its decision to make that variation (or a variation which would have substantially the same effect as that variation); and
  - (b) either the time within which an appeal may be brought has not expired or, if an appeal has been brought, it has not yet been determined.
- (8) R may not apply under subsection (1)(a) for the removal of a condition where either subsection (9) or (10) applies.
- (9) This subsection applies where —
  - (a) the Department has given R notice under section 27 (notice of proposals) of a proposal to remove that condition; and
  - (b) the Department has not decided not to take that step.
- (10) This subsection applies where —
  - (a) the Department has given R notice under section 29 (notice of decisions) of its decision to remove that condition; and
  - (b) either the time within which an appeal may be brought has not expired or, if an appeal has been brought, it has not yet been determined.
- (11) An application under subsection (1) must be made in such form, and contain or be accompanied by such information and documents, as the Department requires.
- (12) If the Department decides to grant an application under subsection (1)(a), it must —
  - (a) serve notice in writing of its decision on the applicant (stating, where applicable, the condition as varied); and
  - (b) issue a new certificate of registration.
- (13) If the Department decides to grant an application under subsection (1)(c), it must serve notice in writing of its decision on the applicant (stating, where applicable, the period as varied).



## SUBDIVISION 5 – REGULATION, CODE OF PRACTICE AND GUIDANCE

**23 Regulation of regulated activities**

- (1) The Department must by regulations impose requirements that the Department considers necessary to secure that services provided in the carrying on of regulated activities cause no avoidable harm to the persons for whom the services are provided.
- (2) The Department may by regulations impose any other requirements in relation to regulated activities that the Department thinks fit for the purposes of this Part, including in particular provision with a view to –
  - (a) securing that any service provided in the carrying on of a regulated activity is of appropriate quality; and
  - (b) securing the health, safety and welfare of persons for whom any such service is provided.
- (3) Regulations under this section may –
  - (a) make provision as to the persons who are fit to carry on or manage a regulated activity;
  - (b) make provision as to the manner in which a regulated activity is carried on;
  - (c) make provision as to the persons who are fit to work for the purpose of the carrying on of a regulated activity;
  - (d) make provision as to the management and training of persons who work for the purpose of the carrying on of a regulated activity;
  - (e) impose requirements in connection with food or drink provided or made available to any person on hospital premises in the Island that are used in connection with the carrying on of a regulated activity;
  - (e) make provision as to the fitness of premises;
  - (f) impose requirements as to the keeping of records and accounts;
  - (g) impose requirements as to the provision of information;
  - (h) impose requirements as to the financial position of a person registered as a service provider;
  - (i) impose requirements as to the making available to the public of information as to any charges made for the provision of any services provided in the carrying on of a regulated activity;
  - (j) impose requirements as to the review of the quality of any services provided in the carrying on of a regulated activity, as to the preparation of reports of such reviews, and as to the making available to the public of such reports;
  - (k) make provision as to the handling of complaints and disputes and the application of lessons learnt from them.
- (4) Regulations made under subsection (3)(b) may in particular include provision as to the control and restraint, in appropriate cases, of persons receiving health or social care or other services in connection with the carrying on of a regulated activity.

- (5) Regulations made under subsection (3)(d) may in particular include provision for a specified person to set the standards which persons undergoing the training in question must attain.
- (6) Regulations made under subsection (3)(e) may in particular –
  - (a) specify nutritional standards, or other nutritional requirements, which are to be complied with;
  - (b) require that specified descriptions of food or drink are not to be provided or made available.
- (7) Regulations made under this section may make provision for the prevention and control of health care associated infections and may include such provision as the Department considers appropriate for the purpose of safeguarding individuals (whether receiving health or social care or otherwise) from the risk, or any increased risk, of being exposed to health care associated infections or of being made susceptible, or more susceptible, to them.
- (8) Regulations under this section may require service providers to ensure that each person working for the purpose of the regulated activities carried on by them receives training on learning disability and autism which is appropriate to the person's role.
- (9) Regulations under this section must make provision as to the provision of information in a case where an incident of a specified description affecting a person's safety occurs in the course of the person being provided with a service.
- (10) Before making regulations under this section, except regulations which amend other regulations under this section and do not, in the opinion of the Department, effect any substantial change in the provision made by those regulations, the Department must consult such persons as the Department considers appropriate.
- (11) Consultation undertaken by the Department before the commencement of this section is as effective for the purposes of this section as consultation undertaken after that time.
- (12) In this section –
  - “cause” means cause or contribute to, whether directly or indirectly;
  - “harm” is avoidable in relation to a service, unless the person providing the service cannot reasonably avoid it (whether because it is an inherent part or risk of a regulated activity or for another reason);
  - “learning disability” means a state of arrested or incomplete development of the mind which includes significant impairment of intelligence and social functioning;
  - “service provider” means a person registered under this Part as a service provider in respect of a regulated activity.

## 24 Code of practice as to compliance with requirements

- (1) The Department may issue a code of practice (and may issue more than one) about compliance with any requirements of regulations under section 23 (regulation of regulated activities).
- (2) A code of practice may —
  - (a) operate by reference to provisions of other documents specified in it (whether published by the Department or otherwise);
  - (b) provide for any reference in it to such a document to take effect as a reference to that document as amended from time to time;
  - (c) make different provision for different cases or circumstances.
- (3) The Department may from time to time revise a code of practice.
- (4) The Department must consult such persons as the Department considers appropriate before —
  - (a) issuing a code of practice; or
  - (b) issuing a revised code of practice which, in the opinion of the Department, would result in a substantial change in the code.
- (5) Consultation undertaken by the Department before the commencement of this section is as effective for the purposes of this section as consultation undertaken after that time.
- (6) A code of practice or a revised code of practice comes into operation on the date it is issued by the Department.
- (7) A code of practice or a revised code of practice must be laid before Tynwald as soon as practicable after it is issued.
- (8) The Department must publish a code of practice or a revised code of practice issued under this section in such a way as the Department considers appropriate.
- (9) A code of practice or a revised code of practice issued under this section is a public document but not a statutory document.

## 25 Guidance as to compliance with requirements

- (1) The Department may issue guidance about compliance with the requirements of regulations under section 23 (regulation of regulated activities).
- (2) The guidance may, if the Department thinks fit, also relate to compliance for the purposes of this Part with the requirements of other Manx legislation.
- (3) The guidance may —
  - (a) operate by reference to provisions of other documents specified in it (whether published by the Department or otherwise);
  - (b) provide for any reference in it to such a document to take effect as a reference to that document as amended from time to time;
  - (c) make different provision for different cases or circumstances.

- (4) The Department may from time to time revise any guidance.
- (5) The Department must consult such persons as the Department considers appropriate before —
  - (a) issuing any guidance; or
  - (b) issuing any revised guidance which, in the opinion of the Department, would result in a substantial change to the guidance.
- (6) Consultation undertaken by the Department before the commencement of this section is as effective for the purposes of this section as consultation undertaken after that time.
- (7) Any guidance or revised guidance comes into operation on the date it is issued by the Department.
- (8) Any guidance or revised guidance must be laid before Tynwald as soon as practicable after it is issued.
- (9) The Department must publish any guidance or revised guidance issued under this section in such a way as the Department considers appropriate.
- (10) Any guidance or revised guidance issued under this section is a public document but not a statutory document.

## **26 Effect of code and guidance**

- (1) A code of practice under section 24 (code of practice as to compliance with requirements) and guidance under section 25 (guidance as to compliance with requirements) are to be taken into account —
  - (a) in the making of any decision by the Department under this Part;
  - (b) in any proceedings on an appeal against such a decision;
  - (c) in any proceedings for an offence under section 36 (failure to comply with conditions) or under regulations under section 23 (regulation of regulated activities).
- (2) A code of practice under section 24 or guidance under section 25 are also admissible in evidence in other criminal or civil proceedings.
- (3) A failure to observe any provision of a code of practice under section 24 or guidance under section 25 does not of itself make a person liable to any criminal or civil proceedings.

### SUBDIVISION 6 – REGISTRATION AND ENFORCEMENT PROCEDURE

## **27 Notice of proposals**

- (1) Subsections (2) and (3) apply where a person applies for registration as a service provider or manager in respect of a regulated activity.
- (2) If the Department proposes to grant the application subject to any condition which has not been agreed in writing between it and the applicant, other than a registered

manager condition required by section 14(1) (condition requiring registered manager), the Department must give the applicant notice in writing of its proposal and of the conditions subject to which it proposes to grant the application.

- (3) The Department must give the applicant notice in writing of a proposal to refuse the application.
- (4) Except where the Department gives notice under section 31 (urgent procedure for cancellation) or section 32 (urgent procedure for suspension, variation etc.), the Department must give any person registered as a service provider or manager in respect of a regulated activity notice in writing of a proposal —
  - (a) to cancel the registration (otherwise than by virtue of section 20(2) (cancellation of registration) or in accordance with an application under section 22(1)(b) (applications by registered persons));
  - (b) to suspend the registration or extend a period of suspension;
  - (c) to vary or remove (otherwise than in accordance with an application under section 22(1)(a) (applications by registered persons)) any condition for the time being in force in relation to the registration; or
  - (d) to impose in relation to the registration any additional condition.
- (5) Where a proposal under subsection (4) names an individual and specifies action that the Department would require the registered person to take in relation to that individual, the Department must give that individual notice in writing of the proposal.
- (6) The Department must give the applicant notice in writing of a proposal to refuse an application under section 22(1)(a), (b) or (c) (applications by registered persons).
- (7) A notice under this section must give the Department's reasons for its proposal.

## **28 Right to make representations**

- (1) A notice under section 27 (notice of proposals) must state that within 28 days of service of the notice any person on whom it was served may make written representations to the Department concerning any matter which that person wishes to dispute.
- (2) Where a notice has been served under section 27, the Department must not determine any matter to which the notice relates until either —
  - (a) any person on whom the notice was served has made written representations to it concerning the matter;
  - (b) any such person has notified the Department in writing that the person does not intend to make such representations; or
  - (c) the period during which any such person could have made representations has elapsed.

## 29 Notice of decisions

- (1) If the Department decides to grant an application for registration as a service provider or manager in respect of a regulated activity —
  - (a) unconditionally; or
  - (b) subject only to conditions each of which is either required by section 14(1) (condition requiring registered manager) or agreed in writing between the Department and the applicant,it must give the applicant notice in writing of the decision.
- (2) A notice under subsection (1) must state the conditions subject to which registration is granted.
- (3) If the Department decides to adopt a proposal of which it was required to give notice under section 27 (notice of proposals), it must give notice in writing of its decision to any person to whom it was required by section 27 to give notice of the proposal.
- (4) A notice under subsection (3) must —
  - (a) explain the right of appeal conferred by section 34 (appeals to the Health and Social Care Services Tribunal)
  - (b) in the case of a decision to adopt a proposal under section 27(2), state the condition subject to which the application is granted;
  - (c) in the case of a decision to adopt a proposal under section 27(4)(b), state the period (or extended period) of suspension; and
  - (d) in the case of a decision to adopt a proposal under section 27(4)(c) or (d), state the condition as varied, the condition which is removed or (as the case may be) the additional condition imposed.
- (5) Where a person (“M”) is registered as a manager in respect of a regulated activity, the Department must —
  - (a) give M a copy of any notice given under subsection (3) to the person (“S”) registered as a service provider in respect of the regulated activity; and
  - (b) give S a copy of any such notice given under that subsection to M.
- (6) Subject to subsections (7) to (9), a decision of the Department to adopt a proposal under section 27(2) or (4) takes effect —
  - (a) at the end of the period of 28 days referred to in section 34 (appeals to the Health and Social Care Services Tribunal); or
  - (b) if an appeal is brought, on the determination or abandonment of the appeal.
- (7) Where a person notifies the Department in writing before the end of the period mentioned in subsection (6)(a) that the person does not intend to appeal, the decision is to take effect when the Department receives that person’s notification.
- (8) But in a case where notice of the proposal has been given to an individual under section 27(5) subsection (7) does not apply unless, by the time the Department receives the person’s notification under subsection (7), it has received notification from the individual that the individual does not intend to appeal.

- (9) If the Department receives the notification from the individual after it receives the person's notification under subsection (7) and before the end of the period mentioned in subsection (6)(a), the decision is to take effect when the Department receives the individual's notification.

### 30 Warning notice

- (1) If it appears to the Department that a person who is registered under this Part as a service provider or manager in respect of a regulated activity has failed to comply with the relevant requirements, the Department may give the registered person a warning notice.
- (2) A warning notice under this section is a notice in writing —
- (a) specifying the conduct which appears to the Department to constitute a failure to comply with the relevant requirements;
  - (b) specifying the requirement concerned; and
  - (c) where it appears to the Department that the failure is continuing —
    - (i) requiring the registered person to comply with the requirement concerned within a specified time; and
    - (ii) stating that, if the registered person fails to do so within that time, the Department may take action to secure compliance with the relevant requirements.
- (3) Subsections (4) and (5) apply where —
- (a) a warning notice under this section has been given to any person; and
  - (b) where any failure to comply with a requirement is specified under subsection (2)(c), the requirement has been complied with within the specified time.
- (4) The failure to which the notice relates, so far as occurring before the relevant time, is not to constitute a ground for the cancellation or suspension of registration, the variation of the conditions of registration, the removal of a condition or the imposition of any additional condition.
- (5) No proceedings may be brought against any person registered in respect of the regulated activity for an offence under this Part (including under regulations under this Part) that arises out of the failure to which the notice relates, so far as occurring before the relevant time.
- (6) In subsections (4) and (5), the “relevant time” means —
- (a) where a time is specified under subsection (2)(c)(i), the time so specified; and
  - (b) in any other case, the date on which the notice was given.
- (7) In this section, “relevant requirements” means —
- (a) any requirements or conditions imposed by or under this Division or Division 4 of this Part (miscellaneous and general); and
  - (b) the requirements of any Manx legislation which appears to the Department to be relevant.

