

2008 No. 346

HEALTH AND PERSONAL SOCIAL SERVICES

**The Establishments and Agencies (Fitness of Workers)
Regulations (Northern Ireland) 2008**

Made - - - - - *12th August 2008*

Coming into operation - *13th August 2008*

The Department of Health, Social Services and Public Safety makes the following Regulations, in exercise of the powers conferred on it by Articles 23(1), (2)(b), (f) and (h), (7)(c) and 48(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(a).

In accordance with Article 23(8) of that Order it has consulted with such persons as it considers appropriate.

Citation and Commencement

1. These Regulations may be cited as the Establishments and Agencies (Fitness of Workers) Regulations (Northern Ireland) 2008 and shall come into operation on 13th August 2008.

Amendment of the Nursing Homes Regulations (Northern Ireland) 2005

2.—(1) The Nursing Homes Regulations (Northern Ireland) 2005(b) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 21 (fitness of workers)—

(a) for paragraph (1)(b), substitute—

“(b) subject to paragraphs (5) and (7), he has obtained in respect of that person the information and documents specified in paragraphs 1 to 7 of Schedule 2;”;

(b) in paragraph (2) for “Paragraph (1)” substitute “This paragraph”;

(c) in paragraph (3) for “Paragraph (1)” substitute “This paragraph”;

(d) in paragraph (4) , at the beginning, insert “Subject to paragraph (4A),”;

(e) after paragraph (4), insert—

“(4A) In the circumstances to which regulation 12(4) of the Nursing Agencies Regulations (Northern Ireland) 2005(c) applies, with the result that a criminal record certificate pursuant to section 113A of the Police Act 1997 (“a criminal record certificate”), or an enhanced criminal record certificate pursuant to section 113B of that Act (“an enhanced criminal record certificate”) is not yet available in respect of a person to whom paragraph (2)

(a) S.I. 2003 No. 431 (N.I. 9)
(b) S.R. 2005 No. 160
(c) S.R. 2005 No. 175

applies, the registered person may allow that person to start work at a nursing home in a position to which paragraph (3) applies pending receipt of, and satisfying himself with regard to, that outstanding information.”;

(f) in paragraph (5)(d), at the beginning, insert “subject to paragraphs (4A) and (7),”;

(g) after paragraph (6) add—

“(7) Where the conditions set out in paragraph (8) are satisfied, the registered person may permit a person (“the new worker”) to start work at a nursing home notwithstanding that paragraphs (1)(b) and (5)(d) have not been complied with in so far as they relate to paragraph 2 of Schedule 2.

(8) The conditions in respect of a new worker are—

(a) that either—

(i) a criminal record certificate has been applied for; or

(ii) an enhanced criminal record certificate has been applied for; and

(b) the registered person has obtained confirmation in writing that the new worker is not included in the list mentioned in Article 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003(a).

(9) Where a registered person permits a new worker to start work pursuant to paragraph (7), the registered person shall—

(a) appoint a member of staff (“the appointed staff member”), who is appropriately qualified and experienced, to supervise the new worker pending receipt of, and satisfying himself with regard to, the outstanding information in relation to a criminal record certificate, or an enhanced criminal record certificate;

(b) ensure that the appointed staff member, or another appropriately qualified and experienced member of staff, is on duty at the same time as the new worker; and

(c) ensure that the new worker does not escort patients away from the nursing home unless accompanied by the appointed staff member, or another appropriately qualified and experienced member of staff.”.

(3) For paragraph 2 of Schedule 2, substitute—

“2. Either—

(a) where a certificate is required for a purpose which is prescribed by regulations under section 113B of the Police Act 1997, an enhanced criminal record certificate issued under that section; or

(b) in any other case, a criminal record certificate issued under section 113A of that Act,

and an application for either certificate shall be accompanied, where applicable, by an adults’ suitability statement under section 113D of that Act.”.

