



Isle of Man

Ellan Vannin

SAFEGUARDING BILL 2017

SAFEGUARDING BILL 2017

Explanatory Memorandum

1. This Bill is promoted by the Hon. C C Thomas MHK.
2. *Part 1* of the Bill (comprising *clauses 1 to 5*) contains provisions setting out the short title of the resulting Act (*clause 1*), providing for its commencement (*clause 2*) and defining key terms in the Act (*clauses 3 to 5*). *Clause 3* deals with general definitions, *clause 4* defines “relevant safeguarding body” and *clause 5* defines “vulnerable adult”.
3. *Part 2* (comprising *clauses 6 to 15*) contains provisions about the Safeguarding Board and bodies associated with the Board.
4. *Division 1 (clauses 6 to 11)* deals with the Board. *Clause 6* establishes the Safeguarding Board and makes provision about its constitution. *Clause 7* specifies the Board’s objectives and *clause 8* its functions. *Clause 9* provides for the establishment of committees and subcommittees of the Board and their relationship with it. *Clause 10* makes provision about directions by the Cabinet Office (referred to below and in the Bill as “the Department”) to the Board. *Clause 11* makes provision about the production of an annual report by the Board, which the Department is to lay before Tynwald.
5. *Division 2 (clauses 12 to 15)* deals with the Board’s relations with other bodies, in particular (*in clause 12*) in connection with the sharing of information for the purposes of the functions of the Board, a committee or subcommittee. *Clause 13* enables the Board to make recommendations to relevant safeguarding bodies with which they must comply or provide an explanation for not doing so. *Clause 14* imposes duties on the Board and on its committees and subcommittees to co-operate with relevant safeguarding bodies, and on those bodies to co-operate with the Board and its committees and subcommittees. *Clause 15* makes it clear that the Board is not a public authority for the purposes of the Freedom of Information Act 2015.
6. *Part 3 (clause 16)* requires a relevant person (a relevant safeguarding body or a person specified in regulations made by the Department) to make arrangements to promote safeguarding of children and vulnerable adults.
7. *Part 4 (clauses 17 to 19)* contains the closing provisions of the Bill. *Clause 17* enables the Department to make regulations for the purposes of the Bill. *Clause 18* provides that all regulations under the Bill, and all orders under it other than appointed day orders, are subject to Tynwald approval. Appointed day orders will merely need to be laid before Tynwald for information. *Clause 19* amends the Interpretation Act 2015 to add “Safeguarding Board” to the list of defined terms for the purposes of all Manx legislation.

8. The Bill is expected to have no impact on Government expenditure.
9. In the opinion of the member moving the Bill, its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



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SAFEGUARDING BILL 2017

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

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

4 **PART 1 – OPENING PROVISIONS**

5 **1 Short title**

6 The short title of this Act is the Safeguarding Act 2018.

7 **2 Commencement**

8 (1) This Act comes into operation on such day or days as the Cabinet Office
 9 may by order appoint.

10 (2) An order under subsection (1) may include such consequential,
 11 incidental, supplementary, transitional and transitory provisions as
 12 appear appropriate to the maker of the order.

13 **3 Interpretation**

14 In this Act—

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

16 “**body**” means a body of persons whether corporate or not;

17 “**the Chair**” means the Chair of the Board appointed under section 6(2);

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

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

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

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

22 “**relevant safeguarding body**”: see section 4;

1 “vulnerable adult”: see section 5.

2 4 Relevant safeguarding bodies

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

- 4 (a) the Department of Education and Children;
- 5 (b) the Department of Health and Social Care;
- 6 (c) the Department of Home Affairs;
- 7 (d) the Isle of Man Constabulary;
- 8 (e) any other body providing services for children or vulnerable
- 9 adults; and
- 10 (f) such other bodies as may be prescribed.

11 5 Meaning of “vulnerable adult”

12 SI2007/1351/art. 3

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

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

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

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

(c) another person is or is to exercise on P's behalf any right which P may have under the Social Security Administration Act 1992 (of Parliament)¹.

(13) The Department may by order provide that a person specified in the order, or of a description so specified, who falls within subsection (1) is not to be treated as a vulnerable adult.

