

EXPLANATORY MEMORANDUM TO

The Children's Homes (Amendment) Regulations (Northern Ireland) 2012

S.R. 2012 No. 182

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Health, Social Services and Public Safety to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Article 23(2)(c), (d) and (f), and (7)(a), (c), (d) and (j) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (2003 No. 431 (N.I. 9)) and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Children's Homes (Northern Ireland) Regulations 2005 (the Principal Regulations), made under the Health and Personal Social Services (Quality Improvement and Regulation) (Northern Ireland) Order 2003, set out the arrangements governing the establishment, management and conduct of children's homes. The Principal Regulations cover a significant range of matters designed to promote and safeguard the welfare of children placed in residential care.
- 2.2. The purpose of the amendments is to change the definition of "placing authority" to provide that the placing authority is the authority which has made the arrangements for the placement of the child. The references to a "looked after child" are deleted. This has the effect of removing the unintended distinction in the Principal Regulations between children who are accommodated by a Health and Social Care (HSC) Trust for periods of 24 hours or more (looked after children) and those who are accommodated for overnight periods of less than 24 hours. In the latter case, the placing authority is currently the child's parent, regardless of whether the Trust has been involved in making arrangements for the child to be accommodated. Under the revised provisions, the placing authority will be the HSC Trust, or a body exercising equivalent functions outside Northern Ireland, which has made the arrangements for providing the accommodation regardless of the length of the child's stay.
- 2.3. The revised definition will continue to provide that, in circumstances where arrangements for providing the accommodation have been made by a voluntary organisation, the voluntary organisation will continue to be the placing authority. In all other cases, the placing authority will be the parent of the child accommodated in the children's home.
- 2.4. The amendments also remove the requirement to provide to children in the home and their parents, at their request, a copy of the monitoring reports considering the matters set out in Schedule 6 to the Principal Regulations and reviews of quality of care reports. The intention is to ensure that the Principal Regulations do not compromise the right of children in

residential care, their families and staff to have private and sensitive information held in confidence.

3. Background

- 3.1. All children currently receiving residential care in statutory or voluntary children's homes in Northern Ireland have been placed by a HSC Trust, that is, the HSC Trust is responsible for arranging and funding the placement, supervising the arrangements and ensuring that the placement is suitable for the child and does not present a risk to other children in the home.
- 3.2. However, under the Principal Regulations, the Trust is the "placing authority" for 'looked after' children only. The Children (Northern Ireland) Order 1995 defines a 'looked after' child as a child who is 'in the care of the HSC Trust' or accommodated by the HSC Trust for 'a continuous period of more than 24 hours'. In the case of a child who spends less than 24 hours in the children's home and who is not in the care of the HSC Trust, under the current Regulations, the placing authority is therefore the child's parent. This situation can arise in the provision of short break/respite care for disabled children where a child may be admitted for several single night short break stays during the year, some or all of which may last for periods of less than 24 hours.
- 3.3. It is evident from the context of the references to the placing authority throughout the Regulations that no distinction was intended between disabled or other children placed by the Trust who receive less than "24 hour continuous accommodation" and those who receive care in the children's home for longer periods.
- 3.4. The definition of the 'placing authority' is being amended to remove the reference to a "looked after child" and to provide that the "placing authority" in relation to a child accommodated in a children's home in Northern Ireland means: a HSC Trust, or a body exercising equivalent functions outside Northern Ireland; if the arrangements for providing the accommodation are made by a voluntary organisation, that voluntary organisation; or in any other case, the child's parent.
- 3.5. Regulation 33(2) of the Principal Regulations requires that copies of reports compiled for the purposes of monitoring the matters set out in Schedule 6 to those Regulations and reviews regarding improvements to the quality of care in the children's home must be supplied to the Regulation and Quality Improvement Authority (RQIA) and the placing authority and, on request to children in the home, their parents and the Commissioner for Children and Young People for Northern Ireland (NICCY). Each Trust completes Schedule 6 monitoring reports on a monthly basis and the matters to be reported upon include sensitive personal information relating to the circumstances of all children and staff in the home.
- 3.6. Although monitoring reports are compiled in ways that avoid using the names of children and staff, the nature of much of the sensitive information is so unique and the relative numbers of children in each home are so small that children, families and staff may be easily identifiable by a

person who is familiar with the home, the children placed during the period covered by the reports and the staff on duty.

