



Northern Ireland  
Assembly

**Committee for Health, Social Services and  
Public Safety**

# **OFFICIAL REPORT (Hansard)**

**The Children's Homes (Amendment)  
Regulations (Northern Ireland) 2012**

**7 March 2012**

# NORTHERN IRELAND ASSEMBLY

## Committee for Health, Social Services and Public Safety

### The Children's Homes (Amendment) Regulations (Northern Ireland) 2012

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**Members present for all or part of the proceedings:**

Mr Jim Wells (Deputy Chairperson)  
Ms Paula Bradley  
Mr Mickey Brady  
Mr Mark H Durkan  
Mr Samuel Gardiner  
Ms Pam Lewis

**Witnesses:**

Ms Eilís McDaniel	Department of Health, Social Services and Public Safety
Ms Patricia Nicholl	Department of Health, Social Services and Public Safety

**The Deputy Chairperson:** I refer members to the SL1 on the Children's Homes (Amendment) Regulations (Northern Ireland) 2012. We considered this issue on 22 February 2012, and we agreed to write to invite officials to brief us on those proposals. I am pleased to say that those officials are here today. You have had a long sit, ladies, but, hopefully, you found the previous session interesting. I invite Eilís McDaniel, who has been with us before, and is acting head of the childcare policy directorate, and Patricia Nicholl, social services officer. I ask the witnesses to make a brief presentation on the SL1, and if members wish to ask questions, let me or the Committee Clerk know.

**Ms Eilís McDaniel (Department of Health, Social Services and Public Safety):** Thank you, Chair. I hope to be brief. This is a fairly small amendment. I have a couple of pages of briefing here, but I will try to get through it as quickly as possible. The Children's Homes Regulations (Northern Ireland) 2005 were made under the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003. The regulations set out the arrangements governing the establishment, management and conduct of children's homes in Northern Ireland. They cover a significant range of matters designed to promote and safeguard the welfare of children placed in residential care.

Regulation 33(2) requires a registered person to establish a system for monitoring a range of matters and to improve the quality of care provided in the home. The regulation also requires the registered person to provide monitoring and quality of care reports to the Regulation and Quality Improvement Authority (RQIA) and to the placing authority, which, in the main, is the health and social care trust, and, on request, to the Children's Commissioner, and children in the home and their parents.

Monitoring reports are compiled on a monthly basis. It is proposed to amend the regulations for reasons drawn to the attention of the Department by the Northern Health and Social Care Trust acting on the advice of trust lawyers. The trust was challenged by the parent of a disabled child who refused to avail of a short break residential placement offered by the trust, unless the trust provided him with specified monitoring reports. The parent claimed that because his child's placement was less than 24 hours in duration, he, the parent, was, in effect, the placing authority and, therefore, entitled to monitoring reports.

Under current regulations, he was correct. However, monitoring reports contain sensitive, confidential information about other children, their families and staff working in the home. In an attempt to balance the rights of the parent concerned, information about the child and the rights of other children in the home and their parents to privacy and confidentiality, the trust offered redacted versions of the reports. The parent refused to accept the trust's offer. That created a conflict between the provisions of the regulations and the need for the trust to protect the personal data of all children accommodated in the children's home and the staff who work there.

It is proposed to make two amendments to the regulations. The first amendment will remove the requirement for the owner of the children's home to provide a copy of monitoring reports and reviews of quality of care reports when requested by children in the home and their parents. As I have indicated, those reports can, and often do, contain very sensitive and personal information relating to children and staff in children's homes. For example, they can include information about child deaths, serious illnesses or accidents involving individual children, serious complaints made about staff, and allegations or suspicions of abuse in respect of individual children.

The second amendment involved the definition of the placing authority in the regulations. The majority of children who receive care in statutory or voluntary children's homes in Northern Ireland have been placed there by trusts. That means that the trust is responsible for arranging and funding the placement, supervising the arrangements and ensuring that the placement is suitable for the child and does not present a risk to other children in the home. As the regulations stand, the trust is the placing authority for looked-after children only: that is children who are in the care of the trust, including those who are accommodated by the trust for a continuous period of more than 24 hours.

