



Committee for Health, Social Services and Public Safety

OFFICIAL REPORT (Hansard)

Foster Placement and Fostering Agencies Regulations (Northern Ireland) 2016 and Regulation and Quality Improvement Authority (Fees and Frequency of Inspections) (Registration) (Amendment) Regulations (Northern Ireland) 2016: DHSSPS

9 March 2016

NORTHERN IRELAND ASSEMBLY

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Foster Placement and Fostering Agencies Regulations (Northern Ireland) 2016 and Regulation and Quality Improvement Authority (Fees and Frequency of Inspections) (Registration) (Amendment) Regulations (Northern Ireland) 2016: DHSSPS

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Members present for all or part of the proceedings:

Ms Maeve McLaughlin (Chairperson)
Mr Alex Easton (Deputy Chairperson)
Mrs Pam Cameron
Mrs Jo-Anne Dobson
Mr Kieran McCarthy
Ms Rosaleen McCorley
Mr Michael McGimpsey
Mr Daithí McKay
Mr Fearghal McKinney
Mr Gary Middleton

Witnesses:

Ms Elaine Lawson	Department of Health, Social Services and Public Safety
Ms Eilís McDowell	Department of Health, Social Services and Public Safety
Ms Frances Nicholson	Department of Health, Social Services and Public Safety

The Chairperson (Ms Maeve McLaughlin): Welcome back, Eilís. We also have with us Frances Nicholson, from the office of social services at the Department; and Elaine Lawson, head of looked-after children and adoption policy at the Department. I invite you to make your opening remarks, and then we will open it up to questions or comments.

Ms Eilís McDowell (Department of Health, Social Services and Public Safety): Thank you for the opportunity to provide the Committee with a briefing on the draft Foster Placement and Fostering Agencies Regulations (Northern Ireland) 2016. You have been provided with the SL1 notification and also a copy of the summary report of responses to the consultation on the draft regs, which details the views of key stakeholders and the Department's response.

At 31 March 2015, there were 2,875 looked-after children in Northern Ireland, with 76% of them being cared for in foster care placements. The Department recognises the invaluable service that foster parents provide, and we also recognise the need to ensure that our fostering legislation supports both foster parents and children in foster care. The current foster placement regulations, which were brought forward in 1996, have been in place for 20 years, and the new foster placement and fostering agencies regulations will revoke and replace them.

One of the main changes that the regulations will make is to enable independent fostering agencies to approve foster parents once they have been assessed. Under the existing 1996 regulations, that can

only be carried out by health and social care trusts and voluntary organisations that have been approved for the purpose. In practice, that can create delays in approving independent agency foster parents, because existing regulations require foster parents to be approved by health and social care trusts. This means that foster carers are approved twice — once by fostering agencies and then by health and social care trusts. The new regulations will therefore bring all fostering agencies in both the independent and voluntary sectors within the scope of registration and inspection by the Regulation and Quality Improvement Authority (RQIA).

Health and social care trusts also provide statutory fostering services, and their fostering functions include the placement of children with foster carers and the monitoring and review of those placements. Trusts also undertake 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. They report annually on the exercise of their statutory functions to the Health and Social Care Board. As well as receiving an annual delegated statutory-functions overview report from the Health and Social Care Board, which relates to the performance of the trusts, the Department receives an interim six-monthly corporate parenting report from the Health and Social Care Board. Both reports are subject to scrutiny by the Department.

When we were developing the fostering regulations, some concerns were expressed about fostering agencies being treated differently from trusts' fostering services, in the sense that one is required to register with the RQIA and the other is not. In response to those concerns, the Department has made it clear that trust fostering functions are different from those of fostering agencies. They are subject to a system of routine monitoring and reporting and can be, and have been, subject to review by the RQIA under article 35 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003. It was on that basis that the Department commissioned a review of statutory fostering services by the RQIA, which reported at the end of 2013. Whilst a range of recommendations were made, the review team found that, in general, trusts had well planned and organised foster care services to meet the assessed needs of looked-after children. Overall, the quality of foster care was good, and carers were generally positive about the way in which agencies prepare, assess and support them for the role.

The review also found that systems were in place for supervision and appraisal of staff and foster care panels, including foster carers, with a wide range of knowledge and experience. In addition to the powers provided at article 35 of the 2003 Order for the RQIA to conduct reviews and inspections of statutory fostering services, article 38 of the 2003 Order provides that the Department may prepare and publish statements of minimum standards. I can advise the Committee that it is intended that, when the minimum care standards for fostering services are published, they will have some application to both the independent and voluntary providers and the statutory providers. Therefore, in addition to regulating independent and voluntary fostering agencies, the RQIA will review, as required, and report on the delivery of statutory fostering services against relevant minimum care standards. It is therefore our view that the requirement for independent and voluntary fostering agencies to be registered with the RQIA, and to be subject to inspection, will bring them under the appropriate level of scrutiny and assurance, albeit with less regular reporting and scrutiny than that relating to the statutory sector. That is appropriate, given that a trust is the corporate parent of a looked-after child.