PART 2 – THE SAFEGUARDING BOARD AND ASSOCIATED BODIES

DIVISION 1 – THE SAFEGUARDING BOARD

6 Safeguarding Board

NI2011/7/1

- (1) There is established a body corporate to be known as the Safeguarding Board (referred to in this Act as “**the Board**”).
- (2) The Chief Secretary must appoint the chair of the Board (“**the Chair**”) after consulting such persons as the Chief Secretary considers appropriate.
- (3) The Chief Secretary, in consultation with the Chair, must also appoint not less than three nor more than five other members of the Board.
- (4) In exercising the powers conferred by subsections (2) and (3), the Chief Secretary is to act independently and is not subject to the direction of Tynwald, its Branches, the Council of Ministers or a Minister.
- (5) The persons appointed under subsections (2) and (3) (“**the independent members**”) must be persons who—
 - (a) are not employed by and do not hold office in any of the relevant safeguarding bodies mentioned in paragraphs (a) to (d) of section 4; and
 - (b) possess such qualifications, knowledge or experience as may be prescribed.
- (6) The other members of the Board are—
 - (a) the Chief Executives of the Departments of Education and Children, Health and Social Care and Home Affairs;
 - (b) the Director of Public Health; and
 - (c) the Chief Constable.
- (7) The *Statutory Boards Act 1987* applies to the Board to such extent as may be specified in an order made by the Department (but not otherwise).

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



- 1 For the sake of clarity, the power conferred by this subsection may not be
2 exercised so as to displace the provisions of subsections (2) to (4).
- 3 (8) Before it makes an order under subsection (7), the Department must
4 consult the Board.

5 7 The Board's objectives

- 6 (1) The objectives of the Board are —
- 7 (a) to co-ordinate the work done by relevant safeguarding bodies for
8 the purposes of safeguarding and promoting the welfare of
9 children and safeguarding and protecting vulnerable adults; and
- 10 (b) to ensure the effectiveness of the work done by each of those
11 bodies for those purposes.
- 12 (2) The Department may by order amend the objectives in subsection (1) for
13 the purpose of —
- 14 (a) safeguarding and promoting the welfare of children; or
15 (b) safeguarding and protecting vulnerable adults.
- 16 (3) Before making an order under subsection (2), the Department must
17 consult the Board.

18 8 Functions

- 19 NI 2011/7/3 (excluding ss (6) of that section).
- 20 (1) The Board must develop policies and procedures for safeguarding and
21 promoting the welfare of children and for safeguarding and protecting
22 vulnerable adults.
- 23 (2) The Board must promote an awareness of the need to safeguard and
24 promote the welfare of children and of the need to safeguard and protect
25 vulnerable adults.
- 26 (3) The Board must keep under review the effectiveness of what is done by
27 relevant safeguarding bodies —
- 28 (a) to safeguard and promote the welfare of children; and
29 (b) to safeguard and protect vulnerable adults.
- 30 (4) For the purpose of identifying lessons to be learnt and applying those
31 lessons in future cases the Board must —
- 32 (a) undertake such case management reviews as may be prescribed in
33 such circumstances as may be prescribed;
- 34 (b) review such information as may be prescribed in relation to
35 deaths of children or vulnerable adults in the Island in such
36 circumstances as may be prescribed.
- 37 (5) The Board must make arrangements for —
- 38 (a) consultation and discussion in relation to safeguarding;

- 1 (b) promoting the welfare of children or protecting vulnerable adults;
2 and
- 3 (c) communicating effectively with children and vulnerable adults.
- 4 (6) The Board may—
- 5 (a) compile and analyse information concerning safeguarding and
6 promoting the welfare of children or safeguarding and protecting
7 vulnerable adults;
- 8 (b) provide advice or information on any matter concerning
9 safeguarding and promoting the welfare of children or
10 safeguarding and protecting vulnerable adults;
- 11 (c) subject to consultation with the Department, publish any matter
12 concerning safeguarding and promoting the welfare of children or
13 safeguarding and protecting vulnerable adults.
- 14 (7) The Board may also engage in any other activity that facilitates, or is
15 conducive to, the achievement of its objectives.
- 16 (8) The Board must, in exercising its functions, have due regard to any
17 guidance given to it for the purpose by the Department.

18 **9 Committees and sub-committees**

19 NI2011/7//7 and 8(3)

- 20 (1) The Board must establish in accordance with this section—
- 21 (a) a committee to be called “the Action and Implementation Panel”;
- 22 (b) a committee to be called “the Child Death Overview Panel”; and
- 23 (c) a committee to be called “the Serious Case Management Review
24 Panel”.
- 25 (2) The Board may also establish in accordance with this section one or more
26 other committees.
- 27 (3) The Board or a committee may establish in accordance with this section
28 one or more sub-committees.
- 29 (4) Regulations may make provision as to—
- 30 (a) the appointment, tenure and vacation of office of Chairs and
31 members of committees and sub-committees (including the
32 circumstances in which they cease to hold office or may be
33 removed or suspended from office);
- 34 (b) the procedure of committees and sub-committees; and
- 35 (c) the functions of committees and sub-committees.
- 36 (5) Each committee and sub-committee must, in exercising its functions,
37 have due regard to any guidance given to it for the purpose by the
38 Department or the Board.

