

Enforcement Procedures Regulated Sector

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1.0 RQIA Enforcement Procedures

- 1.0** These procedures must be read alongside the RQIA Enforcement Policy. Staff involved in enforcement activity should ensure that records held are robust and provide clear evidence of decision making and adherence to the policy and procedures.
- 1.1** All registered establishments/agencies are required to comply with the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (the 2003 Order), the service specific regulations and other related legislation under which they are registered.
- 1.2** Registered persons¹ are also required to ensure that their establishment /agency provides 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 is available on our web site. (<http://www.rqia.org.uk/home/index.cfm>)
- 1.3** Compliance with regulations is mandatory and non-compliance with some specific regulations is considered to be an offence. The minimum standards provide a bench mark to ensure the delivery of a quality service and should be read in the context of the regulations. RQIA will take into account the extent to which the minimum standards have been met in determining whether a registered person maintains registration, or whether to take enforcement action for breach of regulations.
- 1.4** Where an inspector/quality reviewer² identifies a service which is at risk of failing to meet the minimum standards, s/he in consultation with the 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 as indicated below:

Providing advice and guidance
Making a recommendation based on minimum standards
Issue an Improvement Notice
Making a requirement against a breach of regulation
Issue a Failure to Comply Notice
Impose, vary or remove conditions on registration
Cancel registration including via an urgent court order
Prosecute for specified offences*

*It should be noted that RQIA may prosecute in conjunction with other enforcement actions; for example cancellation of registration or as a separate process, regarding the non-registration of a service or registered person.

¹ In line with legislation the registered person means the registered provider and registered manager

² For the purpose of these procedures use of inspector will include quality reviewer

- 1.5** It should also be noted that the options outlined above are not mutually exclusive and RQIA may take a range of enforcement actions in regard to a registered service at the same time, provided the action is related to separate breaches of standards and/or regulations. RQIA may increase inspection activity for a period to monitor compliance and to ensure the necessary quality improvements in the service, in line with the requirements made as a result of regulatory activity. Enforcement actions against a provider may be escalated at any time; this will be proportionate and related to the level of risk to service users and the seriousness of any breach of regulation. RQIA will follow up enforcement action to ensure that quality improvements are achieved.
- 1.6** Heads of programmes/inspectors should also consider whether the non-compliance with minimum standards and/or breach of regulations constitutes a possible breach of professional codes of practice. Any matters of concern should be followed up as deemed appropriate in the circumstances and/or in line with information sharing arrangements with other organisations/regulators.

2.0 A Stepped Approach to Enforcement

- 2.1** In line with the principles set out in the RQIA Enforcement Policy (enforcement policy), RQIA will normally adopt a stepped approach to enforcement where there are areas of concern.
- 2.2** Inspectors will provide general information, advice and guidance to support and encourage registered persons/managers to understand and meet their regulatory obligations and their compliance with minimum standards. When offering compliance advice, inspectors should distinguish between statutory requirements and advice or guidance aimed at improvements above minimum standards. Inspector(s) may confirm advice provided in writing and/or if requested.
- 2.3** When completing an inspection of an establishment/agency, the inspector will aim to provide balanced feedback to the registered person on the inspection outcomes, for example, on standards achieved/not achieved and/or regarding the focus of inspection. The inspector will also evidence any failings and identify improvements to be made by the registered person. Inspection findings will be detailed in the inspection report and any improvements to be made will be specific, realistic and achievable, set within clearly identified timescales and indicated in a Quality Improvement Plan (QIP) attached to the report. The report will be forwarded to the registered person within RQIA's required timeframe.
- 2.4** A recommendation - will be based on minimum standards, codes of practice and recognised good practice. Recommendations will be set out in the inspection report and will specify the actions the registered person should take to improve the quality of the service.
- 2.5** A requirement - will be made if a regulation is breached. Minimum standards (DHSSPS) may also be the basis of a requirement where they link to

regulations. Requirements will be specified in the inspection report and the registered person **must** act on these to ensure compliance with the 2003 Order, regulations or a condition of registration.

- 2.6** At all times, the registered person will be informed by the Director of Regulation/head of programme/inspector of the reason why the improvement needs to be made and the legal basis for doing so. The views of the registered person will be taken into account.
- 2.7** The registered person will be required to complete a QIP detailing how they intend to address the areas of concern. The QIP will be agreed between the registered person and the inspector to ensure that all areas of concern are being fully addressed within appropriate timescales.
- 2.8** The inspector will monitor and review the implementation of the QIP as appropriate, to ensure compliance.
- 2.9** 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 and/or increased inspection activity to encourage and support improvements in the service.
- 2.10** **It should be noted that it is the registered person's responsibility to ensure that regulations are met and minimum standards are achieved and maintained.**
- 2.11** If a service continues to fail to meet the minimum standards and make the required improvements, the head of programme and the relevant inspector(s) will arrange to meet with the registered person, if deemed appropriate in the circumstances. A letter of invitation to meet the head of programme/inspector will be forwarded to the registered person. **(Template 1)** If the invitation is made by telephone or email, a record of the invitation will be held in the relevant file.
- 2.12** The purpose of the meeting is to:
- inform the registered person of RQIA's concerns about the precise nature of the areas of non-compliance
 - agree the required action(s) that must be taken to ensure compliance/quality improvement
 - agree the timescale within which any remedial action must be taken; and
 - inform the registered person of the likely implications if compliance is not achieved.

- 2.13** In line with the principles of good regulation³ and RQIA's enforcement policy, a file record will be made of the meeting with the registered person and it should include any decisions made and actions agreed. A letter confirming the decisions made and any actions agreed should be forwarded to the registered person as soon as practicable after the meeting. The responsibility for making the record will be agreed at the outset of the meeting. **(Template 2)**
- 2.14** Following the issue of the letter as indicated at **2.13** above, the inspector(s) will monitor and review the registered person's compliance with actions agreed as appropriate.
- 2.15** If the registered person does not attend the meeting, a record of all attempts to contact them by telephone/email should be retained including the content of any subsequent discussion. With reference to paragraphs **1.3 and 1.4** above, and in the absence of co-operation by the registered person, the head of programme and relevant inspector(s) will discuss and agree enforcement options. A record of the decision(s) made should be retained in the relevant file. A letter confirming the decisions made and any actions agreed should be forwarded to the registered person as soon as practicable after the meeting. **(Template 3)**

3.0 Improvement Notice

3.1 Decision and Intention to Serve an Improvement Notice

Article 39 of the 2003 Order makes provisions for RQIA to serve an improvement notice, if a registered person fails to comply with any statement of minimum standards issued by the DHSSPS. An improvement notice will be issued to a registered person where there has been an inadequate or no response to a QIP, and a failure to engage with RQIA despite our efforts to support and encourage compliance with minimum standards.

- 3.2** 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. The head of programme/inspector(s) will discuss the areas of concern and decision to issue the notice with the Director of Regulation.*

*If the Director of Regulation is unavailable at any stage of enforcement action, the matter should be referred to the person deputising.

