STATUTORY RULES OF NORTHERN IRELAND

2008 No. 346

HEALTH AND PERSONAL SOCIAL SERVICES

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

Made - - - -	*12th August 2008*
Coming into operation	*13th August 2008*

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

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

Citation and Commencement

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

Amendment of the Nursing Homes Regulations (Northern Ireland) 2005

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

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

(a) for paragraph (1)(b), substitute—

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

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

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

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

(e) after paragraph (4), insert—

(**1**) S.I. 2003 No. 431 (N.I. 9)
(**2**) S.R. 2005 No. 160

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

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

(g) after paragraph (6) add—

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

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

(a) that either—

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

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

(b) the registered person has obtained confirmation in writing that the new worker is not included in the list mentioned in Article 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003(**4**).

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

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

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

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

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

"**2.** Either—

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

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

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

(**3**) S.R. 2005 No. 175
(**4**) S.I. 2003 No. 417 (N.I. 4)

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

3.—(1) The Residential Care Homes Regulations (Northern Ireland) 2005(**5**) are amended in accordance with paragraphs (2) and (3).

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

(a) for paragraph (1)(b), substitute—

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

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

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

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

(e) after paragraph (4), insert—

"(4A) In the circumstances to which regulation 12(4) of the Nursing Agencies Regulations (Northern Ireland) 2005(**6**) applies, with the result that a criminal record certificate pursuant to section 113A of the Police Act 1997 ("a criminal record certificate"), or an enhanced criminal record certificate pursuant to section 113B of that Act ("an enhanced criminal record certificate"), is not yet available in respect of a person to whom paragraph (2) applies, the registered person may allow that person to start work at a residential care home in a position to which paragraph (3) applies pending receipt of, and satisfying himself with regard to, that outstanding information.";

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

(g) after paragraph (6) add—

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

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

(a) that either—

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

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

(b) the registered person has obtained confirmation in writing that the new worker is not included in the list mentioned in Article 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003(**7**).

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

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

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

(**5**) S.R. 2005 No. 161
(**6**) S.R. 2005 No. 175
(**7**) S.I. 2003 No. 417 (N.I. 4)

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

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

"**2.** Either—

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

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

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

Amendment of the Nursing Agencies Regulations (Northern Ireland) 2005

4.—(1) The Nursing Agencies Regulations (Northern Ireland) 2005(**8**) are amended in accordance with paragraphs (2) to (5).

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

(a) in paragraph (1), at the beginning insert "Subject to paragraph (4),";

(b) after paragraph (3), add—

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

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

(a) that either—

(i) a criminal record certificate has been applied for, pursuant to section 113A of the Police Act 1997 ("a criminal record certificate"), or

(ii) an enhanced criminal record certificate has been applied for, pursuant section 113B of that Act ("an enhanced criminal record certificate"); and

(b) the registered person has obtained confirmation in writing that the nurse is not included in a list mentioned in Article 16 or 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003(**9**).

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

(a) pending receipt of the outstanding information in relation to a criminal record certificate, or an enhanced criminal record certificate, take steps, where appropriate, to inform the service user, or the service user's representative, that a full criminal record certificate or a full enhanced criminal record certificate, as the case may be, has not yet been obtained in respect of the nurse;

(b) where appropriate inform the service user, or the service user's representative, when the outstanding information has been obtained; and

(**8**) S.R. 2005 No. 175
(**9**) S.I. 2003 No. 417 (N.I. 4)

(c) terminate the supply of the nurse to the service user where the registered person considers that the outstanding information, when obtained, is not satisfactory.".

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

(a) after paragraph (1) insert—

"(1A) Where an agency—

(a) is acting as an employment agency; and

(b) has supplied a nurse in the circumstances to which regulation 12(4) applies,

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

(b) for paragraph (2) substitute –

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

(4) For paragraph 2 of Schedule 2 substitute—

"**2.** Either—

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

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

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

(5) For paragraph 13 of Schedule 3 substitute—

"**13.** Either—

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

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

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

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

5.—(1) The Children's Homes Regulations (Northern Ireland) 2005(**10**) are amended in accordance with paragraphs (2) and (3).

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

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

(**10**) S.R. 2005 No. 176