

Draft Foster Placement and Fostering Agencies Regulations (Northern Ireland)

A CONSULTATION DOCUMENT

October 2022

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Ministerial Foreword

The current Regulations governing foster care in Northern Ireland are now more than 25 years old. This consultation invites views on proposed new Foster Placement and Fostering Agencies Regulations for Northern Ireland, which will—when made—revoke and replace the Foster Placement (Children) Regulations (Northern Ireland) 1996.

Currently in Northern Ireland, prospective foster parents can only be approved by Health and Social Care Trusts or voluntary organisations. The new Regulations will bring fostering services in Northern Ireland into line with other parts of the UK. They will enable fostering agencies to register with and be inspected by the Regulation and Quality Improvement Authority and will enable HSC Trusts to enter into written agreements with fostering agencies—both in the voluntary and independent sectors—to assess and approve foster parents on their behalf.

The Department of Health will also work with stakeholders to develop and publish minimum standards which will apply to all fostering service providers, in the statutory, voluntary and independent sectors.

The draft Regulations were previously consulted on in 2014. While the responses to that consultation were largely positive, regrettably it was not possible to progress the Regulations at that time. Given the passage of time since the Regulations were last consulted on, I have agreed that a further consultation exercise should be undertaken before proceeding to bring the draft Regulations back to Assembly.

There are now more than 3,500 children in care in Northern Ireland, the highest number since the introduction of the Children (Northern Ireland) Order 1995. The vast majority of these children are living with foster parents. We know that foster parents act as a protective factor for children in care, providing them with care in a stable family environment. As the number of children in care continues to increase, the need for caring, loving homes will also rise. These draft Regulations and accompanying standards will help to ensure that the process for assessing and approving prospective foster parents is as seamless as possible, and that the best interests of the child remain at the forefront of decision making.

A handwritten signature in black ink, appearing to read 'Robin Swann', written in a cursive style.

ROBIN SWANN MLA

Minister for Health

October 2022

Introduction

1. At 31 March 2021, there were 3,530 looked after children in Northern Ireland, with 81% of these children in foster care placements (41% placed in kinship care and 40% placed in non-kinship or independent foster care placements). The Department of Health (“the Department”) recognises the invaluable service that foster parents provide and the need to ensure that our fostering legislation supports both foster parents and children in foster placements.
2. New Foster Placement and Fostering Agencies Regulations were developed and consulted on in 2014, and it was intended that these would revoke and replace The Foster Placement (Children) Regulations (Northern Ireland) 1996. The new Regulations received the broad support of stakeholders who responded to the consultation. However, this work was prevented from progressing for a number of reasons. Given the passage of time since the Regulations were last consulted on, the Department is carrying out this consultation exercise before proceeding to bring the draft Regulations back to Assembly.

Legislative context

3. A Health and Social Care (HSC) Trust may place a child who it is looking after with a foster parent under Article 27(2)(a) of the Children (Northern Ireland) Order 1995 [“the Children Order”]. Provision also exists under Article 75(1)(a) of the Children Order for a voluntary organisation providing accommodation for a child to place a child with a foster parent, although in practice this does not happen. Articles 27(2)(a) and 75(2) of the Children Order provide that the Department may make regulations in relation to the placement of children with foster parents.
4. The Adoption and Children Act (Northern Ireland) 2022 completed its passage in the Assembly and received Royal Assent on 27 April 2022. It is anticipated that the provisions in the Act will be implemented over a five year period. The Act will amend the provisions of the Children Order relating to the placement of children with foster parents.

5. Article 23 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 [“the 2003 Order”] provides that the Department may make regulations in relation to the management, staff, premises and conduct of establishments and agencies.

Definitions

6. Article 2(2) of the Children Order, as amended by the Health and Social Care Act (Northern Ireland) 2022, defines an “authority” as an HSC trust that is exercising social care and children functions within the meaning of Article 10A of the Health and Personal Social Services (Northern Ireland) Order 1991.
7. Article 2(2) of the 2003 Order defines a “fostering agency” as:
 - 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 [this includes undertakings which operate on either a for-profit and a not-for-profit basis]; or
 - b. a voluntary organisation which places children with foster parents under Article 75(1) of the Children Order.
8. Throughout this consultation document, references to an authority mean a HSC Trust. References to a fostering agency have the meaning ascribed by Section 2(2) of the 2003 Order. References to a fostering service provider mean:
 - a. in relation to a fostering agency, a registered person; or
 - b. an authority responsible for the placement of a child under Article 27(2)(a) of the Children Order; or
 - c. an area authority ie. the authority in whose area the child is placed, where that authority is not also the authority responsible for placing the child.