**31 Urgent procedure for cancellation**

- (1) This section applies if the Department has reasonable cause to believe that unless it acts under this section there will be a serious risk to a person's life, health or well-being.
- (2) If this section applies, the Department may, by giving notice in writing to a person registered as a service provider or manager in respect of a regulated activity, cancel the registration of that person and such cancellation shall take effect from the time when the notice is given.
- (3) The notice must —
  - (a) state that it is given under this section;
  - (b) state the Department's reasons for believing that the circumstances fall within subsection (1); and
  - (c) explain the right of appeal conferred by section 34 (appeals to the Health and Social Care Services Tribunal).

**32 Urgent procedure for suspension, variation etc.**

- (1) This section applies if the Department has reasonable cause to believe that unless it acts under this section any person will or may be exposed to the risk of harm.
- (2) If this section applies, the Department may, by giving notice in writing to a person registered as a service provider or manager in respect of a regulated activity, provide for any decision of the Department that is mentioned in subsection (3) to take effect from the time when the notice is given.
- (3) Those decisions are —
  - (a) a decision under section 13(5) (grant or refusal of registration as a service provider) or 17(5) (grant or refusal of registration as a manager) to vary or remove a condition for the time being in force in relation to the registration or to impose an additional condition;
  - (b) a decision under section 21 (suspension of registration) to suspend the registration or extend a period of suspension.
- (4) The notice must —
  - (a) state that it is given under this section;
  - (b) state the Department's reasons for believing that the circumstances fall within subsection (1);
  - (c) specify the condition as varied, removed or imposed or the period (or extended period) of suspension; and
  - (d) explain the right of appeal conferred by section 34 (appeals to the Health and Social Care Services Tribunal).



### 33 The Health and Social Care Services Tribunal

- (1) The Care Services Tribunal continues to exist and is renamed the Health and Social Care Services Tribunal.
- (2) The Health and Social Care Services Tribunal has the jurisdiction given to it under this Part or under any other Manx legislation.
- (3) The Health and Social Care Services Tribunal consists of —
  - (a) a chairperson appointed in accordance with the *Tribunals Act 2006*; and
  - (b) 2 members drawn from a panel appointed in accordance with that Act.

### 34 Appeals to the Health and Social Care Services Tribunal

- (1) An appeal lies to the Health and Social Care Services Tribunal against any decision of the Department under this Part, other than a decision to give a warning notice under section 30 (warning notice).
- (2) No appeal against a decision may be brought by a person more than 28 days after service on the person of notice of the decision.
- (3) An appeal must be made in accordance with rules made under section 8 of the *Tribunals Act 2006*.
- (4) Unless the Health and Social Care Services Tribunal otherwise orders, an appeal does not operate to stay the effect of the original decision pending the deciding of the appeal.
- (5) On an appeal against a decision of the Department, the Health and Social Care Services Tribunal may —
  - (a) confirm the decision;
  - (b) set aside the decision and substitute another decision; or
  - (c) set aside the decision and return the issue to the Department with directions the Health and Social Care Services Tribunal considers appropriate.
- (6) On an appeal against a decision, the Health and Social Care Services Tribunal also has power —
  - (a) to vary any discretionary condition for the time being in force in respect of the regulated activity to which the appeal relates;
  - (b) to direct that any such discretionary condition is to cease to have effect;
  - (c) to direct that any such discretionary condition as the Health and Social Care Services Tribunal thinks fit must have effect in respect of the regulated activity; or
  - (d) to vary any period of suspension.
- (7) A decision of the Health and Social Care Services Tribunal on an appeal under this section is binding on the Department and on the appellant.  
This is subject to section 35 (further appeal on question of law).

- (8) In this section “discretionary condition”, in relation to a registration under this Part, means any condition other than a registered manager condition required by section 14(1) (condition requiring registered manager).

### **35 Further appeal on question of law**

A further appeal from a decision of the Health and Social Care Services Tribunal lies to the Staff of Government Division, in accordance with rules of court, on a question of law.

## **SUBDIVISION 7 - OFFENCES**

### **36 Failure to comply with conditions**

A person who –

- (a) is registered under this Part in respect of a regulated activity (whether as a service provider or manager); and
- (b) fails, without reasonable excuse, to comply with any condition for the time being in force by virtue of this Part in relation to the registration,

is guilty of an offence.

Maximum penalty (summary) – 5 times level 5 on the standard scale.

### **37 Offences relating to suspension or cancellation of registration**

- (1) If a person (“S”) who is registered under this Part as a service provider in respect of a regulated activity carries on that activity while S’s registration is suspended, S is guilty of an offence.

Maximum penalty (summary) – 5 times level 5 on the standard scale.

- (2) A person (“M”) whose registration under this Part as a manager in respect of a regulated activity is suspended is guilty of an offence if, during the period of suspension, M manages that activity at a time when no one else has been registered under this Part as a manager in respect of the activity since the suspension of M’s registration.

Maximum penalty (summary) – 5 times level 5 on the standard scale.

- (3) A person (“M”) whose registration under this Part as a manager in respect of a regulated activity has been cancelled is guilty of an offence if M manages that activity at a time when –

- (a) a person (“S”) remains registered under this Part as a service provider in respect of the activity;
- (b) S’s registration remains subject to a registered manager condition; and
- (c) no-one has been registered under this Part as a manager in respect of the activity since the cancellation of M’s registration.

Maximum penalty (summary) – 5 times level 5 on the standard scale.

- (4) If a person (“M”) who is registered under this Part as a manager in respect of a regulated activity manages that activity while the registration of the person registered under this Part as a service provider in respect of the activity is suspended, M is guilty of an offence if M knows or could reasonably be expected to know of the suspension.

Maximum penalty (summary) – 5 times level 5 on the standard scale.

### **38 Contravention of regulations**

- (1) Regulations under this Division may provide that a contravention of or failure to comply with any specified provision of the regulations is to be an offence.
- (2) But regulations under subsection (1) may not –
- provide for an offence to be triable on information;
  - provide for an offence to be punishable with custody; or
  - provide for an offence to be punishable, except in the case of regulations made under section 23 (regulation of regulated activities), with a fine exceeding level 4 on the standard scale.

### **39 False description of concerns, premises etc.**

- (1) Any person who, with intent to deceive any person –
- applies any name to any concern carried on in the Island or to any premises in the Island; or
  - in any way describes such a concern or such premises or holds such a concern or such premises out,

so as to indicate, or reasonably be understood to indicate, that the carrying on of the concern is a regulated activity or that the premises are used for the carrying on of a regulated activity is guilty of an offence unless the conditions in subsection (2) are met.

Maximum penalty (summary) - level 5 on the standard scale.

- (2) Those conditions are –
- that a person is registered under this Part as a service provider in respect of the regulated activity in question; and
  - that the registration has not been suspended.
- (3) Any person who, with intent to deceive any person, in any way describes or holds out any person registered under this Part as a service provider in respect of a regulated activity as able to provide a service or do any thing the provision or doing of which would contravene a condition for the time being in force by virtue of this Part in relation to the regulated activity is guilty of an offence.

Maximum penalty (summary) – level 5 on the standard scale.

- (4) In this section “concern” includes any organisation.

**40 False statements in applications**

- (1) Subsection (2) applies to any application under this Part by a person (“A”) —
  - (a) for registration;
  - (b) for the variation or removal of any condition in force in relation to A’s registration;
  - (c) for the variation or cancellation of any suspension of A’s registration; or
  - (d) for the cancellation of A’s registration.
- (2) If, in an application to which this subsection applies, A knowingly makes a statement which is false or misleading in a material respect, A is guilty of an offence.

Maximum penalty (summary) – level 4 on the standard scale.

**SUBDIVISION 8 – INFORMATION TO BE AVAILABLE TO THE PUBLIC****41 Provision of copies of registers**

- (1) The Department must secure that copies of any register kept for the purposes of this Part are available at its offices for inspection at all reasonable times by any person.
- (2) Any person who asks the Department for a copy of, or an extract from, a register kept for the purposes of this Part is entitled to have one.
- (3) The Department may by regulations —
  - (a) provide that subsections (1) or (2) do not apply —
    - (i) in such circumstances as may be prescribed; or
    - (ii) to such parts of a register as may be prescribed;
  - (b) prescribe any fee payable for the inspection of any register or for obtaining a copy of, or an extract from, any register.
- (4) Regulations under subsection (3) may —
  - (a) prescribe circumstances in which a fee is not payable; or
  - (b) provide for the Department to allow the inspection of any register or the obtaining of a copy of, or extract from, any register to be free of charge.

**SUBDIVISION 9 - MISCELLANEOUS****42 Periodic returns**

- (1) The Department may by regulations require the person carrying on a regulated activity to make a return to the Department at such intervals as may be prescribed.
- (2) Regulations under subsection (1) may make provision as to the contents of the return and the period in respect of which and the date by which it is to be made.

**43 Liquidators etc.**

- (1) The Department may by regulations —
  - (a) require any person to whom this section applies to give notice of the person's appointment to the Department;
  - (b) require any person to whom this section applies to appoint a person to manage the regulated activity in question.
- (2) This section applies to any person appointed as —
  - (a) a receiver or manager of the property of a relevant company;
  - (b) the liquidator or provisional liquidator of a relevant company;
  - (c) the trustee in bankruptcy of a relevant individual.

- (3) In this section —

“company” includes a partnership;

“relevant company” means a company which is registered under this Part as a service provider in respect of a regulated activity;

“relevant individual” means an individual who is registered under this Part as a service provider in respect of a regulated activity.

**44 Death of registered person**

- (1) If a person registered under this Part as a service provider in respect of a regulated activity is a partnership and a partner who is an individual dies, any surviving partner must without delay notify the Department in writing of the death.
- (2) If a person registered under this Part as a service provider in respect of a regulated activity is an individual and that individual dies, that individual's personal representative must —
  - (a) as soon as practicable after the death, notify the Department in writing of the death; and
  - (b) within 28 days after the death, notify the Department in writing of the personal representative's intentions for the future carrying on of the regulated activity.
- (3) Subject to subsection (5), the personal representative of the deceased individual may carry on the regulated activity without being registered in respect of that regulated activity for —
  - (a) 4 weeks from the deceased individual's death; or
  - (b) if the Department agrees in writing to a longer period (either before or after the 4 weeks end), the longer period.
- (4) The longer period referred to in subsection (3)(b) must not exceed one year.
- (5) Subsection (3) applies only if the personal representative of the deceased individual —
  - (a) has not been convicted of, or admitted, a relevant offence; and

- (b) satisfies any other prescribed requirements.
- (6) The Act shall apply, with any necessary modifications, to the personal representative of the deceased individual as if the deceased individual had not died and as if the personal representative was registered under this Part as the service provider in respect of the regulated activity carried on by the deceased individual.
- (7) Any person who, without reasonable excuse, fails to comply with the requirements in subsections (1) or (2) is guilty of an offence.
- Maximum penalty (summary) – level 4 on the standard scale.
- (8) In this section “relevant offence” has the same meaning as in section 20 (cancellation of registration).

#### SUBDIVISION 10 – POWER TO MODIFY DIVISION

### 45 Power to modify Division in relation to newly regulated activities

- (1) The Department may by regulations modify the provisions of this Part in their application to any newly regulated activities.
- (2) A “newly regulated activity” is any activity which is not a regulated activity on the commencement of section 11 (requirement to register as a service provider).

#### DIVISION 3 – MISCELLANEOUS AND GENERAL

##### SUBDIVISION 1 - INSPECTIONS

### 46 Inspections

- (1) The Department may for the purposes of its regulatory functions carry out inspections of the carrying on of a regulated activity whether or not the person carrying on the regulated activity is registered under this Act.
- (2) For the purposes of this Part, the “regulatory functions” of the Department are its functions under Division 2 (registration, enforcement and monitoring).

### 47 Reports about inspections

- (1) The Department must –
- (a) prepare a report on the matters inspected; and
- (b) send a copy of the report to –
- (i) the person who carries on the regulated activity in question; and
- (ii) if a person is registered under this Part as a manager in respect of the activity, that person.

- (2) The Department must publish a report prepared under subsection (1).
- (3) The Department must provide the persons referred to in subsection (1)(b) with an opportunity to make representations to the Department before the publication of such a report.

#### 48 Inspectors

- (1) The Department may, by notice, appoint appropriately qualified persons (whether in the Island or elsewhere) as inspectors –
  - (a) for the purposes of this Act; or
  - (b) for the purpose of performing functions given to such an inspector under the *Children and Young Persons Act 2001*, the *Education Act 2001* or another Act.
- (2) A person appointed under subsection (1) may or may not be an employee of the Department and may be appointed on such terms as the Department thinks fit.
- (3) A person who holds an appointment under subsection (1) is an “**inspector**”.
- (4) The functions of an inspector are the functions of the Department performed by the inspector for the Department.
- (5) The Department may authorise an inspector to perform any other functions of the Department under this subdivision or subdivision 2 (powers of entry etc).