Amendment of the Residential Care Homes Regulations (Northern Ireland) 2005

3.—(1) The Residential Care Homes Regulations (Northern Ireland) 2005(b) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 21 (fitness of workers)—

(a) for paragraph (1)(b), substitute—

“(b) subject to paragraphs (5) and (7), he has obtained in respect of that person the information and documents specified in paragraphs 1 to 7 of Schedule 2;”;

(b) in paragraph (2) for “Paragraph (1)” substitute “This paragraph”;

(a) S.I. 2003 No. 417 (N.I. 4)

(b) S.R. 2005 No. 161

- (c) in paragraph (3) for “Paragraph (1)” substitute “This paragraph”;
- (d) in paragraph (4), at the beginning, insert “Subject to paragraph (4A),”;
- (e) after paragraph (4), insert—

“(4A) In the circumstances to which regulation 12(4) of the Nursing Agencies Regulations (Northern Ireland) 2005^(a) applies, with the result that a criminal record certificate pursuant to section 113A of the Police Act 1997 (“a criminal record certificate”), or an enhanced criminal record certificate pursuant to section 113B of that Act (“an enhanced criminal record certificate”), is not yet available in respect of a person to whom paragraph (2) applies, the registered person may allow that person to start work at a residential care home in a position to which paragraph (3) applies pending receipt of, and satisfying himself with regard to, that outstanding information.”;

- (f) in paragraph (5)(d), at the beginning insert “subject to paragraphs (4A) and (7),”;
- (g) after paragraph (6) add—

“(7) Where the conditions set out in paragraph (8) are satisfied, the registered person may permit a person (“the new worker”) to start work at a residential care home notwithstanding that paragraphs (1)(b) and (5)(d) have not been complied with, in so far as they relate to paragraph 2 of Schedule 2.

(8) The conditions in respect of a new worker are—

- (a) that either—
 - (i) a criminal record certificate has been applied for; or
 - (ii) an enhanced criminal record certificate has been applied for; and
- (b) the registered person has obtained confirmation in writing that the new worker is not included in the list mentioned in Article 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003^(b).

(9) Where a registered person permits a new worker to start work pursuant to paragraph (7), the registered person shall—

- (a) appoint a member of staff (“the appointed staff member”), who is appropriately qualified and experienced, to supervise the new worker pending receipt of, and satisfying himself with regard to, the outstanding information in relation to a criminal record certificate or an enhanced criminal record certificate;
- (b) ensure that the appointed staff member, or another appropriately qualified and experienced member of staff is on duty at the same time as the new worker; and
- (c) ensure that the new worker does not escort residents away from the residential care home unless accompanied by the appointed staff member, or another appropriately qualified and experienced member of staff.”.

(3) For paragraph 2 of Schedule 2, substitute—

“2. Either—

- (a) where a certificate is required for a purpose which is prescribed by regulations under section 113B of the Police Act 1997, an enhanced criminal record certificate issued under that section; or
- (b) in any other case, a criminal record certificate issued under section 113A of that Act,

and an application for either certificate shall be accompanied, where applicable, by an adults’ suitability statement under section 113D of that Act.”.

(a) S.R. 2005 No. 175
 (b) S.I. 2003 No. 417 (N.I. 4)

Amendment of the Nursing Agencies Regulations (Northern Ireland) 2005

4.—(1) The Nursing Agencies Regulations (Northern Ireland) 2005(a) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 12 (fitness of nurses supplied by an agency)—

- (a) in paragraph (1), at the beginning insert “Subject to paragraph (4),”;
- (b) after paragraph (3), add—

“(4) Where the conditions set out in paragraph (5) are satisfied, the registered person may supply a nurse to a service user notwithstanding that paragraph (1)(d) has not been complied with in so far as it relates to paragraph 13 of Schedule 3.

(5) The conditions in respect of the nurse are—

- (a) that either—
 - (i) a criminal record certificate has been applied for, pursuant to section 113A of the Police Act 1997 (“a criminal record certificate”), or
 - (ii) an enhanced criminal record certificate has been applied for, pursuant section 113B of that Act (“an enhanced criminal record certificate”); and
- (b) the registered person has obtained confirmation in writing that the nurse is not included in a list mentioned in Article 16 or 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003(b).

(6) Where paragraph (4) applies, and where the agency is acting as an employment business, the registered person shall—

- (a) pending receipt of the outstanding information in relation to a criminal record certificate, or an enhanced criminal record certificate, take steps, where appropriate, to inform the service user, or the service user’s representative, that a full criminal record certificate or a full enhanced criminal record certificate, as the case may be, has not yet been obtained in respect of the nurse;
- (b) where appropriate inform the service user, or the service user’s representative, when the outstanding information has been obtained; and
- (c) terminate the supply of the nurse to the service user where the registered person considers that the outstanding information, when obtained, is not satisfactory.”.

