

**CONSULTATION ON A
PROPOSAL FOR AN
ORDER IN COUNCIL**

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

Department of Health, Social Services and Public Safety

November 2002

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Dear Consultee

CONSULTATION ON A PROPOSAL FOR AN ORDER IN COUNCIL

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

Enclosed is a draft copy of the above proposal for an Order in Council, and the accompanying Explanatory Memorandum, which has been issued today for consultation.

Background

In its first Programme for Government the Northern Ireland Assembly made a commitment to put in place a framework to raise the quality of services provided to the community and to tackle issues of poor performance across the HPSS. As a first step in fulfilling this commitment, DHSSPS issued a consultation paper entitled “Best Practice – Best Care” in April 2001. The results of this consultation were published in June 2002. The purpose of the proposed Order is to put into effect those decisions, made following the conclusion of the consultation process, which require legislation.

The Best Practice Best Care consultation document and the subsequent publication summarising the responses to the consultation are both available on the Departmental website www.dhsspsni.gov.uk/publications. They can also be requested by contacting the address shown below.

The proposals contained in “Best Practice – Best Care” focused on:

- (a) developing and disseminating clear service standards for the HPSS;
- (b) securing accountability at local level for the delivery of services; and
- (c) improving monitoring and regulation of the services.

The main focus of this Order is on the implementation of arrangements covering (b) and (c) which require legislation although this legislation is linked in to other arrangements, for the development of standards and guidelines (a), which do not require primary legislation.

The purpose of this further consultation is to provide an opportunity to interested parties to consider the legislation and to recommend for consideration any changes or amendments which they wish to see or to comment further on the proposed legislation in advance of its being laid before Parliament at Westminster (in accordance with Para.1 of the Schedule to the Northern Ireland Act 2000). The Department is keen to obtain as many views as possible on these important matters in advance of finalising this legislation. In considering your response you may wish to pay regard to the following:

- (i) Have you any general comments on the provisions set out within the draft Order?
- (ii) Have you any specific comments on individual articles within the draft Order?
- (iii) Have you any comments or suggestions with regard to the system of regulation as described in part III of the draft Order?
- (iv) Have you any comments or suggestions on the articles defining establishments and agencies, which are to be regulated by the new Authority?
- (v) Have you comments on the roles, responsibility and powers of the new Authority?
- (vi) A number of articles within the draft Order provide for powers for the Department to prescribe various matters or to list services to be regulated. Do you have specific comments on what should be prescribed or listed within some of those articles?
- (vii) Do you have any comments on the Equality Impact of articles in the draft Order or implications for Targeting Social Need?

The consultation period will last until Monday 16th December 2002. Responses and requests for further information should be sent to:

Billy Baird

Dundonald House Upper Newtownards Road Belfast BT4 3SF Northern Ireland



Quality & Performance Improvement Unit
Department of Health Social Services & Public Safety
Room 107A
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BELFAST
BT4 3SF Tel: 028 90524759

E-Mail consultation address: QIROrder.consultation@dhsspsni.gov.uk

Additional copies of this consultation document can be obtained by telephoning: 028 90 524998
or by accessing the Departmental website at: www.dhsspsni.gov.uk/publications.

Yours sincerely

JOHN McGRATH

**PROPOSAL FOR A DRAFT ORDER IN COUNCIL UNDER PARAGRAPH 1
OF SCHEDULE 1 TO THE NORTHERN IRELAND ACT 2000**

DRAFT STATUTORY INSTRUMENTS

2003 No. (N.I.)

NORTHERN IRELAND

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

Made - - - - - 2003

*Coming into operation in accordance with Article
1(2)*

ARRANGEMENT OF ORDER

PART I

INTRODUCTORY

1. Title and commencement [j100]
2. Interpretation [j98]

PART II

**NORTHERN IRELAND HEALTH AND PERSONAL SOCIAL SERVICES
REGULATION AND IMPROVEMENT AUTHORITY**

3. The Regulation and Improvement Authority [j2]
4. General duties in relation to provision of services [j7]
5. Advice and information about services [j71]
6. Regulations and directions [j202]
7. Annual report [j72]

PART III

REGULATION OF ESTABLISHMENTS AND AGENCIES

Preliminary

8. Regulated establishments and agencies: general interpretation [j304]
9. Children's homes [j302]
10. Residential care homes [j301]
11. Nursing homes [j301A]

Registration

12. Requirement to register [j311]
13. Applications for registration [j312]
14. Grant or refusal of registration [j313]
15. Cancellation of registration [j314]
16. Applications by registered persons [j315]
17. Regulations about registration [j316]

Registration procedure

18. Notice of proposals [j317]
19. Right to make representations [j318]
20. Notice of decisions [j319]
21. Urgent procedure for cancellation etc. [j320]
22. Appeals to the Care Tribunal [j321]

Regulations

23. Regulations relating to establishments and agencies [j322]

Offences

24. Failure to comply with conditions [j324]
25. Contravention of regulations [j325]
26. False descriptions of establishments and agencies [j326]
27. False statements in applications [j327]
28. Failure to display certificate of registration [j328]
29. Proceedings for offences [j329]

Supplementary

30. Annual returns [j333]
31. Liquidators etc. [j334]
32. Death of registered person [j335]
33. Provision of copies of register [j336]

PART IV

QUALITY OF HEALTH AND PERSONAL SOCIAL SERVICES

34. Duty of quality [j1]
35. Role of the Regulation and Improvement Authority [j20]

PART V

BOARDS AND HSS TRUSTS - ADOPTION, FOSTERING AND CHILDREN
UNDER 12

36. Provision of information [j312X]
37. Annual returns [j333B]

PART VI

MISCELLANEOUS

38. Statements of minimum standards [j323]
39. Improvement notices [j105]
40. Power to require information from establishments and agencies and power of entry and inspection [j331]
41. Power to require information from inspections relating to Boards and HSS trusts, etc. and powers of entry and inspection [j331B]
42. Inspections: provisions supplementary to Articles 40 and 41 [j332]
43. Restrictions on disclosure of information under Article 40 or 41 [j23]
44. The Care Tribunal [j909]
45. Regulations and directions [j909A]
46. Transitional provisions and savings [j96]
47. Amendments and repeals [j97]

SCHEDULES:

- | | |
|------------|--|
| Schedule 1 | The Northern Ireland Health and Personal Social Services Regulation and Improvement Authority [s501] |
| Schedule 2 | The Care Tribunal [s4] |
| Schedule 3 | Transitional provisions and savings [s3] |
| Schedule 4 | Amendments [s1] |
| Schedule 5 | Repeals [S2] |

At the Court at **, the ** day of ** 2003

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c.1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I

INTRODUCTORY

Title and commencement [j100]

1.—(1) This Order may be cited as the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.

(2) This Order shall come into operation on such day or days as the Department may by order appoint.

(3) An order under paragraph (2) may make such transitional provisions or savings as appear to the Department to be necessary or expedient.

Interpretation [j98]

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order —

“authority”, except in Article 42(1), and “authority foster parent” have the same meanings as in the Children Order;

“Care Tribunal” means the tribunal established under Article 44;

“child” means a person under the age of 18;

PART I

“the Children Order” means the Children (Northern Ireland) Order 1995 (NI 2);

“day care setting” means, subject to paragraph (8), a place where persons in need of prescribed services may attend for the purposes of assessment, rehabilitation or counselling but where they are not provided with board or accommodation;

“the Department” means the Department of Health, Social Services and Public Safety;

“domiciliary care agency” means, subject to paragraph (8), an undertaking which consists of or includes arranging the provision of prescribed services in their own homes for persons who by reason of illness, infirmity, disability or family circumstances are unable to provide any such service for themselves without assistance;

“employment agency” and “employment business” have the same meanings as in Part II of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (NI 20); but no business which is an employment business shall be taken to be an employment agency;

“fostering agency” means, subject to paragraph (8),—

- (a) an undertaking (other than an authority) which consists of or includes discharging functions on behalf of an authority in connection with the placing of children with foster parents; or
- (b) a voluntary organisation which places children with foster parents under Article 75(1) of the Children Order;

“homeless persons” shall be construed in accordance with Part II of the Housing (Northern Ireland) Order 1988 (NI 23);

“hospital” means, subject to paragraph (8),—

- (a) an establishment—
 - (i) the main purpose of which is to provide medical or psychiatric treatment for illness or mental disorder or palliative care; or
 - (ii) in which (whether or not other services are also provided) any of the listed services are provided;
- (b) any other establishment in which treatment or nursing (or both) is provided for persons liable to be detained under the Mental Health (Northern Ireland) Order 1986 (NI 4);

“illness” includes any injury;

“independent clinic” means, subject to paragraph (8), an establishment of a prescribed kind (not being a hospital) in which services are provided by medical practitioners (whether or not any services are also provided for the purposes of the establishment elsewhere), but an establishment in which, or for the purposes of which, services are provided by medical practitioners in pursuance of the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14) is not an independent clinic;

“independent hospital” means a hospital which is not vested in the Department or managed by an HSS trust;

“independent medical agency” means, subject to paragraph (8), an undertaking (not being an independent clinic) which consists of or

includes the provision of services by medical practitioners, but if any of the services are provided for the purposes of an independent clinic, or by medical practitioners in pursuance of the Health and Personal Social Services (Northern Ireland) Order 1972, it is not an independent medical agency;

“medical” includes surgical;

“mental disorder” has the same meaning as in the Mental Health (Northern Ireland) Order 1986 (NI 4);

“nursing agency” means, subject to paragraph (8), an employment agency or employment business, being (in either case) a business which consists of or includes supplying, or providing services for the purpose of supplying, registered nurses, registered midwives or registered health visitors;

“nursing home” has the meaning given by Article 11;

“parent”, in relation to a child, includes any person who is not a parent of his but who has parental responsibility for him;

“parental responsibility” has the same meaning as in the Children Order;

“personal care” has the meaning given by Article 10(3);

“the Regulation and Improvement Authority” means the Northern Ireland Health and Personal Social Services Regulation and Improvement Authority;

“regulations” means regulations made by the Department;

“relative” has the same meaning as in the Children Order;

“residential care home” shall be construed in accordance with Article 10;

“residential family centre” means, subject to paragraph (8), any establishment at which—

- (a) accommodation is provided for children and their parents;
- (b) the parents’ capacity to respond to the children’s needs and to safeguard their welfare is monitored or assessed; and
- (c) the parents are given such advice, guidance or counselling as is considered necessary,

and in this definition “parent”, in relation to a child, includes any person who is looking after the child;

“school” has the meaning assigned to it by Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986 (NI 3);

“service provider” means a person who provides—

- (a) services in accordance with agreements under Article 15C of the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14); or
- (b) Part VI services (within the meaning of that Order);

“treatment” includes diagnosis;

“undertaking” includes any business or profession and—

- (a) in relation to any public body, includes the exercise of any functions of that body; and

PART I

(b) in relation to any other body of persons, whether corporate or unincorporated, includes any of the activities of that body;

“voluntary adoption agency” means a voluntary organisation which is an adoption society within the meaning of the Adoption (Northern Ireland) Order 1987 (NI 22);

“voluntary organisation” has the same meaning as in the Adoption (Northern Ireland) Order 1987 (NI 22).

