

2020 No. 60

HEALTH AND PERSONAL SOCIAL SERVICES

**The Establishment and Agencies (Fitness of Workers)
Regulations (Northern Ireland) 2020**

Made - - - - - *2nd April 2020*

Coming into operation - - - - - *2nd April 2020*

The Department of Health makes the following Regulations, in exercise of the powers conferred on it by Articles 23(1), 2(a), (b), (f) and (h), (4), (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 Establishment and Agencies (Fitness of Workers) Regulations (Northern Ireland) 2020 and shall come into operation on the day on which they are made.

Amendment of the Nursing Homes Regulations (Northern Ireland) 2005

2.—(1) Regulation 21 (*Fitness of workers*) of the Nursing Homes Regulations (Northern Ireland) 2005(b) is amended as follows.

(2) In paragraph (1), after sub-paragraph (c) insert—

“but this is subject to paragraphs (7) to (10).”.

(3) In paragraph (4), after sub-paragraph (c) insert—

“but this is subject to paragraphs (7) to (10).”.

(4) After paragraph (6) insert—

“(7) Where the conditions set out in paragraph (8) are satisfied and the registered person complies with the requirements set out in paragraph (9), the registered person may—

(a) employ a person (“P”) to work at a nursing home, or

(b) allow a person to whom paragraph (2) applies (“P”) to work at a nursing home in a position to which paragraph (3) applies,

(a) S.I. 2003 No. 431 (N.I. 9)

(b) S.R. 2005 No. 160; Regulation 21 has been amended by S.R. 2008 No. 346, S.R. 2009 No. 145, S.R. 2013 No. 225 and S.R. 2017 No. 207.

even though the information and documents mentioned in paragraphs 2 to 7 of Schedule 2 other than details of registration with an appropriate professional regulatory body are not available and have not been obtained.

(8) The conditions are that the registered person, in a case to which paragraph (7)(a) applies, or the employer, in a case to which paragraph (7)(b) applies—

- (a) has applied for whichever of the following certificates would be required to be obtained in respect of P under paragraph 2 of Schedule 2 in the absence of paragraph (7)—
 - (i) a criminal record certificate pursuant to section 113A of the Police Act 1997(a), or
 - (ii) an enhanced criminal record certificate pursuant to section 113B of that Act;
- (b) has requested the information and documents mentioned in paragraphs 3 to 7 of Schedule 2; and
- (c) where the work P is to perform is regulated activity relating to vulnerable adults, has obtained confirmation in writing from the Department of Justice that P is not included in the adults' barred list maintained under Article 6(1)(b) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(b).

(9) The requirements are that the registered person must—

- (a) ensure that, so far as is reasonably practicable, an appropriately qualified and experienced member of staff supervises P when P is on duty until the information and documents mentioned in paragraphs 2 to 7 of Schedule 2 have been obtained; and
- (b) ensure that P does not escort patients away from the nursing home unless accompanied by an appropriately qualified and experienced member of staff.

(10) In paragraph (8) the reference to regulated activity relating to vulnerable adults has the same meaning as in the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.”

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

3.—(1) Regulation 21 (*Fitness of workers*) of the Residential Care Home Regulations (Northern Ireland) 2005(c) is amended as follows.

In paragraph (1), after sub-paragraph (c) insert—

“but this is subject to paragraphs (7) to (10).”.

(2) In paragraph (4), after sub-paragraph (c) insert—

“but this is subject to paragraphs (7) to (10).”.

(3) After paragraph (6) insert—

“(7) Where the conditions set out in paragraph (8) are satisfied and the registered person complies with the requirements set out in paragraph (9), the registered person may—

- (a) employ a person (“P”) to work at a residential care home, or
- (b) allow a person to whom paragraph (2) applies (“P”) to work at a residential care home in a position to which paragraph (3) applies,

(a) 1997 c.50; relevant amendments have been made by 1996 c.26, 1998 c.40, 2001 c.11 (N.I.), 2001 c.15, 2005 c.15, 2006 c.47, 2008 c. 18, S.I. 2008/1216, 2009 c. 25, 2009 c.26, S.R. 2009 No. 39, 2012 c. 9, 2013 c. 22, S.I. 2014/100, S.I. 2014/207, 2015 c. 9 and S.I. 2016/765.

