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STATUTORY INSTRUMENTS

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**1995 No. 755**

**The Children (Northern Ireland) Order 1995**

**PART IX**

**CHILDREN'S HOMES**

*Introductory*

**Interpretation**

**90.**—(1) In this Order—

“children’s home” means, subject to Article 91, a home which provides (or usually provides or is intended to provide) care and accommodation for children;

“registered children’s home” means a children’s home registered under this Part.

(2) In this Part—

“home” includes any institution;

“notice” and “notify” mean respectively notice in writing and notify in writing;

“the relevant requirements” means any requirements of this Part and of regulations under Article 105, and any conditions imposed under Article 97.

(3) Any reference in this Part to an authority in relation to a children’s home means the authority in whose area the home is, or is to be, situated.

**“Children’s home” further defined**

**91.**—(1) A child is not cared for and accommodated in a children’s home when he is cared for and accommodated by—

(a) a parent of his;

(b) a person who is not a parent of his but who has parental responsibility for him;

(c) any relative of his; or

(d) a person who fosters him (within the meaning of Article 119) and not more than two other children.

(2) A home is not a children’s home if it is—

(a) a home provided under Part VII or a voluntary home;

(b) a residential care home;

(c) a hospital (including a private hospital) or nursing home;

(d) a school;

(e) a training school;

(f) used primarily for the accommodation of homeless persons;

- (g) used primarily for or in connection with the provision of cultural, recreational, leisure, social or physical activities;
  - (h) exempted by regulations made by the Department for the purposes of this paragraph, or if it does not fall within sub-paragraphs (a) to (h) but is provided by the Secretary of State, a government department or a prescribed public body.
- (3) A child shall not be treated as cared for and accommodated in a children's home when—
- (a) any person mentioned in paragraph (1)(a) or (b) is living at the home; or
  - (b) the person caring for him is doing so in his personal capacity and not in the course of carrying out his duties in relation to the home.
- (4) Schedule 5 shall have effect for the purpose of setting out the circumstances in which a person may foster more than three children without being treated as carrying on a children's home.

*General*

**Duties of person carrying on children's home**

**92.**—(1) Where a child is accommodated in a children's home, the person carrying on the home shall—

- (a) safeguard and promote the child's welfare;
- (b) make such use of the services and facilities available for children cared for by their own parents as appears to that person reasonable in the case of the child; and
- (c) advise, assist and befriend him with a view to promoting his welfare when he ceases to be so accommodated.

(2) Before making any decision with respect to any such child the person carrying on the home shall, so far as is reasonably practicable, ascertain the wishes and feelings of—

- (a) the child;
- (b) his parents;
- (c) any other person who is not a parent of his but who has parental responsibility for him; and
- (d) any person whose wishes and feelings the person carrying on the home considers to be relevant,

regarding the matter to be decided.

(3) In making any such decision the person carrying on the home shall give due consideration—

- (a) having regard to the child's age and understanding, to such wishes and feelings of his as he has been able to ascertain;
- (b) to such other wishes and feelings mentioned in paragraph (2) as he has been able to ascertain; and
- (c) to the child's religious persuasion, racial origin and cultural and linguistic background.

(4) Every person carrying on a children's home shall, at such times and in such form as the Department may direct, transmit to the Department such particulars as the Department may require with respect to the children accommodated in the home.

**Duties of an authority**

**93.**—(1) Every authority shall satisfy itself that any person carrying on a children's home which provides accommodation—

- (a) within the authority's area for any child; or

(b) outside that area for any child on behalf of the authority,  
is satisfactorily safeguarding and promoting the welfare of the children so provided with accommodation.

(2) Every authority shall arrange for children who are accommodated within its area in a children's home to be visited in the interests of their welfare.

(3) The Department may make regulations—

(a) requiring every child who is accommodated in a children's home within an authority's area to be visited by an officer of the authority—

(i) in prescribed circumstances; and

(ii) on specified occasions or within specified periods; and

(b) imposing requirements which must be met by any authority, or officer of an authority, carrying out functions under this Article.