#### SUBDIVISION 2 - POWERS OF ENTRY ETC.

#### 49 Entry and inspection

- (1) The power in subsection (2) is exercisable if the Department considers it necessary or expedient for the purposes of any of its regulatory functions.
- (2) An inspector may enter and inspect any premises which are, or which the inspector reasonably believes to be, regulated premises.
- (3) Premises are “regulated premises” if they are used for the carrying on of a regulated activity whether or not the person carrying on the regulated activity is registered under this Act.
- (4) The power of entry under this section –
  - (a) may be exercised without a warrant;
  - (b) subject to subsection (5)(b), may be exercised with or without consent;
  - (c) may be exercised with or without giving prior notice; and
  - (d) must be exercised at a reasonable time.
- (5) Subsection (2) does not authorise entry to any premises which are used as a private dwelling unless –
  - (a) subsection to subsection (6), any part of the premises are, or the inspector reasonably believes any part of the premises are, regulated premises (in which case entry is authorised to that part of the premises); or

- (b) the occupier consents.
- (6) Subsection (5)(a) does not apply if the private dwelling is used for the carrying on of a regulated activity but the private dwelling is occupied by someone other than the person carrying on that regulated activity.
- (7) An inspector who proposes to exercise the power conferred by subsection (2) must, if so required, produce some duly authenticated document showing the inspector's authority to exercise the power.
- (8) In this section, "premises" includes a vehicle.

## 50 Warrants

- (1) An inspector may apply to a justice of the peace for a warrant authorising the inspector to enter premises for the purpose mentioned in section 49(1).
- (2) The application must be sworn and state —
  - (a) the premises for which the warrant is sought; and
  - (b) the grounds on which the warrant is sought.
- (3) A justice of the peace may issue the warrant only if the justice of the peace is satisfied —
  - (a) that it is reasonable to carry out an inspection for the purpose mentioned in section 49(1); and
  - (b) at least one of the conditions in subsection (4) is satisfied.
- (4) Those conditions are —
  - (a) the premises are used as a private dwelling;
  - (b) entry to the premises has been refused or is likely to be refused;
  - (c) the purpose of entry may be frustrated or seriously prejudiced unless an inspector arriving at the premises can secure immediate entry; or
  - (d) the premises are unoccupied or the occupier is absent;
- (5) A person acting pursuant to a warrant issued by a justice of the peace under subsection (3) —
  - (a) may enter any premises specified in the warrant, if necessary using reasonable force; and
  - (b) may be accompanied by a constable.
- (6) A warrant issued under this section remains in force for one month starting with the date of its approval by the justice of the peace, which date must be clearly visible on the warrant.

## 51 Entry and inspection: supplementary

- (1) This section applies where an inspector is authorised by virtue of section 49 or a warrant under section 50 to enter and inspect premises.



- (2) An inspector may be accompanied by such other person who, by reason of the person's expertise, is reasonably necessary to assist the inspector.
- (3) If the inspector considers it necessary or expedient, the inspector may —
  - (a) make any examination into the state and management of the premises or the treatment of persons receiving care there;
  - (b) inspect and take copies of any documents or records;
  - (c) have access to, and check the operation of, any computer, and any associated apparatus or material, which is or has been in use in connection with any documents or records;
  - (d) inspect any other item;
  - (e) seize and remove from the premises any documents, records or other items;
  - (f) interview in private —
    - (i) any person who carries on or manages a regulated activity;
    - (ii) any person working at the premises; and
    - (iii) any person receiving care at the premises who consents to be interviewed;
  - (g) if the conditions in subsection (4) are met, examine in private any person receiving care at the premises.
- (4) The conditions are —
  - (a) the examination is performed by a registered medical practitioner or registered nurse;
  - (b) the inspector has reason to believe that the person to be examined is not receiving proper care at the premises; and
  - (c) the person to be examined —
    - (i) is capable of giving consent to the examination and does so; or
    - (ii) is incapable of giving consent to the examination.
- (5) The power under subsection (3)(b) includes power —
  - (a) to require any person holding or accountable for documents or records (whether or not kept at the premises) to produce them for inspection at the premises; and
  - (b) to require any records which are kept by means of a computer to be produced in a form in which they are legible and can be taken away.
- (6) The power under subsection (3)(f)(i) to interview a person in private includes power, in the case of a body corporate, to interview in private —
  - (a) any director, manager, secretary or other similar officer of the body corporate; and
  - (b) where the body is Manx Care, any officer or member of Manx Care.
- (7) An inspector must not enter any premises that are used as a private dwelling unless the inspector is accompanied by a constable.

- (8) An inspector must, if the premises are unoccupied, leave the premises as effectively secured against unauthorised entry as the inspector found them.
- (9) An inspector may —
- (a) require any person to afford the inspector such facilities and assistance with respect to matters within the person’s control as are necessary to enable the inspector to exercise powers under section 49, section 50 and this section; and
  - (b) take such measurements and photographs, and make such recordings, as the inspector considers necessary to enable the inspector to exercise those powers.
- (10) A person who without reasonable excuse —
- (a) obstructs the exercise of a power conferred by section 49, section 50 or this section; or
  - (b) fails to comply with a requirement imposed under this section,
- is guilty of an offence.
- Maximum penalty (summary) – level 4 on the standard scale.
- (11) Nothing in this section —
- (a) compels a person to supply any privileged information; or
  - (b) confers a right on a person who enters premises in exercise of the powers conferred by section 49, section 50 or this section to seize such information.
- (12) In this section —
- (a) “privileged information” means information in respect of which a claim to legal professional privilege could be maintained in legal proceedings;
  - (b) any reference to documents or records includes a reference to personal and medical records; and
  - (c) any reference to a person receiving care at premises includes a reference to a person who is accommodated there.

## 52 Power to require documents and information etc.

- (1) The Department may require any person mentioned in subsection (2) to provide the Department with any information, documents, records (including personal and medical records) or other items which the Department considers it necessary or expedient to have for the purposes of any of its regulatory functions.
- (2) The persons are —
- (a) a person providing health or social care commissioned by the Department or Manx Care; and
  - (b) a person who carries on or manages a regulated activity.
- (3) The power in subsection (1) to require the provision of information, documents or records includes, in relation to information, documents or records kept by means of

a computer, power to require the provision of the information, documents or records in legible form.

- (4) A person who without reasonable excuse fails to comply with a requirement imposed under this section is guilty of an offence.

Maximum penalty (summary) – level 4 on the standard scale.

### **53 Power to require explanation**

- (1) If the Department considers an explanation of a relevant matter necessary or expedient for the purposes of any of its regulatory functions, the persons specified in subsection (4) must, if so requested, provide an explanation of that matter to the Department or to a person authorised by the Department.
- (2) “Relevant matter” means –
- (a) any documents, records or other items inspected, copied or provided under sections 49 (entry and inspection) to 52 (power to require documents and information etc.);
  - (b) any information provided under those sections;
  - (c) any documents, records, other items or information otherwise provided to the Department by any person for the purposes of the Department’s regulatory functions; or
  - (d) any matters which are the subject of the exercise of any such functions.
- (3) Explanations required under subsection (1) must be provided at such times and such places as may be specified by the Department.
- (4) The persons referred to in subsection (1) are –
- (a) a person carrying on a regulated activity;
  - (b) a chair, director, officer or employee of a person carrying on a regulated activity;
  - (c) where the person carrying on a regulated activity is Manx Care, an officer or member of Manx Care;
  - (d) a person who is assisting in the carrying on of a regulated activity; and
  - (e) such other persons as may be prescribed.
- (5) A person who without reasonable excuse fails to comply with a requirement imposed by this section is guilty of an offence.

Maximum penalty (summary) – level 4 on the standard scale.

#### **SUBDIVISION 3 - INTERACTION WITH OTHER AUTHORITIES**

### **54 Interaction with other authorities**

Schedule 3 (interaction with other authorities) has effect.

**55 Co-ordination of reviews or assessments**

The Department must promote the effective co-ordination of reviews, assessments or inspections carried out by public bodies or other persons in relation to the carrying on of regulated activities.

**56 Avoidance of unreasonable burdens in exercise of regulatory powers**

- (1) The Department may publish guidance about steps which regulatory authorities may take in exercising relevant powers with a view to avoiding the imposition of unreasonable burdens on those in respect of whom the powers are exercisable.
- (2) “Regulatory authorities” means —
  - (a) the Department; and
  - (b) such other bodies as may be prescribed in regulations made by Department;
- (3) A body may not be prescribed under subsection (2)(b) unless it has functions relating to the provision of health or social care.
- (4) “Relevant powers” means powers conferred by or under an enactment to —
  - (a) carry out inspections; or
  - (b) require the provision of information,but, in relation to a body prescribed under subsection (2)(b), such powers are “relevant powers” only so far as they are exercisable in respect of a person in respect of whom the Department has relevant powers.
- (5) The steps mentioned in subsection (1) might include for example —
  - (a) co-operating with other regulatory authorities and co-ordinating the exercise of relevant powers;
  - (b) sharing information or the results of inspections; and
  - (c) seeking to obtain information from other sources before exercising a relevant power to require the provision of that information.
- (6) In exercising relevant powers, regulatory authorities must have regard to any guidance published under subsection (1).
- (7) Nothing in this section is intended to limit the scope of a relevant power or affect a person’s obligation to comply with a requirement imposed in the exercise of such a power.
- (8) In this section —
  - (a) “inspections” includes inspections of persons, premises or the carrying on of activities;
  - (b) a reference to a power to carry out inspections includes a reference to any power which is ancillary to that power (such as a power to enter premises or to require assistance); and

- (c) a reference to a power to require the provision of information includes a reference to a power to require the production of documents, records or other items, a power to require the making of reports and a power to require explanations.

#### SUBDIVISION 4 - INFORMATION

### 57 Disclosure of confidential personal information: offence

- (1) This section applies to information which —
  - (a) has been obtained by the Department under this Part on terms or in circumstances requiring it to be held in confidence; and
  - (b) relates to and identifies an individual.
- (2) A person is guilty of an offence if the person knowingly or recklessly discloses information to which this section applies during the lifetime of the individual.  
Maximum penalty —
  - (a) (summary) – 12 months' custody or a fine of level 5 on the standard scale; or
  - (b) (information) – 2 years custody or a fine.
- (3) For the purposes of subsection (1)(b), information obtained by the Department is to be treated as identifying an individual if the individual can be identified from a combination of —
  - (a) that information; and
  - (b) other information obtained by the Department.
- (4) Reference in this section and in sections 58 to 61 to information obtained or disclosed by the Department includes information obtained or disclosed by a person authorised by the Department.

### 58 Defence

- (1) It is a defence for a person charged with an offence under section 57 to prove that at the time of the alleged offence —
  - (a) any of the circumstance in subsection (2) applied in relation to the disclosure; or
  - (b) the person reasonably believed that any of them so applied.
- (2) The circumstances are —
  - (a) that the disclosure was made in a form in which the individual to whom the information relates is not identified;
  - (b) that the disclosure was made with the consent of that individual;
  - (c) that the information disclosed had previously been lawfully disclosed to the public;
  - (d) that the disclosure was made under or pursuant to regulations under section 38 (complaints in respect of health services) of the *National Health Service Act*

- 2001 or section 26 (complaints in respect of social care services and carer support) of the *Social Services Act 2011*;
- (e) that the disclosure was made in accordance with any Manx legislation or court order;
  - (f) that the disclosure was necessary or expedient for the purposes of protecting the welfare of any individual;
  - (g) that the disclosure was made to any person or body in circumstances where it was necessary or expedient for the person or body to have the information for the purpose of exercising functions of that person or body under any Manx legislation or UK legislation.
- (3) It is also a defence for a person charged with an offence under section 57 to prove that the disclosure was made —
- (a) for the purpose of facilitating the exercise of any the Department's functions under this Part;
  - (b) in connection with the investigation of a criminal offence (whether or not in the Island); or
  - (c) for the purpose of criminal proceedings (whether or not in the Island).
- (4) If a person charged with an offence under section 57 relies on a defence in subsection (1) or (3), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (5) For the purposes of subsection (2)(a), information disclosed by a person is to be treated as being in a form in which an individual is identified if the individual can be identified from a combination of —
- (a) the information; and
  - (b) other information disclosed by the person or by the Department.

## 59 Use of information etc.

Information obtained by, or documents or records produced to, the Department in connection with any of its functions under this Part may be used by the Department in connection with any of its other functions under this Part.

## 60 Permitted disclosures

- (1) Subsections (2) and (3) apply to any information obtained by the Department in the course of exercising any of its functions under this Part.
- (2) In the case of information relating to an individual, the Department may disclose the information if —
  - (a) the disclosure is made in a form in which the individual is not identified; or
  - (b) the disclosure is made with the consent of the individual.