(3) Other expressions used in the Health and Personal Social Services (Northern Ireland) Order 1972 and this Order have the same meaning in this Order as in that Order unless specifically defined elsewhere in this Act.

(4) References to a person liable to be detained under the Mental Health (Northern Ireland) Order 1986 (NI 4) do not include a person absent in pursuance of leave granted under Article 15 of that Order.

(5) For the purposes of this Order, the person who carries on—

(a) a fostering agency falling within paragraph (b) of the definition of “fostering agency” in paragraph (2), or

(b) a voluntary adoption agency,

is the voluntary organisation itself.

(6) References in this Order to a person who carries on an establishment or agency include references to a person who carries it on otherwise than for profit.

(7) In the definition of “hospital” in paragraph (2) “listed services” means, subject to paragraph (8),—

(a) a medical treatment under anaesthesia or sedation;

(b) dental treatment under anaesthesia or sedation;

(c) obstetric services and, in connection with childbirth, medical services;

(d) cosmetic surgery;

(e) use of prescribed techniques or prescribed technology.

(8) Regulations may except any description of establishment or undertaking from the following definitions in paragraph (2)—

(a) “day care setting”;

(b) “domiciliary care agency”;

(c) “fostering agency”;

(d) “hospital”;

(e) “independent clinic”;

(f) “independent hospital”;

(g) “independent medical agency”;

(h) “nursing agency”, and

(i) “residential family centre”.

(9) Regulations may modify the definition of “listed services” in paragraph (7).

PART II

NORTHERN IRELAND HEALTH AND PERSONAL SOCIAL SERVICES
REGULATION AND IMPROVEMENT AUTHORITY

The Regulation and Improvement Authority [j2]

3.—(1) There shall be a body corporate to be known as the Northern Ireland Health and Personal Social Services Regulation and Improvement Authority (in this Order referred to as “the Regulation and Improvement Authority”).

(2) Schedule 1 (which makes further provision relating to the Regulation and Improvement Authority) shall have effect.

General duties in relation to provision of services [j7]

4.—(1) In this Part “services” means services provided by—

- (a) persons registered under Part III; and
- (b) Health and Social Services Boards, HSS trusts and special agencies.

(2) The Regulation and Improvement Authority shall have the general duties of—

- (a) keeping the Department informed about the provision of services and in particular about their availability and their quality; and
- (b) encouraging improvement in the quality of services.

Advice and information about services [j71]

5.—(1) When asked to do so by the Department, the Regulation and Improvement Authority shall give the Department advice, reports or information on such matters relating to the provision of services or the exercise of its functions as may be specified in the Department’s request.

(2) The Regulation and Improvement Authority may at any time give advice to the Department on—

- (a) any changes which the Regulation and Improvement Authority thinks should be made in the standards set out in statements under Article 38;
- (b) any other matter connected with the provision of services.

Regulations and directions [j202]

6.—(1) The Department may by regulations make provision—

- (a) as to the times at which, the cases in which, the manner in which, the persons in relation to which or the matters with respect to which, any functions of the Regulation and Improvement Authority are to be exercised;
- (b) as to the matters to be considered or taken into account in connection with the exercise of any functions of the Regulation and Improvement Authority;
- (c) as to the persons to whom any advice, information or reports are to be given or made;
- (d) as to the publication of reports and summaries of reports;

PART II

- (e) as to the recovery from prescribed persons of amounts in respect of the expenditure incurred by the Regulation and Improvement Authority in the exercise of its functions;
- (f) for or in connection with the exercise of functions of the Regulation and Improvement Authority in conjunction with the exercise of functions of other persons;
- (g) conferring additional functions on the Regulation and Improvement Authority.

(2) The Department may give directions to the Regulation and Improvement Authority with respect to the exercise of its functions and the Regulation and Improvement Authority must comply with them.

Annual report [j72]

7.—(1) As soon as possible after the end of each financial year, the Regulation and Improvement Authority shall make a report to the Department—

- (a) on the way in which the Regulation and Improvement Authority has exercised its functions during that year; and
- (b) on what it has found in relation to services during that year.

(2) In paragraph (1) “financial year” has the meaning given by paragraph 12(6) of Schedule 1.

PART III

REGULATION OF ESTABLISHMENTS AND AGENCIES

Preliminary

Regulated establishments and agencies: general interpretation [j304]

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; or
- (g) a residential family centre,

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

Children's homes [j302]

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 [j301]

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);

PART III

- (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.

Nursing homes [j301A]

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 [j311]

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 [j312]

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 [j313]

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.

PART III

- (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 [j314]

- 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 the Registered Homes (Northern Ireland) Order 1992 (NI 20) 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 [j315]

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 [j316]

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 [j317]

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

PART III

(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 [j318]

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 [j319]

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. [j320]

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.

PART III

Appeals to the Care Tribunal [j321]

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 [j322]

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;

PART III

- (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 [j324]

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 [j325]

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 [j326]

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 [j327]

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 [j328]

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 [j329]

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

PART III

Prosecutions for Northern Ireland shall be construed as a reference to the Attorney General for Northern Ireland.

Supplementary

Annual returns [j333]

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. [j334]

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 [j335]

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 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 [j336]

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.

PART IV

QUALITY OF HEALTH AND PERSONAL SOCIAL SERVICES

Duty of quality [j1]

34.—(1) Each Health and Social Services Board and HSS trust shall put and keep in place arrangements for the purpose of monitoring and improving the quality of—

- (a) the health and personal social services which it provides to individuals; and
- (b) the environment in which it provides them.

(2) The Department may by regulations extend the duty in this Article to any special agency specified in the regulations.

Role of the Regulation and Improvement Authority [j20]

35.—(1) The Regulation and Improvement Authority shall have the following functions—

- (a) the function of conducting reviews of, and making reports on, arrangements by Health and Social Services Boards or HSS trusts for the purpose of monitoring and improving the quality of the health and personal social services for which they have responsibility;
- (b) the function of carrying out investigations into, and making reports on, the management, provision or quality of the health and personal social services for which statutory bodies have responsibility;
- (c) the function of conducting reviews of, and making reports on, the management, provision or quality of, or access to or availability of, particular types of health and personal social services for which statutory bodies or service providers have responsibility;

PART IV

- (d) the function of carrying out inspections of statutory bodies and service providers, and persons who provide or are to provide services for which such bodies or providers have responsibility, and making reports on the inspections; and
- (e) such functions as may be prescribed relating to the management, provision or quality of, or access to or availability of, services for which prescribed statutory bodies or prescribed service providers have responsibility.

(2) The inspections referred to in paragraph (1)(d) are to be carried out only in connection with the function referred to in paragraph (1)(c).

(3) If after carrying out—

- (a) a review under paragraph (1)(a);
- (b) an investigation under paragraph (1)(b);
- (c) any function equivalent to one referred to in sub-paragraph (a) or (b) prescribed under paragraph (1)(e); or
- (d) an inspection under paragraph (1)(d),

the Regulation and Improvement Authority is of the view referred to in paragraph (4) as to a body, service provider or other person reviewed, investigated or inspected (taking account, if appropriate, of any other relevant information the Authority may have), the Regulation and Improvement Authority must make a report of its view to the Department.

(4) The view referred to is that—

- (a) the health and personal social services for which the body or service provider in question has responsibility are of unacceptably poor quality (whether generally or in particular areas); or
- (b) there are significant failings in the way the body, service provider or other person is being run (including, where the service provider or other person is an individual, the way his practice is being run).

(5) In its report, the Regulation and Improvement Authority may recommend that the Department take special measures in relation to the body or service provider in question with a view to improving the health and personal social services for which it is responsible or the way the body, service provider or other person (or, as mentioned in paragraph (4)(b), his practice), is being run.

(6) The report must give the Regulation and Improvement Authority's reasons for its view, and for any recommendation under paragraph (5).

(7) For the purposes of this Article a person has responsibility for health and personal social services—

- (a) if he provides or is to provide those services to individuals; or
- (b) if another person provides or is to provide those services to individuals—
 - (i) at his direction,
 - (ii) on his behalf, or
 - (iii) in accordance with an agreement or arrangements made by him with that other person.

(8) References in paragraph (7) to the provision of health and personal social services include references to the provision of those services jointly with another person.

(9) In this Article—

“statutory body” means a Health and Social Services Board, an HSS trust or a special agency;

“statutory function” means a function conferred by or under any statutory provision.

PART V

BOARDS AND HSS TRUSTS - ADOPTION, FOSTERING AND CHILDREN UNDER 12

Provision of information [j312X]

36.—(1) Each Health and Social Services Board and each HSS trust shall give the Regulation and Improvement Authority—

- (a) prescribed information about prescribed matters relating to the Board’s or trust’s Part V functions; and
- (b) any other information which the Regulation and Improvement Authority reasonably requires the Board or trust to give it relating to those functions.

(2) In this Article and Article 37 “Part V functions” means—

- (a) functions as an adoption agency within the meaning of the Adoption (Northern Ireland) Order 1987 (NI 22);
- (b) functions relating to children placed with authority foster parents under Article 27(2)(a) of the Children Order;
- (c) functions under Part XI of the Children Order (child minding and day care for young children).

Annual returns [j333B]

37.—(1) Regulations may require Health and Social Services Boards and HSS trusts to make an annual return to the Regulation and Improvement Authority about their Part V functions.