Purpose of Consultation

9. This consultation seeks views on draft Foster Placement and Fostering Agencies Regulations for Northern Ireland.

10. It is proposed that these new Regulations will allow HSC Trusts to make arrangements with fostering agencies to assess and approve foster parents on the Trusts' behalf, subject to written agreement. The new Regulations will also bring fostering agencies within the scope of inspection and regulation by the Regulation and Quality Improvement Authority (RQIA).
11. The Regulations will, when made, place specific duties on HSC Trusts as the responsible authority, in relation to the making of foster placements, the supervision of placements, the termination of placements, and short-term, emergency and immediate foster placements. The Regulations also place specific duties on HSC Trusts in relation to the health and education of children in foster placements, as well as in relation to the support, training and information to be provided to foster parents.
12. In addition, it is proposed that the new Regulations will place duties on all fostering service providers in relation to the assessment of prospective foster parents, the approval of foster parents, reviews and terminations of approvals, and the records they will be required to maintain.
13. The new Regulations will also place particular duties on fostering agencies, including a duty to secure the welfare of children and duties relating to the operation of the agency.
14. As noted above, a consultation on the draft Regulations was carried out in 2014. Nineteen responses to the consultation were received at that time and these were largely welcoming of the Regulations. The Department has taken account of comments provided insofar as it is considered is possible to do so, in consultation with legal advisors.
15. This new consultation includes the original questions posed in 2014. To inform responses, a summary of the consultation feedback received in 2014 and the action the Department took as a result, including making changes to the draft legislation, is provided as part of the consultation materials.

16. One issue which was raised by some respondents to the 2014 consultation related to the perception that the draft Regulations will place additional requirements on fostering agencies, over and above those requirements to which HSC Trusts are subject. The Department does not accept this assertion. HSC Trusts do not fall within the definition of fostering agencies and are therefore not required to register with RQIA. However HSC Trusts provide statutory fostering services and have specific statutory duties under the Children Order. Trusts' fostering functions include the placement of children with foster parents and the monitoring and review of those placements. Trusts also undertake statutory looked after children reviews, which extend to children in foster care. The Trusts' statutory functions as they relate to looked after children are subject to a system of performance monitoring and review by the Department. In addition, Trust fostering services can be, and have been, subject to review by RQIA under Article 35 of the 2003 Order.
17. Article 38 of the 2003 Order also provides that the Department may prepare and publish statements of minimum standards. The Department intends to work with stakeholders to develop minimum standards for fostering services which will have apply to all fostering service providers. Therefore, in addition to regulating fostering agencies, the RQIA will review, as required, and report on the delivery of statutory fostering services against relevant minimum care standards.
18. The Department is also seeking your views on some additional issues that have arisen since the original consultation took place. Further detail on these is provided below.

Summary of the Regulations

19. The Regulations apply to placements of children by authorities under Article 27(2)(a) of the Children Order and voluntary organisations under Article 75(1)(a) of the Children Order. They do not extend to any placements to which the Placement of Children with Parents etc. Regulations (Northern Ireland) 1996 apply and placements for adoption or with a person having parental responsibility for a child (regulation 3).

20. Part II of the Regulations allows authorities to make arrangements with fostering agencies to assess, approve and review foster parents on the authorities' behalf (regulation 4 and Schedule 1).
21. Part III of the Regulations sets out the requirements for the assessment of prospective foster parents by an authority or fostering agency, including the information to be obtained and checks to be carried out in relation to that person and members of their household and family (regulation 5 and Schedule 2); requires the foster parent with whom a child is placed to be approved by an authority or fostering agency, sets out the process of approval and allows for a person who is informed they are unlikely to be approved to submit representations to the fostering service provider (regulation 6 and Schedule 3); and makes provision for reviews and terminations of approval (regulation 7).
22. Part IV of the Regulations makes provision for the placement of a child with a foster parent (regulation 8 and Schedule 4); for the supervision of placements (regulation 9); for authority visits to children placed with foster parents by voluntary organisations (regulation 10); for the termination of placements (regulation 11); for the application of the Regulations to short-term placements (regulation 12); for placements outside Northern Ireland (regulation 13); and for emergency and immediate placements by authorities (regulation 14).
23. Part V of the Regulations provides for authorities and fostering agencies to maintain records of any placements made with a foster parent approved by them, of applicants who have not been approved by them, and in the case of an authority, of any foster parent with whom a child is placed in an emergency or immediate placement (regulation 15); for authorities and fostering agencies to maintain a register of foster parents approved by them (regulation 16); and for the retention and confidentiality of records (regulation 17).
24. Part VI of the Regulations concerns the conduct of the authority or voluntary organisation which places a child with a foster parent. It places a duty on that authority or voluntary organisation to promote the health and development of the

child (regulation 18); to promote the educational achievement and leisure activities of the child (regulation 19); and to provide support, training and information to the foster parent or any other person who is caring for a child in an emergency or immediate placement (regulation 20).