- (3) In all cases (whether or not relating to an individual), the Department may disclose the information if –
- (a) the information has previously been lawfully disclosed to the public;
  - (b) the disclosure is made under or pursuant to regulations under sections 38 (complaints in respect of health services) of the *National Health Service Act 2001* or section 26 (complaints in respect of social care services and carer support) of the *Social Services Act 2011*;
  - (c) the disclosure is made in accordance with any Manx legislation or court order;
  - (d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual;
  - (e) the disclosure is made to any person or body in circumstances where it is necessary or expedient for the person or body to have the information for the purpose of exercising functions of that person or body under any Manx legislation or UK legislation;
  - (f) the disclosure is made for the purpose of facilitating the exercise of any of the Department's functions under this Part;
  - (g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the Island); or
  - (h) the disclosure is made for the purpose of criminal proceedings (whether or not in the Island).
- (4) Subsections (2) and (3) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.
- (5) For the purposes of subsection (2)(a), information disclosed by the Department is to be treated as being in a form in which an individual is identified if the individual can be identified from a combination of –
- (a) the information; and
  - (b) other information disclosed by the Department.

## 61 Code of practice on confidential information

- (1) The Department must prepare and publish a code in respect of the practice it proposes to follow in relation to confidential personal information.
- (2) The code must in particular make provision –
- (a) about the obtaining by the Department of information which, once obtained, will be confidential personal information; and
  - (b) about the handling, use and disclosure by the Department of confidential personal information.
- (3) Before publishing the code, the Department must consult such other persons as it considers appropriate.

- (4) The Department must keep the code under review and, if it considers it appropriate, from time to time publish a revised code (and references in this section to the code include any revised code).
- (5) In this section “confidential personal information” means information which —
  - (a) is obtained by the Department under this Part on terms or in circumstances requiring it to be held in confidence; and
  - (b) relates to and identifies an individual.
- (6) For the purposes of subsection (5)(b), information obtained by the Department is to be treated as identifying an individual if the individual can be identified from a combination of —
  - (a) the information; and
  - (b) other information obtained by the Department.
- (7) A code prepared and published under this section is a public document but not a statutory document.

#### SUBDIVISION 5 - FEES

## 62 Fees

- (1) The Department may by regulations prescribe the fees that are required to be paid in respect of —
  - (a) an application for registration as a service provider or manager under this Part;
  - (b) the grant or subsistence of any such registration;
  - (c) an application under section 22 (applications by registered persons);
  - (d) the exercise by the Department of any of its other functions under this Part.
- (2) The amount of any fee payable under regulations under subsection (1) may be expressed to be —
  - (a) a specified sum; or
  - (b) calculated or determined in accordance with the regulations.
- (3) Regulations under subsection (1) may provide for —
  - (a) different fees to be paid in different cases;
  - (b) different fees to be paid by persons of different descriptions;
  - (c) the amount of a fee to be determined in accordance with specified factors; and
  - (d) determining the time by which a fee is to be payable.



## SUBDIVISION 6 - ENFORCEMENT

**63 Guidance by the Department in relation to enforcement action**

- (1) The Department must publish guidance about how it will exercise its functions under any of the following provisions of this Part –
  - (a) section 13(5) (variation, removal or imposition of condition in relation to registration as a service provider);
  - (b) section 17(5) (variation, removal or imposition of condition in relation to registration as a manager);
  - (c) sections 20 (cancellation of registration) and 21 (suspension of registration);
  - (d) section 30 (warning notice); and
  - (e) section 64 (publication of information relating to enforcement action etc.).
- (2) The Department may from time to time revise guidance published by it under this section and issue the revised guidance.
- (3) Before issuing any guidance or revised guidance under this section, the Department must consult such persons as it considers appropriate.

**64 Publication of information relating to enforcement action etc.**

- (1) Schedule 4 (publication of information relating to enforcement action etc.) has effect.
- (2) The Council of Ministers may by regulations amend Schedule 4 if it considers it appropriate to do so.  
Tynwald procedure – approval required.

## DIVISION 5 - HUMAN RIGHTS ACT REMEDY

**65 Human Rights Act 2001: certain persons perform a public function**

- (1) This section applies to any person who carries on such regulated activities as may be prescribed.
- (2) For the purposes of section 6(3)(b) of the *Human Rights Act 2001*, such a person is taken to be exercising a function of a public nature in carrying on such a regulated activity.

**PART 3 – OTHER OFFENCES**

## DIVISION 1 - OFFENCES INVOLVING ILL-TREATMENT OR WILFUL NEGLECT

**66 Ill-treatment or wilful neglect: care worker offence**

- (1) It is an offence for an individual who has the care of another individual by virtue of being a care worker to ill-treat or wilfully to neglect that individual.

Maximum penalty —

- (a) (summary) – 12 months’ custody or a fine of level 5 on the standard scale; or
  - (b) (information) – 5 years custody or a fine.
- (2) “Care worker” means an individual who, as paid work, provides —
- (a) health care for an adult or child, other than excluded health care; or
  - (b) social care for an adult or child,
- including an individual who, as paid work, supervises or manages individuals providing such care or is a director or similar officer of an organisation which provides such care.
- (3) An individual does something as “paid work” if that individual receives or is entitled to payment for doing it other than —
- (a) payment in respect of the individual’s reasonable expenses;
  - (b) payment to which the individual is entitled as a foster parent;
  - (c) a benefit under social security legislation; or
  - (d) a payment made under arrangements under section 171A of the *Employment Act 2006* (arrangements for employment and training).
- (4) “Excluded health care” means such health care as is prescribed by the Department.
- (5) References in this section to a person providing health care or social care do not include a person whose provision of such care is merely incidental to the carrying out of other activities by the person.
- (6) In this section —
- “adult” means an individual aged 18 or over;
- “child” means an individual aged under 18;
- “foster parent” means —
- (a) an official foster parent within the meaning of the *Children and Young Persons Act 2001*;
  - (b) a person with whom a child has been placed by the Department, a voluntary organisation or other person under section 23(2) and section 25 of the *Children and Young Persons Act 2001*; or
  - (c) a person who fosters a child privately within the meaning of the *Children and Young Persons Act 2001*.

## 67 Ill-treatment or wilful neglect: care provider offence

- (1) A care provider commits an offence if —
- (a) an individual who has the care of another individual by virtue of being part of the care provider’s arrangements ill-treats or wilfully neglects that individual;

- (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 individual who is ill-treated or neglected; and
- (c) in the absence of the breach, the ill-treatment or wilful neglect would not have occurred or would have been less likely to occur.

Maximum penalty —

- (a) (summary) – a fine of level 5 on the standard scale; or
- (b) (information) – a fine.

(2) “Care-provider” means —

- (a) a body corporate or unincorporated association which provides or arranges for the provision of —
  - (i) health care for an adult or child, other than excluded health care; or
  - (ii) social care for an adult or child; or
- (b) an individual who provides such care and employs, or has otherwise made arrangements with, other persons to assist that individual in providing such care,

subject to section 68 (care provider offence: excluded care providers).

(3) An individual is “part of a care provider's arrangements” where the individual —

- (a) is not the care provider; but
- (b) provides health care or social care as part of health care or social care provided or arranged by the care provider,

including where the individual is not the care provider but supervises or manages individuals providing health care or social care as described in paragraph (b) or is a director or similar officer of an organisation which provides health care or social care as described in paragraph (b).

(4) A “relevant duty of care” means —

- (a) a duty owed under the law of negligence; or
- (b) a duty that would be owed under the law of negligence but for a provision contained in an Act (including this Act), or a statutory document made under an Act (including this Act), under which liability is imposed in place of liability under that law,

but only to the extent that the duty is owed in connection with providing, or arranging for the provision of, health care or social care.

(5) For the purposes of this section, there is to be disregarded any rule of the common law that has the effect of —

- (a) preventing a duty of care from being owed by one person to another by reason of the fact that they are jointly engaged in unlawful conduct; or
- (b) preventing a duty of care being owed to a person by reason of that person's acceptance of a risk of harm.

- (6) A breach of a duty of care by a care provider is a “gross” breach if the conduct alleged to amount to the breach falls far below what can reasonably be expected of the care provider in the circumstances.
- (7) In this section —
  - (a) references to a person providing health care or social care do not include a person whose provision of such care is merely incidental to the carrying out of other activities by the person; or
  - (b) references to a person arranging for the provision of such care do not include a person who makes arrangements under which the provision of such care is merely incidental to the carrying out of other activities.
- (8) In this section, “adult”, “child” and “excluded health care” have the same meaning as in section 66.

### **68 Care provider offence: excluded care providers**

The Department may by regulations exclude persons from the definition of care provider for the purposes of section 67 (ill-treatment or wilful neglect: care provider offence) to the extent specified in the regulations.

### **69 Care provider offence: remedial orders and publicity orders**

- (1) A court before which a person is convicted of an offence under section 67 may make either or both of the following orders —
  - (a) a remedial order;
  - (b) a publicity order;(whether instead of or as well as imposing a fine).
- (2) A “remedial order” is an order requiring the person to take specified steps to remedy one or more of the following —
  - (a) the breach mentioned in section 67(1)(b) (the “relevant breach”);
  - (b) any matter that appears to the court to have resulted from the relevant breach and to be connected with the ill-treatment or neglect;
  - (c) any deficiency in the person’s policies, systems or practices of which the relevant breach appears to the court to be an indication.
- (3) A “publicity order” is an order requiring the person to publicise in a specified manner —
  - (a) the fact that the person has been convicted of the offence;
  - (b) specified particulars of the offence;
  - (c) the amount of any fine imposed;
  - (d) the terms of any remedial order made.
- (4) A remedial order —

- (a) may be made only on an application by the prosecution which specifies the terms of the proposed order;
  - (b) must be made on such terms as the court considers appropriate having regard to any representations made, and any evidence adduced, in relation to its terms by the prosecution or by or on behalf of the person convicted; and
  - (c) must specify a period within which the steps specified in the order must be taken.
- (5) A publicity order must specify a period within which the requirements specified in the order must be complied with.
- (6) A person who fails to comply with a remedial order or a publicity order commits an offence.
- Maximum penalty —
- (a) (summary) – a fine of level 5 on the standard scale; or
  - (b) (information) – a fine.

## **70 Care provider offence: liability for ancillary and other offences**

- (1) An individual cannot be guilty of aiding, abetting, counselling, inciting or procuring the commission of an offence under section 67 (ill-treatment or wilful neglect: care provider offence).
- (2) Where, in the same proceedings, there is —
  - (a) a charge under section 67 arising out of a particular set of circumstances; and
  - (b) a charge against the same defendant of a relevant offence arising out of some or all of those circumstances,the defendant may, if the interests of justice so require, be convicted of both offences.
- (3) A person convicted of an offence under section 67 arising out of a particular set of circumstances may, if the interests of justice so require, be charged with a relevant offence arising out of some or all of those circumstances.
- (4) In this section —

“relevant offence” means an offence under an Act (including this Act), or a statutory document made under an Act (including this Act), dealing with —

  - (a) health and safety matters; or
  - (b) the provision of health care or social care.

## **DIVISION 2 - OFFENCE OF ADMINISTERING CERTAIN SUBSTANCES TO A CHILD**

### **71 Offence of administering certain substances to a child**

- (1) It is an offence for a person to administer, in the Island, to another person (“A”) —
  - (a) botulinum toxin; or

- (b) a subcutaneous, submucous or intradermal injection of a filler for a cosmetic purpose,  
where A is under the age of 18.  
Maximum penalty (summary) – a fine of level 5 on the standard scale.
- (2) A “filler” is any substance used for dermal or mucous membrane filling (whether or not designed to be so used).
- (3) For the purposes of subsection (1)(b), an injection of a filler is, in particular, to be taken to be for a cosmetic purpose if –
- (a) the filler is generally used for such a purpose; or
- (b) the likely effect of the injection is to alter the appearance of the person injected.
- (4) It is a defence for a person charged with an offence under subsection (1) to show that at the time of the alleged offence –
- (a) the defendant was a registered medical practitioner;
- (b) the defendant was a regulated health professional who, in administering the botulinum toxin or the filler (as the case may be), was acting in accordance with the directions of a registered medical practitioner; or
- (c) the defendant –
- (i) had taken reasonable steps to establish A’s age; and
- (ii) reasonably believed that A was aged 18 or over.
- (5) A person is taken to have shown a matter mentioned in subsection (4) if –
- (a) sufficient evidence of the matter is adduced to raise an issue with respect to it; and
- (b) the contrary is not proved beyond reasonable doubt.
- (6) In this section “regulated health professional” means –
- (a) a registered nurse;
- (b) a registered dentist within the meaning of the *Dental Act 1985*;
- (c) a registered pharmacist within the meaning of the Pharmacy Order 2010<sup>1</sup> (of Parliament);
- (d) a registered person within the meaning of the Pharmacy (Northern Ireland) Order 1976<sup>2</sup>.
- (7) The Department may by regulations –
- (a) amend the definition of “regulated health professional” in subsection (6) to delete a description of regulated health professional or to include an additional description of regulated health professional;

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<sup>1</sup> SI 2010/231

<sup>2</sup> SI 1976/1213 (N.I.22)

- (b) amend any provision of subsection (6) to give effect in the Island to a modification of the regulation of any regulated health professional made by any legislation regulating that profession in the United Kingdom;
- (c) make any incidental, supplementary, consequential, transitory and transitional provisions as appear to the Department to be necessary or expedient.

Tynwald procedure – approval required.