(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.

PART VI

MISCELLANEOUS

Statements of minimum standards [j323]

38.—(1) The Department may prepare and publish statements of minimum standards.

(2) The Department shall keep the standards set out in the statements under review and may publish amended statements whenever it considers it appropriate to do so.

PART VI

(3) Before issuing a statement, or an amended statement which in the opinion of the Department effects a substantial change in the standards, the Department shall consult any persons it considers appropriate.

(4) The standards shall be taken into account—

- (a) in the making of any decision by the Regulation and Improvement Authority under Part III;
- (b) in any proceedings for the making of an order under Article 21;
- (c) in any proceedings on an appeal against such a decision or order; and
- (d) in any proceedings for an offence under regulations under Part III.

Improvement notices [j105]

39.—(1) The Regulation and Improvement Authority may serve a notice (“an improvement notice”) on a person registered under Part III or on a Health and Social Services Board, HSS trust or special agency if the Authority believes that that person, Board, trust or agency is failing to comply with any statement of minimum standards under Article 38.

(2) An improvement notice shall—

- (a) specify in what respect there is a failure to comply with a statement of minimum standards under Article 38; and
- (b) recommend what improvements the Regulation and Improvement Authority considers necessary.

Power to require information from establishments and agencies and power of entry and inspection [j331]

40.—(1) The Regulation and Improvement Authority may at any time require a person who carries on or manages an establishment or agency to provide it with any information relating to the establishment or agency which the Regulation and Improvement Authority considers it necessary or expedient to have for the purposes of its functions.

(2) A person authorised by the Regulation and Improvement Authority may at any time enter and inspect premises which are used, or which he has reasonable cause to believe to be used, as an establishment or for the purposes of an agency.

(3) A person authorised by virtue of this Article to enter and inspect premises may—

- (a) make any examination into the state and management of the premises and treatment of patients or persons accommodated or cared for there which he thinks appropriate;
- (b) inspect and take copies of any documents or records required to be kept in accordance with regulations under Part III, Article 10 of the Adoption (Northern Ireland) Order 1987 (NI 22), Article 27(2)(a) or 75(2) of the Children (Northern Ireland) Order 1995 (NI 2) or section 1(3) of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 (c. 11);
- (c) interview in private the manager or the person carrying on the establishment or agency;
- (d) interview in private any person employed there;

- (e) interview in private any patient or person accommodated or cared for there who consents to be interviewed.
 - (4) The powers under paragraph (3)(b) include—
 - (a) power to require the manager or the person carrying on the establishment or agency to produce any documents or records, wherever kept, for inspection on the premises; and
 - (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away.
 - (5) Paragraph (6) applies where the premises in question are used as an establishment and the person so authorised—
 - (a) is a medical practitioner or registered nurse; and
 - (b) has reasonable cause to believe that a patient or person accommodated or cared for there is not receiving proper care.
 - (6) The person so authorised may, with the consent of the person mentioned in paragraph (5)(b), examine him in private and inspect any records relating to his care or treatment in the establishment.
- The powers conferred by this paragraph may be exercised in relation to a person who is incapable of giving consent without that person's consent.
- (7) The Department may by regulations require the Regulation and Improvement Authority to arrange for premises which are used as an establishment or for the purposes of an agency to be inspected on such occasions or at such intervals as may be prescribed.

Power to require information from inspections relating to Boards and HSS trusts, etc. and powers of entry and inspection [j331B]

- 41.—**(1) The Regulation and Improvement Authority may at any time require a Health and Social Services Board, HSS trust or special agency (in this Article referred to as an “HSS body”) or service provider to provide it with any information which the Regulation and Improvement Authority considers it necessary or expedient to have for the purposes of its functions.
- (2) Subject to paragraph (3), a person authorised by the Regulation and Improvement Authority may at any time—
 - (a) enter and inspect premises which are used by an HSS body or service provider; and
 - (b) inspect and take copies of any documents or records.
 - (3) If the person is authorised only for the purposes of functions under Article 35(1)(a), (c) or (e) (reviews etc.), he shall enter the premises only—
 - (a) after giving reasonable notice to the HSS body or service provider;
 - (b) at a reasonable time; and
 - (c) if the premises are wholly or partly used as residential accommodation by persons employed by the HSS body or service provider, after obtaining the consent of those persons.

PART VI

(4) A person authorised by virtue of this Article to enter and inspect premises may—

- (a) make any examination into the state and management of the premises and treatment of patients or persons accommodated or cared for there which he thinks appropriate;
- (b) interview in private any person employed by an HSS body or service provider;
- (c) interview in private any person employed to provide services to an HSS body;
- (d) interview in private any patient or person accommodated or cared for there who consents to be interviewed.

(5) The powers under paragraph (2)(b) include—

- (a) power to require an HSS body or service provider to produce any documents or records, wherever kept, for inspection on the premises; and
- (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away.

(6) Paragraph (7) applies where a person authorised by the Regulation and Improvement Authority—

- (a) is a medical practitioner or registered nurse; and
- (b) has reasonable cause to believe that a patient or person accommodated or cared for on premises used by an HSS body or service provider is not receiving proper care or treatment.

(7) The person so authorised may, with the consent of the person mentioned in paragraph (6)(b), examine him in private and inspect any records relating to his care or treatment there.

The powers conferred by this paragraph may be exercised in relation to a person who is incapable of giving consent without that person's consent.

(8) The Department may by regulations require the Regulation and Improvement Authority to arrange for premises which are used by an HSS body or service provider to be inspected on such occasions or at such intervals as may be prescribed.

Inspections: provisions supplementary to Articles 40 and 41 [j332]

42.—(1) A person who proposes to exercise any power of entry or inspection conferred by Article 40 or 41 shall if so required produce some duly authenticated document showing his authority to exercise the power.

(2) Any person who—

- (a) intentionally obstructs the exercise of any power conferred by Article 40 or 41 or this Article; or
- (b) fails without a reasonable excuse to comply with any requirement under Article 40 or 41 or this Article,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) A person authorised by virtue of Article 40 or 41 to enter and inspect any premises may seize and remove any document or other material or thing found there which he has reasonable grounds to believe may be evidence of a failure to comply with any condition or requirement imposed by or under this Order.

(4) A person so authorised—

(a) may require any person to afford him such facilities and assistance with respect to matters within the person's control as are necessary to enable him to exercise his powers under Article 40 or 41 or this Article;

(b) may take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise those powers.

(5) A person authorised by virtue of Article 40 or 41 to inspect any records shall be entitled to have access to, and to check the operation of, any computer and any associated apparatus which is or has been in use in connection with the records in question.

(6) The references in Article 40 to the person carrying on the establishment or agency include, in the case of an establishment or agency which is carried on by a company, a reference to any director, manager, secretary or other similar officer of the company.

(7) Where any premises which are used as an establishment or for the purposes of an agency have been inspected under Article 40 the Regulation and Improvement Authority—

(a) shall prepare a report on the matters inspected; and

(b) shall without delay send a copy of the report to each person who is registered in respect of the establishment or agency.

Restrictions on disclosure of information under Article 40 or 41 [j23]

43.—(1) Subject to subsection (2), a person shall not be required under Article 40 or 41 to provide confidential information which relates to and identifies a living individual unless—

(a) the information is disclosed in a form in which the identity of the individual cannot be ascertained;

(b) the individual consents to the information being disclosed; or

(c) the individual cannot be traced despite the taking of all reasonable steps.

(2) A person may be required to provide confidential information which relates to and identifies a living individual if—

(a) it is not practicable to disclose the information in a form in which the identity of the individual cannot be ascertained;

(b) the Regulation and Improvement Authority considers that there is a serious risk to the health or safety of any person; and

(c) having regard to that risk and the urgency of the exercise of those functions, the Regulation and Improvement Authority considers that the information should be disclosed without the consent of the individual.

(3) A person shall not be required under Article 40 or 41 to provide information the disclosure of which is prohibited under another statutory provision unless—

PART VI

- (a) the prohibition on the disclosure of information operates by reason of the fact that the information is capable of identifying an individual; and
- (b) the information in question is in a form in which the identity of the individual cannot be ascertained.

(4) In a case where—

- (a) the disclosure of information is prohibited under this Article; and
- (b) the prohibition operates by reason of the fact that the information is capable of identifying an individual,

the Regulation and Improvement Authority or a person authorised by it under Article 40 or 41 may require the person holding the information to put the information in a form in which the identity of the individual concerned cannot be identified, in order that the information may be disclosed.

(5) In this Article “confidential information” means information which is held subject to a duty of confidence, and includes information contained in an accessible record within the meaning of section 68 of the Data Protection Act 1998 (c. 29).

The Care Tribunal [j909]

44.—(1) There shall be a tribunal (“the Care Tribunal”) which shall exercise the jurisdiction conferred on it by this Order or any other statutory provision.

(2) The Department may by regulations make provision about the proceedings of the Care Tribunal.

(3) The regulations may, in particular, include provision—

- (a) as to the manner in which appeals are to be instituted or applications for determinations are to be made;
- (b) as to the period within which appeals are to be instituted;
- (c) as to the circumstances in which applications for leave may be made;
- (d) for enabling any functions which relate to applications for leave or other matters preliminary or incidental to an appeal or determination to be performed by the chairman;
- (e) for the holding of hearings in private in prescribed circumstances;
- (f) for imposing reporting restrictions in prescribed circumstances;
- (g) as to the persons who may appear on behalf of the parties;
- (h) for granting any person such discovery or inspection of documents or right to further particulars as might be granted by a county court;
- (i) for obtaining a medical report in a case where the decision appealed against was made on medical grounds;
- (j) for requiring persons to attend to give evidence and produce documents;
- (k) for authorising the administration of oaths to witnesses;
- (l) for the determination of appeals or issues or applications for leave without a hearing in prescribed circumstances;
- (m) as to the withdrawal of appeals or applications for determinations;
- (n) for the award of costs;

- (o) for taxing or otherwise settling any such costs (and, in particular, for enabling such costs to be taxed in the county court);
- (p) for the recording and proof of decisions and orders of the Care Tribunal;
- (q) for enabling the Care Tribunal to review its decisions, or revoke or vary its orders, in such circumstances as may be determined in accordance with the regulations; and
- (r) for notification of the result of an appeal or determination to be given to such persons as may be prescribed.