- 3.3** When a decision has been made to issue an improvement notice, the Director of Regulation will forward a letter to the registered person confirming RQIA's intention to issue the notice and inviting them to a meeting, to discuss the specific shortcomings in the service and minimum improvements required for compliance with the standards. **(Template 4)**

³ Better Regulation Task Force (Principles of Good Regulation, Cabinet Office publications, October 2003)

- 3.4** The purpose of this meeting is to:
- inform the registered person of RQIA's concerns about the failure(s) to meet specific standards
 - agree the required action(s) that must be taken to meet compliance requirements
 - agree the timescale within which any remedial action(s) must be taken; and
 - inform the registered person of the likely consequences if compliance is not achieved.
- 3.5** In line with the principles of good regulation and the enforcement policy, a formal record will be made of the meeting with the registered person in the relevant file. The record should include any decisions made and actions agreed. The responsibility for making the record will be agreed in advance of the meeting. Refer also to **3.13** below in the event that an improvement notice is served on the registered person at this meeting.
- 3.6** If following the meeting with the registered person indicated at **3.4** above, a decision is made not to issue an improvement notice, the Director of Regulation will forward a letter confirming this decision and actions agreed to the registered person as soon as practicably possible. **(Template 5)**
- 3.7** Following the issue of the letter as indicated at **3.6** above, the inspector(s) will continue to monitor the quality of the service, and carry out an inspection to assess compliance against actions agreed as deemed appropriate. The inspector will update the head of programme and future enforcement action(s) will depend on whether the service has achieved compliance.
- 3.8** If compliance has not been achieved as required, the relevant procedures for future enforcement action(s) should be followed in line with the decision(s) made by the Director of Regulation/head of programme and relevant inspector(s). A file record should be made of all decisions and enforcement actions agreed.
- 3.9** If the registered person does not attend the meeting, a record of all attempts to contact them by telephone/email should be retained in the relevant file including the content of any subsequent discussion. In the absence of co-operation by the registered person, the head of programme and relevant inspector(s) will discuss and agree enforcement options. A record should be made of the decision(s) agreed and future enforcement action(s) to be taken in respect of the service involved; and staff should follow the relevant section within the enforcement procedures. A letter confirming the decisions made and any actions agreed should be forwarded to the registered person. **(Template 6 or 7 and 7a below)**
- 3.10 The Issue of an Improvement Notice**
When a decision is made to issue an improvement notice, the notice will be completed by the relevant inspector(s). **(Template 7)** It should be noted that **one improvement notice should be completed for each minimum standard breached.**

- 3.11** Under Article 38 of the 2003 Order, the improvement notice will indicate:
- the specific minimum standard and criteria breached
 - the specific failings to comply with the standard
 - the required improvements to achieve minimum compliance
 - the specific timescales within which improvements must be made.
- 3.12** Information provided in the notice should detail the breach and supporting evidence in line with **3.11** above. Statements about action(s) required to achieve minimum compliance must be specific and measurable; dates indicated must be realistic and achievable. Timescales may vary and will depend on the specific area of improvement required and the inspector's judgement of the priority to ensure quality of care/service delivery within the establishment/agency.
- 3.13** The improvement notice(s) must be accompanied by a covering letter (**Template 7a**). The improvement notice(s) and letter may be handed to the registered person at the conclusion of the meeting referred to at **3.4** above, forwarded by recorded delivery or hand delivered to the registered person's address. If the notice is hand delivered, a record to confirm the signature of the registered person or person authorised, should be obtained and held on the relevant file. (**Template 8**)
- 3.14** RQIA will inform the following stakeholders by letter that an improvement notice has been issued to the named establishment/agency: (**Template 9**)
- The chief executive(s) of the relevant Health and Social Care (HSC) trust(s)
 - The Northern Ireland Social Care Council (NISCC) who may decide to follow up with the registered person in line with its Codes of Practice
 - Other relevant professional regulators if codes of conduct have been breached.
- 3.15** In line with the enforcement policy, consideration should also be given to other stakeholders (both internal and external) who may need to be informed that an improvement notice has been issued. (**Template 9a**)
- 3.16** The inspection report linked to the improvement notice will be completed and forwarded to the registered person within RQIA's required timeframe.
- 3.17** It is not an offence to fail to comply with an improvement notice. However, non-compliance could result in RQIA issuing a failure to comply notice when non-adherence to a standard is also linked with a breach of regulations. RQIA may also impose an additional condition of registration on the registered person in such circumstances.
- 3.18 Follow up Inspection(s) to Assess Compliance**
The relevant inspector(s) will conduct an inspection of the establishment / agency on the date(s) that compliance must be achieved or earlier with prior agreement of the registered person.

- 3.19** The inspection should focus on the issues raised within the improvement notice(s). If other unrelated issues arise during the inspection, these should be dealt with separately and should not unduly influence the inspector's judgement with respect to assessing compliance or otherwise with the notice(s). An inspection report will be completed clearly indicating whether compliance has been achieved/not achieved and forwarded to the registered person within RQIA's required timeframe. Refer also to paragraphs below under **Compliance Achieved (3.20)** and **Compliance Not Achieved (3.22)**.
- 3.20 Compliance Achieved**
If compliance with the improvement notice(s) is achieved, the inspector should inform the registered person at the conclusion of the inspection.
- 3.21** The registered person will also be notified in writing by the Director of Regulation that compliance has been achieved against the required improvements indicated in the improvement notice(s) and that the notice(s) is/are lifted. **(Template 10)** Refer also to **3.19** above regarding the completion of an inspection report.
- 3.22 Compliance Not Achieved**
If compliance with the improvement notice(s) is not achieved, the inspector should inform the registered person at the conclusion of the inspection of his/her reasons for reaching this decision. The possible consequences should be explained and any mitigating circumstances considered. The possible approaches which RQIA may consider should also be explained.
- 3.23** The inspector should inform the head of programme about the outcomes of the inspection as soon as practicably possible and/or as agreed. A meeting should take place between the Director of Regulation*/head of programme /relevant inspector(s) to review the circumstances (including areas of compliance and non-compliance within the notice(s)) and to discuss future enforcement action(s).
- *If the Director of Regulation is unavailable at any stage of enforcement action, the matter should be referred to the person deputising.
- 3.24** Agreement on the way forward will be reached at this meeting, and the decisions made should be recorded against specific matters indicated within the improvement notice(s) and retained in the relevant file. Refer also to **3.19** above regarding the completion of an inspection report.
- 3.25 With reference to RQIA's Enforcement Policy and principles of good regulation, records should be robust and provide clear evidence of decision making.**
- 3.26 Extension to Improvement Notice**
Following a review and consideration of the facts and when there is clear evidence that progress towards compliance on required improvements has been made, it may be reasonable for RQIA to issue an extension to the compliance date(s).

- 3.27** The Director of Regulation will notify the registered person in writing of the decision to agree an extension to identified matters indicated within the improvement notice(s). These matters and revised timescale(s) will be outlined in the letter which will also emphasise that further enforcement action may be taken if full compliance is not achieved within the revised timescales.

(Template 11)

Refer also to **3.19** above regarding the completion of an inspection report.

- 3.28** With reference to **3.18 and 3.19** above, the inspector(s) will carry out an inspection of the establishment/agency to assess compliance and will follow the procedure outlined regarding inspection outcomes.