(3) In regulation 16 (provision of information to service users)—

(a) after paragraph (1) insert—

“(1A) Where an agency—

- (a) is acting as an employment agency; and
- (b) has supplied a nurse in the circumstances to which regulation 12(4) applies,

the registered person shall inform the service user, or the service user’s representative, that there is outstanding information in relation to either the criminal record certificate, or the enhanced criminal record certificate, and shall also inform the service user or the service user’s representative, when that information is obtained.”;

(b) for paragraph (2) substitute –

“(2) Where the service user is also the patient, the registered person shall ensure, where appropriate, that the information specified in paragraphs (1) and, where applicable (1A), is provided to the person acting on behalf of the patient.”

(4) For paragraph 2 of Schedule 2 substitute—

“2. Either—

(a) S.R. 2005 No. 175
(b) S.I. 2003 No. 417 (N.I. 4)

- (a) where a certificate is required for a purpose which is prescribed by regulations under section 113B of the Police Act 1997, an enhanced criminal record certificate issued under that section; or
- (b) in any other case, a criminal record certificate issued under section 113A of that Act,

and an application for either certificate shall be accompanied, where applicable, by a children's suitability statement under section 113C, or an adults' suitability statement under section 113D of that Act."

(5) For paragraph 13 of Schedule 3 substitute—

"13. Either—

- (a) where a certificate is required for a purpose which is prescribed by regulations under section 113B of the Police Act 1997, an enhanced criminal record certificate issued under that section; or
- (b) in any other case, a criminal record certificate issued under section 113A of that Act,

and an application for either certificate shall be accompanied, where applicable, by a children's suitability statement under section 113C, or an adults' suitability statement under section 113D of that Act."

Amendment of the Children's Homes Regulations (Northern Ireland) 2005

5.—(1) The Children's Homes Regulations (Northern Ireland) 2005(a) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 25 (fitness of workers)—

- (a) in paragraph (3)(f), at the beginning insert "subject to paragraphs (4A) and (5A),";
- (b) after paragraph (4) insert—

"(4A) In the circumstances to which regulation 12(4) of the Nursing Agencies Regulations (Northern Ireland) 2005(b) applies, with the result that a criminal record certificate pursuant to section 113A of the Police Act 1997 ("a criminal record certificate"), or an enhanced criminal record certificate pursuant to section 113B of that Act ("an enhanced criminal record certificate") is not yet available in respect of a person to whom paragraph (2) applies, the registered person may allow that person to start work at a children's home pending receipt of, and satisfying himself with regard to, that outstanding information.";

- (c) in paragraph (5)(b), at the beginning insert, "subject to paragraphs (4A) and (5A),";
- (d) after paragraph (5) insert—

"(5A) Where the conditions set out in paragraph (5B) are satisfied, the registered person may permit a person ("the new worker") to start work in a children's home notwithstanding that paragraphs (3)(f) and (5)(b) have not been complied with in so far as they relate to paragraph 2 of Schedule 2.

(5B) The conditions in respect of a new worker are—

- (a) that either—
 - (i) a criminal record certificate has been applied for; or
 - (ii) an enhanced criminal record certificate has been applied for; and

(a) S.R. 2005 No. 176
 (b) S.R. 2005 No. 175

- (b) the registered person has obtained confirmation in writing that the new worker is not included in a list mentioned in Article 16 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003^(a).

(5C) Where a registered person permits a new worker to start work pursuant to paragraph (5A), the registered person shall—

- (a) appoint a member of staff (“the appointed staff member”), who is appropriately qualified and experienced, to supervise the new worker pending receipt of, and satisfying himself with regard to, the outstanding information in relation to a criminal record certificate, or an enhanced criminal record certificate;
- (b) ensure that either the appointed staff member, or another appropriately qualified and experienced member of staff, is on duty at the same time as the new worker; and
- (c) ensure that the new worker does not escort a child away from the children’s home unless accompanied by the appointed staff member, or another appropriately qualified and experienced member of staff.”.

(3) For paragraph 2 of Schedule 2, substitute—

“2. Either—

- (a) where a certificate is required for a purpose which is prescribed by regulations under section 113B of the Police Act 1997, an enhanced criminal record certificate issued under that section; or
- (b) in any other case, a criminal record certificate issued under 113A of that Act,

and an application for either certificate shall be accompanied, where applicable, by a children’s suitability statement under section 113C of that Act.”.