(b) S.I. 2007/1351; Article 6 amended by S.I. 2012/3006.

(c) S.R. 2005 No. 161; Regulation 21 has been amended by S.R. 2008 No. 346, S.R. 2009 No. 145, S.R. 2013 No. 225 and S.R. 2017 No. 207.

even though the information and documents mentioned in paragraphs 2 to 7 of Schedule 2 other than details of registration with an appropriate professional regulatory body are not available and have not been obtained.

(8) The conditions are that the registered person in a case to which paragraph (7)(a) applies, or the employer, in a case to which paragraph (7)(b) applies—

- (a) has applied for whichever of the following certificates would be required to be obtained in respect of P under paragraph 2 of Schedule 2 in the absence of paragraph (7)—
 - (i) a criminal record certificate pursuant to section 113A of the Police Act 1997, or
 - (ii) an enhanced criminal record certificate pursuant to section 113B of that Act;
- (b) has requested the information and documents mentioned in paragraphs 3 to 7 of Schedule 2; and
- (c) where the work P is to perform is regulated activity relating to vulnerable adults, has obtained confirmation in writing from the Department of Justice that P is not included in the adults' barred list maintained under Article 6(1)(b) of the Safeguarding Vulnerable Groups (Northern Ireland) order 2007.

(9) The requirements are that the registered person must—

- (a) ensure that, so far as is reasonably practicable, an appropriately qualified and experienced member of staff supervises P when P is on duty until the information and documents mentioned in paragraphs 2 to 7 of Schedule 2 have been obtained; and
- (b) ensure that P does not escort residents away from the residential care home unless accompanied by the supervisory staff member of another appropriately qualified and experienced member of staff.

(10) In paragraph (8) the reference to regulated activity relating to vulnerable adults has the same meaning as in the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.”.

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) and (3).

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

(a) in paragraph (1), after sub-paragraph (d) insert—

“but this is subject to paragraphs (4) to (6).”; and

(b) after paragraph (3) insert—

“(4) Where the conditions set out in paragraph (5) are satisfied, the agency may supply a nurse (“P”) to a service user even though the information and documents mentioned in paragraphs 2, 4 to 9 and 11 to 13 of Schedule 3 are not available.

(5) The conditions are that the registered person must ensure—

- (a) whichever of the following certificates would be required to be obtained in respect of P under paragraph 13 of Schedule 3 in the absence of paragraph (4) has been applied for—
 - (i) a criminal record certificate pursuant to section 113A of the Police Act 1997, or
 - (ii) an enhanced criminal record certificate pursuant to section 113B of that Act;

(a) S.R. 2005 No. 175; Regulations 12 and 16 have been amended by Establishments and Agencies (Fitness of Workers) (Amendment No. 2) Regulations (Northern Ireland) (S.R. 2009 No. 145).

- (b) the information and documents mentioned in paragraphs 2, 4 to 9, 11 and 12 of Schedule 3 have been requested; and
 - (c) confirmation has been obtained in writing from the Department of Justice that P is included in neither the adults' barred list nor the children's barred list maintained under Article 6(1) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.
- (6) Where an agency supplies a nurse to a service user in the circumstances mentioned in paragraph (4), and the agency is acting as an employment business^(a), the registered person must—
- (a) inform the service user, or the service user's representative, of the information and documents mentioned in paragraphs 2, 4 to 9 and 11 to 13 of Schedule 3 that are not yet available; and
 - (b) inform the service user, or the service user's representative, when the information and document are available; and
 - (c) terminate the supply of P to the service user where the registered person considers that the information or documents, when available, are not satisfactory.”.
- (3) Regulation 16 (*Provision of information to service users*) is amended as follows -
- (a) after paragraph (1) insert—
 - “(1A) Where the agency supplies a nurse to a service user in the circumstances mentioned in regulation 12(4), and the agency is acting as an employment agency, the registered person must—
 - (a) inform the service user, or the service user's representative, of the information and documents mentioned in paragraphs 2, 4 to 9 and 11 to 13 of Schedule 3 that are not yet available;
 - (b) inform the service user, or the service user's representative, when the information and documents are available.”.
 - (b) for paragraph (2) substitute—
 - “(2) Where the service user is also the patient, the registered person must ensure that the information specified in paragraph (1) and, where applicable, paragraph (1A) is provided to the person acting on behalf of the patient.”.