3.29 Compliance Not Achieved

If compliance is not achieved and the non-compliance is linked to a breach of regulations, a decision may be made at the meeting (referred to at paragraphs **3.23 and 3.24** above) to issue a failure to comply notice.

- 3.30** When a decision is made to issue a failure to comply notice, the Director of Regulation will forward a letter to the registered person, confirming RQIA's intention to serve a failure to comply notice and issuing an urgent invitation to a meeting in RQIA, to discuss the failings in service and the required improvements to ensure full compliance. This letter will also indicate that continued non-compliance may lead to further enforcement action. **(Template 12)** Refer also to **3.25** above regarding records of decisions.

- 3.31** The chief executive(s) of the relevant HSC trust(s) will be informed of the outcome from RQIA's assessment of compliance with the improvement notice(s) issued to the registered person and actions agreed. **(Template 13)** Other stakeholders will be informed as deemed appropriate.

4.0 Failure to Comply Notice

4.1 Decision and Intention to Serve a Failure to Comply Notice

The 2003 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** of the enforcement policy.

- 4.2** 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.
- 4.3** A failure to comply notice will not be issued if RQIA intends to cancel the registration of an establishment or agency under Article 15 of the 2003 Order.
- 4.4** A failure to comply notice may be issued where:

- RQIA have been unsuccessful in securing improvement in the quality of the service
- the service is in breach of regulations including non-compliance with conditions of registration
- there is a failure 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.

RQIA will take all of the above factors into consideration in the decision to issue a failure to comply notice.

- 4.5** As indicated at **3.30** above, the decision to issue a failure to comply notice / notices will be taken following discussion and agreement with the Director of Regulation (or nominated deputy)/head of programme/relevant inspector(s). A letter will be forwarded to the registered person by the Director of Regulation confirming RQIA's intention to serve a failure to comply notice and requesting that they attend a meeting as a matter of urgency. **(Template 12)**
- 4.6** The purpose of this meeting is to ensure that the registered person is fully aware of the reasons for RQIA's decision to issue the notice(s) and specifically to:
- inform the registered person of RQIA's concerns about the specific failure(s) of the service
 - agree the required action(s) that must be taken to ensure compliance requirements
 - agree the timescale(s) within which any remedial action(s) must be taken; and
 - inform the registered person of the likely consequences if full compliance is not achieved within the timescales.
- 4.7** However, it should be noted that this will not preclude RQIA from taking enforcement action and issuing a failure to comply notice without prior notice, where it is considered necessary by RQIA on safety grounds.
- 4.8** In line with the principles of good regulation and the enforcement policy, a file record will be made of the meeting with the registered person and it should include any decisions made and actions agreed. A letter confirming the decisions and actions agreed should be forwarded to the registered person as soon as practicable after the meeting. The responsibility for making the record will be agreed at the outset of the meeting. **(Template 14 or 15/15a/15b see below)**
- 4.9** If a decision is made to issue a failure to comply notice, staff should follow the procedure at **4.15** below.
- 4.10** If a decision is made not to issue a failure to comply notice, the Director of Regulation will forward a letter to the registered person confirming this decision and actions agreed as indicated at **4.8** above. **(Template 14)**

- 4.11** Following the issue of the letter as indicated at **4.10** above, the inspector(s) will continue to monitor the quality of the service, and carry out an inspection to assess compliance against actions agreed as deemed appropriate. The inspector will update the head of programme as agreed. Following each inspection visit an inspection report will be completed and issued to the registered person within RQIA's required timeframe.
- 4.12** Future enforcement action(s) will be based on whether the service has achieved compliance and/or the assessment of progress made by the registered person, including the impact on service users and the quality of the service. A file record should be made of the decision(s) made and future enforcement action(s) to be taken in respect of the service involved. Staff should follow the relevant section within the enforcement procedures.
- 4.13** If compliance has not been achieved as required, the relevant procedures will be followed in line with the decision agreed by the head of programme and relevant inspector(s). The head of programme will discuss the issues and decision reached with the Director of Regulation as appropriate. When the decision is made to issue a failure to comply notice, refer to section **4.15** below.
- 4.14** If the registered person does not attend the meeting, a file record of all attempts to contact them by telephone/email should be retained including the content of any subsequent discussion. In the absence of co-operation by the registered person, the Director of Regulation, the head of programme and relevant inspector(s) will discuss and agree enforcement options. A record should be made of the decision(s) agreed and future enforcement action(s) to be taken in respect of the service involved; and staff should follow the relevant section within the enforcement procedures. A letter confirming the decisions made and any actions agreed should be forwarded to the registered person.
(Template 14a or 15/15a/15b)
- 4.15 The Issue of a Failure to Comply Notice**
The Director of Regulation will inform the Chief Executive of all failure to comply notices prior to their issue.
- 4.16** When a decision is made to issue a failure to comply notice, the notice will be completed by the relevant inspector(s). **(Template 15)** It should be noted that one failure to comply notice should be completed for each regulation breached.
- 4.17 As there is no provision to extend a failure to comply notice beyond three months, it is important from the outset that the minimum level of improvement necessary to ensure compliance is agreed.**
- 4.18** Careful consideration must also be given to timescales as these may vary and will depend on the specific improvements required to ensure quality of care/service delivery within the establishment/agency. This will prevent uncertainty and confusion when assessing compliance.

- 4.19** RQIA will serve a failure to comply notice on the registered person specifying:
- a) the specific failings to comply with regulations.
 - b) the required action(s) the registered person should take to comply with regulations.
 - c) the specific timescales, 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 RQIA about the notice.* (Refer also to **4.26** below)

***However, it should be noted that RQIA will only consider representations related to a point of law and/or fact.**

- 4.20** Information provided in the notice should detail the breach and supporting evidence in line with **4.19** above. Statements about action(s) required to achieve minimum compliance must be specific and measurable and dates indicated must be realistic and achievable. Timescales may vary and will depend on the specific area of improvement required and the inspector's judgement of the priority to ensure quality of care/service delivery within the establishment/agency.
- 4.21** The failure to comply notice(s) must be accompanied by a covering letter (**Template 15a**) and the letter template for the registered person regarding representation (**Template 15b**). The notice(s) and letters may be handed to the registered person at the conclusion of the meeting referred to at **4.6** above, forwarded by recorded delivery or hand delivered to the registered person's address. If the notice is hand delivered, a record to confirm the signature of the registered person or person authorised, should be obtained and held on the relevant file. (**Template 8**)
- 4.22** RQIA will inform the following stakeholders by letter that a failure to comply notice has been served on the registered person in respect of the named establishment/agency: (**Template 16**)
- The chief executive(s) of the relevant Health and Social Care (HSC) trust(s)
 - The Northern Ireland Social Care Council (NISCC) who may decide to follow up with the registered person in line with its Codes of Practice
 - Other relevant professional regulators if codes of conduct have been breached.
- 4.23** In line with the enforcement policy, consideration should also be given to other stakeholders (both internal and external) who may need to be informed that a failure to comply notice(s) has been served. (**Template 16a**)
- 4.24** The inspection report linked to the failure to comply notice(s) will be completed and forwarded to the registered person within RQIA's required timeframe.
- 4.25** Whilst paragraph **4.19 d)** above regarding representations, does not apply to Residential Care Homes, Nursing Homes and Independent Health Care Regulations (NI) 2005, RQIA will provide **all** regulated establishments /

agencies with the right to make representation in line with the enforcement policy and the Enforcement Review Panel Procedures in **Appendix 2**. As indicated at **4.19** above, it should be noted that RQIA will only consider representations related to a point of law and/or fact.