Amendment of the Day Care Setting Regulations (Northern Ireland) 2007

6.—(1) The Day Care Setting Regulations (Northern Ireland) 2007^(b) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 21 (fitness of workers)—

- (a) for paragraph (1)(b), substitute—

“(b) subject to paragraphs (3) and (5), he has obtained in respect of that person the information and documents specified in paragraphs 1 to 7 of Schedule 2;”;

- (b) in paragraph (3)(d), at the beginning insert “subject to paragraph (5),”;

- (c) after paragraph (4) add—

“(5) Where the conditions set out in paragraph (6) are satisfied, the registered person may permit a person (“the new worker”) to start work in a day care setting notwithstanding that paragraphs (1)(b) and (3)(d) have not been complied with in so far as they relate to paragraph 2 of Schedule 2.

(6) The conditions in respect of a new worker are—

- (a) that either—

- (i) a criminal record certificate has been applied for pursuant to section 113A of the Police Act 1997 (“a criminal record certificate”); or
- (ii) an enhanced criminal record certificate has been applied for pursuant to section 113B of that Act (“an enhanced criminal record certificate”); and

- (b) the registered person has obtained confirmation in writing that the new worker is not included in the list mentioned in Article 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003.

^(a) S.I. 2003 No. 417 (N.I. 4)
^(b) S.R. 2007 No. 234

(7) Where a registered person permits a new worker to start work pursuant to paragraph (5), the registered person shall—

- (a) appoint a member of staff (“the appointed staff member”), who is appropriately qualified and experienced to supervise the new worker pending receipt of, and satisfying himself with regard to, the outstanding information in relation to a criminal record certificate, or an enhanced criminal record certificate;
- (b) ensure that the appointed staff member, or another appropriately qualified and experienced member of staff, is on duty at the same time as the new worker; and
- (c) ensure that the new worker does not escort service users away from the day care setting unless accompanied by the appointed staff member, or another appropriately qualified and experienced member of staff.”.

(3) In paragraph 2 of Schedule 2, at the end insert “and an application for either certificate shall be accompanied, where applicable, by an adults’ suitability statement under section 113D of that Act.”.

Amendment of the Domiciliary Care Agencies Regulations (Northern Ireland) 2007

7.—(1) The Domiciliary Care Agencies Regulations (Northern Ireland) 2007(a) are amended in accordance with paragraphs (2) and (3).

(2) For regulation 13 (fitness of domiciliary care worker supplied by an agency), substitute—

“Fitness of domiciliary care workers supplied by an agency

13.—(1) The registered person shall ensure that no domiciliary care worker is supplied by the agency unless—

- (a) he is of integrity and good character;
- (b) he has the experience and skills necessary for the work that he is to perform;
- (c) he is physically and mentally fit for the purposes of the work which he is to perform; and
- (d) subject to paragraph (2), full and satisfactory information is available in relation to him, in respect of each of the matters specified in Schedule 3.

(2) Where the conditions set out in paragraph (3) are satisfied, the registered person may supply a domiciliary care worker (“the new worker”) to a service user notwithstanding that paragraph (1)(d) has not been complied with in so far as it relates to paragraph 12 of Schedule 3.

(3) The conditions in respect of the new worker are—

- (a) that either—
 - (i) a criminal record certificate has been applied for pursuant to section 113A of the Police Act 1997 (“a criminal record certificate”); or
 - (ii) an enhanced criminal record certificate has been applied for pursuant to section 113B of that Act (“an enhanced criminal record certificate”); and
- (b) the registered person has obtained confirmation in writing that the new worker is not included in the list mentioned in Article 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003(b).

(4) Where the registered person supplies a new worker pursuant to paragraph (2), and where the new worker is being supplied by the agency acting otherwise than as an employment agency, the registered person shall, pending receipt of the outstanding information in relation to a criminal record certificate, or an enhanced criminal record certificate (“the outstanding information”)—

(a) S.R. 2007 No. 235

(b) S.I. 2003 No. 417 (N.I. 4)

- (a) appoint a member of staff (“the staff member”), who is appropriately qualified and experienced, to supervise the new worker;
- (b) ensure that the staff member, or another suitably qualified and experienced staff member, is on duty at the same time as the new worker, and is available to be contacted;
- (c) contact the service user, or any representative of the service user, at weekly intervals in order to monitor the service user’s satisfaction with the care provided by the new worker, and any complaints that may arise;
- (d) inform the service user, or any representative of the service user, of the position in relation to the outstanding information, including when the outstanding information has been obtained; and
- (e) terminate the supply of the new worker to the service user where the registered person considers that the outstanding information, when obtained, is not satisfactory.”.