- 1 (6) Regulations may provide that committees and sub-committees must
2 include such representatives of such relevant persons as may be
3 prescribed or such other persons as may be prescribed.
- 4 (7) Members of—
5 (a) committees may be persons who are not members of the Board;
6 (b) sub-committees may be persons who are not members of the
7 Board or of a committee which established the sub-committee.
- 8 (8) Proceedings of committees or of sub-committees are not invalidated by
9 any vacancy in membership or by any defect in a member's qualifications
10 or appointment.

11 10 Directions

- 12 (1) The Department may give directions of a general or specific nature to the
13 Board as to the exercise by the Board of any of its functions.
- 14 (2) Before giving any directions to the Board under subsection (1) the
15 Department must consult the Chair of the Board.
- 16 (3) If the Department is of the opinion that because of the urgency of the
17 matter it is necessary to give directions under subsection (1) without
18 consulting the Chair of the Board—
19 (a) subsection (2) does not apply; but
20 (b) the Department must as soon as reasonably practicable give notice
21 to the Chair of the Board of the grounds on which the Department
22 formed that opinion.
- 23 (4) The Board must comply with any directions given to it under subsection
24 (1).
- 25 (5) Any directions given to the Board by the Department under subsection
26 (1) may be varied or revoked by any subsequent directions so given.

27 11 Annual report

28 NI 2011/7/6

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

DIVISION 2— THE BOARD'S RELATIONSHIP WITH OTHERS

12 Supply of information requested by Board

NI2011/7/11

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

13 Recommendations

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

- 1 (2) A relevant safeguarding body must comply with any recommendation
2 made to it or provide a written explanation to the Board (within a
3 reasonable time) for not doing so.
- 4 (3) Any recommendation made under subsection (1) may be varied or
5 revoked by any subsequent recommendation so made.

6 14 Duty to co-operate

7 NI2011/7/10

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

23 15 Freedom of information

24 Despite section 6, the Board is not a public authority for the purposes of the
25 *Freedom of Information Act 2015* and in section 7(6) of that Act, after “Lieutenant
26 Governor” there is inserted “or the Safeguarding Board”.

27 PART 3 — PROMOTING SAFEGUARDING

28 16 Duty to safeguard children and vulnerable adults

29 NI 2011/7/12 (adapted)

- 30 (1) This section applies to relevant persons.
- 31 Relevant persons are relevant safeguarding bodies and such other
32 persons as may be prescribed.
- 33 (2) But this section does not apply to persons insofar as they provide care or
34 other services for a child or a vulnerable adult in pursuance of routine
35 arrangements made by a person or a person’s family on a private and
36 non-commercial basis.

- 1 (3) For the avoidance of doubt the exception in subsection (2) does not apply
2 to a person who fosters a child privately (within the meaning of section
3 57 of the *Children and Young Persons Act 2001*).
- 4 (4) Each relevant person must make arrangements for ensuring that—
- 5 (a) the relevant person’s functions are exercised having due regard
6 to—
- 7 (i) the need to safeguard and promote the welfare of children;
8 and
- 9 (ii) the need to safeguard and protect vulnerable adults;
- 10 (b) any services provided by another person pursuant to
11 arrangements made by the relevant person in the exercise of the
12 relevant person’s functions are provided having due regard to
13 that need.
- 14 (5) Each relevant person must, in exercising the relevant person’s duty
15 under this section, have due regard to any guidance given to that person
16 for the purpose by the Board.

17 PART 4 – CLOSING PROVISIONS

18 17 Regulations

- 19 (1) Regulations may make provision as to the exercise by the Board of any of
20 its functions (including provision as to further functions to be imposed,
21 procedures to be followed and the manner in which the Board’s
22 functions are to be exercised).
- 23 (2) Regulations under subsection (1) may among other things and to the
24 extent that they are not inconsistent with this Act—
- 25 (a) provide for the appointment and removal of members of the
26 Board (including the independent members);
- 27 (b) require the Board to produce such reports, plans and projections
28 of activity and expenditure as may be prescribed;
- 29 (c) provide for the sharing of information by the Board with such
30 persons as may be prescribed (and may, in particular, provide
31 that such information may be so shared despite any rule of law to
32 the contrary); and
- 33 (d) make provision about such other matters and information as the
34 Department considers necessary or expedient.

35 18 Tynwald control

- 36 (1) Section 34 of the *Legislation Act 2015* (Tynwald procedure — laying only)
37 applies to orders under section 2 of this Act.

- 1 (2) Section 30 of the *Legislation Act 2015* (Tynwald procedure — approval
2 required) applies to all other orders, and to regulations, made under this
3 Act.

4 **19 Consequential amendment**

- 5 In paragraph 1 of the Schedule to the *Interpretation Act 2015* insert—
6 “**Safeguarding Board**” see section 6 of the *Safeguarding Act 2018*”.

IN THE COUNCIL

SAFEGUARDING BILL 2017

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

Leave to introduce given by the Council of Ministers on 26th October 2017.

MR THOMAS

NOVEMBER 2017