4.26 Staff should also note the following matters:

- Service specific regulations make provision for RQIA to 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. **(Refer to Enforcement Policy, Appendix 3, Column C)**
- 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. **(Refer to Enforcement Policy, Appendix 3, Column D)**

4.27 Follow up Inspection(s) to Assess Compliance

The inspector will conduct an inspection of the establishment/agency on the date that compliance must be achieved or earlier with prior agreement of the registered person.

4.28 The inspection should focus on the issues raised within the failure to comply notice(s). If other unrelated issues arise during the inspection these should be dealt with separately and should not unduly influence the inspector's judgement with respect to assessing compliance or otherwise with the notice(s). An inspection report will be completed clearly indicating whether compliance has been achieved/not achieved and forwarded to the registered person within RQIA's required timeframe. Refer also to paragraphs below under **Compliance Achieved (4.31)** and **Compliance Not Achieved (4.33)**.

4.29 The chief executive(s) of the relevant HSC trust(s) will be informed of the outcome from RQIA's assessment of compliance with the failure to comply notice(s) issued to the registered person and actions agreed. **(Template 17)** Other stakeholders (both internal and external) will be informed as deemed appropriate. **(Template 17a)**

4.30 Compliance Achieved

If compliance is achieved within the timescale(s) indicated within the failure to comply notice(s), the inspector should inform the registered person at the conclusion of the inspection.

4.31 The registered person will also be notified in writing by the Director of Regulation that compliance with legal requirements indicated in the notice(s) has been achieved. **(Template 18)** Refer also to **4.29** above regarding the completion of an inspection report.

4.32 Compliance Not Achieved

If compliance with the failure to comply notice(s) is not achieved within the required timescales, the registered person should be informed at the conclusion of the inspection of the reasons for reaching this decision. The possible consequences and future actions which RQIA may consider should also be explained.

4.33 The inspector should inform the head of programme about the outcomes of the inspection as soon as practicably possible and/or as agreed. A meeting should take place between the Director of Regulation, the head of programme and relevant inspector(s) to:

- review the circumstances (including areas of compliance/non-compliance within the notice(s) and assessment of risk
- discuss the enforcement options available and future action(s) to be taken to ensure compliance and quality improvement in the service
- decide if seek legal advice should be sought.

Staff should also refer to paragraphs **1.3** and **1.4** above regarding assessment of risk and enforcement options available.

4.34 Agreement on the way forward will be reached at this meeting, and a record of the decisions* made should be made against specific matters indicated within the failure to comply notice(s) and retained in the relevant file. Refer also to **4.28** above regarding the completion of an inspection report.

4.35 In line with the principles of good regulation, records made should be robust and provide clear evidence of decision making and adherence to the enforcement policy and these procedures.

4.36 With reference to **4.19** and **4.26** above regarding the registered person's right to make representation, consideration must also be given to the decision of the Enforcement Review Panel if a written representation is received by RQIA. **(See Appendix 2 for Procedure)**

4.37 *With reference to the decisions made, (see **4.33 & 4.34** above) staff should follow the relevant section within the procedures and as follows:

- decision to issue a **notice of proposal** (refer to section **5.0**)
- decision to apply to a lay magistrate for an immediate order to cancel registration, or impose/change conditions on an establishment/agency (under Article 21 of the Order) (refer to section **7.0**)
- decision to commence legal proceedings for **Prosecution*** (refer to section **8.0**)

***It should be noted that RQIA may prosecute in conjunction with other enforcement actions, for example cancellation of registration or as a separate process, for example, non-registration of a service or registered person.**

4.38 In line with the enforcement policy (paragraph 1.4), it should also be noted that the above options are not mutually exclusive and RQIA may take a range of

enforcement actions in regard to a registered service at the same time, provided the action is related to separate breaches of standards and/or regulations.

5.0 Notice of Proposal to Cancel, Refuse, Vary, and Remove or Impose Conditions in relation to Registration

- 5.1** A notice of proposal* may be issued by RQIA under Article 18 of the 2003 Order at any time, to give notice of decisions it intends to take to:
- Impose any additional condition in relation to the registration
 - Vary and remove any condition
 - Cancel registration
 - Refuse an application by a registered person under Article 16 of the 2003 Order for the variation or removal of a condition relating to registration or cancellation of the registration.

*Except where RQIA make an 'urgent' application under Article 21 via a lay magistrate for an Order to cancel registration or impose/change conditions to registration.

- 5.2** The decision to issue a notice of proposal will be taken by the Director of Regulation (or nominated deputy) in discussion and agreement with the head of programme and relevant inspector(s). With reference to **4.28** and **4.34** above, an inspection report will be completed and a record of the decision to issue the notice will be held in the relevant file. The Director of Regulation will ensure that the Chief Executive is informed regarding a decision to issue of a notice of proposal.
- 5.3** The notice of proposal should clearly state the parts of the legislation which have been breached, and the reasons why RQIA have reached the decision to serve the notice. **(Template 19)**
- 5.4** Registered persons have the right to make written representations to RQIA within 28 days concerning any matter which that person wishes to dispute following the issue of a notice of proposal. (Article 19 of the 2003 Order) Staff should refer to the associated Enforcement Review Panel Procedures which outlines the process to be followed on receipt of a representation from a registered person. **(Appendix 2)**
- 5.5** The notice of proposal must be accompanied by a covering letter **(Template 19a)** and the letter template for the registered person regarding representation **(Template 19b)**. The notice and letters may be forwarded by recorded delivery or hand delivered to the registered person's address. If the notice is hand delivered, a record to confirm the signature of the registered person or person authorised, should be obtained and held on the relevant file. **(Template 8)**

- 5.6** RQIA will inform the following stakeholders by letter that a notice of proposal has been served on the registered person in respect of the named establishment/agency: **(Template 17)**
- The chief executive(s) of the relevant Health and Social Care (HSC) trust(s)
 - The Northern Ireland Social Care Council (NISCC) who may decide to follow up with the registered person in line with its Codes of Practice
 - Other relevant professional regulators if codes of conduct have been breached.
- 5.7** In line with the enforcement policy, consideration should also be given to other stakeholders (both internal and external) who may need to be informed that a notice of proposal has been issued. **(Template 17a)**
- 5.8 Right to Make Representations - Notice of Proposal**
As indicated at **5.4** above, a notice of proposal will inform the registered person of their right to make formal written representations to the Chief Executive of RQIA concerning the proposed actions of the Authority.
- 5.9** It should be noted that RQIA cannot 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.
- 5.10** However, during this 28 day period, RQIA will continue to monitor the quality of the establishment/agency as deemed appropriate. Following an inspection visit, the inspector should update the head of programme as agreed and a report should be completed and issued to the registered person within RQIA's required timeframe. The head of programme will provide an update to the Director of Regulation as appropriate.
- 5.11** Following consideration of the registered person's representation by the Panel, the registered person will be notified in writing by the Chief Executive of the Panel's decision as follows:
- RQIA's decision is **not** to implement the notice of proposal and the notice is lifted, **(refer to 5.12)** or
 - RQIA's decision is to implement the matters within the notice of proposal and a notice of decision is issued. **(refer to 5.13)**
- 5.12** If RQIA's decision is **not** to implement the notice of proposal, a letter will be forwarded to the registered person which will confirm this decision, explain our reasons for the decision and that the notice will be lifted. The inspector must ensure that the notice is lifted and that the relevant records are updated accordingly. The registered person may be invited to a meeting with the Director of Regulation and head of programme/inspector. **(Template 20)**