## 72 Offence by person carrying on a business

- (1) A person (a “business owner”) commits an offence if in the course of the business owner’s business –
  - (a) a person other than an approved person administers, in the Island, to another person (“A”) –
    - (i) botulinum toxin; or
    - (ii) a subcutaneous, submucous or intradermal injection of a filler for a cosmetic purpose,where A is under the age of 18;
  - (b) arrangements are made, in the Island, by or on behalf of the business owner, for a person other than an approved person to administer, in the Island, to another person (“A”) –
    - (i) botulinum toxin; or
    - (ii) a subcutaneous, submucous or intradermal injection of a filler for a cosmetic purpose,where A is under the age of 18.

Maximum penalty (summary) – a fine of level 5 on the standard scale.

- (2) For the purposes of subsection (1), an injection of a filler is, in particular, to be taken to be for a cosmetic purpose if –
  - (a) the filler injected, or arranged to be injected, is generally used for such a purpose; or
  - (b) the likely effect of the injection is, or would be, to alter the appearance of the person injected.
- (3) It is a defence for a business owner charged with an offence under subsection (1) to prove that the business owner took all reasonable precautions and exercised all due diligence to avoid committing it.
- (4) In this section –

“approved person” means –

  - (a) a registered medical practitioner;
  - (b) a regulated health professional who, in administering the botulinum toxin or the filler (as the case may be), is or would be acting in accordance with directions of a registered medical practitioner;

“filler” has the same meaning as in section 71;

“regulated health professional” has the same meaning as in section 71.

### DIVISION 3 - OFFENCE OF TATTOOING OR BODY PIERCING A CHILD

#### 73 Offence of tattooing or body-piercing a child

- (1) It is an offence for a person —
  - (a) to tattoo; or
  - (b) to pierce any part of the body of,  
another person (“A”), where A is under the age of 18.  
Maximum penalty (summary) – a fine of level 4 on the standard scale.
- (2) It is a defence for a person charged with an offence under subsection (1)(a) to show that at the time of the alleged offence the tattoo was performed for medical reasons and the defendant was a registered medical practitioner or a person working under the direction of a registered medical practitioner.
- (3) It is a defence for a person charged with an offence under subsection (1)(b) to show that at the time of the alleged offence —
  - (a) a parent of A consented in writing to the body-piercing;
  - (b) A was married;
  - (c) the body-piercing was for the purpose of injecting a medicinal product for medical reasons; or
  - (c) the body-piercing was performed for medical reasons and the defendant was a registered medical practitioner or a person working under the direction of a registered medical practitioner.
- (4) A person is taken to have shown a matter mentioned in subsection (2) or (3) if —
  - (a) sufficient evidence of the matter is adduced to raise an issue with respect to it; and
  - (b) the contrary is not proved beyond reasonable doubt.
- (5) In this section —

“medicinal product” has the same meaning as in the Medicines Act 2003;

“parent” means anyone who has parental responsibility (within the meaning of section 2 of the *Children and Young Persons Act 2001*) for A.

#### 74 Offence of tattooing or body-piercing a child by person carrying on a business

- (1) A person (a “business owner”) commits an offence if in the course of the business owner’s business —
  - (a) a person —
    - (i) tattoos; or



- (ii) pierces any part of the body of, another person (“A”), where A is under the age of 18, in circumstances where that person commits an offence under section 73.
- (b) arrangements are made by or on behalf of the business owner for a person —
  - (i) to tattoo; or
  - (ii) to pierce any part of the body of, another person (“A”), where A is under the age of 18, in circumstances where if that person performs the tattoo or piercing that person commits a person under section 73.
- (2) Maximum penalty (summary) – a fine of level 4 on the standard scale. It is a defence for a business owner charged with an offence under subsection (1) to prove that the business owner took all reasonable precautions and exercised all due diligence to avoid committing it.

## PART 4 – SOCIAL WORKERS AND HEALTH AND SOCIAL CARE SUPPORT WORKERS

### DIVISION 1 – SOCIAL WORKERS

#### 75 Meaning of “social work”, “social worker” and “registered social worker”

- (1) “Social work” means social work which is required in connection with any health, education or social services provided in the Island.
- (2) “Social worker” means a person who carries out social work.
- (3) “Registered social worker” means a person registered to carry out social work under —
  - (a) the Children and Social Work Act 2017 (of Parliament) or
  - (b) any UK legislation amending or replacing that Act.

#### 76 Requirement to be a registered social worker

- (1) A person (“P”) must not practise as a social worker in the Island unless P is a registered social worker and practises in accordance with that registration.
- (2) A person who contravenes subsection (1) is guilty of an offence.  
Maximum penalty (summary) – a fine.

#### 77 Pretending to be a registered social worker

- (1) A person (“P”) must not, with intent to deceive (whether expressly or by implication), use the title of “social worker” unless P is a registered social worker and practises in accordance with that registration.
- (2) A person who contravenes subsection (1) is guilty of an offence.

Maximum penalty (summary) – a fine.

## 78 Holding out of a person as a social worker

- (1) A person (“P”) is guilty of an offence if, with intent to deceive (whether expressly or by implication), P falsely represents P –
  - (a) to be a registered social worker;
  - (b) to be a registered social worker able to practise otherwise than in accordance with P’s registration;
  - (c) to have a qualification in relation to social work; or
  - (d) to be the subject of an entry in the register of social workers in England kept under section 39 of the Children and Social Work Act 2017 (of Parliament).
- (2) A person (“P”) is guilty of an offence if, with intent that any person is deceived (whether expressly or by implication), P causes or permits another person to make any representation about P which, if made by P with intent to deceive, would be an offence under subsection (1).
- (3) A person (“A”) is guilty of an offence if, with intent to deceive, A makes any representation with regard to another person (“P”) which –
  - (a) A knows to be false; and
  - (b) if made by P with that intent would be an offence by P under subsection (1).

Maximum penalty (summary) for subsections (1), (2) and (3) – a fine.

## 79 Regulation of social workers

The Department may by regulations –

- (a) amend the definition of “social work” in section 75(1) or “social worker” in section 75(2);
- (b) amend the definition of “registered social worker” in section 75(3) so as to –
  - (i) include persons registered, licensed or regulated in another jurisdiction; or
  - (ii) remove persons registered, licensed or regulated in a particular jurisdiction;
- (c) amend any provision of this Part to give effect in the Island to a modification of the regulation of social workers made by any legislation regulating social workers in any jurisdictions referred to in section 75(3); and
- (d) make any incidental, supplementary, consequential, transitory and transitional provisions as appear to the Department to be necessary or expedient.

Tynwald procedure – approval required.

## 80 Registered social worker grace period

- (1) This section applies if immediately before the commencement of section 75(3) –

- (a) a person is practising as a social worker in the Island; and
  - (b) that person is not a registered social worker.
- (2) Sections 76 and 77 do not apply to a person referred to in subsection (1) —
- (a) until 6 months after the commencement of section 75(3); or
  - (b) if the person applies to be a registered social worker within the period referred to in paragraph (a) or that period as extended under subsection (3), until the application is finally decided or is withdrawn.
- (3) The Department may by regulations extend the period referred to in subsection (2)(a).

## DIVISION 2 – HEALTH AND SOCIAL CARE SUPPORT WORKERS

### 81 Regulation of health and social care support workers

- (1) The Department may by regulations define the meaning of “health and social care support work” and “health and social care support worker”.
- (2) The Department may by regulations impose prohibitions or restrictions in connection with —
- (a) the carrying out of health and social care support work in the Island;
  - (b) the use, in relation to the carrying out of health and social care support work in the Island, of titles or descriptions specified in the regulations;
  - (c) the holding out of a person as qualified to carry out health and social care support work; or
  - (d) the pretending by a person to be qualified to carry out health and social care support work.
- (3) Regulations under this section may —
- (a) require any health and social care support workers to hold a specified qualification or to have completed specified training;
  - (b) require any health and social care support workers to be registered or regulated in any part of the United Kingdom or in any other specified jurisdiction;
  - (c) provide exemptions from any of the requirements made under paragraphs (a) or (b).

### 82 Offences

- (1) The Department may by regulations create offences in connection with any prohibitions or restrictions imposed under section 81.
- (2) Regulations under subsection (1) —
- (a) must provide for the offences to be triable summarily only; and
  - (b) may not provide for the offences to be punishable with a term of custody.

**83 Code of practice**

- (1) The Department may issue a code of practice in relation to the standards of practice, conduct and behaviour that health and social care support workers are expected to meet.
- (2) A code of practice may –
  - (a) despite section 81(1), describe who are health and social care support workers for the purposes of the code of practice and to whom the code applies;
  - (b) operate by reference to provisions of other documents specified in it (whether published by the Department or otherwise);
  - (c) provide for any reference in it to such a document to take effect as a reference to that document as amended from time to time;
  - (d) make different provision for different cases or circumstances.
- (3) The Department may, from time to time, revise the code of practice.
- (4) The Department must consult such persons as the Department considers appropriate before –
  - (a) issuing a code of practice; or
  - (b) issuing a revised code of practice which, in the opinion of the Department, would result in a substantial change in the code.
- (5) A code of practice or a revised code of practice comes into operation on the date it is issued by the Department.
- (6) A code of practice or a revised code of practice must be laid before Tynwald as soon as practicable after it is issued.
- (7) The Department must publish a code of practice or a revised code of practice issued under this section in such a way as the Department considers appropriate.
- (8) A code of practice or a revised code of practice issued under this section is a public document but not a statutory document.

**PART 5 – GENERAL****DIVISION 1 – ENFORCEMENT OF OFFENCES UNDER THIS ACT****84 Investigation of offences**

- (1) The Department may investigate whether an offence is being or has been committed under this Act (and any statutory documents made under it).
- (2) The power in subsection (1) may be exercised whether in response to information received by the Department or otherwise.

**85 Enforcement officers**

- (1) The Department may, by notice, appoint appropriately qualified persons (whether in the Island or elsewhere) as enforcement officers for the purposes of this Act.
- (2) A person appointed under subsection (1) may or may not be an employee of the Department and may be appointed on such terms as the Department thinks fit.
- (3) A person who holds an appointment under subsection (1) is an “**enforcement officer**”.
- (4) The functions of an enforcement officer are the functions of the Department performed by the enforcement officer for the Department.
- (5) To avoid doubt, a person may be appointed as an inspector and as an enforcement officer.

**86 Power to enter premises**

- (1) An enforcement officer may enter premises (other than premises used as a private dwelling) if the enforcement officer reasonably suspects that an offence under this Act (or any statutory document made under it) is being or has been committed on the premises.
- (2) A justice of the peace may, on the application of an enforcement officer, issue a warrant authorising an enforcement officer to enter premises if the justice of the peace is satisfied that —
  - (a) there are reasonable grounds for suspecting that an offence under this Act (or any statutory document made under it) is being or has been committed;
  - (b) there are reasonable grounds for suspecting that evidence of the commission of the offence may be found on the premises; and
  - (c) at least one of the conditions in subsection (3) is satisfied.
- (3) Those conditions are —
  - (a) the premises are used as a private dwelling;
  - (b) entry to the premises has been refused or is likely to be refused;
  - (c) the purpose of entry may be frustrated or seriously prejudiced unless an enforcement officer arriving at the premises can secure immediate entry; or
  - (d) the premises are unoccupied or the occupier is absent.
- (4) A person acting pursuant to a warrant issued by a justice of the peace under subsection (2) —
  - (a) may enter any premises specified in the warrant, if necessary using reasonable force; and
  - (b) may be accompanied by a constable.
- (5) A warrant issued under this section remains in force for one month starting with the date of its approval by the justice of the peace, which date must be clearly visible on the warrant.

- (6) An enforcement officer who proposes to exercise the power conferred by this section must, if so required, produce some duly authenticated document showing the enforcement officer's authority to exercise the power.
- (7) In this section, "premises" includes a vehicle.

### **87 Power to enter premises: supplementary**

- (1) This section applies where an enforcement officer is authorised by virtue of section 86 to enter premises.
- (2) An enforcement officer may be accompanied by such other person who, by reason of the person's expertise, is reasonably necessary to assist the enforcement officer.
- (3) For the purposes of section 86, an enforcement officer has the same powers as an inspector under section 51 (entry and inspection: supplementary).
- (4) An enforcement officer must not enter any premises that are used as a private dwelling unless the enforcement officer is accompanied by a constable.
- (5) An enforcement officer must, if the premises are unoccupied, leave the premises as effectively secured against unauthorised entry as the enforcement officer found them.
- (6) A person who without reasonable excuse —
  - (a) obstructs the exercise of a power conferred by section 86 or this section; or
  - (b) fails to comply with a requirement imposed under this section,is guilty of an offence.  
Maximum penalty (summary) – level 4 on the standard scale.
- (7) Nothing in this section —
  - (a) compels a person to supply any privileged information; or
  - (b) confers a right on a person who enters premises in exercise of the powers conferred by section 86 or this section to seize such information.
- (8) In this section, "privileged information" means information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

### **88 Procedure where offence detected on an inspection**

- (1) This section applies if an inspector carrying out an inspection of premises under section 49 (entry and inspection) to section 51 (entry and inspection: supplementary) reasonably suspects that an offence under this Act is being or has been committed.
- (2) If the inspector is also an enforcement officer, that person may continue to investigate the offence under the powers in this Division as if that person had entered the premises under section 86(1) (power to enter premises).
- (3) Subsection (2) does not apply if the premises being inspected are premises used as a private dwelling.