25. Part VII of the Regulations relates only to fostering agencies.

- i) Chapter 1 places upon the fostering agency a duty to safeguard and promote the welfare of children placed with foster parents approved by the agency (regulation 21); and to promote contact between foster children and their families (regulation 22).
- ii) Chapter 2 requires the fostering agency to have a statement of purpose setting out the aims, objectives, services and facilities provided by the agency, and a children's guide to the service (regulation 23); and to keep the statement of purpose and children's guide under review (regulation 24).
- iii) Chapter 3 places a duty on the fostering agency to prepare and implement policies for the protection of children (regulation 25); to prepare and implement policies regarding acceptable behaviour management, and to prepare and implement a procedure to be followed if children are missing from a foster parent's home (regulation 26); and to establish a written procedure for considering complaints and representations made by or on behalf of foster children, foster parents, and any person deemed not suitable to be a foster parent (regulation 27).
- iv) Chapter 4 makes provision about the fitness of the registered provider within the fostering agency (regulation 28 and Schedule 5); the appointment of a manager (regulation 29); the fitness of the manager (regulation 30 and schedule 5); the general requirements of the registered provider and the manager (regulation 31); the notification of offences (regulation 32); the staffing of the fostering agency (regulation 33); the fitness of any persons working for the fostering agency (regulation 34 and schedule 5); the

employment of staff within the agency (regulation 35); and the maintenance and keeping of staff records (regulation 36).

v) Chapter 5 makes miscellaneous provision about fostering agencies, including those which cease to carry out the functions of fostering agencies; for relevant persons to be notified (regulation 37); and for a new provider to take over responsibility for foster parents approved by the old agency and to be re-assessed by the new provider (regulation 38). Chapter 5 also places a duty on the registered provider to maintain a system for monitoring and improving the service provided by the fostering agency (regulation 39 and Schedule 6); to make notifications of certain serious events to the relevant body (regulation 40 and Schedule 7); to ensure the financial viability of the fostering agency (regulation 41); and to notify the Regulation and Quality Improvement Authority of certain changes within the management of the fostering agency (regulations 42 and 43). This Chapter also requires certain actions to be taken in the event of the appointment of liquidators (regulation 44); enables the Regulation and Quality Improvement Authority to bring proceedings against the registered provider or registered manager of a fostering agency (regulation 45); and sets out the requirement for compliance with the Regulations, in the event that an agency has more than one registered person (regulation 46).

26. Part VIII provides for transitional arrangements for registration of fostering agencies following making of the Regulations (regulation 48) and revokes The Foster Placement (Children) Regulations (Northern Ireland) 1996 (regulation 49).

Further Proposed Changes to legislation

Proposed amendment to Regulation 14(3)

27. Since the last consultation exercise, a further issue has been raised with the Department. It relates to the length of time a responsible authority may place a child with a person who has not been approved under Regulation 6, where the authority is satisfied that an immediate placement is necessary. We are proposing increasing this from 12 weeks to 16 weeks and are seeking your views on this change at Regulation 14(3).
28. The reason for this proposed change is that an audit of kinship placements carried out by the then HSC Board in 2018 found that the capacity of placement services to undertake assessments within 12 weeks was significantly compromised, with Trusts reporting that the requirement to assess and approve foster carers within the 12 week legislative time frame was unrealistic, given the circumstances of the majority of placements (immediate or emergency placements) and the need for potential foster carers to adjust to caring for children without prior planning and to understand and help to work through the assessment process.

Retention and confidentiality of records

29. Regulation 17 of the draft Fostering Regulations deals with the retention and confidentiality of records compiled in relation to foster parents. The current draft provides that these must be retained for a period of at least 40 years from the date on which a foster parent's approval is terminated (in the case of records compiled under regulation 15(1)); or from the date on which the placement is terminated (in the case of records compiled under regulation 15(2)), or until the foster parent's death if earlier; or, in the case of records compiled under regulation 15(5), for at least 40 years from the refusal or withdrawal of the application to become a foster parent.

30. The Department is considering whether the timescale for retention of records should be amended to bring fostering into line with other care settings and we are seeking your views on which timescale is most appropriate. For example, the Adoption Agencies Regulations (NI) 1989 require case records and indexes to be preserved for at least 75 years, in respect of cases where an adoption order was made. Another example is the Children's Homes Regulations (Northern Ireland) 2005, which require children's case records to be kept securely in the home for as long as the child is accommodated there, and thereafter retained in a place of security for 75 years from the child's date of birth or—if the child dies before the age of 18—for 15 years from the date of death.

