

---

DRAFT STATUTORY INSTRUMENTS

---

**2003 No.**

The Health and Personal Social Services (Quality,  
Improvement and Regulation) (Northern Ireland) Order 2003

PART III

REGULATION OF ESTABLISHMENTS AND AGENCIES

*Preliminary*

**Regulated establishments and agencies: general interpretation**

8.—(1) Any reference to a description of establishment in the following provisions of this Order is a reference to—

- (a) a children's home;
- (b) a day care setting;
- (c) an independent clinic;
- (d) an independent hospital;
- (e) a nursing home;
- (f) a residential care home;
- (g) a residential family centre; or
- (h) such other establishment as may be specified by order under paragraph (3),

and a reference to any establishment is a reference to an establishment of any of those descriptions.

(2) Any reference to a description of agency in the following provisions of this Order is a reference to—

- (a) a domiciliary care agency;
- (b) a fostering agency;
- (c) an independent medical agency;
- (d) a nursing agency; or
- (e) a voluntary adoption agency; or
- (f) such other agency as may be specified by order under paragraph (3),

and a reference to any agency is a reference to an agency of any of those descriptions.

(3) The Department may by order specify establishments for the purposes of paragraph (1) and agencies for the purposes of paragraph (2).

(4) The Department shall not make an order under paragraph (1) or (2) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

### **Children's homes**

**9.**—(1) Paragraphs (2) to (5) have effect for the purposes of this Order.

(2) An establishment is a children's home (subject to paragraphs (3) and (4)) if it provides care and accommodation wholly or mainly for children.

(3) An establishment is not a children's home merely because a child is cared for and accommodated there by a parent or relative of his or by a foster parent.

(4) An establishment is not a children's home if it is—

- (a) a hospital;
- (b) a school;
- (c) a residential care home;
- (d) a nursing home;
- (e) a juvenile justice centre;
- (f) used primarily for the accommodation of homeless persons; or
- (g) used primarily for or in connection with the provision of cultural, recreational, leisure, social or physical activities,

or if it is of a description excepted by regulations.

(5) For the purposes of this Article a person is a foster parent in relation to a child if—

- (a) he is an authority foster parent in relation to the child;
- (b) he is a foster parent with whom a child has been placed by a voluntary organisation under Article 75(1)(a) of the Children Order; or
- (c) he fosters the child privately.

### **Residential care homes**

**10.**—(1) For the purposes of this Order, an establishment is a residential care home if it provides or is intended to provide, whether for reward or not, residential accommodation with both board and personal care for persons in need of personal care by reason of—

- (a) old age and infirmity;
- (b) disablement;
- (c) past or present dependence on alcohol or drugs; or
- (d) past or present mental disorder.

(2) But an establishment is not a residential care home if it is—

- (a) a hospital which is vested in the Department or managed by an HSS trust;
- (b) a private hospital as defined in Article 90(2) of the [Mental Health \(Northern Ireland\) Order 1986 \(NI 4\)](#);
- (c) an establishment which is used, or is intended to be used, solely as a nursing home;
- (d) a children's home;
- (e) a university, or an institution of further education, college of education or school;

or if it is of a description excepted by regulations.

(3) In paragraph (1)—

“disablement”, in relation to persons, means that they are substantially and permanently handicapped by illness, congenital deformity, sensory impairment or any other prescribed disability;

“personal care” includes the provision of appropriate assistance in counteracting or alleviating the effects of any of the matters mentioned in paragraph (1)(a) to (d) and, in particular, includes—

- (a) action taken to promote rehabilitation;
- (b) assistance with physical or social needs; and
- (c) counselling,

but does not include any prescribed activity.

### **Nursing homes**

**11.**—(1) For the purposes of this Order “nursing home” means, subject to paragraph (2), any premises used, or intended to be used, for the reception of, and the provision of nursing for, persons suffering from any illness or infirmity.