## DIVISION 2 – PROCEEDINGS FOR OFFENCES

**89 Proceedings for offences**

- (1) Proceedings for an offence under this Act may be instituted only by or with the consent of the Attorney General.
- (2) Proceedings for a summary offence under this Act may be commenced only before the later of the following –
  - (a) 3 years after the commission of the offence; or
  - (b) 6 months after the prosecutor first had sufficient evidence of the offence.
- (3) For subsection (2)(b), a prosecutor's certificate stating when the prosecutor first had the sufficient evidence is evidence of that fact.
- (4) In this section –

“prosecutor's certificate” means a certificate signed, or purporting to be signed, by or for the prosecutor; and

“sufficient evidence”, of the offence, means evidence that, in the prosecutor's opinion, is sufficient to justify the proceedings.

**90 Offences by bodies corporate**

- (1) This section applies if an offence under this Act (including under regulations under this Act) is committed by a body corporate.
- (2) If the offence is proved to have been committed by, or with the consent or connivance of, or to be attributable to any neglect on the part of any officer of the body corporate, that officer (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) In this section, “officer” of the body corporate means any or all of the following of or for the body –
  - (a) a director, manager or secretary or other similar officer;
  - (b) anyone purporting to act as its director, manager or secretary or other similar officer;
  - (c) if its affairs are being managed by its members, a member;
  - (d) if it has a registered agent under the legislation under which it was incorporated, the registered agent or anyone purporting to act as its registered agent; and
  - (e) if it is a Statutory Board, any member of that Statutory Board.

**91 Unincorporated associations**

- (1) Proceedings for an offence under this Act (including under regulations under this Act) alleged to have been committed by an unincorporated association must be brought in the name of the association (and not in that of any of the members).

- (2) Documents must be served on an unincorporated association as if it were a body corporate and section 10 of the *Criminal Jurisdiction Act 1993* and any other Manx legislation relating to the service of documents shall have effect accordingly.
- (3) In proceedings for an offence brought against an unincorporated association —
  - (a) section 10 of the *Criminal Jurisdiction Act 1993* (plea by corporation); and
  - (b) section 32 of the *Summary Jurisdiction Act 1989* (corporations),apply as they do in relation to a body corporate.
- (4) A fine imposed on an unincorporated association on its conviction of an offence is to be paid out of the funds of the association.
- (5) If an offence under this Act (including under regulations under this Act) is committed by an unincorporated association and the offence is proved —
  - (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body; or
  - (b) to be attributable to any neglect on the part of such an officer or member,the officer or member (as well as the association) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (6) For the purposes of section 67 (ill-treatment or wilful neglect: care provider offence) and section 69 (care provider offence: remedial orders and publicity orders), an unincorporated association is to be treated as owing whatever duties of care it would owe if it were a body corporate.

### DIVISION 3 - GENERAL

#### 92 Statutory documents: general

- (1) Any power conferred by this Act on the Department to make regulations or orders includes power —
  - (a) to make such supplementary, incidental, consequential, transitory or transitional provision or savings as the Department considers appropriate; and
  - (b) to confer a function on a specified person or body (including the Department) and a function conferred may, in particular, be a power or duty to exercise a discretion.
- (2) Regulations or orders under this Act may modify any Manx legislation (including this Act) for the purposes of ensuring the proper operation of this Act.
- (3) Except as otherwise provided, the procedure in section 32 (negative) of the *Legislation Act 2015* applies in relation to the making of any regulations or orders under this Act.

#### 93 Power to make transitional and consequential provision etc.

- (1) The Department may by regulations or an order make —



- (a) any supplementary, incidental or consequential provision;
  - (b) any transitional or transitory provisions or savings,
- as the Department considers appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) Regulations or an order under subsection (1) may modify, repeal or revoke any provision of Manx legislation.

#### 94 Application to the Crown

- (1) Any provision made by or under this Act binds the Crown, but does not affect His Majesty in his private capacity (within the meaning of the Crown Proceedings Act 1947<sup>3</sup> (of Parliament)).
- (2) Subsection (1) does not require regulated activities to apply to activities carried on by or on behalf of the Crown.
- (3) No contravention of any provision made by or under this Act is to make the Crown criminally liable; but the High Court may declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (4) The provisions of this Act apply to persons in the public service of the Crown as they apply to other persons.
- (5) If the Council of Ministers certifies that it appears to the Council of Ministers requisite or expedient in the interests of national security that the powers of entry and inspection conferred by section 49 (entry and inspection) to section 51 (entry and inspection: supplementary) —
  - (a) should not be exercisable in relation to any premises which are used by or on behalf of Crown and are specified in the certificate; or
  - (b) should not be exercisable in relation to any premises which are so used and are specified in the certificate, except in circumstances specified in the certificate,those powers are not exercisable in relation to those premises or (as the case may be) are not exercisable in relation to those premises except in those circumstances.
- (6) In this section “the Crown” has the same meaning as “the Sovereign” as that expression is construed under section 32 of the Interpretation Act 2015 (references to the Sovereign)

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<sup>3</sup> 1947 c.44



## SCHEDULE 1

## Section 8

## REGULATED ACTIVITIES

**1 Personal care**

- (1) Subject to subparagraph (2), the provision of personal care for persons who, by reason of age, illness or disability are unable to provide it for themselves, and which is provided in a place where those persons are living at the time the care is provided.
- (2) Subparagraph (1) does not apply to —
  - (a) the supply of carers to a service provider by any undertaking acting as an employment agency or employment business for the purposes of that provider carrying on a regulated activity;
  - (b) the introduction of carers to an individual (other than a service provider) by a person (including an employment agency or an employment business) having no ongoing role in the direction or control of the service provided to that individual;
  - (c) the services of a carer employed by an individual or related third party, without the involvement of an undertaking acting as an employment agency or employment business, and working wholly under the direction and control of that individual or related third party in order to meet the individual's own care requirements;
  - (d) the provision of personal care by a person managing a prison or other similar custodial establishment (other than a hospital within the meaning of Part 2 of the *Mental Health Act 1998*).

- (3) In subparagraph (3) —

“carer” means an individual who provides personal care to a person referred to in subparagraph (1);

“related third party” means —

- (a) an individual with parental responsibility (within the meaning of section 2 of the *Children and Young Persons Act 2001*) for a child to whom personal care services are to be provided;
- (b) an individual with power of attorney or other lawful authority to make arrangements on behalf of the person to whom personal care services are to be provided;
- (c) a group of individuals mentioned in either of paragraphs (a) or (b) making arrangements on behalf of one or more persons to whom personal care services are to be provided;
- (d) a trust established for the purpose of providing services to meet the health or social care needs of a named individual.

**2 Accommodation for persons who require nursing or personal care**

- (1) Subject to subparagraph (2), the provision of residential accommodation together with nursing care or personal care.
- (2) Subparagraph (1) does not apply to the provision of accommodation —
  - (a) to an individual by a shared lives carer under the terms of a shared lives agreement; or
  - (b) in a school.

**3 Accommodation for persons who require treatment for substance misuse**

The provision of residential accommodation for a person together with treatment for drug or alcohol misuse (other than in a hospital), where acceptance by the person of such treatment is a condition of the provision of the accommodation.

**4 Treatment of disease, disorder or injury**

- (1) Subject to subparagraph (2), the provision of treatment for a disease, disorder or injury by or under the supervision of —
  - (a) a health care professional, or a team which includes a health care professional; or
  - (b) a registered social worker, or a team which includes a registered social worker, where the treatment is for a mental disorder.
- (2) The activities set out in subparagraph (3) are excepted from subparagraph (1).
- (3) The activities referred to in subparagraph (2) are —
  - (a) assessment or medical treatment for persons detained under the *Mental Health Act 1998*;
  - (b) the provision of treatment by means of surgical procedures;
  - (c) diagnostic and screening procedures;
  - (d) services in slimming clinics;
  - (e) the practice of alternative and complementary medicine, with the exception of the practice of osteopathy or chiropractic;
  - (f) the provision of treatment in a sports ground or gymnasium (including associated premises) where it is provided for the sole benefit of persons taking part in, or attending, sporting activities and events;
  - (g) the provision of treatment (not being first aid for the purposes of paragraph 5 (first aid) of Schedule 2 (regulated activities: general exceptions)) under temporary arrangements to deliver health care to those taking part in, or attending, sporting or cultural events;

- (h) the carrying on of any of the activities authorised by a licence granted pursuant to an order made by the Department under section 85 (provision for licensing of certain activities) of the *Children and Young Persons Act 2001*.

(4) In this paragraph —

“health care professional” means a person who is —

- (a) a registered medical practitioner;
- (b) a dental practitioner;
- (c) a dental hygienist;
- (d) a dental therapist;
- (e) a dental nurse;
- (f) a dental technician;
- (g) an orthodontic therapist;
- (h) a registered nurse;
- (i) a registered midwife;
- (j) a registered biomedical scientist;
- (k) a registered clinical scientist;
- (l) a registered operating department practitioner;
- (m) a registered paramedic;
- (n) a registered radiographer;
- (o) a registered practitioner psychologist;
- (p) a registered podiatrist;
- (q) a registered chiropodist;
- (r) a registered physiotherapist;
- (s) a registered hearing aid dispenser;
- (t) a registered prosthetist and registered orthoptist;
- (u) a registered dietician;
- (v) a registered speech and language therapist;

“dental hygienist”, “dental therapist”, dental nurse”, “dental technician” and “orthodontic therapist” means persons registered as such in the dental care professionals register;

“dental care professionals register” has the same meaning as in section 11(1) of the *Dental Act 1985*;

“mental disorder” means any disorder or disability of the mind, including dependence on alcohol or drugs.

## **5 Assessment or medical treatment for persons detained under the Mental**

**Health Act 1998**

- (1) Subject to subparagraph (2), the assessment of, or medical treatment (other than surgical procedures) for, a mental disorder affecting a person in a hospital where that person is —
  - (a) detained in that hospital pursuant to the provisions of the *Mental Health Act 1998* with the exceptions of section 131 (warrant to search for and remove patients) or 132 (mentally disordered persons found in public places); or
  - (b) detained in that hospital pursuant to an order or direction made under other Manx legislation, where that detention takes effect as if the order or direction were made pursuant to the provisions of the *Mental Health Act 1998*.
- (2) Subparagraph (1) does not apply to the assessment or treatment by a registered medical practitioner nominated for the purposes of Part 4 of the *Mental Health Act 1998* in giving a certificate under sections 65 (treatment requiring consent and a second opinion) or 66 (treatment requiring consent or a second opinion) of that Act.
- (3) In this paragraph —

“hospital” means a hospital within the meaning of Part 2 of the *Mental Health Act 1998*;

“medical treatment” has the same meaning as in section 138 (interpretation) of the *Mental Health Act 1998*;

“mental disorder” has the same meaning as in section 1 of the *Mental Health Act 1998*.

**6 Surgical procedures**

- (1) Subject to subparagraphs (2) to (4), surgical procedures (including all pre-operative and post-operative care associated with such procedures) carried on by a health care professional for —
  - (a) the purpose of treating disease, disorder or injury;
  - (b) the purpose of sterilisation or reversal of sterilisation;
  - (c) cosmetic purposes, where the procedure involves the use of instruments or equipment which are inserted into the body; or
  - (d) the purpose of religious observance.
- (2) Subject to subparagraph (3), the following procedures are excepted from subparagraph (1) —
  - (a) nail surgery and nail bed procedures carried out by a health care professional on any area of the foot; and
  - (b) surgical procedures involving the curettage, cautery or cryocautery of warts, verrucae or other skin lesions carried out by —
    - (i) a registered medical practitioner; or

- (ii) another health care professional on any area of the foot.
- (3) Subparagraph (2) only applies where the procedures are carried out —
  - (a) without anaesthesia; or
  - (b) using local anaesthesia.
- (4) The following cosmetic procedures are excepted from subparagraph (1)(c) —
  - (a) the piercing of any part of the human body;
  - (b) tattooing;
  - (c) the subcutaneous or submucous injection of a substance or substances for the purpose of enhancing a person's appearance;
  - (d) the removal of hair roots or small blemishes on the skin by the application of heat using an electric current.

## 7 Diagnostic and screening procedures

- (1) Subject to subparagraphs (3), (5) and (7), diagnostic and screening procedures involving —
  - (a) the use of X-rays and other methods in order to examine the body by the use of radiation, ultrasound or magnetic resonance imaging;
  - (b) the use of instruments or equipment which are inserted into the body to —
    - (i) view its internal parts; or
    - (ii) gather physiological data;
  - (c) the removal of tissues, cells or fluids from the body for the purposes of discovering the presence, cause or extent of disease, disorder or injury;
  - (d) the use of equipment in order to examine cells, tissues and other bodily fluids for the purposes of obtaining information on the causes and extent of a disease, disorder or injury; and
  - (e) for the purposes of obtaining information on the causes and extent of a disease, disorder or injury, or the response to a therapeutic intervention, where such information is needed for the purposes of the planning and delivery of care or treatment, the use of equipment to measure or monitor physiological data in relation to the —
    - (i) audio-vestibular system;
    - (ii) vision system;
    - (iii) neurological system;
    - (iv) cardiovascular system;
    - (v) respiratory system;
    - (vi) gastro-intestinal system; or
    - (vii) urinary system.