(4) Part I of the Arbitration Act 1996 (c. 23) shall not apply to any proceedings before the Care Tribunal but regulations may make provision corresponding to any provision of that Act.

(5) Any person who without reasonable excuse fails to comply with—

- (a) any requirement imposed by the regulations by virtue of paragraph (3)(f);
 - (b) any requirement in respect of the discovery or inspection of documents imposed by the regulations by virtue of paragraph (3)(h); or
 - (c) any requirement imposed by the regulations by virtue of paragraph (3)(j),
- is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) An appeal shall lie to the High Court on a point of law from a decision of the Care Tribunal.

(7) Schedule 2 shall have effect with respect to the Care Tribunal.

Regulations and directions [j909A]

45.—(1) Regulations under this Order shall be subject to negative resolution.

(2) Regulations under this Order may contain—

- (a) any supplementary, incidental or consequential provision;
- (b) any transitory, transitional or saving provision,

which the Department considers necessary or expedient.

(3) Section 17(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33) shall apply to a direction given by the Department under this Order as if the direction were a statutory instrument.

Transitional provisions and savings [j96]

46. The transitional provisions and savings set out in Schedule 3 shall have effect.

Amendments and repeals [j97]

47.—(1) The statutory provisions set out in Schedule 4 shall have effect subject to the amendments there specified.

(2) The statutory provisions set out in Schedule 5 are hereby repealed to the extent mentioned in the third column of that Schedule.

PART VI

Clerk of the Privy Council

SCHEDULES

SCHEDULE 1

Article 3.

THE NORTHERN IRELAND HEALTH AND PERSONAL SOCIAL SERVICES REGULATION AND IMPROVEMENT AUTHORITY [S501]

Status

1. The Regulation and Improvement Authority shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and its property shall not be regarded as property of, or property held on behalf of, the Crown.

General powers

2.—(1) Subject to any directions given by the Department, the Regulation and Improvement Authority may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions.

(2) That includes, in particular—

- (a) co-operating with other public authorities in the United Kingdom;
- (b) acquiring and disposing of land and other property; and
- (c) entering into contracts.

General duty

3. The Regulation and Improvement Authority shall carry out its functions effectively, efficiently and economically.

Membership

4. The Regulation and Improvement Authority shall consist of a chairman and other members appointed by the Department.

Appointment, procedure etc.

5. The Department may by regulations make provision as to—

- (a) the appointment of the chairman and other members (including the number, or limits on the number, of members who may be appointed and any conditions to be fulfilled for appointment);
- (b) the tenure of office of the chairman and other members (including the circumstances in which they cease to hold office or may be removed or suspended from office);
- (c) the appointment of, constitution of and exercise of functions by committees and sub-committees (including committees and sub-committees which consist of or include persons who are not members of the Regulation and Improvement Authority); and

SCH. 1

- (d) the procedure of the Regulation and Improvement Authority and any committees or sub-committees (including the validation of proceedings in the event of vacancies or defects in appointment).

Remuneration and allowances

6.—(1) The Regulation and Improvement Authority may pay to its chairman, to any other member of the Authority and to any member of a committee or sub-committee who is not a member of the Authority, such remuneration and allowances as the Department may determine.

(2) If the Department so determines, the Regulation and Improvement Authority shall make provision for the payment of such pension, allowance or gratuities as the Department may determine to or in respect of a person who is or has been the chairman or any other member of the Authority.

(3) If the Department determines that there are special circumstances that make it right for a person ceasing to hold office as chairman of the Regulation and Improvement Authority to receive compensation, the Authority shall pay to him such compensation as the Department may determine.

(4) Any determination of the Department under this paragraph shall be subject to the approval of the Department of Finance and Personnel.

Chief executive

7.—(1) There shall be a chief executive of the Regulation and Improvement Authority who shall be a member of its staff and shall be responsible to it for the general exercise of its functions.

(2) The first chief executive shall be appointed by the Department on such terms and conditions as the Department may determine.

(3) Subject to paragraph 8(3), any chief executive subsequent to the first shall be appointed by the Regulation and Improvement Authority on such terms and conditions as the Authority may determine.

(4) An appointment under sub-paragraph (3) requires the approval of the Department.

Staff

8.—(1) The Regulation and Improvement Authority may appoint such other staff as it considers appropriate.

(2) Subject to sub-paragraph (3), appointments under this paragraph shall be on such terms and conditions as the Regulation and Improvement Authority may determine.

(3) The Department may give directions as to—

- (a) the appointment of staff under this paragraph and paragraph 7(3) (including any conditions to be fulfilled for appointment); and
- (b) the terms and conditions of appointment of staff under the provisions mentioned in sub-paragraph (a).

(4) Different directions may be given under sub-paragraph (3) in relation to different categories of staff.

Delegation of functions

9. The Regulation and Improvement Authority may arrange for the discharge of any of its functions by a committee, sub-committee, member or member of staff of the Authority or any other person.

Arrangements for the use of staff

10. The Department may by regulations provide for arrangements under which—

- (a) members of staff of the Regulation and Improvement Authority are placed at the disposal of a prescribed person for the purpose of discharging, or assisting in the discharge of, prescribed functions of that person; or
- (b) members of staff of a prescribed person are placed at the disposal of the Regulation and Improvement Authority for the purpose of discharging, or assisting in the discharge of, any functions of the Authority.

Payments to the Regulation and Improvement Authority

11. The Department may make payments to the Regulation and Improvement Authority of such amounts, at such times and on such conditions (if any) as it considers appropriate.

Accounts

12.—(1) The Regulation and Improvement Authority shall—

- (a) keep proper accounts and proper records in relation to the accounts; and
- (b) prepare a statement of accounts in respect of each financial year.

(2) The statement of accounts shall—

- (a) be in such form; and
- (b) contain such information,

as the Department may, with the approval of the Department of Finance and Personnel, direct.

(3) The Regulation and Improvement Authority shall, within such period after the end of each financial year as the Department may direct, send copies of the statement of accounts relating to that year to—

- (a) the Department; and
- (b) the Comptroller and Auditor General for Northern Ireland.

(4) The Comptroller and Auditor General shall—

- (a) examine, certify and report on every statement of accounts sent to him by the Regulation and Improvement Authority under this paragraph; and
- (b) send a copy of his report to the Department.

(5) The Department shall lay a copy of the statement of accounts and of the Comptroller and Auditor General's report before the Assembly.

(6) In this paragraph "financial year" means—

- (a) the period beginning with the date on which the Regulation and Improvement Authority is established and ending with the next 31st March following that date; and

SCH. 1

- (b) each successive period of twelve months ending with 31st March.

Application of seal and evidence

13. The application of the seal of the Regulation and Improvement Authority shall be authenticated by the signature—

- (a) of any member of the Regulation and Improvement Authority; or
(b) of any other person who has been authorised by the Regulation and Improvement Authority (whether generally or specifically) for that purpose.

14. A document purporting to be duly executed under the seal of the Regulation and Improvement Authority or to be signed on its behalf shall be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

Article 44(7).

SCHEDULE 2

THE CARE TRIBUNAL [S4]

Constitution of Care Tribunal

1.—(1) There shall be appointed—

- (a) a panel of persons (“the chairmen’s panel”) who may serve as chairmen of the Care Tribunal; and
(b) a panel of persons (“the lay panel”) who may serve as the other two members of the Care Tribunal apart from the chairman.

(2) The Care Tribunal shall consist of—

- (a) a chairman nominated by the First Minister and deputy First Minister acting jointly from the chairmen’s panel; and
(b) two other persons nominated by the Department from the lay panel.

Appointment of the panels

2.—(1) The members of the chairmen’s panel shall be appointed by the First Minister and deputy First Minister acting jointly.

(2) No person may be appointed a member of the chairmen’s panel unless he is a barrister or solicitor of at least ten years’ standing.

(3) The members of the lay panel shall be appointed by the Department.

(4) No person may be appointed member of the lay panel unless he satisfies such requirements as may be prescribed.

Tenure of office

3.—(1) Each member of the chairmen’s panel or lay panel shall hold and vacate office under the terms of the instrument under which he is appointed.

(2) A member of the chairmen’s panel may resign office by notice in writing to the First Minister and deputy First Minister.

(3) A member of the chairmen’s panel may be removed from the panel by the First Minister and deputy First Minister acting jointly on the ground of incapacity or misbehaviour.

(4) A member of the lay panel may resign office by notice in writing to the Department.

(5) A member of the lay panel may be removed from the panel by the Department on the ground of incapacity or misbehaviour.

(6) A member of the chairmen's panel or lay panel is eligible for re-appointment if he ceases to hold office (otherwise than under sub-paragraph (3) or (5)).

Staff and accommodation

4. The Department may, with the consent of the Department of Finance and Personnel, provide such staff and accommodation as the Care Tribunal may require.

Remuneration and expenses

5.—(1) The Department may pay any person, in respect of his service as a member of the Care Tribunal, such remuneration and allowances as the Department may, with the consent of the Department of Finance and Personnel, determine.

(2) The Department may defray the expenses of the Care Tribunal to such amount as the Department may, with the consent of the Department of Finance and Personnel, determine.

Attendance allowances

6. The Department may pay such allowances for the purpose of or in connection with the attendance of persons at the Care Tribunal as the Department may, with the consent of the Department of Finance and Personnel, determine.

Temporary provision

7. Until the commencement of section 5(1) of the Justice (Northern Ireland) Act 2002 (c. 26) references in this Schedule to the First Minister and deputy First Minister or to the First Minister and deputy First Minister acting jointly shall be construed as references to the Lord Chancellor.

SCHEDULE 3

Article 46(1).

TRANSITIONAL PROVISIONS AND SAVINGS [S3]

Fostering agencies

1. The Department may by regulations provide that, if prescribed requirements are satisfied, Article 12 shall apply, during the prescribed period, to a person running a fostering agency who has made an application for registration under Article 13(1) as if that person were unconditionally registered under Part III.

Voluntary adoption agencies

2.—(1) Where a body is, before the commencement of Article 14, registered under Article 4 of the Adoption (Northern Ireland) Order 1987 (NI 22) (registration of adoption societies), Part III shall, if prescribed requirements are

SCH. 3

satisfied, have effect after that commencement as if any person carrying on or managing the body were registered under Part III in respect of it, either—

- (a) unconditionally; or
- (b) subject to such conditions as may be prescribed.

