



# Enforcement Policy and Procedure - Regulated Sector

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## 1.0 Introduction

- 1.1 The Regulation and Quality Improvement Authority (RQIA) is committed to working closely with Registered Providers to help improve the safety and quality of care across Northern Ireland. When the quality of care falls below the minimum standards or where service users are at risk, the RQIA will inform the Registered Person / Manager of its views, and agree with them what remedial action is required to improve the service and to ensure the safety of service users.
- 1.2 Enforcement action is an essential element of the responsibilities of the RQIA under The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003, and is central to the aim of the RQIA to protect service users and bring about sustained improvements in the safety and quality of service provision.
- 1.3 The purpose of this policy and procedure is to provide a framework within which the RQIA will operate if there are concerns about the safety and quality of service provision in regulated establishments or agencies. This framework sets out the principles and approach which the RQIA will follow when considering enforcement action. **(See Appendix 1, Enforcement Flowchart)**

## 2.0 The Principles of Good Regulation

The principles of good regulation are outlined in the Better Regulation Task Force (Principles of Good Regulation, Cabinet Office publications, October 2000).

The following principles underpin this policy and procedure:

- 2.1 **Transparency** - The RQIA will aim to provide clear information to Registered Persons / Managers about improvements required and reasons for any recommendations, requirements or enforcement action taken. Enforcement action will be based on documented evidence. Inspection reports will provide information to service users about any recommendations, requirements or proposed legal procedures.
- 2.2 **Targeting** - The RQIA will endeavour to ensure that its resources are targeted primarily on services that are most at risk of failing to meet the required minimum standards.
- 2.3 **Proportionality** - The RQIA will endeavour to ensure that all enforcement action will be in proportion to the risks identified and to the action required by Registered Providers to make improvement.
- 2.4 **Consistency** - The RQIA will endeavour to ensure that it takes a consistent approach to the regulation of registered services and the application of the enforcement procedure.

**2.5 Accountability** - The RQIA will take full accountability for the actions / omissions of its officers in the proper application of this policy and procedure. All enforcement notices issued by the RQIA under The Health and Personal Social Services (Quality, Improvement and Regulation) Northern Ireland Order 2005 will include information on the Registered Person's right to make representation and the right of appeal to the Care Tribunal, (a) where registration has been either refused, cancelled, varied or made subject to certain conditions or (b) where actions has been taken via the court to cancel or make changes to the registration of an establishment / agency.

### **3.0 Policy Statement**

**3.1** The RQIA will ensure that all enforcement action proposed will be in accordance with this policy and procedure. A stepped approach to enforcement will normally be adopted. However, this stepped approach would not rule out the option of the RQIA moving directly to legal enforcement action if considered appropriate.

### **4.0 Scope of the Policy**

**4.1** This policy and procedure will apply to the regulation and inspection of all establishments and agencies.

**4.2** All employees undertaking regulation and inspection activity are required to abide by this policy and procedure and any failure to do so may lead to disciplinary action.

**4.3** This policy and procedure should be read in conjunction with the RQIA's Inspection Policy and Procedure and Section 3 of the RQIA Complaints Procedure which deals with any complaints about;

- an individual employee; or
- those relating to how RQIA goes about its business.

### **5.0 Legislative Framework**

**5.1** All registered establishments and agencies are required to comply with The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (the Order) and the subordinate regulations specific to the particular service being provided.

**5.2** Offences and penalties under the Order are outlined in **Appendix 2**.

**5.3** Service specific regulations relating to offences and enforcement are outlined in **Appendix 3, Offences and Penalties Under the Order**.

**5.4** Registered Persons / Managers should also ensure that their service operates in accordance with the minimum standards relevant to their establishment or agency that have been issued by the Department of Health, Social Services and Public Safety (DHSSPS).

**5.5** The legislation referred to provides the RQIA with statutory powers to take enforcement action where it deems it appropriate to do so. Enforcement action includes:

- **An Improvement Notice** - where there is a failure to comply with any statement of minimum standards issued by the DHSSPS.
- **A Failure to Comply Notice** - where there is a failure to comply with an Improvement Notice and the non-compliance is linked to a breach of regulations or where the service provided is in breach of regulations including non-compliance with conditions of registration (see Appendix 2 & 3).
- **Prosecution for Offences** - where a Registered Person fails to take appropriate and timely action to comply following the issue of a Failure to Comply Notice within the specified timescale as outlined in the List of Service Specific Regulations and Regulations regarding Offences in Appendix 2 & 3.
- **A Notice of Proposal** - under Article 18 Paragraph 4 of the Order may be issued by the RQIA at any time in respect of an establishment or agency to:
  - Cancel registration
  - Vary or remove any condition
  - Impose any additional condition in relation to registration
- **The Cancellation of Registration** under Article 15, Paragraph 1 of the Order may be commenced at any time;
  - a) on the ground that the Registered 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; and
  - d) on any ground specified by regulations.
- **An urgent procedure for the process of cancellation** via the court is set out under Article 21 of the 2003 Order if the RQIA believe there is serious risk to the life, health and wellbeing of any service user and urgent action is required.