- (2) Subject to subparagraphs (3), (5) and (7), the analysis and reporting of the results of the procedures referred to in subparagraph (1).
- (3) The procedures specified in subparagraph (4), and the analysis and reporting of the results of those procedures, are excepted from subparagraphs (1) and (2).
- (4) The procedures referred to in subparagraph (3) are —
- (a) the taking of blood samples where —
    - (i) the procedure is carried out by means of pin prick or from a vein; and
    - (ii) it is not necessary to send such samples for analysis to a place which is established for the purposes of carrying out tests or research in relation to samples of bodily cells, tissues or fluids;
  - (b) where part of neither the planning and delivery of care or treatment nor a national screening programme, other than for cancer, the taking and analysis of samples of bodily tissues, cells or fluids in order to ascertain —
    - (i) the existence of a genetically inherited disease or disorder; or
    - (ii) the influence of an individual's genetic variation on drug response;
  - (c) the carrying out of procedures as part of a national cancer screening programme by a body established solely for the purpose of such a programme;
  - (d) fitness screening procedures carried out in a gymnasium in order to ascertain that a person is sufficiently healthy to use fitness equipment or take part in fitness routines safely;
  - (e) the taking of X-rays by registered chiropractors;
  - (f) the use of ultrasound equipment by registered physiotherapists;
  - (g) the carrying out of a hearing needs assessment or the supply and fitting of a hearing aid carried out by a registered hearing aid dispenser or a person acting under the direction or supervision of a registered hearing aid dispenser where —
    - (i) the patient is aged 19 or over; or
    - (ii) the patient is under 19 years old and the procedure is carried out in, or arranged by, a school;
  - (h) the taking of urine samples where it is not necessary to send such samples for analysis to a place which is established for the purposes of carrying out tests or research in relation to samples of bodily cells, tissues or fluids;
  - (i) the taking and analysing of wound swabs, hair samples or nail clippings;
  - (j) the non-ambulatory recording of blood pressure;



- (k) the use of 12-lead electrocardiography;
  - (l) the use of a peak flow meter to measure peak expiratory flow;
  - (m) pulse oximetry when used for the purpose of spot recording;
  - (n) spirometry when carried out for screening, non-diagnostic or monitoring purposes;
  - (o) diagnostic and screening procedures carried out by a person in connection with any of the activities authorised by a licence granted pursuant to an order made by the Department under section 85 (provision for licensing of certain activities) of the *Children and Young Persons Act 2001*.
- (5) Where a service provider is registered in respect of an activity listed in any other paragraph of this Schedule, the procedures specified in subparagraph (6), and the analysis and reporting of the results of those procedures, are excepted from subparagraphs (1) and (2).
- (6) The procedures referred to in subparagraph (5) are —
- (a) the taking of blood or urine samples;
  - (b) the analysis of urine or stool samples by means of dip stick or other reagent; and
  - (c) the taking of tissue samples by means of —
    - (i) a swab specimen from any external part of the body or from the mouth, ear, nose or throat; or
    - (ii) skin scrapings.
- (7) The carrying out of diagnostic and screening procedures mentioned in subparagraph (1) or analysis and reporting of such procedures for research is excepted from subparagraphs (1) and (2) where those procedures, or that analysis and reporting, do not form part of an individual's care or treatment.

## 8 Management of supply of blood and blood derived products

- (1) Subject to subparagraph (2), the management of —
- (a) the supply of blood, blood components and blood derived products intended for transfusion;
  - (b) the supply of tissues and tissue derived products intended for transplant, grafting or use in a surgical procedure; and
  - (c) the matching and allocation of donor organs intended for transplant, and of stem cells and bone marrow intended for transfusion.
- (2) Subparagraph (1) does not apply to the management of the supply of blood, blood components, tissues and products mentioned in subparagraph (1)(a) and (b) where that management does not involve direct physical contact with patients or donors.
- (3) For the purposes of this paragraph —

“donor” means a person from whom anything mentioned in subparagraph (1)(a) or (b) is derived;

“patient” means a person to whom anything mentioned in subparagraph (1)(a) or (b) is administered.

## **9 Transport services, triage and medical advice provided remotely**

(1) Subject to subparagraphs (3) and (4), transport services provided by means of a vehicle which is designed for the primary purpose of carrying a person who requires treatment.

(2) Medical advice in cases where immediate action or attention is needed, or triage provided, by any method of communication by a body established for that purpose.

(3) Transport services which are provided within the confines of the site or venue being used for an activity or event mentioned in paragraph 4(3)(f) or (g) (treatment of disease, disorder or injury) are excepted from subparagraph (1).

(4) The provision of an air ambulance is excepted from subparagraph (1) where —

(a) the aircraft is registered with the Department for Enterprise pursuant to articles 8 (application for registration) and 9 (registration and certificate of registration) of the Civil Aviation (Aircraft Registration and Marking) Order 2022<sup>4</sup> or is registered with the Civil Aviation Authority pursuant to article 27 (application for the registration of an aircraft) of the Air Navigation Order 2016 (of Parliament)<sup>5</sup>; and

(b) the person providing the air ambulance does not provide treatment to a patient.

(5) For the purposes of this paragraph —

“triage” means the assignment of degrees of urgency to diseases, disorders or injuries in order to decide the order and place of treatment of service users;

“vehicle” includes an air or water ambulance.

## **10 Maternity and midwifery services**

Maternity and midwifery services carried on by, or under the supervision of, a health care professional.

## **11 Termination of pregnancies**

The termination of pregnancies.

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<sup>4</sup> SD 2022/0073

<sup>5</sup> SI 2016/765

**12 Services in slimming clinics**

Services provided in a slimming clinic consisting of the provision of advice or treatment by, or under the supervision of, a registered medical practitioner, including the prescribing of medicines for the purposes of weight reduction.

**13 Nursing care**

The provision of nursing care, including nursing care provided in a person's own home.

**14 Family planning services**

The insertion or removal of an intrauterine contraceptive device carried out by, or under the supervision of, a health care professional.

**15 Secure accommodation for children**

The provision of accommodation for children to restrict their liberty.

**16 Care for children**

- (1) Subject to subparagraph (2), the provision of care and supervision for one or more children aged 12 years or under.
- (2) The following types of provision are excepted from subparagraph (1) —
  - (c) care provided by a related third party to the child;
  - (d) care provided by a person who is employed by a related third party to the child to provide care for that child;
  - (e) care provided by a person who is employed by 2 different employers to provide care for any children in respect of whom the employers are related third parties;
  - (f) care provided in a school.

- (3) In this paragraph —

“relative”, in relation to a child, means a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by marriage or civil partnership) or step-parent;

“related third party” means —

- (a) a relative of the child;
- (b) anyone else who has parental responsibility (within the meaning of section 2 of the *Children and Young Persons Act 2001*) for the child;
- (c) an official foster parent of the child within the meaning of section 102 (interpretation) of the *Children and Young Persons Act 2001*; or
- (d) anyone fostering the child privately under section 57 (private fostering) of the *Children and Young Persons Act 2001*.

**17 Care and accommodation for children**

- (1) The provision of care and accommodation wholly or mainly for children.
- (2) Subparagraph (1) does not apply to —
  - (a) the provision of care and accommodation for a child by a related third party;
  - (c) a school, other than an accommodation-providing school.
- (3) In this paragraph —

“accommodation-providing school” means a school at which at any time accommodation is provided for children and either —

- (a) in each year that fell within the period of 2 years ending at that time, the school provided child accommodation for more than 295 days; or
- (b) it is intended to provide child accommodation for more than 295 days in any year;

“proprietor”, for a school, has the same meaning as in section 59 (interpretation) of the *Education Act 2001*;

“provide child accommodation”, for a school, means to provide accommodation for at least one child either at the school or under arrangements made by its proprietor;

“related third party” means —

- (a) a relative of the child;
- (b) anyone else who has parental responsibility (within the meaning of section 2 of the *Children and Young Persons Act 2001*) for the child;
- (c) anyone fostering the child as an official foster parent within the meaning of section 102 of the *Children and Young Persons Act 2001*; or
- (d) anyone fostering the child privately under section 57 of the *Children and Young Persons Act 2001*;

“relative”, in relation to a child, means a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by marriage or civil partnership) or step-parent; and

“year” means any period of 12 months.

**18 Adult day care**

- (1) The provision of any of the following services for adults in the circumstances set out in subparagraph (2) —
  - (a) personal care, with or without practical assistance;
  - (b) personal support, with or without practical assistance;
  - (c) rehabilitation;
  - (d) respite; or

- (e) therapeutic activities.
- (2) The circumstances are —
  - (a) the services are provided to that person because of —
    - (i) abuse, neglect or risk of harm;
    - (ii) past or present illness;
    - (iii) past or present dependency on alcohol or a drug; or
    - (iv) mental disorder, physical disability or infirmity;
  - (b) the services are provided at an establishment other than a private dwelling;
  - (c) the services provided are available at the establishment for more than 4 hours a day; and
  - (d) the services are provided during the daytime.

## 19 Supply or introduction of child carers

- (1) The supply or introduction of child carers to others, whether or not the person supplying or introducing child carers has an ongoing role in the direction or control of the service provided.
- (2) Subparagraph (1) does not apply to the supply of child carers to a service provider by any undertaking acting as an employment agency or employment business for the purposes of that provider carrying on a regulated activity.
- (3) In this paragraph, “child carers” means people who look after children, wholly or mainly where they dwell or who take them to or from their dwellings, even if the looking after or taking is —
  - (a) not for reward; or
  - (b) only on an occasional basis.

## 20 Adoption services

The provision of any facility of the adoption service (within the meaning of the *Adoption Act 2021*) where that provision is not carried on for profit.

## 21 Fostering Services

The provision, under section 23 (functions of Department in relation to children in danger or need) or section 24A (fostering service) of the *Children and Young Persons Act 2001*, of a service in relation to the accommodation or placing of children with other persons as official foster parents (as defined in section 102 of the *Children and Young Persons Act 2001*).

## 22 Residential family services

- (1) The provision of residential accommodation for children and their parents together with —
  - (a) the monitoring or assessment of the parents' capacity to respond to their children's needs and to safeguard their welfare; and
  - (b) the giving of advice, counselling or guidance to the parents.
- (2) In this paragraph, "parent" includes anyone who has parental responsibility (within the meaning of section 2 of the *Children and Young Persons Act 2001*) for the child.

## 23 [Non-surgical] cosmetic procedures

Procedures, other than surgical or dental procedures, that are or may be carried out for cosmetic purposes, including —

- (a) the injection of a substance;
- (b) the application of a substance that is capable of penetrating into or through the epidermis;
- (c) the insertion of needles into the skin;
- (d) the placing of threads under the skin;
- (e) the application of light, electricity, cold or heat.

## 24 Interpretation

- (1) In this Schedule —

**"adult"** means an individual aged 18 or over;

**"child"** means an individual aged under 18;

**"dental practitioner"** has the same meaning as in section 43 of the *National Health Service Act 2001*;

**"employment"** means —

- (a) employment under a contract of service, an apprenticeship, a contract for services or otherwise than under a contract;
- (b) the grant of practising privileges by a service provider to a registered medical practitioner, giving permission to practice as a medical practitioner in a hospital managed by the service provider,

and "employed" and "employer" is to be construed accordingly;

**"employment agency"** and **"employment business"** have the meaning given in section 12 (interpretation) of the *Employment Agencies Act 1975*;

**"equipment"** includes —

- (a) a medical device (as defined in in regulation 2(1) (interpretation) of the Medical Devices Regulations 2002<sup>6</sup> (of Parliament); and
- (b) materials used in, or used by persons employed in, the carrying on of a regulated activity;

**“health care professional”**, except in paragraph 4, means —

- (a) a health care professional within the meaning of the *Health Care Professionals Act 2014*;
- (b) a dental practitioner;
- (c) an optometrist whose name is entered in the register of optometrists maintained under section 7(a) of the *Opticians Act 1989* (of Parliament);
- (d) a pharmacist who is registered in Part 1 of the register maintained under article 19 of the *Pharmacy Order 2010*<sup>7</sup> (of Parliament) or who is registered in the register maintained under articles 6 and 9 of the *Pharmacy (Northern Ireland) Order 1976*<sup>8</sup>;

**“hospital”** has the same meaning as in section 43 (interpretation) of the *National Health Service Act 2001*;

**“independent school”** has the same meaning as in section 59(1) (interpretation) of the *Education Act 2001*;

**“local anaesthesia”** means any anaesthesia other than general, spinal or epidural anaesthesia, and also excludes the administration of a regional nerve block;

**“nursing care”** means any services provided by a registered nurse and involving —

- (a) the provision of care; or
  - (b) the planning, supervision or delegation of the provision of care,
- other than any services which, having regard to their nature and the circumstances in which they are provided, do not need to be provided by a registered nurse;

**“personal care”** means —

- (a) physical assistance given to a person in connection with —
  - (i) eating or drinking (including the maintenance of established parenteral nutrition);
  - (ii) toileting (including in relation to the process of menstruation);
  - (iii) washing or bathing;
  - (iv) dressing;
  - (v) oral care; or