(2) Any application made before the commencement of Article 13 for registration under Article 4 of the Adoption (Northern Ireland) Order 1987 shall be treated after that commencement as an application made under Article 13(1) to the Regulation and Improvement Authority for registration under Part III.

(3) The Department may by order subject to negative resolution make such further transitional provision in relation to the repeal by this Order of provisions of the Adoption (Northern Ireland) Order 1987 as it considers appropriate.

Saving for amendments

3. The amendments made by paragraphs 2, 3(3) and (4) and 5 of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992 (NI 20) shall continue to have effect notwithstanding the repeal of those paragraphs by this Order, but subject to any further amendments made by this Order.

Article 47(1).

SCHEDULE 4

AMENDMENTS [S1]

The Superannuation (Northern Ireland) Order 1972 (NI 10)

In Schedule 1 (employments to which Article 3 of that Order applies) at the end there shall be added—

“Employment by the Northern Ireland Health and Personal Social Services Regulation and Improvement Authority.”.

The Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14)

In Article 36(2) (provision of accommodation in premises maintained by voluntary organisations etc.), for the words from “(a)” to “Charter” substitute “which are registered as a nursing home under Part III of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003”.

In Article 50(1) (power of inspection), for “the Registered Homes (Northern Ireland) Order 1992” substitute “Part III of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003”.

The Northern Ireland Assembly Disqualification Act 1975 (c. 25)

In Part II of Schedule 1 (bodies of which all members are disqualified), the following entry shall be inserted at the appropriate place—

“The Northern Ireland Health and Personal Social Services Regulation and Improvement Authority.”.

The Mental Health (Northern Ireland) Order 1986 (NI 4)

In Article 2(2) (interpretation)—

- (a) in the definition of “nursing home” for the words from “Article 16” to the end substitute “Article 11 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003”;
- (b) for the definition of “residential care home” substitute—
 - ““residential care home” has the meaning assigned to it by Article 10 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;”.

The Adoption (Northern Ireland) Order 1987 (NI 22)

In Article 2(2) (interpretation) after the definition of “adoption rules” insert the following definition—

““appropriate voluntary organisation” means a voluntary organisation which is an adoption society in respect of which a person is registered under Part III of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;”.

In Article 3 (The Adoption Service)—

- (a) in paragraph (1) for “registered adoption societies” substitute “appropriate voluntary organisations”;
- (b) in paragraph (3) for “a registered adoption society” substitute “an appropriate voluntary organisation”.

In Article 5(2) (power of Department to make directions where registration of adoption society is cancelled or expires), for the words from the beginning to “expires” substitute “Where, by virtue of the cancellation of the registration of any person under Part III of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003, a body has ceased to be an appropriate voluntary organisation”.

In Article 8 (inactive or defunct adoption societies)—

- (a) in paragraph (1) for the words from “registered” to “Article 5,” substitute “body which is or has been an appropriate voluntary organisation”; and
- (b) for “society” in each place where it occurs substitute “organisation”.

In Article 10 (regulation of adoption agencies) after paragraph (1) insert the following paragraph—

“(1A) Regulations under paragraph (1) may in particular make, in relation to an appropriate voluntary organisation any provision which regulations under Article 23(2) or (7) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 may make in relation to a fostering agency (within the meaning of that Order).”.

In Article 11 (restriction on arranging adoptions and placing children)—

- (a) in paragraph (2) for the words from “registered under Article 4” substitute “an appropriate voluntary organisation”;
- (b) in paragraph (3)(a) for “which is not an adoption agency” substitute “which is not—
 - (i) a Board or HSS trust; or

SCH. 4

- (ii) a voluntary adoption agency within the meaning of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 in respect of which he is registered;”.

In Article 23 (enquiries to be made of Board etc.)—

- (a) for “a registered adoption society” substitute “an appropriate voluntary organisation”;
- (b) for “the society” in both places where it occurs substitute “the organisation”.

In Article 33(2)(a)(ii) (meaning of “protected child”), for “children’s home or voluntary home” substitute “children’s home in respect of which a person is registered under Part III of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003”.

In Article 54(3)(d)(i) (disclosure of birth records of adopted children), for “registered under Article 4” substitute “being an appropriate voluntary organisation”.

The Disabled Persons (Northern Ireland) Act 1989 (c. 10)

In section 2(5) for paragraph (d) substitute the following paragraph—

- “(d) in a residential care home or nursing home within the meaning of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003; or”.

The Children (Northern Ireland) Order 1995 (NI 2)

In Article 2(2) (interpretation)—

- (a) after the definition of “Adoption Order” insert the following definition—
 - ““appropriate children’s home” has the meaning given in Article 27(10);”;
- (b) after the definition of “care order” insert the following definition—
 - ““Care Tribunal” means the tribunal established by Article 44 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;”;
- (c) in the definition of “children’s home” for the words from “given” to the end substitute “assigned to it by Article 9 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003”;
- (d) in the definition of “nursing home” for the words from “Article 16” to the end substitute “section 11 of the Health and Personal Social Services (Quality, Improvement and Regulation) Act (Northern Ireland) 2002”;
- (e) after the definition of “prescribed” insert the following definition—
 - ““private children’s home” means a children’s home—
 - (a) in respect of which a person is registered under Part III of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003; and
 - (b) which is not a home provided under Part VII of the Children Order or a voluntary home;”;

- (f) after the definition of “registered children’s home” insert the following definition—

““Regulation and Improvement Authority” means the Northern Ireland Health and Personal Social Services Regulation and Improvement Authority;”;

- (g) in the definition of “residential care home” for the words from “Article 3” to the end substitute “Article 10 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003”;

In Article 27 (accommodation and maintenance for children looked after by an authority)—

- (a) in paragraph (2), for sub-paragraphs (b) to (e) substitute the following sub-paragraph—

“(aa) maintaining him in an appropriate children’s home;”;

- (b) after paragraph (9) add the following paragraph—

“(10) In this Order “appropriate children’s home” means a children’s home in respect of which a person is registered under Part III of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.”.

In Article 35 (advice and assistance for certain children) as it has effect before the commencement of the Children (Leaving Care) Act (Northern Ireland) 2002, in paragraph (2)(c) for “registered” substitute “private”.

In Article 35 (persons qualifying for advice and assistance) as it has effect after the commencement of the Children (Leaving Care) Act (Northern Ireland) 2002, in paragraph (2)(c) for “registered” substitute “private”.

In Article 35C (information), in paragraph (2)(a) for “registered” substitute “private”.

In Article 37 (supplementary), in paragraph (4)(a) for “registered” substitute “private”.

In Article 70(1) (refuges for children at risk), for “registered” substitute “private”.

In Article 74(1) (definition of “voluntary home”, etc.), for the definition of “voluntary home” substitute the following definition—

““voluntary home” means a children’s home which is carried on by a voluntary organisation;”.

In Article 75(1) (provision of accommodation for children by voluntary organisations), for sub-paragraphs (b) to (e) substitute the following sub-paragraph—

“(aa) maintaining him in an appropriate children’s home;”.

In Article 77 (duties of an authority in relation to children provided with accommodation by voluntary organisations) in paragraph (5)(c), for “Article 89” substitute “Article 23 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003”.

SCH. 4

In Article 78 (persons disqualified from carrying on, or being employed in, voluntary homes)—

- (a) in paragraphs (1)(a) and (2)(a), for “authority” substitute “Regulation and Improvement Authority”;
- (b) in paragraphs (1)(b) and (2)(b), for “the consent of the authority” substitute “its consent”;
- (c) in paragraph (3)—
 - (i) for “an authority” substitute “the Regulation and Improvement Authority”;
 - (ii) for “the authority” substitute “it”;
 - (iii) for sub-paragraph (b) substitute—

“(b) the applicant’s right to appeal under Article 78A against the refusal to the Care Tribunal; and”.

After Article 78 insert—

“Appeal against refusal of consent under Article 78

78A.—(1) An appeal against a decision of the Regulation and Improvement Authority under Article 78 shall lie to the Care Tribunal.

(2) On an appeal the Care Tribunal may confirm the decision of the Regulation and Improvement Authority or direct it to give the consent in question.”.

In the heading to Part IX, before “CHILDREN’S HOMES” insert “PRIVATE”.

In Article 90(3) (references to an authority), before “children’s home” insert “private”.

In Article 91(4) (circumstances in which a person may foster more than three children without being treated as carrying on a children’s home), after “treated” insert “for the purposes of this Order and the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003”.

In Article 92 (duties of person carrying on children’s home)—

- (a) in the heading,
- (b) in paragraph (1), and
- (c) in paragraph (4),

before “children’s home” insert “private”.

In Article 93 (duties of an authority)—

- (a) in paragraphs (1), (2), (3)(a), (4) and (5)(a), before “children’s home” insert “private”;
- (b) in paragraph (5)(c) for “Article 105” substitute “Article 23 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003”.

In Article 94 (persons disqualified from carrying on, or being employed in, children’s homes)—

- (a) in the heading before “children’s homes” insert “private”;

- (b) in paragraphs (1)(a) and (2)(a), for “authority” substitute “Regulation and Improvement Authority”;
- (c) in paragraphs (1)(b) and (2)(b), for “the consent of the authority” substitute “its consent”;
- (d) in paragraph (3)—
 - (i) for “an authority” substitute “the Regulation and Improvement Authority”;
 - (ii) for “the authority” substitute “it”;
 - (iii) for sub-paragraph (b) substitute—

“(b) the applicant’s right to appeal under Article 94A against the refusal to the Care Tribunal; and”.

After Article 94 insert the following Article—

“Appeal against refusal of consent under Article 94

94A.—(1) An appeal against a decision of the Regulation and Improvement Authority under Article 94 shall lie to the Care Tribunal.

(2) On an appeal the Care Tribunal may confirm the decision of the Regulation and Improvement Authority or direct it to give the consent in question.”.

In Article 105(1)(a) (regulations as to placing of children), for “registered” substitute “private”.