Amendment of the Regulation and Improvement Authority (Fees and Frequency of Inspections) Regulations (Northern Ireland) 2005

31. The Department intends to make a separate set of Regulations 'The Regulation and Quality Improvement Authority (Fees & Frequency of Inspections) (Registration)(Amendment) Regulations (Northern Ireland)' with the aim of providing for charging of fees for registration/inspection and for frequency of inspection of foster agencies following introduction of the new Regulations.
32. However the Department is seeking your views now on the proposal that foster agencies are inspected at least once in every three year period in line with similar organisations such as Adoption Agencies.

Human Rights and Equality Implications

33. Section 75 of the Northern Ireland Act 1998 requires public authorities, in carrying out their functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity between:
- persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
 - men and women generally;
 - persons with a disability and persons without; and
 - persons with dependants and persons without.

34. In addition, and without prejudice to the above obligations, public authorities should also, in carrying out their functions relating to Northern Ireland, have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.
35. In conjunction with guidance produced by the Equality Commission for Northern Ireland and in keeping with Section 75 of the Northern Ireland Act 1998, the proposals for The Foster Placement and Fostering Agencies Regulations have been subject to an equality screening and a preliminary decision has been taken that a full Equality Impact Assessment is not required. In addition, it is considered that the provisions of the Regulations are compatible with the Human Rights Act 1998 and the UN Convention on the Rights of the Child.

Regulatory Impact Assessment

36. Regulatory impact screening exercises and assessments are carried out for the purposes of determining whether policy proposals are likely to have any direct or indirect impact on businesses or on the voluntary/community sector. A screening exercise has been undertaken in relation to these Regulations, which concluded that they will have a direct impact on fostering service providers currently operating on a not-for-profit basis in Northern Ireland, by making them subject to a system of registration with, and inspection by the RQIA.
37. However, the introduction of a system of regulation will enable fostering agencies to engage in the activities of recruiting and approving foster parents on behalf of HSC Trusts subject to a written agreement. The agencies will be paid for this service by the Trusts. It is therefore considered that the Regulations will not have a negative impact on businesses or voluntary/ community sector organisations. It is worth noting that representatives from fostering service providers had been involved in the process of developing the draft Foster Placement and Fostering Agencies Regulations prior to the 2014 consultation, and were supportive of the move to put practice on a legislative basis.

Rural Needs Impact Assessment

38. A draft Rural Needs Impact Assessment Screening has been completed and published alongside the other consultation materials. This screening concludes that the proposed Foster Placement and Fostering Agencies Regulations will not have a material impact on the social or economic needs of the people in rural areas.

Data Protection Impact Assessment Screening Exercise

39. The Department is also seeking your views on a draft Data Protection Impact Assessment which concludes that the proposed Regulations will have a medium privacy impact, on the basis that personal information is involved and several low/medium risks have been identified. In order to mitigate any risk, the minimum standards which will be developed to accompany the Regulations will include standards in respect of data processing and retention of records. These standards will apply to all fostering service providers.

Children's Rights Impact Assessment

40. A Children's Rights Impact Assessment has also been conducted and is published as part of this consultation. The assessment concludes that the proposed Regulations will positively impact on children and young people, by ensuring the continued rigorous assessment of foster carers and the potential to reduce delays in the process to approve foster parents.

Privacy, Confidentiality and Access to Consultation Responses

41. For this consultation, we may publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding in a professional capacity will be published. We will remove email addresses and telephone numbers from these responses; but apart from this, we will publish them in full. For more information about what we do with personal data please see our consultation privacy notice, which has been published alongside the other consultation materials.

42. Your response, and all other responses to this consultation, may also be disclosed on request in accordance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR); however all disclosures will be in line with the requirements of the Data Protection Act 2018 (DPA) and the UK General Data Protection Regulation (UK GDPR) (EU) 2016/679.
43. If you want the information that you provide to be treated as confidential it would be helpful if you could explain to us why you regard the information you have provided as confidential, so that this may be considered if the Department should receive a request for the information under the FOIA or EIR.

How to respond to the Consultation

44. The consultation package including response questionnaire can be accessed at the following link:
<https://consultations2.nidirect.gov.uk/doh-1/foster-placement-and-fostering-agencies-regulation>

Responses should be completed and submitted on-line using the above link by **23 December 2022**. Contact details are as follows:

Email: lookedafterchildren@health-ni.gov.uk

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