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<sup>6</sup> SI 2002/618

<sup>7</sup> SI 2010/231

<sup>8</sup> SI 1976/1213 (N.I.22)

- (vi) the care of skin, hair and nails (with the exception of nail care provided by a registered chiropodist or podiatrist); or
- (b) the prompting, together with supervision, of a person, in relation to the performance of any of the activities listed in paragraph (a), where that person is unable to make a decision for themselves in relation to performing such an activity without such prompting and supervision;

**“personal support”** means counselling, emotional support or other help provided as part of a planned programme of care;

**“practical assistance”**, from one person to another, means performing domestic tasks for the other person or helping them with domestic tasks, but does not include a prescribed activity;

**“school”** has the same meaning as in section 59(1) (interpretation) of the *Education Act 2001*;

**“service provider”** means, in respect of a regulated activity, a person registered under Part 2 as a service provider in respect of that activity;

**“service user”** means a person who receives services provided in the carrying on of a regulated activity;

**“shared lives agreement”** means an agreement entered into between a person carrying on a shared lives scheme and an individual for the provision, by that individual, of personal care to a service user together with, where necessary, accommodation in the individual’s home;

**“shared lives carer”** means an individual who, under the terms of a shared lives agreement, provides, or intends to provide, personal care for service users together with, where necessary, accommodation in the individual’s home;

**“shared lives scheme”** means a scheme carried on (whether or not for profit) by a person for the purposes of —

- (a) recruiting and training shared lives carers;
- (b) making arrangements for the placing of service users with shared lives carers; and
- (c) supporting and monitoring placements

**“treatment”**, except in paragraph 5, includes —

- (a) a diagnostic or screening procedure carried out for medical purposes;
  - (b) the ongoing assessment of a service user’s mental or physical state;
  - (c) nursing, personal and palliative care; and
  - (d) the giving of vaccinations and immunisations;
- (2) In the definition of “employment” in subparagraph (1), the reference to otherwise than under a contract includes —
- (a) under a shared lives agreement;



- (b) under an agreement between the service provider and a temporary work agency for the supply of an agency worker to the service provider;
- (c) under arrangements for persons to provide their services voluntarily.

draft for consultation

**SCHEDULE 2**

[Section 8]

**REGULATED ACTIVITIES: GENERAL EXCEPTIONS****1 Family or personal relationships**

- (1) Any activity which is carried on —
  - (a) in the course of a family or personal relationship; and
  - (b) for no commercial consideration.
- (2) A family relationship includes a relationship between two persons who —
  - (a) live in the same household; and
  - (b) treat each other as though they were members of the same family.
- (3) A personal relationship is a relationship between or among friends.
- (4) A friend of a person (A) includes a person who is a friend of a member of A's family.

**2 Treatment in a surgery or consulting room by a medical practitioner**

- (1) Subject to paragraph 3, the provision of treatment in a surgery or consulting room by a registered medical practitioner who is (or a group of registered medical practitioners who are) —
  - (a) a service provider in respect of a regulated activity specified in paragraph 4 of Schedule 1 (treatment of disease, disorder or injury) or employed by such a service provider; and
  - (b) either on the medical performers list for a designated body or employed by a service provider that is a designated body.
- (2) In this paragraph, “designated body” means a body prescribed by regulation 4 of the Medical Profession (Responsible Officers) Regulations 2010 (of Parliament)<sup>9</sup>.

**3 Non-application of paragraph 2**

Paragraph 2 does not apply in relation to —

- (a) treatment carried out under anaesthesia (other than local anaesthesia for the purposes of a procedure mentioned in paragraph 6(2) of Schedule 1 (surgical procedures)) or intravenously administered sedation;
- (b) medical services provided in connection with childbirth;
- (c) the termination of pregnancies;

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<sup>9</sup> SI 2010/2841

- (d) cosmetic surgery, with the exception of the procedures referred to in paragraph 6(4) of Schedule 1 (surgical procedures);
- (e) haemodialysis or peritoneal dialysis;
- (f) endoscopy other than using a device which does not have a lumen or other channel for the purpose or design of passing fluid or instruments through, or removing body tissue or fluid or any other item from, a person's body;
- (g) the provision of hyperbaric therapy, being the administration of oxygen (whether or not combined with one or more other gases) to a person who is in a sealed chamber which is gradually pressurised with compressed air, where such therapy is carried out by or under the supervision or direction of a registered medical practitioner;
- (h) intravenous, intrathecal or epidural administration of medicines or diagnostic agents;
- (i) the therapeutic or diagnostic use of s-rays, radiation, protons or magnetic resonance imaging; or
- (j) invasive cardiac physiology tests.

#### **4 Forensic medicine or dental services**

Forensic medicine or dental services provided under arrangements made with the police force (within the meaning of section 21 of the *Police Act 1993*).

#### **5 First aid**

- (1) The provision of first aid by —
  - (a) health care professionals where it is provided in unexpected or potentially dangerous situations requiring immediate action;
  - (b) organisations established for that purpose; or
  - (c) non-health care professionals trained to deliver such treatment.
- (2) In this paragraph, “health care professional” has the same meaning as in paragraph 24 of Schedule 1 (interpretation).

**SCHEDULE 3**

[Section 54]

**INTERACTION WITH OTHER AUTHORITIES****1 Inspection functions**

In this Schedule “inspection functions” means functions relating to, or connected with, inspections carried out by the Department under section 46 (inspections).

**2 Public authorities**

- (1) In this Schedule “public authority” —
  - (a) includes any person certain whose functions are functions of a public nature, but
  - (b) does not include the House of Keys, the Legislative Council or Tynwald or a person exercising functions in connection with proceedings in the House of Keys, the Legislative Council or Tynwald.
- (2) Subject to paragraph 7(3), references in this Schedule to a public authority do not include a public authority outside the Island.
- (3) In relation to a particular act, a person is not a public authority by virtue of subparagraph (1) if the nature of the act is private.

**3 Delegation of inspection functions to public authorities**

- (1) The Department may delegate any of its inspection functions (to such extent as it may determine) to another public authority.
- (2) If the carrying out of an inspection is delegated under subparagraph (1) it is nevertheless to be regarded for the purposes of any Manx legislation as carried out by the Department.

**4 Inspection programmes and inspection frameworks**

- (1) The Department must from time to time prepare —
  - (a) a document setting out what inspections the Department proposes to carry out (an “inspection programme”); and
  - (b) a document setting out the manner in which the Department proposes to exercise its functions of inspecting and reporting (an “inspection framework”).
- (2) Before preparing an inspection programme or an inspection framework the Department must —
  - (a) consult any public authority that may be affected; and
  - (b) send to each such authority a copy of each programme or framework once it is prepared.

- (3) The Department may determine that any document or combination of documents prepared for the purposes of any other Manx legislation (including this Act) is to be treated as a document prepared for the purposes of subparagraph (1)(b) (so long as any requirements applying under or by virtue of this paragraph are complied with in relation to the document or documents concerned).
- (4) Nothing in any inspection programme or inspection framework is to be read as preventing the Department from making visits without notice.

## **5 Co-operation**

The Department must co-operate with any other public authority where it is appropriate to do so for the efficient and effective exercise of the Department's functions under this Act.

## **6 Joint action**

- (1) The Department may act jointly with another public authority where it is appropriate to do so for the efficient and effective exercise of the Department's functions under this Act.
- (2) Subparagraph (1) is without prejudice to any other power the Department may have to act jointly with another public authority.

## **7 Advice or assistance for other public authorities**

- (1) The Department may, if it considers it appropriate to do so, provide advice or assistance to another public authority for the purpose of the exercise by that authority of that authority's functions.
- (2) Anything done under this paragraph may be done on such terms, including terms as to payment, as the Department thinks fit.
- (3) In this paragraph the reference to another public authority includes a public authority in the United Kingdom.

## **8 Inspections carried out under arrangements**

- (1) The Department may make arrangements with another public authority to carry out, on behalf of the public authority, inspections of any institution or matter which the Department is not required or authorised to carry out by virtue of any other Manx legislation.
- (2) Inspections under this paragraph may be carried out on such terms, including terms as to payment, as the Department thinks fit.

**SCHEDULE 4**

[Section 64]

**PUBLICATION OF INFORMATION RELATING TO ENFORCEMENT ACTION****PART 1 – OBLIGATION TO PUBLISH INFORMATION****1 Obligation to publish information relating to enforcement action**

The Department must publish information relating to enforcement action in accordance with the provisions of this Part.

**2 Cancellation or suspension of registration**

In relation to the cancellation or suspension of a person's registration under section 20 (cancellation of registration), 21 (suspension of registration), 31 (urgent procedure for cancellation) or 32 (urgent procedure for suspension, variation etc.), the Department must publish –

- (a) a description of the regulated activity to which the cancellation or suspension relates;
- (b) the name of the service provider in respect of that regulated activity;
- (c) where the cancellation or suspension relates to a registered manager, the name of the registered manager;
- (d) an explanation of why the registration has been cancelled or suspended, and, where applicable, the period of suspension; and
- (e) the relevant address.

**3 Offences under Part 2**

In relation to the conviction of any person in respect of an offence under Part 2, except an offence under section 57 (disclosure of confidential personal information: offence), the Department must publish –

- (a) a description of the offence;
- (b) a description of the regulated activity that the person so convicted is carrying on, or involved in carrying on;
- (c) the name of the service provider in respect of that regulated activity;
- (d) where the person convicted is the registered manager, the name of the registered manager; and
- (e) the relevant address.

**4 Variation, removal or addition of condition**

- (1) This paragraph applies to a decision under section 13(5) (grant or refusal of registration as a service provider) or 17(5) (grant or refusal of registration as a manager) to vary or remove a condition for the time being in force in

relation to a person's registration, or to impose an additional condition, which —

- (a) takes effect from the time when the notice is given in accordance with section 32 (urgent procedure for suspension, variation etc.); or
  - (b) appears to the Department to have a material impact on the regulated activity being carried on.
- (2) If this paragraph applies, the Department must publish —
- (a) a description of the regulated activity that the variation or removal of a condition, or the imposition of an additional condition, relates to;
  - (b) the name of the service provider in respect of that regulated activity;
  - (c) where the decision relates to a condition in respect of a registered manager, the name of the registered manager;
  - (d) a description of the condition being varied, removed or imposed and, where applicable, the variation or removal;
  - (e) an explanation of why the decision was taken; and
  - (f) the relevant address.

## 5 Exceptions

- (1) Paragraphs 2 and 4 do not apply, and the information must not be published, where an appeal is brought under section 34 (appeals to the Health and Social Care Services Tribunal) and the Health and Social Care Services Tribunal has directed that the Department's decision is not, or is to cease, to have effect.
- (2) Paragraph 3 does not apply, and the information must not be published, where an appeal is brought against a conviction for an offence under Part 2 and the conviction is quashed.

## 6 Timing for publication of information

- (1) Where no appeal is brought under section 34 (appeals to the Health and Social Care Services Tribunal), the information under paragraphs 2 and 4 must be published within the period starting immediately after the end of the period of 28 days referred to in section 34(2) and ending 4 months after service on the person of the notice of the Department's decision.
- (2) Where an appeal is brought under section 34, the information under paragraphs 2 and 4 must be published within 3 months of the determination or abandonment of the appeal.
- (3) Where no appeal is brought against a conviction, the information under paragraph 3 must be published within the period starting immediately after the end of the period of 28 days after the date of the conviction and ending 4 months after the date of the conviction.

- (4) Where an appeal is brought against a conviction, the information under paragraph 3 must be published within 3 months of the determination or abandonment of the appeal.

## PART 2 – AUTHORITY TO PUBLISH INFORMATION

### 7 Authority to publish information relation to enforcement action

The Department may publish information relating to enforcement action in accordance with the provisions of this Part.

### 8 Offence under Part 2

In relation to a conviction in respect of an offence under Part 2, except an offence under section 57 (disclosure of confidential personal information: offence), the Department may publish –

- (a) the penalty imposed;
- (b) where the person convicted of the offence is not a registered person, the name of, and such other details as the Department considers relevant about, the individual convicted of the offence.

### 9 Variation, removal or addition of condition

In relation to decisions under section 13(5) or 17(5) which do not fall within paragraph 4(1), the Department may publish the information listed in paragraph 4(2)(a) to (f).

### 10 Warning notice

- (1) In relation to a warning notice given under section 30 (warning notice), the Department may publish –
- (a) a description of the regulated activity to which the warning notice relates;
  - (b) the name of the service provider in respect of that regulated activity;
  - (c) where the warning notice is given to a registered manager, the name of the registered manager;
  - (d) a description of the conduct which appears to the Department to constitute a failure to comply with the relevant requirements and a description of the requirements concerned; and
  - (e) the relevant address.
- (2) Before publishing the information referred to in paragraph (1), the Department must –
- (a) provide the person to whom the notice was given an opportunity to make representations to the Department relating to the matters dealt with in the notice; and



- (b) take any such representations into account when determining whether to publish the information referred to in paragraph (1).

## 11 Interpretation

In this Schedule “relevant address” means —

- (a) where the service provider is registered to carry on the regulated activity to which the enforcement action relates from one address, that address; or
- (b) where the service provider is registered to carry on the regulated activity from more than one address, any of those addresses to which the enforcement action is relevant.