(3) In regulation 18 (provision of information to service users)—

(a) after paragraph (1), insert—

“(1A) Where an agency—

- (a) is acting as an employment agency; and
- (b) has supplied a domiciliary care worker in the circumstances to which regulation 13(2) applies,

the registered person shall inform the service user that there is outstanding information in relation to either the criminal record certificate, or the enhanced criminal record certificate, and shall also inform the service user when that outstanding information is obtained.”;

(b) for paragraph (2) substitute—

“(2) The registered person shall ensure, where appropriate, that the information specified in paragraphs (1) and, where applicable (1A), is provided to the service user’s relatives or carers.”

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 12th August 2008.



Paul Martin

A senior officer of the
Department of Health, Social Services and Public Safety

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations which apply to establishments and agencies in Northern Ireland, amend certain Regulations made under the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 in respect of nursing homes, residential care homes, nursing agencies, children's homes, day care settings and domiciliary care agencies.

Regulation 2 of these Regulations amends the Nursing Homes Regulations (Northern Ireland) 2005 to enable a registered nursing home provider to allow a person to start work in a nursing home, pending receipt of a criminal record certificate pursuant to section 113A of the Police Act 1997 ("a criminal record certificate"), or an enhanced criminal record certificate pursuant to section 113B of that Act ("an enhanced criminal record certificate"), provided that certain conditions are met. The conditions include that either a criminal record certificate, or if applicable, that an enhanced criminal record certificate has been applied for, and the registered person has obtained confirmation in writing that the new worker is not included in the list mentioned in Article 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003. In those circumstances the new worker must be subject to specified conditions with regard to supervision. Other amendments are also made to paragraph 2 of Schedule 2 with regard to references to sections 113A and 113B of the Police Act 1997.

Regulation 3 of these Regulations makes similar amendments to the Residential Care Homes Regulations (Northern Ireland) 2005.

Regulation 4 of these Regulations amends the Nursing Agencies Regulations (Northern Ireland) 2005 to enable a registered provider of a nursing agency to supply a nurse to a service user, pending receipt of a criminal record certificate, or an enhanced criminal record certificate, provided that certain conditions are met. The conditions include that either a criminal record certificate, or if applicable, an enhanced criminal record certificate has been applied for, and the registered person has obtained confirmation in writing that the nurse is not included in a list mentioned in Articles 16 or 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003. In those circumstances, or where an agency is acting as an employment business, the registered person shall inform the service user, or the service user's representative that there is outstanding information in relation to the criminal record certificate, or if applicable, the enhanced criminal record certificate. Other amendments are also made to paragraph 2 of Schedule 2 and paragraph 13 of Schedule 3 with regard to references to sections 113A and 113B of the Police Act 1997.

Regulation 5 of these Regulations amends the Children's Homes Regulations (Northern Ireland) 2005 to enable a registered children's home provider to allow a person to start work at a children's home, pending receipt of a criminal record certificate, or an enhanced criminal record certificate, provided that certain conditions are met. The conditions include that either a criminal record certificate, or if applicable, that an enhanced criminal record certificate, has been applied for, and that the registered person has obtained confirmation in writing that the new worker is not included in a list mentioned in Article 16 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003. In those circumstances the new worker must be subject to specified conditions with regard to supervision. Other amendments are also made to paragraph 2 of Schedule 2 with regard to references to sections 113A and 113B of the Police Act 1997.

Regulation 6 of these Regulations amends the Day Care Setting Regulations (Northern Ireland) 2007 to enable a registered day care setting provider to allow a person to start work at a day care setting, pending receipt of a criminal record certificate, or an enhanced criminal record certificate, provided that certain conditions are met. The conditions include that either a criminal record certificate, or if applicable, that an enhanced criminal record certificate, has been applied for, and that the registered person has obtained confirmation in writing that the new worker is not included in the list mentioned in Article 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003. In those circumstances the new worker must be subject to specified conditions with regard to supervision.

Regulation 7 of these Regulations amends the Domiciliary Care Workers Regulations (Northern Ireland) 2007 to enable an agency provider to supply a domiciliary care worker to a service user, pending receipt of a criminal record certificate, or an enhanced criminal record certificate, provided that certain conditions are met. The conditions include that either a criminal record certificate, or if applicable, that an enhanced criminal record certificate, has been applied for, and that the registered person has obtained confirmation in writing that the new worker is not included in the list mentioned in Article 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003. In those circumstances, or where a domiciliary care agency is acting as an employment business, the registered person shall inform the service user that there is outstanding information in relation to the criminal record certificate, or if applicable, the enhanced criminal record certificate.

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