- 5.13 If RQIA's decision is to implement the matters within the notice of proposal, a notice of decision under Article 20 of the 2003 Order, will be issued to the registered person by the Chief Executive. **(Refer to section 6.0)**

6.0 The Issue of a Notice of Decision

- 6.1 A notice of decision will be completed by the relevant inspector(s). **(See Template 21)** It will detail the regulations and/or the parts of the 2003 Order which are breached and the reasons for issuing the notice. The notice of decision must be accompanied by a covering letter **(Template 21a)**. The notice and the letter will confirm the registered person's right of appeal to the Care Tribunal under Article 22 of the Order.
- 6.2 The notice and letter may be forwarded by recorded delivery or hand delivered to the registered person's address. If the notice is hand delivered, a record to confirm the signature of the registered person or person authorised, should be obtained and held on the relevant file. **(Template 8)**
- 6.3 Where a notice of decision relates to a refusal or cancellation of registration, the Chief Executive should ensure that a report of any refusals or cancellations of registration is brought to the next Board meeting in line with RQIA's Standing Orders. **(Refer to Standing Order Three, 3.4.1.2, page 30)**
- 6.4 **Appeals to the Care Tribunal**
If a registered person intends to lodge an appeal with the Care Tribunal (Tribunal), they must do so within 28 days of the notice of decision.
- 6.5 On an appeal, the Tribunal may confirm RQIA's notice of decision or direct that it should not have effect.
- 6.6 The Tribunal also has the power on an appeal against a decision:
a) to vary any condition for the time being in force;
b) to direct that any such condition shall cease to have effect; or
b) to direct that any such condition as it thinks fit shall have effect.
- 6.7 It should be noted that a notice of decision cannot take effect unless:
 - no appeal is made to the Tribunal, and the period of 28 days has expired, or
 - the registered person has notified RQIA in writing that he does not intend to appeal*, or
 - an appeal is made to the Tribunal and it has been determined or abandoned.

***If a registered person notifies RQIA in writing before the expiration of the period that he does not intend to appeal, the notice of decision will take effect from the date when the notice was served.**

- 6.8 However, during this 28 day period, RQIA will continue to monitor the quality of the establishment/agency as deemed appropriate. Following an inspection

visit, the inspector should update the head of programme as agreed and a report should be completed and issued to the registered person within RQIA's required timeframe. The head of programme will provide an update to the Director of Regulation as appropriate.

6.9 Following the Tribunal's decision regarding a registered person's appeal against a notice of decision, the Chief Executive will write to the registered person confirming the Tribunal's decision as indicated at **6.4** and **6.5** above and RQIA's response. **(Template 22)**

6.10 A meeting should take place between the Director of Regulation/head of programme/relevant inspector(s) to review the circumstances and agree the way forward. A record of the decisions made should be recorded against specific matters indicated within the notice of decision and retained in the relevant file. With reference to **6.9** above, the inspector should ensure that relevant records are updated accordingly.

6.11 In line with the enforcement policy, relevant stakeholders (both internal and external) will be informed about the Care Tribunal's decision and RQIA's response. **(Template 22)**

7.0 Urgent Procedure for Cancellation of Registration or to Vary, Remove or Impose a Condition of Registration

7.1 Under Article 21 of the 2003 Order, RQIA can apply to a lay magistrate for an immediate order to:

- cancel the registration of a person in respect of an establishment or agency
- vary or remove any condition of registration; or
- impose an additional condition; and
- if it appears to the lay magistrate that, unless the order is made, there will be a serious risk to the life, health or wellbeing of any service user and urgent action is required.

7.2 RQIA will only make application for an urgent cancellation where it is considered that any service user(s) is at serious risk. RQIA may seek legal advice on the application and the completion of an evidential report to be presented to a lay magistrate. **(Template 23)**

7.3 If a decision is made to apply for an immediate order under Article 21 as indicated at 7.1 above, the inspector must ensure that a record of the decision is made in the relevant file. In view of the circumstances, staff should be mindful of the need to expedite the application as quickly as possible and that the proposed application must be presented to the Enforcement Review Panel for authorisation. (the Panel) **(Refer to 7.7 to 7.10 below)**

7.4 With reference to paragraphs **1.4** and **1.5** above, the Director of Regulation/head of programme/inspector will liaise with relevant HSC trusts

and/or other stakeholders to ensure that appropriate action is taken to safeguard the health and well-being of service users. RQIA may invite relevant stakeholders to a meeting to discuss the circumstances and to agree arrangements in the establishment or agency (**Template 30**). The relevant inspector(s) will continue to inspect and monitor the establishment or agency as agreed with the Director of Regulation/head of programme. Following any inspection visit, the inspector will update the Director of Regulation/head of programme.

- 7.5** In the preparation of the application, the Director of Regulation/head of programme/relevant inspector(s) must ensure that the following matters are clearly indicated:
- details of the regulation(s) and/or parts of the 2003 Order breached including relevant enforcement history of non-compliance
 - evidence to support RQIA's application for an immediate order, and
 - specific statements about the risks to a service user's life, health or wellbeing if the order is not made.
- 7.6** As an application can be made without giving notice to the registered person, the Director of Regulation/head of programme/inspector should ensure that the level of risk is clearly identified to enable the lay magistrate to make a decision in this regard if deemed appropriate. (Article 21(2) of the 2003 Order)
- 7.7** In line with RQIA's Standing Order Three, the Chief Executive or (in his/her absence) the Director of Regulation, will present the proposed application, relevant inspection report(s) and related documents, and any legal advices obtained, to the Panel.
- 7.8** The Panel will review the application and determine whether or not, it is satisfied that there is a serious risk to a person's life, health or well-being. It should be noted that the Panel will make their determination within 48 hours of receipt of the application.
- 7.9** If the Panel is satisfied that such a risk exists, refer to **7.10** below **or** if it is not satisfied that such a risk exists, refer to **7.14** below.
- 7.10** If the Panel is satisfied that such a risk is exists, it will authorise the application to be made to a lay magistrate on behalf of RQIA. The Panel will present a report at the next Board meeting. (Refer to the Enforcement Review Panel Procedures. (**Appendix 2**))
- 7.11** Following the Panel's decision to authorise an application, the Chief Executive must inform the DHSSPS that an application has been made for an immediate order. In line with section 8.0 in the enforcement policy, RQIA will also inform other relevant stakeholders about the application; this will include the Health and Social Care Board, the Public Health Agency and the relevant HSC trust(s). RQIA may also make a referral to the Safeguarding Board for Northern Ireland and liaise with relevant professional regulators if codes of conduct have been breached. (**Template 24 and 24a**)