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

- 5.—**(1) The Children's Homes Regulations (Northern Ireland) 2005^(b) are amended as follows.
- (2) In regulation 25 (*Fitness of workers*)—
- (a) in paragraph (1), after sub-paragraph (b) insert—
 - “but this is subject to paragraphs (7) to (9).”.
 - (b) in paragraph (2), after “employed by a person” insert “(“the employer”)”.
 - (c) in paragraph (4)(b), after “him” insert “but this is subject to paragraphs (7) to (9)”.
 - (d) after paragraph (6) insert—
 - “(7) Where the conditions set out in paragraph (8) are satisfied and the registered person complies with the requirements set out in paragraph (9), the registered person may—
 - (a) employ a person (“P”) to work at a children's home,
 - (b) allow a person to whom paragraph (2) applies (“P”) to work at a children's home,
 even though the information and documents mentioned in paragraphs 2 to 6 of Schedule 2 are not available.

(a) S.I 1981/839 (N.I. 20); “Employment business” and “employment agency” have the meanings assigned by Article 11 of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981.

(b) S.R. 2005 No. 176; Regulation 25 has been amended by S.R. 2009 No. 145, S.R. 2013 No. 225 and S.R. 2017 No. 207.

(8) The conditions are that the registered person, in a case to which paragraph (7)(a) applies, or the employer, in a case to which paragraph (7)(b) applies—

- (a) has applied for whichever of the following certificates would be required to be obtained in respect of P under paragraph 2 of Schedule 2 in the absence of paragraph (7)—
 - (i) a criminal record certificate pursuant to section 113A of the Police Act 1997, or
 - (ii) an enhanced criminal record certificate pursuant to section 113B of that Act;
- (b) has requested the information and documents mentioned in paragraphs 3 to 6 of Schedule 2; and
- (c) has obtained confirmation in writing from the Department of Justice that P is not included in the children's barred list maintained under Article 6(1)(a) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

(9) The requirements are that the registered person must—

- (a) ensure that, so far as is reasonably practicable, an appropriately qualified and experienced member of staff supervises P when P is on duty until the information and documents mentioned in paragraphs 2 to 6 of Schedule 2 have been obtained; and
- (b) ensure that P does not escort a child away from the children's home unless accompanied by the supervisory staff member or another appropriately qualified and experienced member of staff.”.

(3) In paragraph (7) of Schedule 2 (*Information and documents required in respect of persons seeking to carry on, manage or work at a children's home*), after the word “confirmation”, insert “, if applicable,”.

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

6.—(1) Regulation 21 (*Fitness of workers*) of the Day-Care Setting Regulations (Northern Ireland) 2007(a) is amended as follows.

(2) In paragraph (1), after sub-paragraph (c) insert—

“but this is subject to paragraphs (5) to (8).”.

(3) In paragraph (2), after sub-paragraph (c) insert—

“but this is subject to paragraphs (5) to (8).”.

(4) After paragraph (4) insert—

“(5) Where the conditions set out in paragraph (6) are satisfied and the registered person complies with the requirement set out in paragraph (7), the registered person may—

- (a) employ a person (“P”) to work in a day care setting, or
- (b) allow a person (“P”), who is employed by a person, referred to in paragraph (2) as the employer, to work in a position where P may have regular contact with service users in the day-care setting,

even though the information and documents mentioned in paragraphs 2 to 7 of Schedule 2 other than details of registration with an appropriate professional regulatory body are not available and have not been obtained.

(6) The conditions are that the registered person, in a case to which paragraph (5)(a) applies, or the employer, in a case to which paragraph (5)(b) applies—

- (a) has applied for whichever of the following certificates would be required to be obtained in respect of P under paragraph 2 of Schedule 2 in the absence of paragraph (5)—

(a) S.R. 2007 No. 234; Regulation 21 has been amended by S.R. 2009 No. 145 and S.R. 2017 No. 207.

