

EXPLANATORY MEMORANDUM TO

Children's Social Care (Coronavirus) (Temporary Modification of Children's Social Care) Regulations (Northern Ireland) 2020

S.R. 2020 No. 78

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Health to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Article 10(1) of the Adoption (Northern Ireland) Order 1987 S.I. 1987 No. 2203 (N.I. 22), Articles 27(2)(a), 27(5), 28 (1), 28(3), 34F, 45(1), (2) and (5), 75(2), 75(4) and (5), 77(3), 89(1), 105(1) and (2)(l) of, and paragraph 6(2) of Schedule 5 to, the Children (Northern Ireland) Order 1995 S.I. 1995 No. 755 (N.I. 2) and Article 23(2)(d) and (f) and (5)(a) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 S.I. 2003 No. 431 (N.I. 9) and is subject to the negative resolution procedure.

2. Purpose

- 2.1. This Statutory Rule makes provision for the purpose of enabling a number of measures relating to children's social care services to be taken to reduce the public health risks posed by the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Northern Ireland, which causes the disease Covid-19. It is required in order to modify existing statutory requirements in relation to the provision of children's social care services to enable emergency working arrangements to be put in place. This will ensure essential children's social care services are delivered in a safe manner to protect children, their families/carers and social workers.

3. Background

- 3.1. These Northern Ireland emergency Regulations come into operation in response to the Covid-19 pandemic. Their overarching aim is to provide Health and Social Care (HSC) Trusts with the flexibility to put in place emergency arrangements, if needed, to ensure that looked after and former looked after children and young people can continue to receive the support and safeguarding they require throughout the period of the Covid-19 outbreak and until such times as normal services can be safely resumed.
- 3.2. Regulations 3, 4 and 8 modify the Placement of Children with Parents etc. Regulations (Northern Ireland) 1996, the Foster Placement (Children) Regulations (Northern Ireland) 1996 and the Adoption Agencies Regulations (Northern Ireland) 1989 to remove the requirement for visits to be undertaken within specified timescales by HSC Trusts to looked after children. The modifications provide that such visits should instead be undertaken in accordance with guidance issued by the Department.
- 3.3. Regulation 4 makes further modifications to the Fostering Placement (Children) Regulations (Northern Ireland) 1996. Paragraph (2) modifies

regulation 3 of those Regulations to enable a person to be approved as a foster parent pending receipt of specified information required to determine the suitability of prospective foster parents, on the basis that certain conditions are met. The conditions are that the specified information has been applied for, and the authority or independent fostering provider has obtained confirmation in writing from the Department of Justice (AccessNI) that the prospective foster parent or any adult member of his family is not included in the children's barred list maintained under Article 6(1)(a) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

- 3.4. Paragraph (3) modifies regulation 4 to remove the requirement for annual reviews of foster parents and their household to be undertaken and paragraph (6) modifies regulation 11 to remove the restriction that an authority may only place a child in an emergency for a period not exceeding 24 hours (sub-paragraph (a)) or, in an immediate placement, for a period not exceeding 12 weeks (sub-paragraph (b)). Instead the Department will issue guidance on the timescales for such placements. Sub-paragraph (c) modifies paragraph 3 to provide that, in addition to a person who is a relative or friend of the child, an immediate placement of a child under regulation 11(3) may be made with an approved prospective adopter or a registered child minder.
- 3.5. Regulations 5 and 8 modify the Review of Children's Cases Regulations (Northern Ireland) 1996 and the Adoption Agencies Regulations (Northern Ireland) 1989 to remove the requirement for reviews of looked after children's cases to be undertaken within specified timescales. This includes the cases of children who have been freed for adoption but have not been placed with prospective adopters within 6 months and children who have been placed for adoption and an application for an adoption order has not been made after 3 months. The modifications provide that such reviews should instead be undertaken in accordance with guidance issued by the Department.
- 3.6. Regulation 6 modifies the Children (Leaving Care) Regulations (Northern Ireland) 2005 to remove the requirement for reviews of pathway plans to be undertaken within specified timescales. The modification provides that such reviews should instead be undertaken in accordance with guidance issued by the Department.
- 3.7. Regulation 7 modifies the Children (Secure Accommodation) Regulations (Northern Ireland) 1996 to provide HSC Trusts with more flexibility during the emergency period. Paragraph (2) modifies regulation 10 to reduce from 3 to 2 the minimum number of persons who shall review the keeping of a child in secure accommodation, and to increase from 3 months to 4 months the maximum duration of intervals between the first and second, and any subsequent, reviews of the keeping of a child in secure accommodation.
- 3.8. Regulation 9 modifies the Representations Procedure (Children) Regulations (Northern Ireland) 1996 to remove the statutory timescales for operating a representations/complaints procedure in order to provide HSC Trusts with more flexibility during the emergency period. The

modifications provide that such procedures should instead be operated in accordance with guidance issued by the Department.

- 3.9. Regulation 10 modifies regulation 32 of the Children's Homes Regulations (Northern Ireland) 2005 to provide for visits by the Registered Provider to a children's home to be undertaken in accordance with guidance issued by the Department.
- 3.10. Given their urgent nature, these Regulations will come into operation on the day after they are made, meaning that the usual period of 21 days between laying and coming into operation will not apply.

4. Consultation

- 4.1. There has been no public consultation on these Regulations. The Department has consulted HSC Trusts and the HSC Board, as well as the Department of Justice and the Northern Ireland Courts and Tribunal Service in relation to the provisions relating to secure care, as part of the preparation of guidance to be issued by the Department, as required by the Regulations. Consultation on the guidance was also conducted with a range of interested bodies, including the Northern Ireland Commissioner for Children and Young People, the British Association for Social Work and Social Workers (BASWNI), the Children's Law Centre and Voice of Young People in Care.

5. Equality Impact

- 5.1. In accordance with guidance produced by the Equality Commission for Northern Ireland and in keeping with section 75 of the Northern Ireland Act 1998, the proposals were screened for equality impact and it is concluded that a full Equality Impact Assessment is not required.

6. Regulatory Impact

- 6.1. Given the urgent nature of this legislation, there is insufficient time to consider regulatory impact screening more fully. However, it is not anticipated that any business, charity, social economy enterprise or the voluntary sector in Northern Ireland will be adversely affected by these amendments.

7. Financial Implications

- 7.1. It is anticipated that there will be no cost impact on businesses, charities, social economy enterprises or the voluntary sector in Northern Ireland.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Statutory Rule is not deemed to breach section 24 of the Northern Ireland Act 1998 as it is considered to be compatible with any of the Convention rights or community law and does not discriminate against a person on the grounds of religious belief or political opinion.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. The UK Government has made the Adoption and Children (Coronavirus) (Amendment) Regulations 2020 to amend statutory requirements relating to children's social care in England. The Scottish Government has also included provisions relating to looked after children and children's hearings in the Coronavirus (Scotland) Act 2020. The Welsh Government has issued guidance on children's social care during the Covid-19 pandemic and has indicated that it is considering whether it will make legislative changes also.

11. Additional Information

- 11.1. Not applicable