In Article 106 (interpretation)—

- (a) in paragraph (1) in the definition of “privately fostered child” after “accommodation” insert “in their own home”;
- (b) in paragraph (2)(a) for “, 91 and 95” substitute “and 91”;
- (c) after paragraph (3) add the following paragraph—

“(3A) The Department may by regulations make provision as to the circumstances in which a person who provides accommodation to a child is, or is not, to be treated as providing him with accommodation in the person’s own home.”.

In Article 107(3) (privately fostered children further defined)—

- (a) sub-paragraph (b) shall cease to have effect;
- (b) for “sub-paragraphs (b)” in both places where it occurs substitute “sub-paragraphs (c)”.

In Article 149(5) (persons required to furnish information, etc.), after sub-paragraph (i) add the following sub-paragraph—

- “(j) any person carrying on a fostering agency (within the meaning of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003”.

In Article 153(2) (representations concerning child care training), for sub-paragraph (a) substitute the following sub-paragraph—

- “(a) the Northern Ireland Social Care Council;”.

SCH. 4

In Article 176 (children accommodated in schools)—

- (a) in paragraph (2) for “within the area of an authority, the authority” substitute “the Regulation and Improvement Authority”;
- (b) in paragraph (3)—
 - (i) for “an authority” substitute “it”;
 - (ii) for “within the authority’s area, the authority” substitute “the Regulation and Improvement Authority”;
- (c) for paragraph (4) substitute the following paragraph—

“(4) Where accommodation is, or is to be, provided for a child by any school, a person authorised by the Regulation and Improvement Authority may, for the purpose of enabling that Authority to discharge its duty under this Article, enter at any time any premises which are, or are to be, premises of the school.”.

In Schedule 5 (foster parents: limits on number of foster children), in paragraph 5(1) after “treated” insert “for the purposes of this Order and the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003”.

The Commissioner for Complaints (Northern Ireland) Order 1996 (NI 7)

In Schedule 2 (bodies subject to investigation), the following entry shall be inserted at the appropriate place—

“The Northern Ireland Health and Personal Social Services Regulation and Improvement Authority.”.

The Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3)

In section 15 (appeals to the Social Care Tribunal)—

- (a) in subsections (2), (3) and (5) for “a Social” substitute “the”;
- (b) in subsection (4), for “A Social” substitute “The”.

For section 22 (interpretation) substitute—

“Interpretation of this Part

22. In this Part “child”, “children’s home”, “day care setting”, “domiciliary care agency”, “nursing home”, “personal care”, “registered care home”, “residential family centre”, “school” and “undertaking” have the same meanings as in the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.”.

The Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 (c. 11)

In section 2 (Central Authority and accredited bodies)—

- (a) after subsection (2) insert the following subsection—

“(2A) A voluntary adoption agency in respect of which a person is registered under Part III of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 is an accredited body for the purposes of the Convention if, in accordance with the conditions of the registration, the agency may provide facilities in

respect of Convention adoptions and adoptions effected by Convention adoption orders.”;

(b) for subsection (5) substitute the following subsection—

“(5) In this section “voluntary adoption agency” has the same meaning as in the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003; and expressions which are also used in the Adoption (Northern Ireland) Order 1987 (NI 22) (“the 1987 Order”) have the same meaning as in that Order.”.

The Justice (Northern Ireland) Act 2002 (c. 26)

In Schedule 6, in the entry relating to Social Care Tribunals, for “Social Care Tribunals” substitute “the Care Tribunal”.

The Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (NI 00)

In Article [4] (power of certain other authorities to refer)—

(a) in paragraph (2), after sub-paragraph (c) insert the following sub-paragraph—

“(cc) the Regulation and Improvement Authority;”;

(b) in paragraph (3), after sub-paragraph (c) insert the following sub-paragraph—

“(cc) in relation to the Regulation and Improvement Authority, functions under [Part III] of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (regulation of establishments and agencies);”.

In the following provisions, for “a Social” substitute “the”—

Article [9](1), (2) and (3) (appeals against inclusion in list);

Article [10](1) (application for removal from list);

Article [11](1) (conditions for applications under Article [10]);

Article [13](4), (5)(a) and (6) (list in connection with prohibiting or restricting employment in schools, etc.);

Article [16](2)(g) (accredited organisations);

Article [25](1) (review of disqualification);

Article [40](1) and (2) (appeals against inclusion in list);

Article [41](1) (application for removal from list);

Article [42](1) (conditions for application under Article [41]).

In Article [32(1)] (interpretation of Chapter II), in the definition of “children’s home” for the words from “meaning” to the end substitute “same meaning as in the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003”.

In Article [36] (power of other authorities to refer)—

(a) in paragraph (2), for sub-paragraph (a) substitute the following sub-paragraph—

“(a) the Regulation and Improvement Authority;”;

SCH. 4

(b) in paragraph (3), for sub-paragraph (a) substitute the following sub-paragraph—

“(a) in relation to the Regulation and Improvement Authority, any of its functions;”.

In Article [46] (supplementary)—

(a) in paragraph (1)(b), for “or at a private hospital” substitute “, an independent hospital, an independent clinic or an independent medical agency”;

(b) in paragraph (6)(c), for “or at a private hospital” substitute “, an independent hospital, an independent clinic or an independent medical agency”;

(c) in paragraph (7)(c), for “private hospital” substitute “, an independent hospital, an independent clinic or an independent medical agency”;

(d) for paragraph (11) substitute—

“(11) In this Part the following expressions have the same meaning as in the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003—

“domiciliary care agency”;

“independent clinic”;

“independent hospital”;

“independent medical agency”;

“personal care”.”.

In Article [49] [(1)] (interpretation of Act)—

(a) for the definitions of “nursing agency” and “nursing home” substitute the following definition—

““nursing agency” and “nursing home” have the same meanings as in the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;”;

(b) for the definition of “private hospital” substitute the following definition—

““the Regulation and Improvement Authority” means the Northern Ireland Health and Personal Social Services Regulation and Improvement Authority;”;

(c) in the definition of “residential care home”, for the words from “meaning” to the end substitute “same meaning as in the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003”.

SCHEDULE 5

Article 47(2).

REPEALS [S2]

Short Title	Extent of repeal
The Nursing Homes and Nursing Agencies Act (Northern Ireland) 1971 (c. 32).	The whole Act.
The Nurses, Midwives and Health Visitors Act 1979 (c. 36).	In Schedule 7 paragraphs 19 to 22.
The Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (NI 20).	Article 11(5)(b) and (6).
The Adoption (Northern Ireland) Order 1987 (NI 22).	<p>In Article 2(2) the definition of “registered adoption society”.</p> <p>Article 4.</p> <p>In Article 5, paragraph (1) and in paragraph (2) the word “concerned”.</p> <p>Article 6.</p> <p>Article 7.</p> <p>Schedule 1.</p>
The Registered Homes (Northern Ireland) Order 1992 (NI 20).	The whole Order.
The Children (Northern Ireland) Order 1995 (NI 2).	<p>In Article 2(2) the definition of “registered children’s home”.</p> <p>Article 73(1)(b) and (c) and (2).</p> <p>Article 74(2) and (3).</p> <p>Articles 79 to 88.</p> <p>Article 89(1)(b) and (c) and (2)(a) to (e) and (g) to (l).</p> <p>Article 90(1).</p> <p>Article 91(1) to (3).</p> <p>Articles 95 to 104.</p> <p>Article 105(1)(b) and (c), (2)(a) to (e) and (g) to (k) and (m).</p> <p>Article 107(3)(b).</p>

Health and Personal Social Services (Quality, Improvement and Regulation)

SCH. 5

Short Title	Extent of repeal
	In Article 152(1)(b) the words “or voluntary home”.
The Arbitration Act 1996 (c. 23).	In Schedule 9 paragraphs 188 to 190. In Schedule 3 paragraph 58.
The Nurses, Midwives and Health Visitors Act 1997 (c. 24).	In Schedule 4 paragraph 5.
The Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3).	Section 15(1), (6) and (7). Sections 20 and 21.
The Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 (c. 11).	Section 8.
The Justice (Northern Ireland) Act 2002 (c. 26).	In Schedule 3 paragraphs 26 to 28.
The Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003.	In Article [4](3)(a) the words “and Article 176 of the Children Order”. In the cross-heading immediately preceding Article [40] the word “Social”. Article [48].

EXPLANATORY NOTE

(This note is not part of the Order)

This Order establishes the Northern Ireland Health and Personal Social Services Regulation and Improvement Authority and makes provision for the registration and regulation of certain establishments and agencies.

It also makes provision relating to the quality of health and personal social services and to adoption, fostering and children under 12.

**DRAFT HEALTH AND PERSONAL SOCIAL
SERVICES (QUALITY, IMPROVEMENT AND
REGULATION) ORDER**

EXPLANATORY MEMORANDUM

INTRODUCTION

The draft Health and Personal Social Services (Quality, Improvement and Regulation) Order (“the Order”) will be made under paragraph 1 of Schedule 1 of the Northern Ireland Act 2000 if it is affirmed by each House of Parliament.

This Explanatory Memorandum has been prepared by the Department of Health, Social Services and Public Safety (DHSSPS) in order to assist the reader of the Order and to help inform debate on it. The Memorandum does not form part of the Order.

The Memorandum needs to be read in conjunction with the Order. It does not give, and is not meant to be, a comprehensive description of the Order. So where an Article or part of an Article does not seem to require any explanation or comment, none is given.

PURPOSE

In summary the proposed Order –

- establishes a new, independent body, the Northern Ireland Health and Personal Social Services Regulation and Improvement Authority (the Authority) with overall responsibility for monitoring and regulating services delivered by or on behalf of the Health and Personal Social Services (HPSS) and services delivered by the independent, voluntary and private sectors and for monitoring the quality of care in the HPSS;
- introduces a statutory duty of quality to be placed on Health and Social Services (HSS) Boards, HSS Trusts and some special agencies with regard to services which they provide;
- gives the Authority powers to review and inspect the quality of services provided by the HPSS including evaluating clinical and social care governance

DEPARTMENT OF HEALTH SOCIAL SERVICES AND PUBLIC SAFETY

arrangements within HPSS bodies designed to underpin the statutory duty of quality placed on HSS Boards, HSS Trusts etc;

- gives the new Authority responsibility for and powers to regulate a wide range of care services including many services (establishments and agencies) which have previously been unregulated;
- introduces a common system of regulation based on minimum standards set out by the Department;
- gives the Authority powers to assess the quality of some unregulated services provided by HSS Trusts i.e. fostering, adoption and regulation of services provided to children under 12;
- reconstitutes the main appeals tribunal used by this and other legislation; and
- transfers responsibility for the inspection of care provided in schools which provide accommodation to children from HSS Boards to the new Authority.