- (i) a criminal record certificate pursuant to section 113A of the Police Act 1997,
or
 - (ii) an enhanced criminal record certificate pursuant to section 113B of that Act;
 - (b) has requested the information and documents mentioned in paragraphs 3 to 7 of Schedule 2; and
 - (c) where the work P is to perform is regulated activity relating to vulnerable adults, has obtained confirmation in writing from the Department of Justice that P is not included in the adults' barred list maintained under Article 6(1)(b) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.
- (7) The requirements are that the registered person must—
- (a) ensure that, so far as is reasonably practicable, an appropriately qualified and experienced member of staff supervises P when P is on duty until the information and documents mentioned in paragraphs 2 to 7 of Schedule 2 have been obtained; and
 - (b) ensure that P does not escort service users away from the day care setting unless accompanied by the supervisory staff member of another appropriately qualified and experienced member of staff.
- (8) In paragraph (6) the reference to regulated activity relating to vulnerable adults has the same meaning as in the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.”.

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

7.—(1) The Domiciliary Care Agencies Regulations (Northern Ireland) 2007(a) are amended as follows.

(2) In regulation 13 (*Fitness of domiciliary care workers supplied by an agency*)—

- (a) the existing words become paragraph (1) and in that paragraph, after sub-paragraph (d) insert—

“but this is subject to paragraphs (2) to (4).”; and

- (b) after paragraph (1) insert—

“(2) Where the conditions set out in paragraph (3) are satisfied, the agency may supply a domiciliary care worker (“P”) to a service user even though the information and documents mentioned in paragraphs 2 and 4 to 12 of Schedule 3 other than details of registration with an appropriate regulatory body are not available.

(3) The conditions are that the registered person must ensure that—

- (a) whichever of the following certificates would be required to be obtained in respect of P under paragraph 12 of Schedule 3 in the absence of paragraph (2) has been applied for—
 - (i) a criminal record certificate pursuant to section 113A of the Police Act 1997,
or
 - (ii) an enhanced criminal record certificate pursuant to section 113B of that Act;
- (b) the information and documents mentioned in paragraphs 2 and 4 to 11 of Schedule 3 have been requested; and
- (c) confirmation has been obtained in writing from the Department of Justice that P is not included in the adults' barred lists maintained under Article 6(1)(b) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

(a) S.R. 2007 No. 235; Regulations 13 and 18 have been amended by S.R. 2009 No. 145 and Regulation 13 has been amended by S.R. 2017 No. 207.

(4) Where the agency supplies a domiciliary care worker to a service user in the circumstances mentioned in paragraph (2), and the agency is acting otherwise than as an employment agency, the agency must—

- (a) ensure that, so far as is reasonably practicable, an appropriately qualified and experienced member of staff supervises P and is available to be contacted when P is on duty, until the information and documents mentioned in paragraphs 2 and 4 to 12 of Schedule 3 have been obtained; and
- (b) contact the service user, or the service user’s representative, at regular intervals and no less than once per month in order to monitor the service user’s satisfaction with the care provided by P, and any complaints that may arise;
- (c) inform the service user, or the service user’s representative, of the position in relation to the information and documents, including when they are available; and
- (d) terminate the supply of P to the service user where the registered person considers that the information or documents, when available, are not satisfactory.”.

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

(a) after paragraph (1) insert—

“(1A) Where the agency supplies a domiciliary care worker to a service user in the circumstances mentioned in regulation 13(2), and the agency is acting as an employment agency, the registered person must—

- (a) inform the service user of the information and documents mentioned in paragraphs 2 and 4 to 12 of Schedule 3 that are not yet available;
- (b) inform the service user when the information and documents are available.”; and

(b) for paragraph (2) substitute—

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

(4) In paragraph 8 of Schedule 2 (*Information and documents required in respect of registered providers and managers of an agency*), for the word “Details” substitute, “If applicable, details”.

Amendment of the Residential Family Centres Regulations (Northern Ireland) 2007

8.—(1) Regulation 18 (*Fitness of workers*) of the Residential Family Centres Regulations (Northern Ireland) 2007(a) is amended as follows.