## **6.0 Responsibilities**

- 6.1 The RQIA Board** - is responsible for approving this policy and procedure and holds the Chief Executive accountable for its implementation.
- 6.2 The Chief Executive** - is accountable for the effective implementation of this policy and procedure. S / he will delegate responsibility to the Director of Operations for the operational management of the policy and procedure.
- 6.3 The Director of Operations** - is responsible for the effective operation of this policy and procedure supported by other staff referred to below in 6.4 to 6.9. S / he will ensure that appropriate training and guidance is provided to all appropriate staff.
- 6.4 Heads of Programmes** - are responsible for the day-to-day operation of this policy and procedure and will ensure that their staff are appropriately supervised and supported in the implementation of any enforcement action. Heads of Programmes will endeavour to ensure consistency and standardisation of approach in all enforcement activity across operational teams. Heads of Programmes must also ensure that all enforcement activity is kept up to date and information shared with the information / registration team as appropriate.
- 6.5 Inspectors / Quality Reviewers** - are responsible for their own practice and will ensure that they are up-to-date on all enforcement matters and that all activities are undertaken in accordance with the spirit and intention of this policy and procedure. They must actively provide peer support for colleagues where enforcement action is being considered.
- 6.6 Communication Manager** - is responsible for the management of communication activities in regard to all aspects of the Enforcement Policy] and Procedure.
- 6.7 Information Manager** - must ensure that all enforcement activity is kept up to date. S / he must ensure that systems are in place to record enforcement action and to update the RQIA's register of establishments and agencies, and for re issuing and retracting Certificates of Registration where necessary, following enforcement action.
- 6.8 The Director of Corporate Services** - is required to ensure that this policy and procedure is accessible to all the RQIA employees by maintaining an appropriate policy management system. S / he will also ensure that the Register of all establishments and agencies is accurately maintained.
- 6.9 The Director of Quality Assurance** - is responsible for auditing compliance with this policy and procedure and ensuring that any deficiencies in its application are brought to the attention of the Director of Operations and reported to the Chief Executive.

**Appendix 4** sets out a flow chart indicating different accountabilities and responsibilities.

## **7.0 Training**

**7.1** Mandatory training on this policy and procedure will be provided for all relevant staff involved in the process of regulating and inspecting establishments or agencies to ensure its effective implementation. This training will be facilitated by the Quality Assurance Directorate. Areas covered will include:

- Legislative framework governing registered establishment or agencies
- Improvement strategies
- Review planning
- Reaching decisions about enforcement action
- Enforcement options
- Enforcement procedure

## **8.0 Monitoring**

**8.1** The Quality Assurance Directorate will review the application of this policy and procedure in practice at six months following its implementation by auditing the records relating to any enforcement action taken.

## **9.0 Equality**

**9.1** This policy was equality screened on the 8 October 2008 and 19 January 2009 and was considered to have a neutral impact implication for equality of opportunity, therefore the policy does not require to be subjected to a full equality impact assessment.

## **10.0 Review of the Policy**

**10.1** This policy will be kept under review during the first 12 months of its implementation to ensure that it adequately reflects good practice and annually thereafter by the Director of Quality Assurance.

## 11.0 ENFORCEMENT PROCEDURE

### 11.1 Introduction

- 11.2** All Registered establishments and agencies are required to comply with the legislation under which they are registered and to provide a standard of care and service in accordance with the Department of Health, Social Services and Public Safety (DHSSPS) Minimum Standards. The list of minimum standards issued by the DHSSPS is contained in **Appendix 5**.
- 11.3** Where an Inspector / Quality Reviewer<sup>1</sup> identifies a service which is at risk of failing to meet the minimum standards, s / he in consultation with his / her Head of Programme will consider the various options to support that establishment or agency to improve. Depending on the circumstances and assessment of risk, the options will range from providing advice and guidance to the full rigour of legal enforcement action.
- 11.4** The RQIA will make recommendations and requirements for quality improvement through regulation and inspection activity where appropriate.
- 11.5** The RQIA will take direct legal enforcement action as outlined in this procedure to protect the safety of service users where there are significant failings.

### 12.0 A Stepped Approach to Enforcement

- 12.1** In line with the principles set out in the Enforcement Policy, the RQIA will normally adopt a stepped approach to enforcement where there are areas of concern.
- 12.2** When completing an inspection, the Inspector will highlight any failings and identify improvements to be made by the Registered Person / Manager. Inspection findings will be outlined in the inspection report and improvements to be made will be specific, realistic and achievable and set within clearly identified timescales.
- 12.3 Recommendations** - will be set out in the inspection report and will specify the actions the Registered Person / Manager should take to improve or develop the quality of the service. Recommendations will be based on minimum standards, codes of practice and recognised good practice.
- 12.4 Requirements** - will be specified in the inspection report and the Registered Person / Manager **must** act on these to ensure compliance with the Order, regulations or a condition of registration. If a regulation is breached a requirement will be made. Minimum standards (DHSSPS) may also be the basis of a requirement where they link to regulations.