- 7.12** If a lay magistrate makes an order, a senior RQIA officer must serve a copy of the order and the covering letter confirming a right of appeal to the Care Tribunal on the registered person. **(Template 25)** A record to confirm the signature of the registered person or person authorised, should be obtained and held on the relevant file. **(Template 8)**
- 7.13** The Chief Executive will inform relevant stakeholders by letter if an order is made. (Refer also to **7.11** above regarding stakeholders) **(Template 26)**
- 7.14** If the Panel is not satisfied that such a risk exists, the Chair of the Panel will inform the Chief Executive/Director of Regulation of their decision. The Director of Operations will meet with the relevant head of programme / inspector(s) to review the situation and to make a decision on future actions. The Director of Operations will consult with the Chief Executive in the decision making process. The inspector should ensure that decisions made are recorded in the relevant file including any legal advices obtained.
- 7.15 Appeals to the Care Tribunal**
If a registered person intends to lodge an appeal with the Care Tribunal (Tribunal), they must do so within 28 days of the order being served.
- 7.16** On an appeal the Tribunal may confirm the order or direct that it should not have effect.
- 7.17** The Tribunal also has the power on an appeal against an 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 impose any such condition as it thinks fit.
- 7.18** RQIA may invite relevant stakeholders to a meeting to discuss the circumstances and agree arrangements to ensure the safety and wellbeing of the service users in the establishment or agency during the period of appeal to the Care Tribunal **(Template 30)**. RQIA will continue to inspect and monitor the establishment or agency as deemed appropriate. The relevant inspector(s) will update the head of programme as agreed. The Director of Regulation will be kept informed. The inspector will complete an inspection report and forward it to the registered person within RQIA's required timeframe.
- 7.19** Following the Tribunal's decision regarding a registered person's appeal against an order, the Chief Executive will write to the registered person confirming the Tribunal's decision as indicated at paragraphs **7.16** and **7.17** above and RQIA's response. **(Template 27)**
- 7.20** A meeting should take place between the Director of Regulation/head of programme/relevant inspector(s) to review the circumstances and agree the way forward. A record of the decisions made should be recorded against specific matters indicated within the order and retained in the relevant file. With reference to **7.18** above, the inspector should ensure that records are updated accordingly.

7.21 In line with the enforcement policy, relevant stakeholders (both internal and external) will be informed about the Care Tribunal's decision and RQIA's response. **(Template 28)** Depending on the circumstances and assessment of risk, relevant stakeholders may be invited to a meeting with the Director of Regulation/head of programme/inspector(s) to discuss the implications of the Tribunal's decision and proposed action(s) by RQIA **(Template 30)**.

8.0 Prosecution for Specified Offences

8.1 Principles of Practice

RQIA recognise that the commencement of a prosecution is a serious matter that should only be taken after full consideration of the implications and consequences. In making decisions about prosecution, RQIA will take account of legal advice and the principles in the Code for Crown Prosecutors. (www.cps.gov.uk/victims_witnesses/code.html)

8.2 RQIA will not commence or continue a prosecution unless it is satisfied that there is sufficient, admissible and reliable evidence that an offence has been committed and that there is a realistic prospect of conviction. If the case does not pass this evidential test, it will not go ahead. Staff must be mindful of this when collating and preparing information/evidence for a report to enable RQIA to determine whether an offence is being committed. As indicated at **8.1** above, RQIA will liaise with legal services as deemed appropriate.

8.3 In line with the enforcement policy and paragraphs **1.3** and **1.4** above, it may be appropriate for RQIA to use prosecution in conjunction with other enforcement actions, for example, cancellation of registration and/or imposing conditions on registration. RQIA will also consider prosecution for non-registration when a person carries on or manages an unregistered establishment or agency under the 2003 Order.

8.4 Legal Context

Staff should refer to Appendix 2 and 3 in the enforcement policy which provides information regarding 'Offences and Penalties under the Order' and 'Service Specific Regulations and Offences'. More specifically, Column A in Appendix 3 indicates the service specific regulation which makes provision for offences within the nine sets of regulations listed. Each of the service specific 'offence' regulations confirms which of the regulations if breached is an offence. For example:

- under the Children's Homes Regulations, **regulation 40(1)** indicates that a breach of regulations 4 to 37 is an offence

8.5 Each of the service specific regulations includes the paragraphs which confirm the matters that RQIA must adhere to **before** bringing proceedings against a person who has breached any of those regulations. For example:

- under **regulation 40(2)** of the Children's Homes Regulations, RQIA cannot bring proceedings against a person unless –
(a) he is a registered person

- (b) notice has been given to him in accordance with **paragraph (3)**
- (c) the period specified in the notice for making representation* to RQIA has expired (one month) and,
- (d) where the notice specifies action to be taken within a specified period: the period has expired and the action has not been taken within that period.

*Staff should refer to the enforcement policy and paragraph **4.26** above, which confirms that the right of representation does not apply to all regulated services, however, RQIA will provide all regulated services with the opportunity to make representation related to a point of law and/or fact.

- 8.6** With reference to regulation 40(2) (b) indicated at **8.5** above, the 'notice' will be deemed to be a failure to comply notice. Regulation 40 (2) (b) refers to paragraph (3) which outlines the four matters that must be specified in the notice served on the registered person. Staff should refer to paragraph **4.19** above under the sub heading, 'The Issue of a Failure to Comply Notice' which details these four matters. Staff should also note that these details are incorporated into the failure to comply notice template which includes clear statements regarding future enforcement action and prosecution.

With reference to paragraphs **8.1** and **8.2** above, staff must consider the evidential test in making a decision about the commencement and/or the continuance of a prosecution.

- 8.7** Following legal advice regarding the possible court interpretation of Article 29 (2) of the 2003 Order (Proceedings for offences) and in consideration of the Magistrates' Courts (NI) Order 1981 (6 month rule), the commencement of legal proceedings for prosecution must be brought within 6 months from the expiry date of a failure to comply notice and where there is non-compliance by a registered person of action(s) specified in the notice. This paragraph should be read in conjunction with paragraph **8.5** above and staff should also refer to paragraphs **4.32** to **4.37** for further information under 'Compliance Not Achieved'.

8.8 Procedure

Staff should read the paragraphs below alongside the paragraphs in section **4.0** 'Failure to Comply Notice', and specifically paragraphs **4.28** to **4.37**.

- 8.9** In the event that RQIA decide to commence a prosecution for specified offences, the registered person will be informed in writing of RQIA's intention to commence legal proceedings. **(Template 29)** RQIA will continue to inspect and monitor the establishment/agency. Following an inspection visit, the relevant inspector(s) will update the head of programme who will inform the Director of Regulation as appropriate. The inspector(s) will complete a report and forward it to the registered person within the required timeframe.