(2) In paragraph (1), after sub-paragraph (c) insert—

“but this is subject to paragraphs (8) to (10).”.

(3) In paragraph (3)(c), after “satisfied” insert “(but this is subject to paragraphs (8) to (10)).”.

(4) After paragraph (8) insert—

“(9) Where the conditions set out in paragraph (9) are satisfied and the registered person complied with the requirements set out in paragraph (10), the registered person may—

- (a) employ a person (“P”) to work at a residential family centre,
- (b) allow a person to whom paragraph (2) applies (“P”) to work at a residential family centre.

even though the information and documents mentioned in paragraphs 2 to 7 of Schedule 2 are not available.

(10) The conditions are that the registered person, in a case to which paragraph (9)(a) applies, or the employer, in a case to which paragraph (9)(b) applies—

(a) S.R. 2007 No. 236, as amended by the Northern Ireland Social Care Council (Social Care Workers Prohibition) and Fitness of Workers (Amendment) Regulations (Northern Ireland) (S.R. 2017 No. 207).

- (a) has applied for whichever of the following certificates would be required to be obtained in respect of P under paragraph 2 of Schedule 2 in the absence of paragraph (9)—
 - (i) a criminal record certificate pursuant to section 113A of the Police Act 1997, or
 - (ii) an enhanced criminal record certificate pursuant to section 113B of that Act;
 - (b) has requested the information and documents mentioned in paragraphs 3 to 7 of Schedule 2; and
 - (c) has obtained confirmation in writing from the Department of Justice that P is not included in either of the barred lists (children’s and adults’) maintained under Article 6(1) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.
- (11) The requirements are that the registered person must—
- (a) ensure that, so far as is reasonably practicable, an appropriately qualified and experienced member of staff supervises P when P is on duty until the information and documents mentioned in paragraphs 2 to 7 of Schedule 2 are available; and
 - (b) ensure that P does not escort a child away from the residential family centre unless accompanied by the supervisory staff member or another appropriately qualified and experienced member of staff.”.

Sealed with the Official Seal of the Department of Health on 2nd April 2020



Alastair Campbell
A senior officer of the
Department

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, domiciliary care agencies and residential family centres.

These regulations are made in emergency circumstances and as such the period and range of persons consulted has been limited by the need to act responsively to the situation caused by COVID-19. However, consultation with the Health and Social Care Board has taken place.

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 specified information and documents that are required to determine the fitness of that person to work in a nursing home, on the basis that certain conditions are met. The conditions include that the specified information and documents have been applied for, and the registered person has obtained confirmation in writing that the new worker is not included in the adult’s barred list maintained under Article 6(1)(b) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007. In those circumstances the new worker must be subject to specified conditions with regard to supervision.

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

Regulations 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 specified information and documents that are required to determine the fitness of that person to be supplied to a service user, provided that certain conditions are met. The conditions include that the specified information and documents have been applied for, and the registered person has obtained confirmation in writing that the nurse is not included in neither the children's barred list nor the adults' barred list maintained under Article 6(1) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007. 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 specified information and documents.

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 specified information and documents that are required to determine the fitness of that person to work in a children's home, provided that certain conditions are met. The conditions include that the specified information and documents have been applied for, and that the registered person has obtained confirmation in writing that the new worker is not included in the children's barred list maintained under Article 6(1)(a) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007. In those circumstances the new worker must be subject to specified conditions with regard to supervision.

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 specified information and documents that are required to determine the fitness of that person to work in a day care setting, provided that certain conditions are met. The conditions include that the specified information and documents have been applied for, and that the registered person has obtained confirmation in writing that the new worker is not included in the adult's barred list maintained under Article 6(1)(b) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007. In those circumstances the new worker must be subject to specified conditions with regard to supervision.

Regulations 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 specified information and documents, provided that certain conditions are met. The conditions include that the specified information and documents have been applied for, and that the registered person has obtained confirmation in writing that the new worker is not included in the adult's barred list maintained under Article 6(1)(b) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007. 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 specified information and documents.

Regulation 8 makes similar amendments as Regulation 7 to Residential Family Centres (Regulations) 2005.

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