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<sup>1</sup> For the purpose of this Procedure use of Inspector will include the title of Quality Reviewer

- 12.5** At all times the Registered Person / Manager will be informed of the reason the improvement needs to be made and the legal basis for doing so. The views of the Registered Person / Manager will be taken into account.
- 12.6** The Registered Person / Manager will be required to provide a Quality Improvement Plan (QIP) detailing how they intend to address the areas of concern. The QIP will be agreed between the Registered Person / Manager and the Inspector to ensure that all areas of concern are being fully addressed within appropriate timescales.
- 12.7** The Inspector will monitor and review the implementation of the QIP as appropriate in the circumstances to ensure compliance.
- 12.8** If there is a failure to agree the QIP or if the QIP is not fully implemented within the agreed timescale or if further areas of concern are identified, the Inspector will seek advice from his / her Head of Programme. In these circumstances, it may be appropriate to consider further meetings with the Registered Person / Manager and / or increased inspection activity to encourage and support improvements.
- 12.9** It is the Registered Person's responsibility to ensure that regulations are met and minimum standards are achieved and maintained.
- 12.10** If a service continues to fail to meet the minimum standards or there is an immediate risk to the life, health, safety or welfare of the service user(s), the RQIA will review the situation and consider taking other enforcement action(s) in accordance with the procedures outlined below.
- 12.11** At this stage, when a decision has been made to take further enforcement action, the Head of Programme and the relevant Inspector(s) will arrange to meet with the Registered Person / Manager, if deemed appropriate in the circumstances. This meeting should take place within five working days of the decision to take further enforcement action.
- 12.12** The purpose of the meeting is to;
- inform the Registered Person / Manager of the precise nature of the failure(s);
  - agree the required action(s) that must be taken to meet compliance requirements;
  - agree the timescale within which any remedial action must be taken; and
  - inform the Registered Person / Manager of the likely implications if compliance is not achieved.

### **13.0 Improvement Notice**

- 13.1** Article 39 of The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (the Order) makes provisions for the RQIA to serve an Improvement Notice, if a Registered Person fails to

comply with any statement of minimum standards issued by the DHSSPS.

- 13.2** The decision to issue an Improvement Notice will be taken following discussion and agreement between the relevant Inspector(s) and his / her Head of Programme.
- 13.3** An Improvement Notice will be issued to the Registered Person where there has been an inadequate or no response to a QIP. The Improvement Notice will specify in what respect there is a failure to comply with a statement of minimum standards under Article 38 of the Order, what specific improvements the RQIA considers necessary for the Registered Person to achieve compliance and the timescales within which improvements must be made. It will also specify the likely implications if the Improvement Notice is not properly complied with.
- 13.4** It is not an offence to fail to comply with an Improvement Notice. However, non-compliance could result in the RQIA issuing a Failure to Comply Notice when non-adherence to a standard is also linked to a breach of regulations. The RQIA may also impose an additional condition of registration on the Registered Person in such circumstances.
- 13.5** If compliance with the notice is achieved within the agreed timescale, the Registered Person will be notified in writing that the terms of the Improvement Notice have been satisfied and the notice lifted.
- 13.6** If compliance is not achieved, the RQIA will review the circumstances and either extend the timescales for compliance particularly in cases of part compliance or move to issue a Failure to Comply Notice if the non compliance is linked to a breach of regulations.
- 14.0 Failure to Comply Notice**
- 14.1** The Order and the subordinate regulations specific to the particular service being provided, govern the operation of registered establishments and agencies. The service specific legislation and the regulations dealing with Offences and Failure to Comply Notices are contained in **Appendix 3**.
- 14.2** Registered Persons are required to comply fully with legislative requirements. The legislation states that contravention or failure to comply with any of the provisions of the regulations (as specified) will be an offence.
- 14.3** A Failure to Comply Notice will not be issued if the RQIA intends to cancel the registration of an establishment or agency under Article 15 of The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.
- 14.4** The decision to issue a Failure to Comply Notice will be taken following discussion and agreement with the relevant Inspector(s), his / her Head of Programme and the Director of Operations (or nominated deputy).

The Director of Operations will inform the Chief Executive of all Failure to Comply Notices prior to their issue.

- 14.5** A Failure to Comply Notice may be issued where;
- the RQIA have been unsuccessful in securing improvement in the quality of the service;
  - the Registered Person has failed with legislative requirements or fails to comply with an Improvement Notice and the non compliance is linked to a breach of regulations; or
  - the service being provided is considered to place the health, welfare and safety of service users at immediate risk.

All of the above factors will be taken into consideration in the decision to issue a Failure to Comply notice.