(4) If an authority is not satisfied that the welfare of any child who is accommodated in a children's home is being satisfactorily safeguarded or promoted, the authority shall—

(a) unless it considers that it would not be in the best interests of the child, take such steps as are reasonably practicable to secure that the care and accommodation of the child are undertaken by—

(i) a parent of his;

(ii) any person who is not a parent of his but who has parental responsibility for him; or

(iii) a relative of his; and

(b) consider the extent to which (if at all) the authority should exercise any of its functions with respect to the child.

(5) Any person authorised by an authority may, for the purpose of enabling the authority to discharge its duties under this Article—

(a) enter at any reasonable time and inspect any children's home;

(b) inspect any children there;

(c) require any person to furnish him with such records of a kind required to be kept by regulations made under Article 105 (in whatever form they are held), or allow him to inspect such records, as he may at any time direct.

(6) Any person exercising the power conferred by paragraph (5) shall, if asked to do so, produce some duly authenticated document showing his authority to do so.

(7) Any person authorised to exercise the power to inspect records conferred by paragraph (5)—

(a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question; and

(b) may require—

(i) the person by whom or on whose behalf the computer is or has been so used; or

(ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,

to afford him such assistance as he may reasonably require.

(8) Any person who intentionally obstructs another in the exercise of any power conferred by paragraph (5) or (7) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Persons disqualified from carrying on, or being employed in, children's homes**

**94.**—(1) A person who is disqualified (under Article 109) from fostering a child privately shall not carry on, or be otherwise concerned in the management of, or have any financial interest in, a children's home unless he has—

- (a) disclosed to the authority the fact that he is so disqualified; and
- (b) obtained the consent of the authority in writing.

(2) No person shall employ a person who is so disqualified in a children's home unless he has—

- (a) disclosed to the authority the fact that that person is so disqualified; and
- (b) obtained the consent of the authority in writing.

(3) Where an authority refuses to give its consent under this Article, the authority shall inform the applicant by a notice which states—

- (a) the reason for the refusal;
- (b) the applicant's right to appeal against the refusal to a Registered Homes Tribunal under Article 103; and
- (c) the time within which he may do so.

(4) Any person who contravenes paragraph (1) or (2) shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

(5) Where a person contravenes paragraph (2) he shall not be guilty of an offence if he proves that he did not know, and had no reasonable grounds for believing, that the person whom he was employing was disqualified under Article 109.

*Registration***Children not to be cared for and accommodated in unregistered children's homes**

**95.**—(1) No child shall be cared for and provided with accommodation in a children's home unless the home is registered under this Part.

(2) The register may be kept by means of a computer.

(3) Where any child is at any time cared for and accommodated in a children's home which is not a registered children's home, the person carrying on the home shall, unless he has a reasonable excuse, be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Application for registration**

**96.**—(1) An application for the registration of a children's home shall be made—

- (a) by the person carrying on, or intending to carry on, the home; and
- (b) to the authority in whose area the home is, or is to be, situated.

(2) The application shall be made in the prescribed manner and shall be accompanied by—

- (a) such particulars as may be prescribed; and
- (b) such reasonable fee as the Department may determine.

(3) If the authority is satisfied that a children's home with respect to which an application has been made in accordance with this Part complies or (as the case may be) will comply—

- (a) with such requirements as may be prescribed, and

(b) with such other requirements (if any) as appear to the authority to be appropriate, the authority shall grant the application, either unconditionally or subject to conditions imposed under Article 97.

(4) Before deciding whether or not to grant an application the authority shall comply with any prescribed requirements.

(5) Regulations made for the purposes of paragraph (4) may, in particular, make provision as to the inspection of the home in question at prescribed times.

(6) Where an application is granted, the authority shall notify the applicant that the home has been registered under this Part as from such date as may be specified in the notice.

(7) Where an application is granted subject to conditions imposed under Article 97, the authority shall also notify the applicant of those conditions.

(8) If the authority is not satisfied as mentioned in paragraph (3), it shall refuse the application.