- 8.9** It should be noted that the outcome of the legal proceedings, i.e. the conviction or acquittal of the registered person, has no effect on the matters

indicated in a failure to comply notice. The registered person is required to comply with the terms of the notice within the agreed timescales set by RQIA.

8.10 Depending on the circumstances, RQIA may invite relevant stakeholders to a meeting to discuss the situation and agree contingency arrangements to ensure the safety and wellbeing of the service users in the establishment or agency pending registration or until the situation is resolved. **(Template 30)**

8.11 In line with the enforcement policy and principles of good regulation, the inspector(s) should ensure that records made are robust and provide clear evidence of decision making including any legal advice received.

8.12 Unregistered Establishment or Agency

When RQIA become aware of the existence of an unregistered establishment / agency, the relevant inspector(s) will carry out an initial investigation to clarify the nature of the service provided, to determine whether an offence is being committed. The inspector(s) will provide an update to the head of programme who will inform the Director of Regulation.

8.13 If it is determined that an offence is being committed, the Chief Executive will be informed. The Chief Executive will write to the establishment / agency to require them to cease operation and to confirm the implication of continuing to provide an unregistered service. **(Template 31)**

8.14 Following a review of the circumstances and consideration of available evidence, RQIA may decide that it may be appropriate to proceed with the registration of the establishment or agency providing that, where relevant, satisfactory safeguards for service users are in place. The Chief Executive will confirm this decision in writing to the establishment/agency including any contingency plans agreed pending registration, to ensure the safety and welfare of service users. **(Template 32)**

8.15 The Chief Executive will write to the chief executive(s) of the relevant HSC trust(s) to inform them that an unregistered establishment/agency is operating in their area and to confirm actions to be taken as indicated above at **8.9** and **8.10**. **(Template 31 or 32)**

8.16 RQIA will continue to inspect and monitor the unregistered establishment/agency as deemed appropriate to ensure the ongoing safety and welfare of service users. The relevant inspector(s) will update the head of programme as agreed. The Director of Regulation will be kept informed. Following an inspection visit, the relevant inspector(s) will complete a report and forward it to the establishment/agency within the required timeframe.

9.0 Communication with Relevant Stakeholders

9.1 In line with section 8.0 in the enforcement policy, RQIA will inform all relevant stakeholders (both internal and external) if there are concerns about the quality of service provided in a registered establishment or agency. Relevant

stakeholders will include those responsible for commissioning, delivering, overseeing and regulating health and social care.

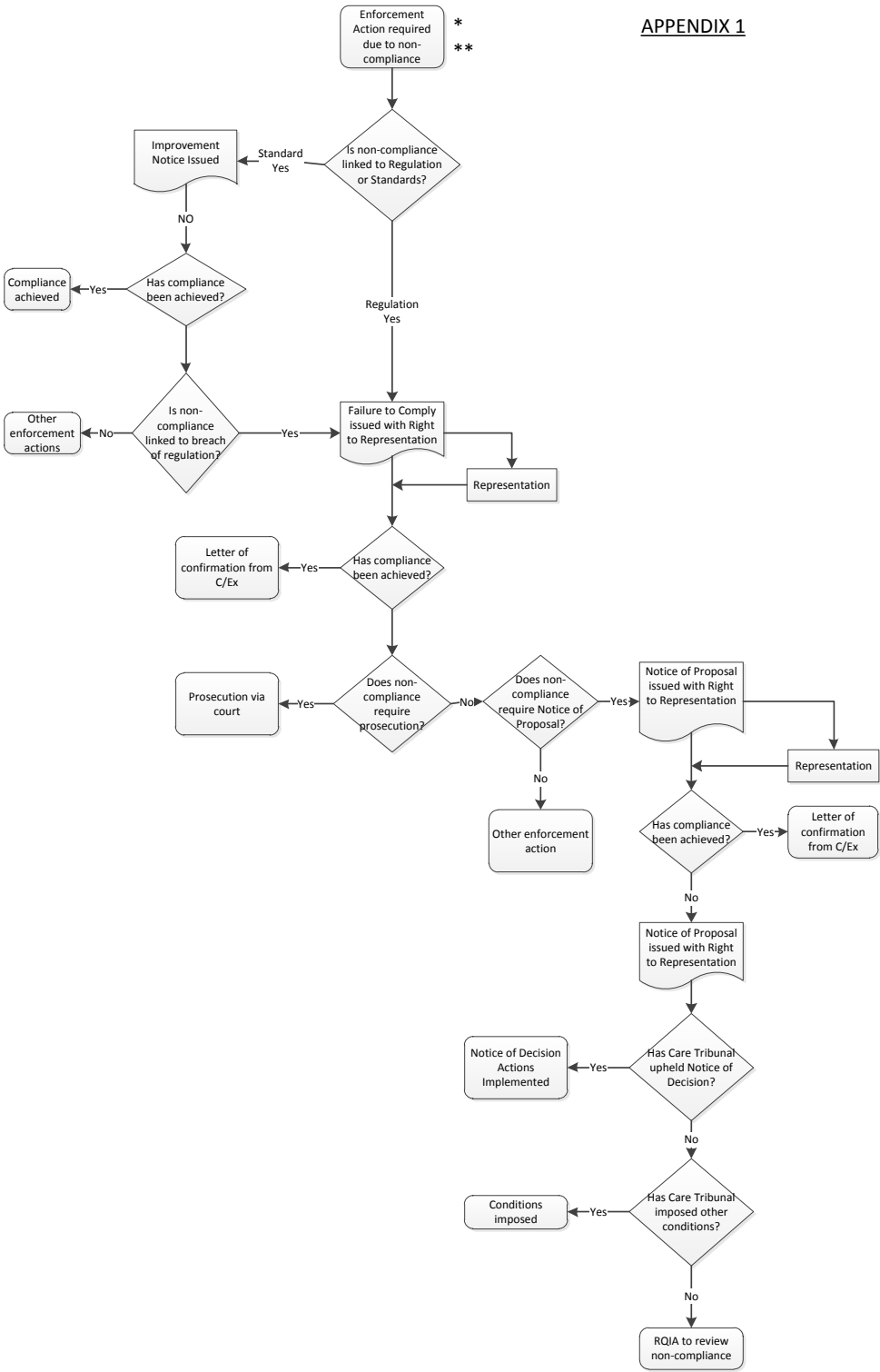
9.2 In line with the 2003 Order, the Chief Executive will also inform the DHSSPS about the quality of health and social care services.

9.3 RQIA decisions to take enforcement action may have specific consequences for service users and other stakeholders and staff should always consider:

- which stakeholders need to be informed
- the appropriate method of communication, and
- what, when and with whom should information be shared at different stages in the above enforcement procedures.