- 14.6** The RQIA will serve a Failure to Comply Notice on the Registered Person specifying;
- a) in what respect in its opinion, the Registered Person has contravened the requirements of any of the regulations;
  - b) what action, in the opinion of the RQIA, the Registered Person should take so as to comply with any of those regulations;
  - c) the period, not exceeding three months, within which the Registered Person should take action; and
  - d) the period, not exceeding one month, within which the Registered Person may make representations to the RQIA about the notice.

**NB:** Whilst paragraph (d) above does not apply to Residential Care Homes, Nursing Homes and Independent Health Care Regulations (Northern Ireland) 2005, the RQIA will provide **all** regulated establishments / agencies with the right to make representation in line with the procedure outlined at **Section 15.0** below.

- 14.7** In accordance with regulations, the RQIA may bring proceedings against the person who was once, but no longer is, a Registered Person, in respect of a failure to comply with regulations pertaining to the maintenance of records.
- 14.8** Where there is more than one Registered Person in respect of an establishment or agency, anything required to be done under the regulations by the Registered Person will, if done by one of the Registered Persons, not be required to be done by any of the other Registered Persons.
- 14.9** The Registered Person should be made aware by letter of the RQIA's intention to issue a Failure to Comply Notice. Where time permits and depending on the issue(s) involved, the Registered Person may be invited to attend a meeting with the Head of Programme. The purpose of this meeting is to ensure that the Registered Person is fully aware of the reasons for the RQIA's decision to issue the notice. However, this will not preclude the RQIA from taking enforcement action and issuing a Failure to Comply Notice without prior notice where it is considered necessary by the RQIA on safety grounds.

## **15.0 Right to Make Representation - Failure to Comply Notice**

- 15.1** A Registered Person may make formal written representations to the RQIA in regard to the issue of a Failure to Comply Notice, within a period not exceeding one month from the date of issue of the notice.
- 15.2** The Registered Person should give early notification to the Inspector with responsibility for the Home by letter, email or telephone of their intention to make formal written representation to the RQIA. The Registered Person should then write to the Chief Executive of the RQIA as soon as possible and within the specified period of one month, stating the precise reasons for making the representation
- 15.3** The Chief Executive will convene an Internal Review Panel to consider the Registered Person's representation. The Panel will review all relevant matters relating to the Registered Person's representation, and the Chair of the Panel will provide a report to the Chief Executive who will confirm the Review Panel's decision in writing to the Registered Person, within 28 working days of the date the RQIA received the representation.  
**(Procedure for Enforcement Review Panel cited in Appendix 6).**
- 15.4** It should be noted that the RQIA will continue to monitor the quality of service provision in the establishment / agency during the period within which the Internal Review Panel is considering the Registered Person's representation.

## **16.0 Failure to Meet the Conditions of a Failure to Comply Notice**

- 16.1** There is no provision to extend a notice beyond three months. When the **minimum action required** has not been taken or fully met, the RQIA may take legal proceedings against the Registered Person via a Magistrates court.
- 16.2** The Director of Operations (or nominated deputy) will seek legal advice on the merits of **Prosecution for Offences**. S/he will discuss the matter and the likely implications with the Chief Executive prior to any decision to prosecute.
- 16.3** Prior to issuing legal proceedings in regard to the above, the legislative requirements set out below must be met:

The RQIA shall not bring proceedings against a person in respect of any contravention or failure to comply with the regulations unless:

- a) S / he is a registered person, (*proceedings may be brought against a person who was once, but no longer is, a Registered Person in respect of failure to maintain adequate records*)
- b) A Failure to Comply Notice has been issued
- c) The period specified in the notice has expired and
- d) The person contravenes any of the provisions of the regulations mentioned in the notice.

**16.4 NB:** In line with some specific service regulations, and for consistency of approach across all regulated services, the RQIA will not take legal proceedings against a Registered Person until the period (one month) specified in the notice, within which the Registered Person may make representation to the RQIA, has expired.

#### **17.0 Prosecution for Offences**

**17.1** Matters which constitute an offence and the penalties which may be imposed are detailed in Part III of The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003. **(Appendix 2).**

**17.2** The subordinate regulations for each type of registered establishment or agency also detail the specific regulations which when contravened constitute an offence. **(Appendix 3).**

**17.3** Proceedings for an offence under Part III of the Order or regulations made under the Order, may be brought within 6 months from the date the RQIA had sufficient evidence to warrant prosecution. Proceedings for prosecution may not be brought more than 3 years after the commission of an offence.

**17.4** If the Registered Person is convicted, the Magistrate may impose a fine and depending on the gravity of the situation, consideration can be given by the RQIA to commence the procedure to impose a condition on the registration of the establishment or agency or commence the procedure to cancel the registration of the Registered Person.

#### **18.0 Notice of Proposal to Cancel, Refuse, Vary, Remove or Make certain Conditions in relation to Registration**

**18.1** Under Article 15 of the Order the RQIA may serve a Notice of Proposal to **cancel** the registration at any time:

- a) on the ground that the Registered 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; and
- d) on any ground specified by regulations.