At this point, I draw your attention to the associated draft Regulation and Quality Improvement Authority (Fees and Frequency of Inspections) (Registration) (Amendment) Regulations (Northern Ireland) 2016. The intention outlined in those draft regulations is that independent and voluntary fostering agencies will be inspected by the RQIA a minimum of once in every three years. That mirrors the frequency of inspection of voluntary adoption agencies, which were brought under regulation by the RQIA in 2010, and which are similar in their make-up to fostering agencies. The draft fees and frequency of inspections regulations also propose a nil fee charge on fostering agencies for registration with the RQIA. That is in keeping with all other establishments and agencies which, since 2007, have been subject to registration under the 2003 Order. The Department is currently carrying out a review of the current charging and frequency of inspections across the whole of the regulated sector. That will be subject to consultation. In addition, fostering agencies that are currently operating in Northern Ireland will have a six-month period within which to register with the RQIA.

I turn now to the fostering regulations consultation process. Public consultation ran from 13 January to 7 April. We received 19 responses, which were largely supportive of the regulations. The Department has taken account of comments, in so far as we consider it possible to do so, in consultation with legal advisers. We have provided you with a list of respondents and a table showing the detailed consultation responses and the departmental replies to those responses with the SL1. Those will be published on the Department's website. A number of amendments requested by

consultees were considered by the Department to be inappropriate for inclusion at the level of subordinate legislation. It is intended that those issues will be covered either in guidance or in the minimum care standards that will support the regulations. In addition, consultees requested a number of amendments which would require primary legislation.

I will now turn to the major issues that were raised by respondents to the consultation. Five of the 19 respondents asked for clarification on the inspection of statutory fostering services, or expressed concerns about them not being regulated in the same way as fostering agencies, as that would create a two-tier system. I have already addressed that point. Three respondents considered that the requirement in the regulations to have a written agreement between the trust and the fostering agency setting out the services to be provided by the agency to the trust was an unnecessary bureaucracy. These organisations also advised that they could find no similar provision in the equivalent English or Scottish regulations.

Respondents also questioned the appropriateness of an agreement to be made with the trusts, on the basis that the trusts also provide fostering services. There was a suggestion that the agreement should be with the Health and Social Care Board. We can advise that the same written agreement requirement applies in English and Scottish regulations. We have consulted further with the Health and Social Care Board and have concluded that the trust is the appropriate body to put the agreement in place with fostering agencies. The trust is the corporate parent and is responsible for the placement of children into foster care.

Just under half of the respondents were concerned about the absence of a specific process for the approval of foster parents by a foster panel. The Department's lawyers have confirmed that we do not have the primary powers to prescribe for fostering panels in draft regulations. Likewise, the introduction of an independent review mechanism would require primary legislation.

The regulations require a trust social worker to visit children in a foster placement at least once a month, and some respondents to the consultation sought more flexibility, particularly in circumstances where foster placements are stable and long-term. In England, visits are undertaken every six months for long-term foster placements after the first year of placement. However, the consultation in Northern Ireland with children and young people on the draft regulations showed mixed views, where a significant number of children consulted — around 33% — did not agree to visiting being reduced for placements that lasted more than a year. Research also points to relationship stability as an important factor for looked-after children. Having taken professional advice and after further consultation with the Health and Social Care Board, the Department has decided that monthly visits remain important, as longer periods between visits would make it difficult for a social worker to build up and maintain a relationship with a child.

Just under half of the respondents expressed concerns that the regulations required police checks on children under the age of 10 who were living in the household of a prospective foster parent. Regulation 5(3)(a) requires the fostering service provider to consider not only whether the prospective foster parent is suitable to undertake the role, but also whether their household is suitable for the child. This has been the subject of consultation by the Department of Justice following a review of the criminal record disclosure system by Sunita Mason. That review concluded that criminal records checks should continue for those aged under 16 who live in the households of those who undertake home-based occupations. That would extend to foster care, and on that basis the Department intends to retain this provision.