(2) The definition in paragraph (1) does not include—

- (a) a hospital which is vested in the Department or managed by an HSS trust;
- (b) a private hospital as defined in Article 90(2) of the Mental Health (Northern Ireland) Order 1986;
- (c) a children’s home;
- (d) any sanatorium provided at a school or educational establishment and used, or intended to be used, solely by persons at, or members of staff of, that school or establishment or members of their families;
- (e) any first aid or treatment room provided at premises to which the Factories Act (Northern Ireland) 1965 (c. 20) or the Office and Shop Premises Act (Northern Ireland) 1966 (c. 26) applies or at a sports ground, show ground or place of public entertainment;
- (f) any premises used, or intended to be used, wholly or mainly—
  - (i) by a medical practitioner for the purpose of consultations with his patients;
  - (ii) by a dental practitioner or chiropodist for the purpose of treating his patients; or
  - (iii) for the provision of occupational health facilities;
- (g) any premises used, or intended to be used, wholly or mainly as a private dwelling; or
- (h) any other premises excepted from that definition by regulations.

### *Registration*

#### **Requirement to register**

**12.**—(1) Any person who carries on or manages an establishment or agency of any description without being registered under this Part in respect of it (as an establishment or, as the case may be, agency of that description) shall be guilty of an offence.

(2) The reference in paragraph (1) to an agency does not include a reference to a voluntary adoption agency.

(3) The Department may by regulations make provision about the keeping of registers by the Regulation and Improvement Authority for the purposes of this Part.

(4) A person guilty of an offence under this Article shall be liable on summary conviction—

- (a) if paragraph (5) does not apply, to a fine not exceeding level 5 on the standard scale;
- (b) if paragraph (5) applies, 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) This paragraph applies if—
- (a) the person was registered in respect of the establishment or agency at a time before the commission of the offence but the registration was cancelled before the offence was committed; or
  - (b) the conviction is a second or subsequent conviction of the offence and the earlier conviction, or one of the earlier convictions, was of an offence in relation to an establishment or agency of the same description.

### **Applications for registration**

13.—(1) A person seeking to be registered under this Part shall make an application to the Regulation and Improvement Authority.

- (2) The application shall give—
- (a) the prescribed information about prescribed matters;
  - (b) any other information which the Regulation and Improvement Authority reasonably requires the applicant to give,

and shall be accompanied by a fee of the prescribed amount.

(3) Only an individual may apply for registration as the manager of an establishment or agency.

(4) A person who carries on or manages, or wishes to carry on or manage, more than one establishment or agency shall make a separate application in respect of each of them.

### **Grant or refusal of registration**

14.—(1) Paragraphs (2) to (4) apply where an application under Article 13 has been made with respect to an establishment or agency in accordance with the provisions of this Part.

- (2) If the Regulation and Improvement Authority is satisfied that—
- (a) the requirements of regulations under Article 23; and
  - (b) the requirements of any other statutory provision which appears to the Regulation and Improvement Authority to be relevant,

are being and will continue to be complied with (so far as applicable) in relation to the establishment or agency, it shall grant the application; otherwise it shall refuse it.

(3) The application may be granted either unconditionally or subject to such conditions as the Regulation and Improvement Authority thinks fit.

(4) On granting the application, the Regulation and Improvement Authority shall issue a certificate of registration to the applicant.

- (5) The Regulation and Improvement Authority may at any time—
- (a) vary or remove any condition for the time being in force in relation to a person's registration; or
  - (b) impose an additional condition.

### **Cancellation of registration**

15.—(1) The Regulation and Improvement Authority may at any time cancel the registration of a person in respect of an establishment or agency—

- (a) on the ground that that person has been convicted of a relevant offence;
- (b) on the ground that any other person has been convicted of such an offence in relation to the establishment or agency;

- (c) on the ground that the establishment or agency is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements;
  - (d) on any ground specified by regulations.
- (2) For the purposes of this Article the following are relevant offences—
- (a) an offence under this Order or regulations made under it;
  - (b) an offence under any statutory provision repealed by this Order or regulations made under it;
  - (c) an offence under the Children Order or regulations made under it;
  - (d) an offence under the [Mental Health \(Northern Ireland\) Order 1986 \(NI 4\)](#);
  - (e) in relation to a voluntary adoption agency, an offence under regulations under Article 10(2) of the [Adoption \(Northern Ireland\) Order 1987 \(NI 22\)](#) or section 1(3) of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 (c. 11).
- (3) In this Article “relevant requirements” means—
- (a) any requirements or conditions imposed by or under this Part; and
  - (b) the requirements of any other statutory provision which appear to the Regulation and Improvement Authority to be relevant.