**18.2** The decision to issue a Notice of Proposal will be taken by the Director of Operations (or nominated deputy) in discussion and agreement with the relevant Inspector(s) and the Head of Programme. The Chief Executive will be kept informed accordingly where the Notice of Proposal is related to cancellation of registration.

**18.3** Under Article 18 of the Order the RQIA shall give the Registered Person a Notice of Proposal:

- a) To cancel the registration
- b) Vary or remove any condition
- c) Impose any additional condition in relation to the registration, or
- d) To refuse an application by a Registered Person under Article 16.

**18.4** Unless there is an application under Article 21 for urgent cancellation of registration, the RQIA will give the Registered Person written notice of its proposal including their right to make written representation to the RQIA within 28 days.

**18.5** The Notice of Proposal should clearly state the parts of the legislation (if any) which have been breached, and the reasons why the RQIA have reached the decision to serve the notice.

### **19.0 Right to Make Representations - Notice of Proposal (Article 19)**

**19.1** A Notice of Proposal will inform the Registered Person of their right to make formal written representations to the Chief Executive of the RQIA concerning the proposed actions of the Authority.

**19.2** The RQIA shall not make any determination on any matter to which the notice relates until:

- written representations are received from the Registered Person;
- written notification has been received that the Registered Person does not intend to make written representations; or
- 28 days have elapsed.

**19.3** If following consideration of the Registered Person's representation by the Chief Executive, the RQIA's decision is to proceed with the matters outlined in the Notice of Proposal, a Notice of Decision will be served on the Registered Person.

### **20.0 Notice of Decision (Article 20)**

**20.1** A Notice of Decision should clearly state the parts of the legislation which have been breached and the reasons why the RQIA have reached the decision to serve the notice.

**20.2** The notice will also explain the Registered Person's right of appeal to the Care Tribunal within 28 days of the notice being served.

### **21.0 Appeals to the Care Tribunal (Article 22)**

**21.1** A Registered Person or prospective Registered Person, a Registered Manager or prospective Registered Manager of an establishment / agency as defined in the Order, can appeal to the Tribunal against a decision of the RQIA under Article 22 of the Order if;

- registration has been either refused, cancelled, varied or made subject to certain conditions (Notice of Decision, Article 20); or

- action has been taken via the court to immediately cancel registration or make changes to the registration of the establishment / agency (Article 21).
- 21.2** Such appeals must be lodged by the Registered Person within 28 days of the Notice of Decision or court order being served.
- 21.3** On an appeal the Tribunal may confirm the Order of the Magistrate or direct that it cease to have effect.
- 21.3** On an appeal the Tribunal may confirm the Notice of Decision of the RQIA or direct that it should not have effect.
- 21.5** The Tribunal also has the power on an appeal against a decision or order;
  - a) to vary any condition for the time being in force;
  - 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.
- 22.0 Urgent Procedure for Cancellation of Registration or to Vary, Remove or Impose a Condition of Registration**
- 22.1** Under Article 21 of the Order, the RQIA can apply to a Magistrate for an immediate order where there are concerns about a serious risk to service users and urgent action is required.
- 22.2** Depending on the circumstances the RQIA can apply to a Magistrate for an order to;
  - a) cancel the registration of a person in respect of an establishment or agency;
  - b) vary or remove any condition of registration; or
  - c) impose an additional condition.
- 22.3** The decision to initiate an Urgent Procedure for Cancellation of Registration will be taken by the Director of Operations (or nominated deputy) in consultation with the Chief Executive. The Chief Executive will be kept informed accordingly.
- 22.4** The RQIA will only proceed to apply for an urgent cancellation in respect of an establishment or agency in situations where it is considered that service users are at immediate risk. If following legal advice urgent cancellation is deemed necessary, the evidence to support cancellation will be presented to a Magistrate as a matter of urgency of the evidence being made available to the RQIA. The application can, if the Magistrate thinks fit, be made without notice to the Registered Person.
- 22.5** If it appears to the Magistrate that unless the order is made there will be a "serious risk to a person's life, health or wellbeing", the Magistrate can make an order to cancel registration, vary, remove or impose a condition of registration, which takes effect from the time the order is made.

- 22.6** A Senior Officer of the RQIA must serve the order and the notice of the right of appeal on the Registered Person.
- 22.7** The RQIA must inform the DHSSPS that the order has been made.
- 22.8** The Registered Person can appeal to the Care Tribunal within 28 days of the order being made.