Two independent voluntary organisations and one statutory organisation raised concerns about perceived negative impacts on children with disabilities arising out of regulation 12. Regulation 12 replicates in full the provisions of regulation 9 of the current Foster Placement (Children) Regulations (Northern Ireland) 1996. The regulation sets out the circumstances in which a child who is placed in a planned series of short-term placements with a foster parent — for example, for respite purposes — can have their series of placements treated as a single placement for the purposes of reducing the regularity of visits to the child. This regulation has been interpreted in the past as requiring a child to move placement because, for example, the 90 days timescale in the regulation was viewed as a limit on the placement. In the response to the consultation, we have clarified that the criteria set out in regulation 12(1) should not be read as a cap on the amount of short-break care permitted and that the level of care provided should be based on an assessment of the needs of the individual child concerned. If at any point it is assessed that the short-break care for a child should extend beyond the criteria set out in regulation 12(1), there is no difficulty in the placement being extended. However, in those circumstances there will be no easement in terms of visiting requirements, and the normal visiting and review arrangements for a looked-after child will apply. We consider this to be

appropriate, and it is for the relevant trust to determine the quantum of short-break care that would be in the child's best interests.

Just under half of the respondents raised concerns about regulation 11's provision for a trust to remove a child forthwith from a placement where it appears to the trust that the continuation of the placement would be detrimental to the welfare of the child. It was considered that this should be caveated with a reference to the child being at risk of significant harm. This regulation is consistent with the regulation in the 1996 regulations. While we have amended the term "forthwith" to "immediately", we still consider that, where continuation of a placement appears to a trust to be detrimental to the welfare of the child, the placement must be terminated with immediate effect. However, generally, it is expected that placements will be ended in a planned way and it is intended that the fostering standards which will be developed will cover these issues in more detail.

There are a number of other key issues that I was going to take you through; if you want me to continue, I will, Chair. I will say that, in terms of the number of amendments made in response to consultation, we have changed the wording of the draft regulations in around 25 areas, and further amendments were made on the basis of further legal advice which we sought.

The draft regulations also take account of comments received from the Departments of Justice and Enterprise, Trade and Investment, following requests for them to consider the cross-cutting issues in the regulations affecting those Departments. Amendments have been made relating to both bankruptcy provision and police checks. Minister Hamilton issued a letter to ministerial colleagues on 3 March, stating his intention to make the fostering regulations and submit them to the Committee for its clearance. Subject to the agreement of the Committee, the intention is to make the regulations before the dissolution of the Assembly and bring them into operation 21 days later.

I am very happy to take questions from members.

The Chairperson (Ms Maeve McLaughlin): OK. Again, unless we have had the opportunity to go through all that detail that you have produced, it is very difficult to track some of the changes from the consultation to this point. However, I suppose it would be useful if you gave us a sense even of the five organisations that you referred to which have raised issues with what is being proposed. Who were they?

Ms McDaniel: Raised issues in connection with what, exactly?

The Chairperson (Ms Maeve McLaughlin): In connection with proceeding with the regulations.

Ms McDaniel: I do not think there were any organisations which were not supportive of us proceeding.

The Chairperson (Ms Maeve McLaughlin): The difficulty is that we do not have a detailed analysis of the consultation process.

Ms McDaniel: There was one key issue, and I dealt with it in the opening statement. The issue was raised very early on in the process of engagement with agencies and repeated in the consultation. That was the creation of what they perceive to be a two-tier system, with fostering agencies being subject to inspection and —

The Chairperson (Ms Maeve McLaughlin): You also referred to the fact that some organisations raised the issues about how similar it was to England and Wales. You also raised the issue about the impact on children with disabilities. There were a number of issues raised in your presentation; it was more than just a two-tier system.

Ms McDaniel: And in response to some of those issues, using the example of the agreement that a trust will be required to put in place with fostering agencies, there was a misapprehension that we were imposing something in Northern Ireland that was different from the arrangements in other parts of the UK. It was a misapprehension. When we looked at English and Scottish regulations, we found that exactly the same arrangement is in place. One thing that I will say is that the fostering agencies that will possibly be impacted the most by these regulations — there are only four of them in Northern Ireland — are very welcoming of the introduction of —

The Chairperson (Ms Maeve McLaughlin): Who are they?

Ms Frances Nicholson (Department of Health, Social Services and Public Safety): We have Barnardo's, Action for Children, Kindercare and Foster Care Associates. They are already all operating, but obviously they are not regulated under RQIA. When they are approving foster carers, those have to come from fostering panels that are really run by the trusts, so they are having to go to two panels at this stage.

The Chairperson (Ms Maeve McLaughlin): So, Barnardo's, Action for Children — is it kinship care?

Ms Nicholson: Kindercare.

The Chairperson (Ms Maeve McLaughlin): And what is the fourth one?

Ms Nicholson: Foster Care Associates.

The Chairperson (Ms Maeve McLaughlin): You said that most of the responses were largely supportive, but all of these organisations —

Ms Nicholson: Are supportive.

Ms McDaniel: They are very welcoming of the introduction of the regulations. I had a conversation with the Fostering Network today. It has been acting on behalf of all those organisations and was very pleased to see the regulations appearing before the Committee.