### **Applications by registered persons**

**16.**—(1) A person registered under this Part may apply to the Regulation and Improvement Authority—

- (a) for the variation or removal of any condition relating to the registration; or
- (b) for the cancellation of the registration.

(2) But a person may not make an application under paragraph (1)(b)—

- (a) if the Regulation and Improvement Authority has given him notice under Article 18(4)(a) of a proposal to cancel the registration, unless the Regulation and Improvement Authority has decided not to take that step; or
- (b) if the Regulation and Improvement Authority has given him notice under Article 20(3) of its decision to cancel the registration and the time within which an appeal may be brought has not expired or, if an appeal has been brought, it has not been determined.

(3) An application under paragraph (1) shall be made in such manner and state such particulars as may be prescribed and, if made under paragraph (1)(a), shall be accompanied by a fee of such amount as may be prescribed.

(4) If the Regulation and Improvement Authority decides to grant an application under paragraph (1)(a) it shall serve notice in writing of its decision on the applicant (stating, where applicable, the condition as varied) and issue a new certificate of registration.

(5) If different amounts are prescribed under paragraph (3), the regulations may provide for the Regulation and Improvement Authority to determine which amount is payable in a particular case.

### **Regulations about registration**

**17.**—(1) Regulations may make provision about the registration of persons under this Part in respect of establishments or agencies, and in particular about—

- (a) the making of applications for registration;
- (b) the contents of certificates of registration.

(2) Regulations may provide that no application for registration under this Part may be made in respect of a fostering agency, or a voluntary adoption agency, which is an unincorporated body.

(3) Regulations may also require persons registered under this Part to pay to the Regulation and Improvement Authority an annual fee of such amount, and at such a time, as may be prescribed.

(4) A fee payable by virtue of this Article may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.

### *Registration procedure*

#### **Notice of proposals**

**18.**—(1) Paragraphs (2) and (3) apply where a person applies for registration in respect of an establishment or agency.

(2) If the Regulation and Improvement Authority proposes to grant the application subject to any conditions which have not been agreed in writing between it and the applicant, it shall give the applicant written notice of its proposal and of the conditions subject to which it proposes to grant his application.

(3) The Regulation and Improvement Authority shall give the applicant notice of a proposal to refuse the application.

(4) Except where it makes an application under Article 21, the Regulation and Improvement Authority shall give any person registered in respect of an establishment or agency notice of a proposal—

- (a) to cancel the registration (otherwise than in accordance with an application under Article 16(1)(b));
- (b) to vary or remove (otherwise than in accordance with an application under Article 16(1)(a)) any condition for the time being in force in relation to the registration; or
- (c) to impose any additional condition in relation to the registration.

(5) The Regulation and Improvement Authority shall give the applicant notice of a proposal to refuse an application under Article 16(1)(a).

(6) A notice under this Article shall give the Regulation and Improvement Authority's reasons for its proposal.

#### **Right to make representations**

**19.**—(1) A notice under Article 18 shall state that within 28 days of service of the notice any person on whom it is served may make written representations to the Regulation and Improvement Authority concerning any matter which that person wishes to dispute.

(2) Where a notice has been served under Article 18, the Regulation and Improvement Authority shall 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 Regulation and Improvement Authority in writing that he does not intend to make representations; or
- (c) the period during which any such person could have made representations has elapsed.

## Notice of decisions

**20.**—(1) If the Regulation and Improvement Authority decides to grant an application for registration in respect of an establishment or agency unconditionally, or subject only to conditions which have been agreed in writing between it and the applicant, it shall give the applicant written notice of its decision.