### **Power to impose conditions**

**97.**—(1) The authority may grant an application for registration subject to such conditions relating to the conduct of the home as the authority thinks fit.

(2) The authority may—

(a) vary or cancel any condition for the time being in force with respect to a home by virtue of this Article; or

(b) impose an additional condition,

either on the application of the person carrying on the home or without such an application.

(3) Where the authority varies or cancels or imposes a condition under paragraph (2) with respect to a home, the authority shall notify the person carrying on the home that the condition has been varied or cancelled or imposed as from such date as may be specified in the notice.

(4) If any condition imposed or varied under this Article is not complied with, the person carrying on the home shall, if he has no reasonable excuse, be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **Cancellation of registration**

**98.**—(1) The person carrying on a registered children's home may at any time make an application, in such manner and including such particulars as may be prescribed, for the cancellation by the authority of the registration of the home.

(2) If on any annual review under Article 102, or at any other time, it appears to the authority that a registered children's home is being carried on otherwise than in accordance with the relevant requirements, the authority may cancel the registration of the home.

(3) The authority may at any time cancel the registration of a children's home on the ground—

(a) that the person carrying on the home has been convicted of an offence under this Part or any regulations made under Article 105; or

(b) that any other person has been convicted of such an offence in relation to the home.

(4) Where the authority cancels the registration of a children's home, the authority shall notify the person carrying on the home that the registration has been cancelled as from such date as may be specified in the notice.

### **Cases where an authority must serve notice of proposal**

**99.**—(1) Where—

(a) a person applies for the registration of a children's home; and  
(b) the authority proposes to grant his application subject to conditions,  
the authority shall give him notice of its proposal and of the conditions subject to which it proposes to grant his application.

(2) The authority need not give notice under paragraph (1) if it proposes to grant the application subject only to conditions which—

- (a) the applicant specified in the application; or
- (b) the authority and the applicant have subsequently agreed.

(3) The authority shall give an applicant notice of a proposal to refuse his application.

(4) The authority shall give any person carrying on a registered children's home notice of a proposal—

- (a) to cancel the registration;
- (b) to vary or cancel any condition for the time being in force with respect to the home by virtue of this Part; or
- (c) to impose any additional condition.

(5) The authority need not give notice under paragraph (4) if it proposes—

- (a) to cancel the registration on the application of the person carrying on the home; or
- (b) to vary or cancel or impose a condition as mentioned in paragraph (4) on the application of, or with the agreement of, that person.

(6) A notice under this Article shall give the authority's reasons for its proposal.

### **Right to make representations**

**100.**—(1) A notice under Article 99 shall state that within 14 days of service of the notice any person on whom it is served may in writing require the authority to give him an opportunity to make representations to it concerning the proposal.

(2) Where a notice has been served under Article 99, the authority shall not determine the matter until—

- (a) any person on whom the notice was served has made representations to the authority concerning the matter;
- (b) the period during which any such person could have required the authority to give him an opportunity to make representations has elapsed without the authority being required to give such an opportunity; or
- (c) the conditions specified in paragraph (3) are satisfied.

(3) The conditions are—

- (a) that a person on whom the notice was served has required the authority to give him an opportunity to make representations to the authority concerning the matter;
- (b) that the authority has allowed him a reasonable period to make his representations; and
- (c) that he has failed to make them within that period.

(4) The representations may be made, at the option of the person making them, either in writing or orally.

(5) If he informs the authority that he desires to make oral representations, the authority shall give him an opportunity of appearing before and of being heard by the authority.

### **Decision to adopt proposal**

**101.**—(1) If the authority decides to adopt the proposal, it shall serve notice of its decision on any person on whom the authority was required to serve notice of the proposal.

(2) A notice under this Article shall be accompanied by an explanation of the right of appeal conferred by Article 103.

(3) Subject to paragraph (4), the authority's decision shall not take effect—

(a) if no appeal is brought, until the end of the period of 28 days referred to in Article 103(3); and

(b) if an appeal is brought, until it is determined or abandoned.