The Chairperson (Ms Maeve McLaughlin): So who were the ones that were not?

Ms Nicholson: It was not about bringing in the regulations in the main. It was about some small parts of the regulations. Different people had issues with different regulations.

The Chairperson (Ms Maeve McLaughlin): OK, but the point that I am making is about the role of this Committee. As it stands, we do not have a detailed analysis of that consultation process.

Ms McDaniel: We have provided you with a summary of the responses.

The Chairperson (Ms Maeve McLaughlin): We have not had the opportunity to listen to those who are largely supportive of the regulations or those individuals who may have issues.

Ms McDaniel: I am simply going to repeat myself: the majority of those who responded to the consultation were supportive of what the regulations intend to achieve. The fostering agencies will be the most impacted by the regulations, in the sense that they will be subject to registration and inspection by the RQIA. They are not currently subject to registration and inspection by the RQIA. They are particularly welcoming of the introduction of the regulations.

The Chairperson (Ms Maeve McLaughlin): Let me try this a different way. There are 48 regulations and seven schedules.

Ms McDaniel: Yes.

The Chairperson (Ms Maeve McLaughlin): And we are being asked to agree to this proceeding as a tabled item today at the last Committee of the mandate.

Ms McDaniel: It has taken us some time to get to this point. Throughout this process, we not only undertook consultation but went through an engagement process whereby we established a group on which all the agencies were represented. We undertook an exercise involving foster carers and foster children. We have gone through a fairly significant process of engagement and consultation, and the outcome of all of that is that people are generally supportive of what the Department is trying to do.

The Chairperson (Ms Maeve McLaughlin): First of all, the consultation ended in April 2014.

Ms McDaniel: There are a number of reasons why it has taken us until this time to get the regulations to Committee. While there were small numbers of responses, they were very detailed in nature. It

required us to consult fairly significantly with the Department's lawyers again, and there were some issues with the capacity of the RQIA to undertake inspections of the agencies.

The Chairperson (Ms Maeve McLaughlin): It has been two years since the consultation ended on a significantly important issue, and, at the last Committee of the mandate, there is a tabled item that has 48 regulations and seven schedules. A number of organisations are largely supportive, but some have raised quite significant issues. We are being asked to proceed on that basis. I do not think it is acceptable.

Mr McKinney: I understand the process arguments that have been made, and I tend to share those in the wider sense. I do not know the mind of the Committee, but I understand that there is a need to extend capacity around foster care. Significant numbers of children here are fostered, and a significant number are moved substantially and frequently in their short lives before they leave the system again. I think that there is a need to think about how we can expand the capacity here to allow other organisations. It makes sense that other organisations have the capacity to vet foster parents, as does the fact that they would be brought in separately under the RQIA model. There is a need that the Committee has to consider, and we need to look back at the intent of the SL1 and the direction of travel. It is important to make those points.

The Chairperson (Ms Maeve McLaughlin): The points are well made. I cannot speak for the whole Committee, but I think that they would be shared, given the importance of the whole area of fostering and regulations. There is no doubt about that. My specific issues are about the role of the Committee.

Mr McKinney: I understand.

The Chairperson (Ms Maeve McLaughlin): I reiterate that I do not think that it is appropriate that, at the last Committee meeting of the mandate, we have been presented with this tabled item. It is huge — given that there are 48 regulations and six schedules, it could be a Bill — and it has come at us effectively at the eleventh hour.

Ms McDaniel: One thing that I will add to that is that the regulations replicate the 1996 regulations, so what you have in front of you are not entirely new regulations. We have gone through a process of consolidation also.

The Chairperson (Ms Maeve McLaughlin): Again, however, the Committee has not been able to arrive at that view, because of our lack of ability to scrutinise the regulations at this stage.

Mr McKinney: With your permission, Chair, may I add one other comment? Unlike on the previous issue, there is not large dissent at all from those involved. Here we have people who have been consulted and are largely in favour of the regulations. I understand, having looked at the explanatory tables, any mitigations, and so on, that, if we were facing dissent from a large percentage of those involved, there would be a greater argument. I do not disagree with — I made this point at another Committee — the point about late business and the potential for a Committee to miss something as a result. However, those other, wider points have to be made.

The Chairperson (Ms Maeve McLaughlin): Yes, and I think that they are listened to.

Members, I suggest that we send the regulations back until after the election. I think that they are too big not to apply proper scrutiny to, and I think that we would be failing in our responsibility otherwise. You have heard clearly about the sense of the importance that people attach to getting things right. To date, we have not been able to test the regulations in any shape, form or fashion. I therefore seek agreement from members that we return to the issue post the election.

Members indicated assent.