(2) A notice under paragraph (1) shall state the agreed conditions.

(3) If the Regulation and Improvement Authority decides to adopt a proposal under Article 18, it shall serve notice in writing of its decision on any person on whom it was required to serve notice of the proposal.

(4) A notice under paragraph (3) shall—

- (a) explain the right of appeal conferred by Article 22;
- (b) in the case of a decision to adopt a proposal under Article 18(2), state the conditions subject to which the application is granted; and
- (c) in the case of a decision to adopt a proposal under Article 18(4)(b) or (c), state the condition as varied, the condition which is removed or (as the case may be) the additional condition imposed.

(5) Subject to paragraph (6), a decision of the Regulation and Improvement Authority to adopt a proposal under Article 18(2) or (4) shall not take effect—

- (a) if no appeal is brought, until the expiration of the period of 28 days referred to in Article 22(2); and
- (b) if an appeal is brought, until it is determined or abandoned.

(6) Where, in the case of a decision to adopt a proposal under Article 18(2), the applicant notifies the Regulation and Improvement Authority in writing before the expiration of the period mentioned in paragraph (5)(a) that he does not intend to appeal, the decision shall take effect when the notice is served.

## Urgent procedure for cancellation etc.

**21.**—(1) If—

- (a) the Regulation and Improvement Authority applies to a justice of the peace for an order—
  - (i) cancelling the registration of a person in respect of an establishment or agency;
  - (ii) varying or removing any condition for the time being in force by virtue of this Part; or
  - (iii) imposing an additional condition; and
- (b) it appears to the justice that, unless the order is made, there will be a serious risk to a person's life, health or well-being,

the justice may make the order, and the cancellation, variation, removal or imposition shall have effect from the time when the order is made.

(2) An application under paragraph (1) may, if the justice thinks fit, be made without notice.

(3) As soon as practicable after the making of an application under this Article, the Regulation and Improvement Authority shall notify the Department and the appropriate authority of the making of the application.

(4) An order under paragraph (1) shall be in writing.

(5) Where such an order is made, the Regulation and Improvement Authority shall, as soon as practicable after the making of the order, serve on the person registered in respect of the establishment or agency—

- (a) a copy of the order; and
- (b) notice of the right of appeal conferred by Article 22.

### **Appeals to the Care Tribunal**

**22.**—(1) An appeal against—

- (a) a decision of the Regulation and Improvement Authority under this Part; or
- (b) an order made by a justice of the peace under Article 21,

shall lie to the Care Tribunal.

(2) No appeal against a decision or order may be brought by a person more than 28 days after service on him of notice of the decision or order.

(3) On an appeal against a decision of the Regulation and Improvement Authority the Tribunal may confirm the decision or direct that it shall not have effect.

(4) On an appeal against an order made by a justice of the peace the Tribunal may confirm the order or direct that it shall cease to have effect.

(5) The Tribunal shall also have power on an appeal against a decision or order—

- (a) to vary any condition for the time being in force in respect of the establishment or agency to which the appeal relates;
- (b) to direct that any such condition shall cease to have effect; or
- (c) to direct that any such condition as it thinks fit shall have effect in respect of the establishment or agency.

### *Regulations*

#### **Regulations relating to establishments and agencies**

**23.**—(1) Regulations may impose in relation to establishments and agencies any requirements which the Department thinks fit for the purposes of this Part and may in particular make any provision such as is mentioned in paragraph (2) or (7).

(2) Regulations may—

- (a) make provision as to the persons who are fit to carry on or manage an establishment or agency;
- (b) make provision as to the persons who are fit to work at an establishment or for the purposes of an agency;
- (c) make provision as to the fitness of premises to be used as an establishment or for the purposes of an agency;
- (d) make provision for securing the welfare of persons accommodated in an establishment or provided with services by an establishment, an independent medical agency or a domiciliary care agency;
- (e) make provision for securing the welfare of children placed, under Article 27(2)(a) of the Children Order, by a fostering agency;
- (f) make provision as to the management and control of the operations of an establishment or agency;
- (g) make provision as to the numbers of persons, or persons of any particular type, working at an establishment or for the purposes of an agency;
- (h) make provision as to the management and training of such persons;