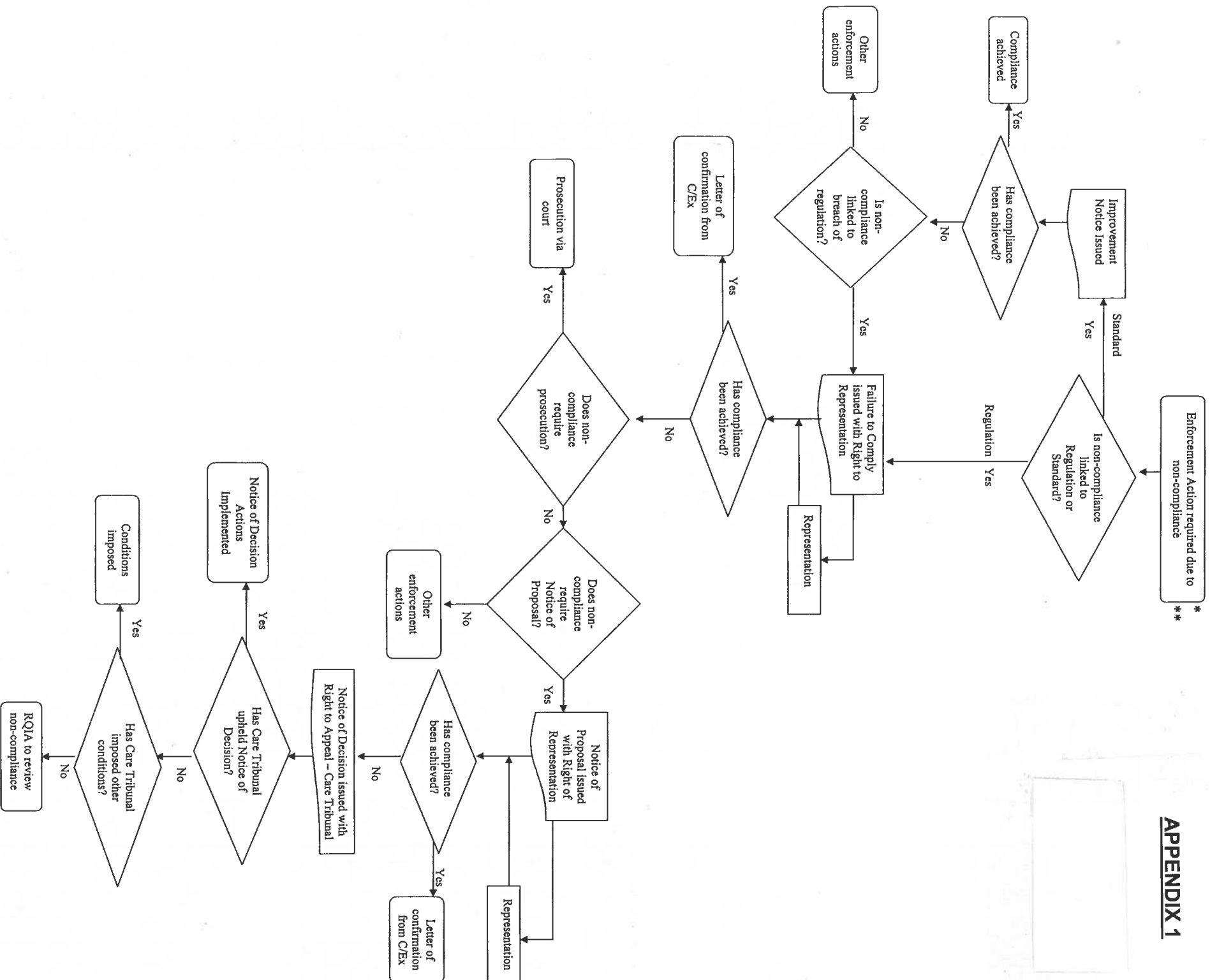
### **23.0 Prosecution for Non-Registration**

- 23.1** Any Person who carries on or manages an unregistered establishment / agency under The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 shall be committing an offence.
- 23.2** When the RQIA becomes aware of the existence of such an establishment / agency, it will make an initial investigation to clarify the nature of the service provided to determine whether an offence is being committed.
- 23.3** If it is determined that an offence is being committed, the Chief Executive of the RQIA will write to the establishment / agency to advise them of the implication of continuing to provide an unregistered service.
- 23.4** Provided that the establishment / agency acts in accordance with the RQIA's guidance, it may be appropriate to proceed with the registration of the establishment or agency providing that satisfactory safeguards for the service users are in place, pending the registration process.
- 23.5** In all events the Chief Executive of the RQIA will write to the Chief Executive of the local HSC Trust to inform them that an unregistered establishment / agency is operating in their area.

### **24.0 Communication with Relevant Stakeholders**

- 24.1** The RQIA will inform all relevant stakeholders if they have concerns about the quality of service provided in a registered establishment / agency. Relevant stakeholders will include those responsible for commissioning, delivering, overseeing and regulating as well as those receiving care.
- 24.2** This will include:
- commissioners including the Health and Social Care Board and the Public Health Agency where appropriate. The relevant local Trust and the Patient Client Council.
  - referral to the Independent Safeguarding Board, Protection of Children and Vulnerable Adults Team if relevant
  - referral to relevant regulators if professional codes of conduct have been breached, i.e. NMC and NISCC.
  - service users receiving care through the inspection report as appropriate.

- 24.3** Decisions to take enforcement action may have specific consequences for service users and the RQIA will consider:
- Which stakeholders need to be informed
  - The methods of communication to be used
  - What, when and with whom information will be shared at each stage of this procedure.
  - Ensure the RQIA Board is kept informed of notices issued at their monthly Board meetings.