BACKGROUND AND POLICY OBJECTIVES

The chapter on “Working for Healthier People” in the Executive’s first Programme for Government, included a commitment to put in place a framework to raise the quality of services provided to the community and tackle issues of poor performance across the HPSS. As a first step in fulfilling this commitment, DHSSPS issued a consultation paper entitled “Best Practice – Best Care” in April 2001. The results of this consultation were published in June 2002. The purpose of this Order is to put into effect those decisions, made following the conclusion of the consultation process, which require legislation.

The relevant documents are listed below –

- “Programme for Government” published in March 2001.
- “Best Practice – Best Care, A Consultation Paper”, published in April 2001.
- “Best Practice – Best Care, Responses to the Consultation”, published in June 2002.

The proposals contained in “Best Practice – Best Care” focused on:

- (a) developing and disseminating clear service standards for the HPSS;
- (b) securing accountability at local level for the delivery of services; and
- (c) improving monitoring & regulation of the services.

The main focus of this Order is on the implementation of arrangements covering (b) and (c) which require legislation although this legislation is linked in to other arrangements, for the development of standards and guidelines (a), which do not require primary legislation.

DEPARTMENT OF HEALTH SOCIAL SERVICES AND PUBLIC SAFETY

CONSULTATION

The Department consulted widely on these proposals in the “Best Practice – Best Care” consultation document. The results of this consultation exercise were published in June 2002 and showed widespread support for the introduction of a statutory duty of quality, clinical and social care governance arrangements for the HPSS and a new system of regulation of care services extended to cover a much wider range of services. The consultation showed different views on which body or bodies should inspect and regulate services. However, a common theme was that the system of regulation and inspection should be as streamlined as possible and not involve creating multiple new bodies. As part of this consultation DHSSPS invited consultees to put forward their views on the equality impact of the proposals, and also invited any further comment on the major policy objectives that have been brought forward in this Order. There was almost universal support for the proposals and the equality aims of the Order were broadly welcomed.

OPTIONS

The “Best Practice – Best Care” consultation document put forward different options for standards setting, for extending regulation to a wider range of services and for the inspection of quality in the HPSS. Consultees were also invited to put forward their own proposals if they had alternatives. The measures proposed in this Order have been developed to take account of the original options in the consultation document, responses from consultees and subsequent developments with equivalent arrangements elsewhere.

OVERVIEW

The Order is in six Parts:

- Part I (Articles 1 – 2) provides for the title and commencement and also provides for the interpretation of certain terms and references;
- Part II (*Articles 3 - 7*) provides for the establishment of the Authority and sets out its general responsibility with regard to the monitoring of the quality of health and care services;
- Part III (*Articles 8 - 33*) makes provision for the regulatory procedures to be followed by the Authority;
- Part IV (*Articles 34 - 35*) introduces the statutory duty of quality and the responsibilities of the new Authority with regard to services delivered by HSS Boards, HSS Trusts and special agencies;

DEPARTMENT OF HEALTH SOCIAL SERVICES AND PUBLIC SAFETY

- Part V (*Articles 36 - 37*) sets out the functions of the new Authority with regard to Boards and Trusts adoption and fostering services as well as the delivery of their functions with regard to day care and childminding for children aged under 12; and
- Part VI (*Articles 38 - 46*) sets out the powers of inspection and review of the new Authority. It confers power on the Department to introduce minimum standards applicable to regulated and other services. It also covers the concept of improvement notices linked to minimum standards. Part VI also sets out the powers of a Tribunal with the role of hearing appeals against the decisions of the new Authority.

COMMENTARY ON ARTICLES

PART II

Article 3 - The Regulation and Improvement Authority

Article 3 establishes the Authority. *Schedule 1* sets out detailed provisions regarding the Authority.

Under the provisions of *Schedule 1* the Authority (subject to directions) may take any necessary or expedient action to fulfil its statutory duties (*paragraph 2*). The Department has powers to make regulations governing the procedures of the Authority and the appointment of members (*paragraph 5*). *Paragraph 6* sets out provisions for the payment of remuneration and allowances (including pensions) to the Chairman and members of the Authority subject to the determination of the Department. The first chief executive will be appointed by the Department. The Authority will appoint subsequent chief executives itself, subject to the approval of the Department.

Paragraph 8 makes provision for the Authority to appoint staff subject to directions from the Department.

Paragraph 9 provides that the Authority may arrange for any of its functions to be carried out by a committee or member of staff of the Authority or by another person. *Paragraph 10* makes provision to enable staff from other bodies, to be placed at the disposal of the Authority and vice versa. This will allow the Authority when reviewing or inspecting regional or more specialist services to call upon a wider pool of expertise either from within NI or elsewhere from bodies such as the Commission for Health Improvement.

Paragraph 12 requires the Authority to keep accounts and submit them to the Department and the Comptroller and Auditor General. The Authority's accounts will be audited by the Comptroller and Auditor General.

DEPARTMENT OF HEALTH SOCIAL SERVICES AND PUBLIC SAFETY

Article 4 - General duties in relation to provision of services

Article 4 specifies the remit of the Authority with regard to regulated services and with regard to the HPSS and its general duties with regard to quality.

Paragraph (1) links the main role of the Authority to services regulated under Part III and to services provided by HSS Boards, HSS Trusts and special agencies.

Paragraph (2) sets out the Authority's main functions of keeping the Department informed about the availability and quality of services. This will include reporting on trends in the provision of long term health and care services. The Authority's other main function is of encouraging improvement in the quality of these services. It will do this by, for example, disseminating examples of good practice and giving advice to service providers on how to meet minimum standards (see *Article 38*), the requirements of clinical and social care governance guidelines and the requirements arising from any other standards, guidance or guidelines which the Department may endorse as applying to the HPSS bodies and regulated services.

PART III

Article 8

Article 8 groups all of the regulated services as either establishments or agencies. Establishments are places at which services are delivered. Agencies are organisations which deliver services at different locales. Throughout the Order this enables various articles dealing with regulation to refer to "establishments" and "agencies" and thereby apply to all of the services under that generic list.

Article 9 - Children's homes

Paragraph (2) defines a children's home as an establishment which provides care and accommodation wholly or mainly for children. This will include statutory homes, voluntary homes and registered children's homes (including small private children's homes) as defined in the Children (NI) Order 1995 (the Children Order), and homes for disabled children. *Paragraph (3)* excludes a place where a child is cared for by his parents, a relative, a person with parental responsibility for him or a foster parent. *Paragraph (4)* excludes hospitals, schools and other institutions and gives the Department the power to make other exceptions in regulations. It is intended that regulations will be made to exempt, for example, homes where children take holidays or certain hostels set up by professionals to accommodate apprentices (such as footballers or jockeys). *Paragraph (5)* clarifies the definition of foster parent for the purposes of this Article.

Article 10 - Residential care homes

Article 10 defines the various types of residential care homes which are to be regulated. These are residential homes including adult placements and small residential homes.

DEPARTMENT OF HEALTH SOCIAL SERVICES AND PUBLIC SAFETY

This definition follows on from the definition in Part II of the Registered Homes (NI) Order 1992 except that some exceptions e.g. Trusts and small homes are no longer exempted.

Paragraph (1) defines a residential care home as any home which provides or intends to provide, whether for reward or not, residential accommodation with both board and personal care for those in need of personal care by reason of old age and infirmity, disablement, past or present dependence on alcohol or drugs or past or present mental disorder. This definition includes HSS Trust managed homes, homes covered by Charters and Acts of Parliament and small homes.

Paragraph (3) defines disablement and personal care. “Personal care” in the context of residential care homes includes assistance with bodily functions where such assistance is required. This may include, for instance, assistance with washing, bathing, toileting, dressing and eating for people who are unable to do these things without help. This means that an establishment is not defined as a residential care home unless that type of assistance is provided where required.

Homes which provide personal care and accommodation for disabled children are to be treated as children’s homes and not care homes.

Article 11 - Nursing homes

Article 11 defines nursing homes. This definition follows on from the definition in Part III of the Registered Homes (NI) Order 1992 except that some exemptions are removed and other services previously included are defined at Article 2.

Article 12 - Requirement to register

Paragraph (1) provides that any person who carries on or manages an establishment or agency of any description must be registered, and it will be an offence to carry on or manage such an establishment without being registered in respect of it. The principle is that each establishment or agency should have a registered owner or proprietor (person who ‘carries on’ the business). If the person who carries on the business is not in day-to-day control of it, it is intended that the regulations will require the appointment of a manager who must also be registered by the Authority (see *Article 23*).

Paragraph (2) states that registration is required in respect of voluntary adoption agencies under the provisions of Part III, but the relevant sanctions remain within the Adoption (Northern Ireland) Order 1987 (NI 22).

Paragraphs (4) and (5) relate to offences. A person who carries on or manages an establishment or agency without being registered will be guilty of an offence and liable to a fine up to level 5 on the standard scale (£5,000). If the person continues to run an unregistered establishment or agency after having been convicted of this offence, or

DEPARTMENT OF HEALTH SOCIAL SERVICES AND PUBLIC SAFETY

after their registration has been cancelled, then they will be guilty of an offence and liable to six months' imprisonment, or a fine, or both.

Article 15 - Cancellation of registration

Relevant offences for the purposes of *Article 15* include offences under legislation, such as the Registered Homes (NI) Order 1992, which is being repealed or amended by this Order. This allows for the continued possibility that offences which occurred prior to the commencement of this Order may not come to light or may not be dealt with until a date after this Order comes into effect and previous legislation is repealed or amended. The offences relevant to this Part are –

- failure to comply with conditions (*Article 23*);
- contravention of regulations (*Article 24*);
- false description of an establishment or agency (*Article 25*);
- false statements in applications (*Article 26*);
- failure to display a certificate of registration (*Article 27*);
- obstructing an inspector (*Article 41*);
- in the case of a voluntary adoption agency the offence of contravening 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);
- an offence under the Children Order or any regulations made under it;
- an offence under the Mental Health (Northern Ireland) Order 1986 (NI 4); and
- offences under the Registered Homes (Northern Ireland) Order 1992 (NI 20) or regulations made under it.