- (i) impose requirements as to the financial position of an establishment or agency;
  - (j) make provision requiring the person carrying on an establishment or agency to appoint a manager in prescribed circumstances.
- (3) Regulations under paragraph (2)(a) may, in particular, make provision for prohibiting persons from managing an establishment or agency unless they are registered in, or in a particular part of, any register specified in the regulations for the purposes of this paragraph .
- (4) Regulations under paragraph (2)(b) may, in particular, make provision for prohibiting persons from working in such positions as may be prescribed at an establishment, or for the purposes of an agency, unless they are registered in, or in a particular part of, any register specified in the regulations for the purposes of this subsection.
- (5) Regulations under sub-paragraph (d) of paragraph (2) may, in particular, make provision—
- (a) as to the promotion and protection of the health of persons such as are mentioned in that sub-paragraph;
  - (b) as to the control and restraint of adults accommodated in, or provided with services by, an establishment;
  - (c) as to the control, restraint and discipline of children accommodated in, or provided with services by, an establishment.
- (6) Regulations under sub-paragraph (e) of paragraph (2) may, in particular, make provision—
- (a) as to the promotion and protection of the health of children such as are mentioned in that sub-paragraph;
  - (b) as to the control, restraint and discipline of such children.
- (7) Regulations may make provision as to the conduct of establishments and agencies, and such regulations may in particular—
- (a) make provision as to the facilities and services to be provided in establishments and by agencies;
  - (b) make provision as to the keeping of accounts;
  - (c) make provision as to the keeping of documents and records;
  - (d) make provision as to the notification of incidents occurring in establishments or in premises used for the purposes of agencies;
  - (e) make provision as to the giving of notice by the person carrying on an establishment or agency of periods during which he or (if he does not manage it himself) the manager proposes to be absent from the establishment or agency, and specify the information to be supplied in such a notice;
  - (f) provide for the making of adequate arrangements for the running of an establishment or agency during a period when the manager is absent from it;
  - (g) make provision as to the giving of notice by a person registered in respect of an establishment or agency of any intended change in the identity of the manager or the person carrying it on;
  - (h) make provision as to the giving of notice by a person registered in respect of an establishment or agency which is carried on by a body corporate of changes in the ownership of the body or the identity of its officers;
  - (i) make provision requiring the payment of a fee of such amount as may be prescribed in respect of any notification required to be made by virtue of sub-paragraph (h);
  - (j) make provision requiring arrangements to be made by the person who carries on, or manages, an establishment or agency for dealing with complaints made by or on behalf

of those seeking, or receiving, any of the services provided in the establishment or by the agency and requiring that person to take steps for publicising the arrangements;

(k) make provision requiring arrangements to be made by the person who carries on, or manages, an independent hospital, independent clinic or independent medical agency for securing that any medical or psychiatric treatment, or listed services, provided in or for the purposes of the establishment or (as the case may be) for the purposes of the agency are of appropriate quality and meet appropriate standards;

(l) make provision requiring arrangements to be made by the person who carries on, or manages, a residential care home or nursing home for securing that any nursing provided by the home is of appropriate quality and meets appropriate standards.

(8) Before making regulations under this Article, except regulations which amend other regulations made under this Article and do not, in the opinion of the Department, effect any substantial change in the provision made by those regulations, the Department shall consult any person it considers appropriate.

(9) References in this Article to agencies do not include references to voluntary adoption agencies.

(10) In paragraph (7)(k), “listed services” has the meaning given in Article 2(7).

### *Offences*

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

**24.** If a person registered in respect of an establishment or agency fails, without reasonable excuse, to comply with any condition for the time being in force by virtue of this Part in respect of the establishment or agency, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **Contravention of regulations**

**25.—**(1) Regulations under this Part may provide that a contravention of any specified provision of the regulations shall be an offence.