\* Under Article 21 of the Order, the RQIA can apply to a Magistrate for an immediate order where there are concerns about a serious risk to service users and urgent action is required - Refer to Section 22.0 of the Enforcement Policy/Procedure

\*\* Failure to Register - Refer to Section 23.0 of the Enforcement Policy/Procedure

**Offences and Penalties Under the Order****APPENDIX 2**

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

<b>LEGISLATION</b>	<b>OFFENCE</b>	<b>PENALTY</b>
Article 12	Failure to register	Fine not exceeding Level 5 and in some situations imprisonment for a term not exceeding 6 months
Article 24	Failure to comply with conditions of registration	Fine not exceeding Level 5
Article 25	Failure to comply with regulations	Fine not exceeding Level 4
Article 26	False descriptions of establishments and agencies	Fine not exceeding Level 5
Article 27	False statements in application	Fine not exceeding Level 4
Article 28	Failure to display certificate of registration	Fine not exceeding Level 2

## Service Specific Regulations

## APPENDIX 3

The Residential Care Homes Regulations (Northern Ireland) 2005

The Nursing Homes Regulations (Northern Ireland) 2005

The Nursing Agencies Regulations (Northern Ireland) 2005

The Independent Health Care Regulations (Northern Ireland) 2005

The Children's Home Regulations (Northern Ireland) 2005

The Domiciliary Care Agencies Regulations (Northern Ireland) 2007

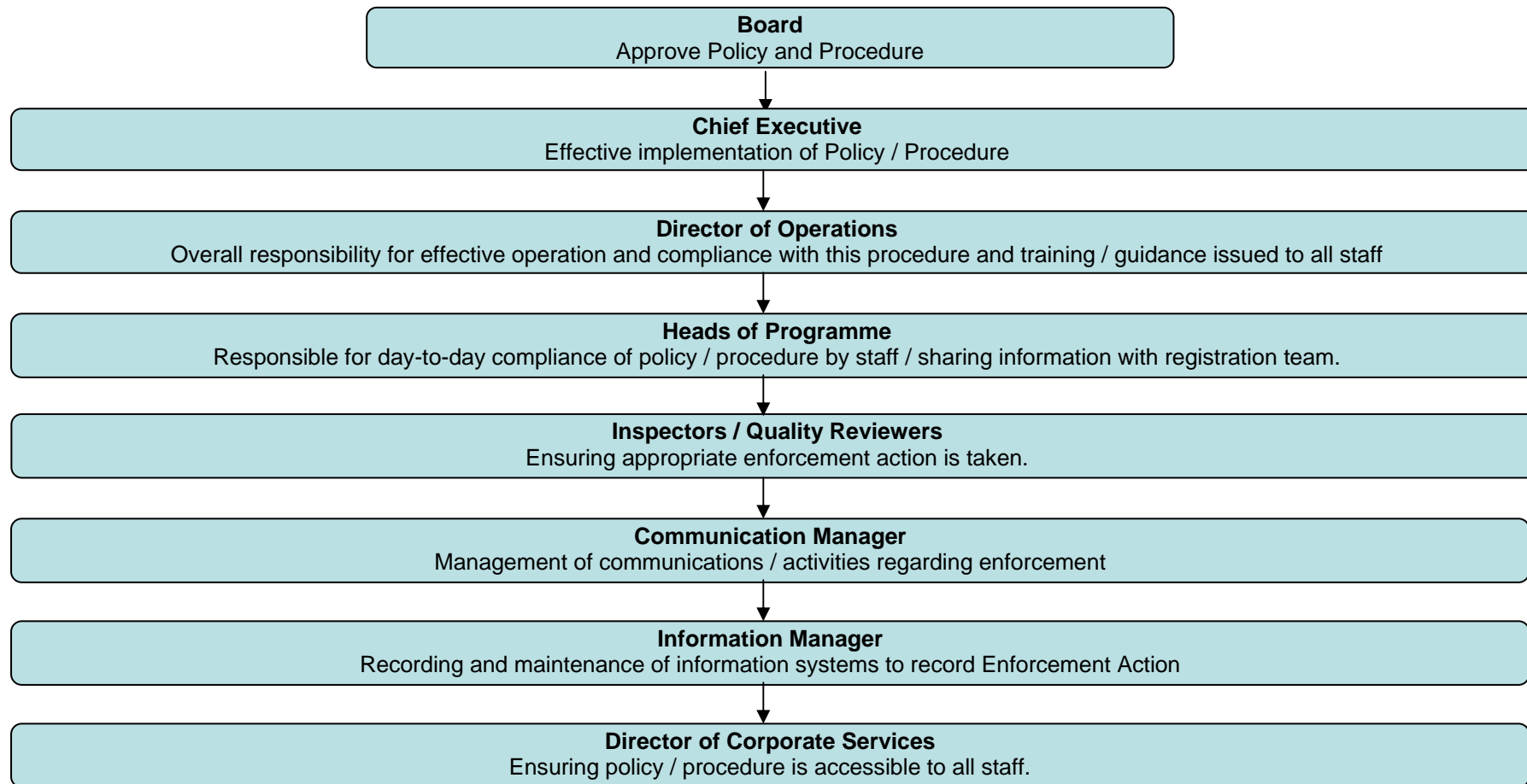
The Day Care Setting Regulations (Northern Ireland) 2007