Cancellation of registration would not normally be the first step in a formal enforcement action. It is more likely to be used where other actions such as prosecution have failed to ensure compliance by the establishment or agency. If a registered person is convicted of a relevant offence, such as breaching a condition of registration (an offence under *Article 24*), and still fails to remedy the breach, the Authority will be able to consider cancellation of the person's registration.

Article 16 - Applications by registered persons

Paragraph (1) enables the registered person to apply for a change to his conditions of registration (for example to change the number of people accommodated in the home) or to apply voluntarily for the cancellation of registration, for example, if he plans to close or sell the business. *Paragraph (2)* prevents a person voluntarily cancelling his registration if the Authority has given notice of intention to, or decided to, cancel registration. *Paragraph (3)* enables the Department to make regulations specifying the particulars to accompany an application for registration. *Paragraph (4)* provides that if the Authority grants the application it must give notice in writing and issue a new certificate of registration.

DEPARTMENT OF HEALTH SOCIAL SERVICES AND PUBLIC SAFETY

Article 17 - Regulations about registration

Article 17 provides for regulation-making powers with respect to registration. Regulations covering applications for registration (*paragraph (1)(a)*) will deal with matters such as the information that should be provided in the application. Regulations made under *paragraph (1)(b)* may require certificates of registration to include, for example, the conditions of registration for that person in respect of that establishment or agency e.g. the categories of person which a home may accommodate.

Paragraph (2) concerns fostering and voluntary adoption agencies. The Department will be able to make regulations to provide that fostering agencies or voluntary adoption agencies which are unincorporated bodies are ineligible to apply to be registered.

Paragraph (3) enables regulations to be made requiring registered persons to pay an annual fee. Decisions will be made about the level and structuring of fees at a later date. *Paragraph (4)* provides that unpaid fees may be recovered as a civil debt.

Article 18 - Notice of proposals

This Article provides for the Authority to give notice of decisions it intends to take (“notice of proposal”) with respect to applications for registration, cancellation of registration or any change to the conditions of registration. Notice must be given to the applicant or registered person and must set out the reasons (*Paragraph (6)*). For example, in the case of a person applying for registration for the first time, the notice of proposal will state whether or not the Authority proposes to register them, and if so, the conditions subject to which they propose to grant the application. *Article 18* does not apply where the Authority decides to grant an application for registration unconditionally, or subject to agreed conditions.

Article 22 - Appeals to the Care Tribunal

Article 22 provides for an appeal against a decision of the Authority under Part III. The appeal is to a new “Care Tribunal” established under this Order (*Schedule 2*). This Tribunal replaces the Registered Homes Tribunal which was established under the Registered Homes Order. *Paragraphs (3), (4)* and *(5)* set out the powers and decision making ability of the Tribunal hearing the appeal.

Article 23 - Regulations relating to establishments and agencies

This Article provides for regulation-making powers which will cover the management, staff, premises and conduct of establishments and agencies (other than voluntary adoption agencies). It also provides for regulations to be made regarding the health and welfare of service users.

DEPARTMENT OF HEALTH SOCIAL SERVICES AND PUBLIC SAFETY

PART IV

Article 34 – Duty of Quality

Article 34 introduces a statutory duty of quality which will apply to Boards and Trusts with regard to the services which they provide (*paragraph (1)*) including arrangements relating to the environment in which health and care services are provided.

Paragraph (2) enables the Department to extend the duty of quality to special agencies.

The “Duty of Quality” will place a statutory requirement on all HPSS providers to put and keep in place arrangements for improving and monitoring the quality of health and social care services that they provide directly to individuals. That is, they will have to put and keep in place a system of clinical and social care governance.

PART V

Article 36 - Provision of information & Article 37 - Annual returns

HSS Boards and Trusts currently have responsibilities, set out in the Children Order 1995 and the Adoption (NI) Order 1987 (as amended by the 1994 Order) to deliver a range of fostering and adoption services. A different approach is therefore needed to the regulation of these services. The approach to the regulation of these services (delivered by Local Authorities) in Scotland and in England and Wales under equivalent legislation has also been handled separately for similar reasons.

Part XI of the Children Order sets out a system for the regulation of a range of child minding and day care services by Boards and Trusts. These functions will not transfer to the Authority.

The provisions at *Article 36* and *37* will require HSS Boards and Trusts to provide information and annual returns to the Authority covering the way in which they exercise their functions and responsibilities with regard to delivering fostering and adoption services and also covering the way HSS Boards and Trusts exercise their functions with regard to the regulation of day care and child minding. It is the intention that this information and these returns should be such that they will involve HSS Boards and Trusts providing the same type of information as would be the case if these services were regulated under Part III of this Order. It is also intended that the new Authority will inspect the way in which these fostering and adoption services and the regulation of day care and child minding by Boards and Trusts under the powers set out at *Article 35 (1)(d)*.

DEPARTMENT OF HEALTH SOCIAL SERVICES AND PUBLIC SAFETY

PART VI

Article 38 – Statements of minimum standards

Article 38 enables the Department to issue minimum standards for Northern Ireland applicable to all services including regulated services (*paragraph (1)*). These minimum standards are essential to the arrangements for regulating and inspecting these services. However the Department will also be able to issue minimum standards for non-regulated services.

The Department is establishing a Standards and Guidelines Unit which will have a key role in the development and dissemination of standards and guidelines both for regulated and non-regulated services. The unit will itself lead the work of developing many standards and guidelines, however, much of the work may be undertaken by arrangement with existing standards and guidelines setting bodies.

Any breach of these standards will not, of itself, be a breach of regulatory requirements, but the standards shall be taken into account when determining whether a breach of the regulations has occurred. For example, a regulation might state that suitable and nutritious food should be provided to all residents in a home. The minimum standards would set out what registered providers are expected to provide in terms of the number of meals per day and their nutritional content.

Different services will have different sets of regulations and standards which will be appropriate to the type of service. Standards will also be developed to apply to non-regulated HPSS services.

Article 39 - Improvement notices

Article 39 applies to all services at Part III, and all HPSS bodies in respect of any service for which the Department issues a statement of minimum standards.

The Authority can issue an improvement notice to an establishment, agency or HPSS body which the Authority judges is failing to meet a minimum standard. As part of this improvement notice the Authority must recommend what improvements it considers necessary (*paragraph (2)(b)*). However, failure to comply with an improvement notice does not constitute an offence in itself.

Article 44 - The Care Tribunal

This Article along with *Schedule 2* sets out provisions for the right of appeal to a tribunal. Under *Article 22* there is a right of appeal against decisions by the Authority, in respect of registration, (for example, a decision not to register an establishment or agency or to remove it from the register or to impose conditions on registration). Such decisions could affect an individual's ability to secure employment or the agency or establishment's ability to operate as a profitable business.

DEPARTMENT OF HEALTH SOCIAL SERVICES AND PUBLIC SAFETY

The Tribunal replaces Registered Homes Tribunals which were set up by the Registered Homes (Northern Ireland) Order 1992, and renamed by section 15 of the Health and Personal Social Services Act (Northern Ireland) 2001 as Social Care Tribunals. This Tribunal is to be known as the Care Tribunal reflecting the wider range of services for which a tribunal panel may be required to hear an appeal. This new tribunal will also hear appeals under the terms of the HPSS Act (Northern Ireland) 2001.

The Department will have the power to make regulations covering the work of the Tribunal (*paragraph (3)*). Under *paragraph (5)* it is an offence to fail to co-operate with the Tribunal (Level 3 fines). Appeals against the findings of the Tribunal may be made to the High Court on a point of law (*paragraph (6)*).

Schedule 2 sets out provisions for appointments to the Tribunal and to individual panels. These are similar to the existing provisions covering Registered Homes Tribunals. A panel of persons who may serve as chairmen of the Care Tribunal will be appointed by the Lord Chancellor. Chairmen must be barristers or solicitors of at least ten years standing. The Lord Chancellor will also select the chairman for each panel from this list of panel members. [Note: *Schedule 2 paragraph 7* of the Order will enable the Lord Chancellor to carry out the functions of the First and Deputy First Ministers until such time as section 5(1) of the Justice (Northern Ireland) Act 2002 comes into force.]

The Department will select members of a lay (non-legal) persons panel. The Department will also appoint from this panel the two remaining members of each Tribunal.

The remaining provisions of *Schedule 2* cover staff support to the tribunal as well as remuneration, expenses and allowances payable to the tribunal members.

Schedules

Schedule 1 – The Northern Ireland Health and Personal Social Services Regulation and Improvement Authority.

Schedule 2 – The Care Tribunal.

Schedule 3 – Transitional Provisions and Savings.

Schedule 4 – Amendments.

Schedule 5 – Repeals.

DEPARTMENT OF HEALTH SOCIAL SERVICES AND PUBLIC SAFETY

FINANCIAL EFFECTS OF THE ORDER

It is anticipated that the costs of running the new Authority will be £5,600,000 per annum offset against £2,000,000 current expenditure and potential income estimated at £800,000 from services to which regulation is extended.

Under the existing system of regulation many providers (e.g. nursing homes) are already paying registration and inspection fees to HSS Board Registration and Inspection Units or to HSS Trusts. An impact on business and the HPSS will arise from both the levels of fees and charges applied by the Authority and the minimum standards of care which are applied to their service. The level of fees and charges has not yet been determined and minimum standards for each of the regulated services have not yet been developed.

Proposals on the level of fees charged for registration and inspection under this new system as well as proposals on the minimum standards of care set for each service will be subject to extensive consultation. They will also be subject to regulatory impact assessments.

EUROPEAN CONVENTION ON HUMAN RIGHTS ISSUES

The provisions of the Order are compatible with the European Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

There has been considerable consultation on the proposals with widespread support for the proposals contained in “Best Practice – Best Care”. The proposed legislation is intended to improve safeguards and the quality of services for all service users. It will have the positive effect of putting in place a system designed to promote and ensure equality of access to the same quality of service. It would have no adverse effect on any group mentioned in section 75 of the Northern Ireland Act 1998. There may well be equality issues arising out of the standards which will be set. As individual sets of standards are developed and agreed for regulated and non-regulated services, the equality issues will have to be addressed.