Appendix 1: Enforcement Flowchart

APPENDIX 1



* Under Article 21 of the Order, 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 7.0 of the Enforcement Procedure

** Failure to Register – Refer to Section 8.12 of the Enforcement Procedure

Appendix 2: Enforcement Review Panel Procedures



Procedures for the RQIA Enforcement Review Panel

Procedure Type:	Operational
Directorate Area:	All Directorates
Previous Versions:	April 2009 (as part of enforcement policy)
Policy Author / Project Team	Jackie Callan
Policy Champion:	Phelim Quinn, Director of Regulation and Nursing
Date Approved by Project Team:	25 October 2011
Date Approved by Executive Management Team	26 October 2011
Date(s) Approved by Board:	N/A
Date of re issue to RQIA Staff:	4 November 2011
Date(s) of next review:	2 September 2013
Version 2_5	26 October 2011

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RQIA Enforcement Review Panel

1.0 Introduction

- 1.1 This procedure outlines the process to be followed for the operation of the Enforcement Review Panel (the Panel) which will be convened by the Chief Executive, following receipt of a written representation from a registered person, regarding the issue of a failure to comply notice and/or notice of proposal.
- 1.2 In line with RQIA's Standing Order Three, the Panel will also be convened when a decision is taken by the Director of Regulation to make application to a lay magistrate for an immediate order under Article 21 of the 2003 Order to:
- cancel the registration of a person in respect of an establishment/agency
 - vary or remove any condition of registration; or
 - impose an additional condition.
- 1.3 The procedure for the Panel should be read in conjunction with RQIA's Enforcement Policy and associated enforcement procedures. It should be adhered to by all staff, including RQIA Board members, involved in matters related to this procedure.

2.0 Representation - Failure to Comply Notice

- 2.1 All subordinate regulations relating to registered establishments / agencies (except those relating to nursing homes, residential care homes and independent health care) make provision for registered persons to have a right of representation regarding a failure to comply notice. In line with the principles underpinning the enforcement policy and good governance, all registered persons have the opportunity to make formal written representation following the issue of a failure to comply notice. **However, it should be noted that RQIA will only consider representations related to a point of law and/or a point of fact.**
- 2.2 A registered person may make written representation to the Chief Executive regarding a failure to comply notice and on matters relating to a point of **law or fact**, within a period not exceeding one month from receipt of the notice. Any other matters related to enforcement action, should be brought to the attention of the relevant head of programme / inspector for the service. (Refer also to section 7, paragraphs 7.1 to 7.3 in the enforcement policy and section 4 in the enforcement procedures)

3.0 Representation – Notice of Proposal

- 3.1 Registered persons have the right to make written representations to RQIA within 28 days concerning any matter which that person wishes to dispute following the issue of a notice of proposal. (Refer also to section 7.0, paragraphs 7.5 and 7.6 in the enforcement policy and section 5.0 in the enforcement procedures)

4.0 Written Representation

A registered person should make a written representation regarding a failure to comply notice and/or a notice of proposal to the:

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

5.0 The Procedure – Failure to Comply Notice

- 5.1 Any written representation to the Chief Executive will be acknowledged in writing using the template provided within 3 working days of RQIA's receipt of the representation. (**Template 15c**)
- 5.2 On receipt of a written representation the Chief Executive will convene the Panel. (Refer to section 8.0 below for composition of the Panel)
- 5.3 The Panel will determine the terms of reference for the representation.
- 5.4 The Director of Regulation will ensure that all relevant documentation regarding the representation is made available to the Chair of the Panel.
- 5.5 At the outset, the Panel will consider the representation and decide if it meets the criteria of a **point of law or fact**. The Panel will consult / interview any relevant RQIA staff as necessary to ascertain further information.
- 5.6 If the representation does not meet the criteria, the Chair of the Panel will inform the Chief Executive who will confirm the Panel's decision in writing to the registered person using the template provided. (**Template 15d**)
- 5.7 If the representation does meet the criteria, the Chair of the Panel will inform the Chief Executive who will confirm this in writing to the registered person using the template provided. (**Template 15e**) The Panel will review the serving of the notice on matters relating to a point of law and/or fact.

- 5.8** The Panel will produce a written report indicating its decision for the Chief Executive, within 28 days of receipt of the representation from the registered person.
- 5.9** 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.
- 5.10** The Panel may also make recommendations to the Chief Executive as part of the outcome of its review.
- 5.11** The Chief Executive will confirm the decision of the Panel, (whether the representation was **upheld/not upheld**) in writing to the registered person using the relevant templates provided. **(Templates 15f and 15g)**
- 5.12** If the registered person's representation is **upheld** and the failure to comply was issued in error on a point of law or fact, the Chief Executive will make remedy by:
- writing to the registered person as indicated above at 5.11
 - ensuring the decision is attached to the notice and uploaded onto the RQIA website
 - informing relevant stakeholders of the Panel's decision.

It should be noted that there is no legislative provision to rescind a failure to comply notice.

- 5.13** The Chief Executive will inform the Chair of the RQIA Board (the Board) if the representation is upheld.

6.0 The Procedure – Notice of Proposal

- 6.1** The procedure outlined at 5.1 to 5.4 above and from 6.2 below, should be adhered to following receipt of a representation from a registered person regarding the issue of a notice of proposal.
- 6.2** The Panel will produce a written report indicating its decision for the Chief Executive, within 28 days of receipt of the representation from the registered person.
- 6.3** The Panel may also make recommendations to the Chief Executive as part of the outcome of its review.
- 6.4** The Chief Executive will confirm the Panel's decision in writing to the registered person as follows:
- RQIA's decision is **not** to implement the notice of proposal and the notice is lifted **(Template 20)** or,
 - RQIA's decision is to implement the matters within the notice of proposal and a notice of decision is issued. This notice will also

confirm the registered person's right of appeal to the Care Tribunal.
(Template 21 and 21a)

6.5 Relevant stakeholders will be informed of the Panel's decision.

7.0 Urgent Procedure for Cancellation of Registration or to Vary, Remove or Impose a Condition of Registration

7.1 In line with section 7.0 of the enforcement procedures, the Chief Executive or (in his/her absence) the Director of Regulation, will present the proposed application, relevant inspection report(s) and related documents, and any legal advices obtained to the Panel.

7.2 The Panel will review the application and determine whether or not it is satisfied, that there is a serious risk to a person's life, health or well-being.

7.3 If the Panel is satisfied that such a risk exists, it will authorise the application to be made to a lay magistrate on behalf of RQIA. The Panel will present a report at the next Board meeting.

7.4 If the Panel is not satisfied that such a risk exists, the Chair of the Panel will inform the Chief Executive/Director of Regulation of their decision.

8.0 Composition of the Enforcement Review Panel

8.1 Membership of the Panel will consist of:

Chair: A Board member (who has already been identified for a term in office).

Members: Two Directors (who are not connected to the regulated service making representation).

Independent Advisor: - A head of programme with experience of regulation and enforcement (who is not connected to the regulated service making representation) will advise the Panel as necessary.

9.0 Monitoring

9.1 The Chief Executive will report to the audit committee twice annually. The Panel will ensure that formal, accurate minutes of its activity are maintained and made available to the Board on request. The Panel will produce an annual report for the Board which on approval will be included in RQIA's Annual Report and Accounts.

10.0 Panel Support

10.1 Administrative support including minute taking for the Panel will be undertaken by an identified member of staff. The Chair of the Panel has responsibility for planning any meetings.

11.0 Review

11.1 The Enforcement Review Panel procedure will be reviewed in September 2013 in conjunction with a review of the enforcement policy and associated procedures.

Appendix 3: Enforcement Templates

The associated Enforcement Templates are available on the RQIA website