(4) Paragraph (3) does not apply to a decision to adopt a proposal to refuse an application for registration.

### **Annual review of registration**

**102.**—(1) The authority shall, at the end of the period of twelve months beginning with the date of registration of a children's home, and annually thereafter, review its registration for the purpose of determining whether the registration should continue in force or be cancelled under Article 98(2).

(2) If on any such annual review the authority is satisfied that the home is being carried on in accordance with the relevant requirements, the authority shall determine that, subject to paragraph (3), the registration should continue in force.

(3) The authority shall give to the person carrying on the home notice of the determination under paragraph (2) and the notice shall require him to pay to the authority with respect to the review such reasonable fee as the Department may determine.

(4) It shall be a condition of the home's continued registration that the fee is so paid before the expiry of the period of 28 days beginning with the date on which the notice is received by the person carrying on the home.

### **Appeals**

**103.**—(1) An appeal against a decision of an authority under this Part shall lie to a Registered Homes Tribunal.

(2) An appeal shall be brought by notice given to the authority.

(3) No appeal shall be brought by a person more than 28 days after service on him of notice of the decision.

(4) On an appeal the Tribunal may confirm the authority's decision or direct that it shall not have effect.

(5) A Tribunal may also on an appeal—

(a) vary any condition in force by virtue of Article 97 with respect to the home to which the appeal relates;

(b) direct that any such condition shall cease to have effect; or

(c) direct that any such condition as the Tribunal thinks fit shall have effect with respect to the home.

(6) An authority shall comply with any direction given by a Tribunal under this Article.

**Prohibition on further applications**

**104.**—(1) Where an application for the registration of a home is refused, no further application may be made within the period of six months beginning with the date when the applicant is notified of the refusal.

(2) Paragraph (1) shall have effect, where an appeal against the refusal of an application is determined or abandoned, as if the reference to the date when the applicant is notified of the refusal were a reference to the date on which the appeal is determined or abandoned.

(3) Where the registration of a home is cancelled, no application for the registration of the home shall be made within the period of six months beginning with the date of cancellation.

(4) Paragraph (3) shall have effect, where an appeal against the cancellation of the registration of a home is determined or abandoned, as if the reference to the date of cancellation were a reference to the date on which the appeal is determined or abandoned.

*Regulations***Regulations**

**105.**—(1) The Department may make regulations—

- (a) as to the placing of children in registered children's homes;
- (b) as to the conduct of such homes; and
- (c) for securing the welfare of the children in such homes.

(2) The regulations may in particular—

- (a) prescribe standards to which the premises used for such homes are to conform;
- (b) impose requirements as to the accommodation, staff and equipment to be provided in such homes;
- (c) impose requirements as to the arrangements to be made for protecting the health of children in such homes;
- (d) provide for the control and discipline of children in such homes;
- (e) require the furnishing to an authority of information as to the facilities provided for—
  - (i) the parents of children in such homes;
  - (ii) persons who are not parents of such children but who have parental responsibility for them; and
  - (iii) other persons connected with such children, to visit and communicate with the children;
- (f) prohibit the use of accommodation for the purpose of restricting the liberty of children in such homes;
- (g) impose requirements as to the keeping of records and giving of notices with respect to children in such homes;
- (h) impose requirements as to the facilities which are to be provided for giving religious instruction to children in such homes;
- (i) make provision as to the carrying out of annual reviews under Article 102;
- (j) authorise an authority to limit the number of children who may be accommodated in any particular registered children's home;
- (k) require notice to be given to an authority of any change of the person carrying on or in charge of a registered children's home or of the premises used by such a home;

- (l) make provision similar to that made by regulations under Article 45;
  - (m) provide that, to such extent as may be provided for in the regulations, the Department may in special circumstances direct that any provision of regulations under this Article which is specified in the direction shall not apply in relation to a particular home or the premises used by such a home.
- (3) The regulations may provide that a contravention of any specified provision of the regulations, without reasonable excuse, shall be an offence against the regulations.
- (4) Any person guilty of such an offence shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.