The Residential Family Centre (Northern Ireland) 2007

The Adult Placement Agencies Regulations (Northern Ireland) 2007

<b>Regulations which deal with Offences and Failure to comply Notices</b>					
Nursing Homes 2005	36(1)	36(3)	36(4)	37	36(2)
Nursing Agencies 2005	28(1)	28(3)	28(4)	27	28(2)
Independent Health Care 2005	42(1)	42(3)	42(4)	41	42(2)
Children's Homes 2005	40(1)	40(3)	40(4)	41	40(2)
Domiciliary Care Agencies 2007	32(1)	32(3)	32(4)	31	32(2)
Day Care Settings 2007	35(1)	35(3)	35(4)	36	35(2)
Residential Family Centres 2007	36(1)	36(3)	36(4)	37	36(2)
Adult Placement Agencies 2007	39(1)	39(3)	39(4)	38	39(2)

**Flowchart of responsibilities for implementation of Enforcement Procedure**



## APPENDIX 5

### **The Department of Health, Social Services and Public Safety Minimum Standards**

Nursing Homes Minimum Standards January 2008

Residential Care Homes Minimum Standards January 2008

Domiciliary Care Agencies Minimum Standards July 2008

Nursing Agencies Minimum Standards July 2008

FURTHER STANDARDS TO BE ADDED WHEN AVAILABLE



## **Procedure for RQIA Enforcement Review Panel**

- 1.0 Introduction**
- 2.0 Procedure to be Followed on Receipt of a Written Representation**
- 3.0 Composition of the RQIA Enforcement Review Panel**
- 4.0 Terms of Reference**
- 5.0 Conduct of Business**
- 6.0 Report of the Panel**
  - 6.1 Report Structure**

## **RQIA Enforcement Review Panel**

### **1.0 Introduction**

It should be noted that this procedure only relates to a written representation from a Registered Person in regard to the issue of a Failure to Comply Notice.

The procedure for written representation from a Registered Person in regard to a Notice of Proposal is outlined in Section 19 of the Enforcement Policy and Procedure.

**1.1** A Registered Person can make a written representation to the RQIA in regard to the issue of a Failure To Comply Notice within a period not exceeding one month of receipt of the notice.

**1.2** A Registered Person should make a formal written representation to the Chief Executive of the RQIA at:

The Regulation and Quality Improvement Authority  
9th Floor  
Riverside Tower  
Lanyon Place  
Belfast  
BT1 3BT

### **2.0 Procedure to be Followed on Receipt of a Written Representation from a Registered Person**

1. Any written representation to the Chief Executive will be acknowledged within three working days of the receipt of the representation by the RQIA.
2. The Chief Executive will convene an Internal Review Panel to be chaired by a RQIA Board Member and agree dates for the Panel to meet.
3. The Director of Operations will ensure that all relevant documentation in respect of the representation is made available to the Chair of the Panel.
4. The review should normally be completed within 28 working days of receipt of the representation from the Registered Person.

### **3.0 Composition of the Enforcement Review Panel**

The Internal Review Panel will consist of three members, a Board member and two Executive Directors not previously involved in the enforcement decision. The Board Member will act as Panel Chair.

### **4.0 Terms of Reference**

1. To review all relevant matters in the inspection and enforcement decision relating to the issuing of a Failure to Comply Notice and in regard to the written representation from the Registered Person.
2. To confirm whether the information obtained in the regulatory process in conjunction with the written representation, support the decision to issue the Failure To Comply Notice, by reference to the RQIA Enforcement Policy and Procedure.
3. To advise the Chief Executive accordingly and to produce a report of the findings, including any recommendations for the Chief Executive, within 28 days of receipt of the representation from the Registered Person.

If the Panel find that a Failure To Comply Notice was issued in error, the Chair of the Panel should inform the Chief Executive immediately. The Chief Executive will confirm this decision in writing to the Registered Person and this letter can be appended to the Failure to Comply Notice.

### **Conduct of Business**

#### **The Panel should:**

- conduct its proceedings in line with the Authority's Principles and in private
- have access to all the inspection and enforcement records relating to the representation
- take advice from appropriately appointed RQIA Executive Officers or other Authority Officers if required, in consultation with the Chief Executive.

## 6.0 Report Structure

The report of the Panel **must** include the following outcomes

- the Panel's consideration of all relevant matters relating to the issuing of the Failure to Comply Notice
- the opinion of the Panel on the Registered Person's representation(s)
- the Panel's view on whether the decision to issue a Failure to Comply notice was appropriate in the circumstances
- recommendations (if any) for action by the RQIA.