A child who spends less than 24 hours in a children's home is not in the care of the trust, and, therefore, the child's parent is the placing authority. That situation can arise in the provision of short-break respite care for disabled children, when a child may be admitted for several single-night short-break stays during the year, some or all of which may last for periods of less than 24 hours. In most cases, a trust will be involved in arranging those short-break or respite stays. The definition of the placing authority will be changed by removing the reference to a looked-after child. The effect of the change is that any trust that makes arrangements to accommodate a child in the children's home, regardless of the length of time that the child is in the home, will be the placing authority for that child, regardless of whether the child is actually looked after.

I will return to the provision of monitoring and quality of care reports. Members will appreciate and understand that the supply of monitoring and quality of care reports to the RQIA, the Commissioner for Children and Young People and the health and social care trusts, which all have statutory duties and powers in relation to children generally, are in connection with children's homes specifically. Difficulties arise, however, in implementing the requirements of the regulations as they apply to children and their parents. As I have explained, a parent has an entitlement to those reports under the current definition of a "placing authority" under regulation 33.

I assure the Committee that although the proposed changes to the regulations would effectively remove the power of parents and children to request monitoring and quality of care reports, which can easily identify individual children and can often contain very sensitive information, there are a number of ways in which a parent or child can access information about the quality of care in a children's home. I was going to go on to list what those arrangements are, but I am conscious of the time.

**The Deputy Chairperson:** Can you give us the first two or three? I was going to ask you to give me an example of what a parent could do.

**Ms McDaniel:** Inspection reports are produced twice yearly after inspections that are conducted by RQIA. Parents can have access to those reports, either from the RQIA, from a trust or from a registered provider. A second way is by way of reports of annual reviews of residential provision by trusts or the Health and Social Care Board as part of its corporate parenting and delegated statutory functions arrangements. Reports can also be accessed under the provisions of the Children (Northern Ireland) Order 1995, the Data Protection Act 1998 or the Freedom of Information Act 2000, although that is not how we would expect parents to get information about their child's care in a residential home. There are a number of ways in which a parent can access information.

**The Deputy Chairperson:** The fact that parents or carers would ask for a monitoring report would indicate that they had some concern about something that had happened to their child in a particular institution. I can understand why it is totally inappropriate that a parent would get a monitoring report that explains what several children did when they interacted with that parent's child, but I cannot understand why a redacted version could not be applicable, with the names of the other children and carers taken out.

The alternatives that you suggest are much more general documents. An RQIA report is not going to say that, on 27 March, Freddie hit Seamus, or that there was a concern about the behaviour of a certain member of staff. It is going to be a more general report about the level of care that has been discovered in a certain institution. Why did you not consider the alternative that you would release the information, but in a redacted version?

**Ms McDaniel:** I will deal with both points. Interestingly, the parent in this case did not have any concerns about the home in question.

**The Deputy Chairperson:** So why did he ask?

**Ms McDaniel:** I am not absolutely certain.

**Ms Patricia Nicholl (Department of Health, Social Services and Public Safety):** He asked because he recognised that the regulations entitled him to the information, as the placing authority.

**The Deputy Chairperson:** It is a strange thing to happen.

**Ms Nicholl:** But he refused to accept the redacted version.

**The Deputy Chairperson:** But if he or she had been genuinely concerned, the redacted version would surely have given him or her enough information to be either reassured or alarmed about what had happened.

**Ms McDaniel:** As Patricia has explained, he was offered a redacted version and refused it for reasons known only to him. There is the potential for a redacted report to have been so heavily redacted that it can become meaningless to people, but I do not necessarily think that would have been true in this case. Redaction would have been the obvious way around it, but given that we arrived at a situation where he was not willing to accept it, the Department found itself in the position that an amendment of the regulations was probably the only and best way forward.

**The Deputy Chairperson:** Your reaction to him refusing the redacted version was to prevent anyone asking for a monitoring report in the future.

**Ms McDaniel:** On the basis that we think and are convinced that there is access to sufficient information in other ways that I given examples of.

**The Deputy Chairperson:** If a child comes back from care and he or she is quite distressed, an RQIA general report about two visits a year to that particular institution would not pick that up.

**Ms Nicholl:** There is a difference insofar that there is a right for any parent who has a concern about a specific issue around the care of their child to have that addressed through the complaints and representation procedure in the Children Order. They can address that with the trust through due process. For example, you spoke of a child coming back from a visit having been injured or making an account of concern about a member of staff. The parents have a right to have that addressed. If there is a specific issue about the quality of the care, the parent has a right to consider that with the trust and to have that investigated and be considered. The parent also has a right to have access to all of the reports in relation to their own child through the Children Order documentation. That is a given.