(2) A person guilty of an offence under the regulations shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### **False descriptions of establishments and agencies**

**26.—**(1) A person who, with intent to deceive any person—

(a) applies any name to premises; or

(b) in any way describes such premises or holds such premises out,

so as to indicate, or reasonably be understood to indicate, that the premises are an establishment, or an agency, of a particular description shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale unless registration has been effected under this Part in respect of the premises as an establishment or agency of that description.

(2) References to premises in paragraph (1) shall be taken to include references to an undertaking or organisation.

(3) No person shall, with intent to deceive any person, in any way describe or hold out an establishment or agency as able to provide any service or do any thing the provision or doing of which would contravene a condition in force by virtue of this Part in respect of the establishment or agency.

(4) A person who contravenes paragraph (3) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **False statements in applications**

27.—(1) Any person who, in an application for registration under this Part or for the variation of any condition in force in relation to his registration, knowingly makes a statement which is false or misleading in a material respect shall be guilty of an offence.

(2) A person guilty of an offence under this Article shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **Failure to display certificate of registration**

28.—(1) A certificate of registration issued under this Part in respect of any establishment or agency shall be kept affixed in a conspicuous place in the establishment or at the agency.

(2) If default is made in complying with paragraph (1), any person registered in respect of the establishment or agency shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### **Proceedings for offences**

29.—(1) Proceedings in respect of an offence under this Part or regulations made under it shall not, without the consent of the Director of Public Prosecutions for Northern Ireland, be taken by any person other than the Regulation and Improvement Authority.

(2) Proceedings for an offence under this Part or regulations made under it may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecution to warrant the proceedings came to its knowledge; but no such proceedings shall be brought by virtue of this paragraph more than three years after the commission of the offence.

(3) Until the commencement of section 41(2) of the Justice (Northern Ireland) Act 2002 (c. 26) the reference in paragraph (1) to the Director of Public Prosecutions for Northern Ireland shall be construed as a reference to the Attorney General for Northern Ireland.

## *Supplementary*

### **Annual returns**

30.—(1) Regulations may require the person carrying on an establishment or agency to make an annual return to the Regulation and Improvement Authority.

(2) Provision may be made by the regulations as to the contents of the return and the period in respect of which and date by which it is to be made.

### **Liquidators etc.**

31.—(1) Regulations may—

- (a) require any person to whom this Article applies to give notice of his appointment to the Regulation and Improvement Authority;
- (b) require any person to whom this Article applies to appoint a person to manage the establishment or agency in question.

(2) This Article 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; or
  - (c) the trustee in bankruptcy of a relevant individual.
- (3) In this Article—
- “company” includes a partnership;
  - “relevant company” means a company which is registered under this Part in respect of an establishment or agency; and
  - “relevant individual” means an individual who is registered under this Part in respect of an establishment or agency.

### **Death of registered person**

- 32.—(1) Regulations may—
- (a) provide for the provisions of this Part to apply with prescribed modifications in cases where a person who was the only person registered under this Part in respect of an establishment or agency has died;
  - (b) require the personal representatives of a deceased person who was registered in respect of an establishment or agency to notify the Regulation and Improvement Authority of his death.
- (2) Regulations under paragraph (1)(a) may in particular—
- (a) provide for the establishment or agency to be carried on for a prescribed period by a person who is not registered in respect of it; and
  - (b) include provision for the prescribed period to be extended by such further period as the Regulation and Improvement Authority may allow.

### **Provision of copies of register**

- 33.—(1) Subject to paragraph (3), the Regulation and Improvement Authority shall 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) Subject to paragraphs (3) and (4), any person who asks the Regulation and Improvement Authority for a copy of, or of an extract from, any register kept for the purposes of this Part shall be entitled to have one.
- (3) Regulations may provide that paragraphs (1) and (2) shall not apply—
- (a) in such circumstances as may be prescribed; or
  - (b) to such parts of a register as may be prescribed.
- (4) A fee determined by the Regulation and Improvement Authority shall be payable for the copy except—
- (a) in prescribed circumstances;
  - (b) in any other case where the Regulation and Improvement Authority considers it appropriate to provide the copy free of charge.