- 3.7. Monitoring reports are routinely provided by each children's home to RQIA as part of its statutory regulatory and inspection role. NICCY also has statutory powers of investigation and inspection and the home's monitoring information can be legitimately requested and provided as part of such processes. The supply of such reports to the placing authority where this is a Trust or a voluntary agency also presents no difficulty. Both have a range of statutory duties under the Principal Regulations and those under the Children (Northern Ireland) Order (1995), which include ensuring that the general environment of the home remains a suitable placement for the child.
- 3.8. Difficulties arise, however, in implementing the requirements of the regulations, both where the placing authority is the parent (and the home is not a private provision) and in respect of the requirement under the regulations to supply, on request, a copy of the monitoring reports to children and their parents. Access to such information relating to children and staff in the home by a child or his/her family has the potential to breach the right to confidentiality of other children, their families and staff in respect of their personal information. Moreover private individuals such as children and their parents are not subject to the duty of confidentiality which governs the relationships between public bodies or other agencies providing services and their service users.
- 3.9. Regulation 33(2) of the Principal Regulations also requires that reports of reviews conducted for the purpose of improving the quality of care provided in the children's home should also be made available on request to children in the home and their parents. Apart from the monthly monitoring reports which have been considered above, the most regular reviews dealing with potential improvement of care in children's homes are: the twice-yearly inspections of each home carried out by the RQIA, which can be requested by children in the home and their parents; and, in the case of HSC Trusts, the annual review of residential care provision provided to the HSC Board as part of the corporate parenting and delegated statutory functions reports. These reports are publicly available documents.
- 3.10. However, other ad hoc or planned reviews concerning the quality of care in the home may be required from time to time. Depending on the nature of the review, this may contain personal information relating to children and staff or sensitive considerations which it may not be appropriate to make publicly available prior to final decisions having been made or proposed ways forward agreed. The reports of such reviews, if not published or not available through other means could be sought by interested parties under Data Protection or, where appropriate, Freedom of Information provisions, subject to the rules of both pieces of legislation.
- 3.11. Where reviews concerning the quality of care in the home involve major considerations such as, for example, the need for an investigation, a change of purpose or closure of a children's home, the sharing of such

information and/or consultation with key stakeholders such as children and parents would naturally form part of the review process.

- 3.12. The view of the Department therefore is that adequate provision exists for parents and children in residential care, to have access to a wide range of information which effectively upholds their rights but does not breach the rights of others in the same manner as the current regulatory provisions regarding the sharing of monitoring information. Section 35 (1) of the Data Protection Act 1998 exempts personal data from the non-disclosure provisions of the Act, where the disclosure “is required by, or under any enactment by any rule of law”. In amending the Principal Regulations, the exemption currently contained in the Data Protection Act will no longer apply.

4. Consultation

- 4.1. The Department of Health, Social Services and Public Safety consulted on the draft Regulations between December 2010 and February 2011. In total, 11 responses were received and most respondents were content with the changes being proposed to the Principal Regulations. However, following comments received from RQIA, further enquiries revealed that some children's homes in Northern Ireland occasionally take children placed by bodies operating outside the jurisdiction who have statutory functions equivalent to those of the Trusts. The Regulations have therefore been further amended to include such bodies in the definition of "placing authority" to ensure that those bodies can access relevant reports produced by a registered person in whose home a child is accommodated.

5. Equality Impact

- 5.1. Consideration has been given to compliance with section 75 of the Northern Ireland Act 1998. There are no negative equality impacts on any of the section 75 groupings.

6. Regulatory Impact

- 6.1. There is no adverse impact on business, charities, social economy or voluntary bodies.

7. Financial Implications

- 7.1. None.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. These Regulations do not breach section 24 of the Northern Ireland Act 1998, as they are not incompatible with any of the Convention rights or community law, and they do not discriminate against a person on the grounds of religious belief or political opinion. These Regulations do not modify or amend any of the enactments stated in section 7 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. Between August and November 2010, the Department for Education consulted on proposals to make a number of amendments to the Regulations governing management of care homes in England (the Children's Homes Regulations 2001 (S.I. 2001/3967)). The consultation included a proposal to amend regulation 34 (equivalent to regulation 33 of the Principal Regulations) regarding the supply of copies of reports to children and parents. As consultees were mostly supportive of the amendments being proposed, the Department for Education proceeded to make the Children's Homes (Amendment) Regulations 2011 (S.I. 2011/583), which came into force on 1st April 2011.

11. Additional Information

- 11.1. Not applicable.