The issue here is that this particular parent wished to have quality reports and a monitoring report about a children's home, not about their child, but about staffing arrangements, incidents in the report, incidents in the unit and incidents whereby parents arrive at a children's home having created a fracas or having been under the influence of alcohol. In some of those instances, although the reports are relatively well anonymised, they still refer to small units of between four and eight individuals. They are small communities, and in many instances, the anonymity is impossible to guarantee, so the parent of a child could be placed in a position where they could uncover information about incidents whereby a member of staff has been suspended because of suspicions of misconduct, and that could be taken forward in a way that the trust would have no control over, for example, vigilante behaviour outside in the community. Really, it is about the cordon of control around the information and monitoring reports. Where there is a specific issue of concern, there are a number of avenues for a parent to take that forward.

**The Deputy Chairperson:** Would the investigating body have access to the unredacted monitoring reports if you made a formal complaint — not the parents, but if it was referred for investigation? Would the full information be on the table for the people looking at the complaint?

**Ms Nicholl:** If a parent has a specific complaint to make, then, under the Children Order, they have a right to have that complaint investigated and considered by the trust. If they are not happy with the way the trust investigates it at stage one, they then have the right to have that complaint investigated and considered by independent persons who have nothing to do with the case. With all of those reports, the outcome at each stage is made available to the complainant, which in this case was the parent.

**The Deputy Chairperson:** Would the independent individual have full access to unredacted monitoring reports as part of that process?

**Ms Nicholl:** Not necessarily. It really depends on the nature of the complaint made.

**The Deputy Chairperson:** Would they have access to it if it were helpful to investigate the complaint?

**Ms Nicholl:** Again, the monitoring reports are provided for reasons of provision of specific data that is required to be completed in relation to the monitoring reports. It would be about the number of incidents when a child has absconded from a unit, so, for example, if the complaint was about someone who was not happy about the way in which their child had been managed within the unit, or someone was generally unhappy about the way in which the unit is dealing with children because they had had specific experiences, then it would be for the trust to consider whether the access to the monitoring report is relevant to the complaint. I would imagine that, if there were a general complaint about the management of a children's home, the monitoring complaints would be reviewed over a period in order to ascertain whether that has been a trend and what RQIA has done in its inspections. The trusts might well ask RQIA to review that or, indeed, the board or the Department might ask RQIA to go in and do a specific inspection.

**The Deputy Chairperson:** This is a very difficult and controversial issue. Unfortunately, in the past, there have been attempts by authorities on both sides of border to make it as difficult as possible to come out with what happened in institutions. Therefore, I am always very worried about anything that could be perceived as trying to make it more difficult to investigate any allegation. I am intrigued about why someone would ask for all that material and take it to a judicial review when he did not have a complaint. That really is anorak behaviour. Clearly, he did not have a motive beyond personal interest.

However, I am thinking about a more real situation where a child comes back and alleges something and the parent could be denied what he or she perceives as being important.

**Ms Nicholl:** If there were an investigation of an allegation of abuse or neglect, they would be entitled to access all of that documentation.

**Ms McDaniel:** For most children residing in a children's home, the trust is the corporate parent in any case. This is an unusual situation where you have a parent of a child who is not a looked-after child by the trust and who is placed for a very short respite break in a children's home. In most cases, that report will be for the trust anyway, as the placing authority and as the corporate parent.

**The Deputy Chairperson:** Of course, he would have full access to everything.

**Ms Nicholl:** Absolutely, yes.

**Mr Durkan:** It is very strange that these events are being gone into over that incident.

**Ms McDaniel:** The parent concerned was invited to respond to the consultation to amend the regulations. Although he did not agree with us amending the regulations, he made a recommendation about bringing forward regulations specific to disabled children, for example, and there is some merit in that recommendation. In addition to what we are doing, it is probably something that the Department needs to look at.

**The Deputy Chairperson:** At the moment, we are only allowing authority for the rule to be prepared. If any alarm bells ring between now and you coming back, we have that opportunity. The horse has not bolted from the stable, as it were. Is the Committee content that the Department prepare the rule?

*Members indicated assent.*

**The Deputy Chairperson:** We will have another look at it when it comes back to us. Thank you.