



ENFORCEMENT POLICY FOR THE REGULATED SECTOR

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1.0 Introduction

Background

- 1.1 The Regulation and Quality Improvement Authority (RQIA) was established on 1 April 2005 under The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (the 2003 Order). RQIA provides independent assurance about the quality, safety and availability of health and social care services in Northern Ireland, encourages continuous improvement in those services and safeguards the rights of service users.
- 1.2 This policy provides the framework and principles within which RQIA will operate if there are concerns about the safety and quality of service provision in regulated establishments or agencies. The appropriate use of enforcement powers, including prosecution, is important, both to secure compliance with legislation and minimum standards and to ensure that registered providers may be held to account for failures to safeguard the health, safety and welfare of service users. This framework sets out the general principles and approach which RQIA will follow in relation to enforcement and prosecution.

The Purpose and Method of Enforcement

RQIA exists to be an effective regulator, to promote quality by identifying good practice, to reduce risk by exposing deficiencies where they exist and to improve outcomes for service users by, working with registered providers. When a registered provider or manager fails to comply with legislation or minimum standards, or the terms of registration, or a person operates an establishment/agency without being registered, RQIA has the power to take action. This is called enforcement.

- 1.3 Enforcement action is an essential element of the responsibilities of RQIA and we have a range of enforcement options to ensure compliance with regulations and minimum standards, to effect improvements and to afford protection to service users. In line with the principles set out below, RQIA will normally adopt a stepped approach to enforcement where there are areas of concern.

Depending on the circumstances and assessment of risk, the options range from:

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 Notice of Failure to Comply with Regulations
Impose, vary or remove conditions on registration
Cancel registration
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, for example, non-registration of a service or registered person.*

1.4 It should 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. RQIA may increase inspection activity for a period of time to monitor compliance and ensure the necessary improvements are being made, in line with the requirements made by RQIA as a result of regulatory activity. RQIA may also escalate enforcement actions against a provider at any time; this will be proportionate and related to the level of risk to service users and seriousness of any breach of regulation. RQIA will follow up enforcement action to ensure that quality improvements are achieved. **(Refer to Appendix 1 – Enforcement Flowchart)**

2.0 Scope of the Policy

2.1 This policy will apply to the regulation and inspection of all establishments and agencies as specified within the 2003 Order.

2.2 All staff undertaking regulation and inspection activity and who take enforcement decisions, are required to adhere to RQIA's Enforcement Policy and associated procedures.

2.3 This policy should be read in conjunction with the associated enforcement procedures and other RQIA policies and procedures including:

- RQIA's Inspection Policy
- RQIA's Policy and Procedure on the Management and Handling of Complaints against RQIA (which deals with complaints about an individual employee or how RQIA conducts its business)
- Policy and Procedure for Search of Premises and Seizure of Property (Code B Notice) (which applies to a specific set of circumstances concerning an investigation by RQIA into an alleged offence)
- RQIA Escalation Policy (which relates to the reporting and management of concerns, direct allegations and/or disclosures arising from inspection and/or review activity).

3.0 Policy Statement

3.1 RQIA will ensure that all enforcement action will be taken in accordance with the relevant legislation, its subordinate regulations and policy. A stepped approach to enforcement will normally be adopted. However, this stepped approach would not rule out the option of RQIA moving directly to legal action, including prosecution if the circumstances merit such action.

4.0 The Principles of Good Regulation and Enforcement

4.1 RQIA believes in a system of firm but fair regulation and has adopted the principles outlined in *the Better Regulation Task Force (Principles of Good Regulation, Cabinet Office publications, October 2003)*. These key principles underpin this policy and associated procedures and are explained further below:

- 4.2 Proportionality** - RQIA will endeavour to ensure that all enforcement action will be in proportion to the risks identified, seriousness of any breach of the law and to the action required by registered persons to make improvements.
- 4.3 Consistency** - RQIA will endeavour to ensure that it takes a consistent approach to the regulation of registered services and the application of the enforcement procedure. However, consistency does not mean uniformity.

RQIA needs to take account of many variables; the impact of the breach or incident, the degree of risk, the actions of management, any history of incidents and breaches, and previous enforcement actions. Decisions on enforcement action are a matter of professional judgement and RQIA, through its officers, will exercise discretion in individual cases.

- 4.4 Targeting** - 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, and on those directly responsible for the risk and/or lack of improvement, who should be held to account.
- 4.5 Transparency** - RQIA will aim to provide clear information to registered persons / managers about improvements required and reasons for any recommendations, requirements or enforcement actions 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.
- 4.6 Accountability** - RQIA will take full accountability for the actions/omissions of its officers in the proper application of this policy and its associated procedures. All enforcement notices issued by RQIA under the 2003 Order, will include information on the registered person's right to make representation and the right of appeal to the Care Tribunal, where appropriate.

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 2003 Order) and the subordinate regulations specific to the particular service being provided.
- 5.2** Offences and penalties under the 2003 Order are outlined in **Appendix 2**.
- 5.3** Service specific regulations relating to offences and Failure to Comply Notices under the 2003 Order are outlined in **Appendix 3**.
- 5.4** Registered persons/managers should also ensure that their service operates in accordance with the minimum standards relevant to their establishment or agency issued by the Department of Health, Social Services and Public Safety (DHSSPS).

The list of minimum standards (DHSSPS) is available on our web site. (<http://www.rqia.org.uk/home/index.cfm>)

5.5 In most circumstances and where appropriate, RQIA will make recommendations and requirements for quality improvement through regulation and inspection activity. Where a service is identified at risk of failing to meet minimum standards, RQIA will consider the various options to support the establishment or agency to make the necessary improvements. **(Para 1.3)**

5.6 The legislation referred to in 5.1 provides RQIA with statutory powers to take enforcement action, to protect the safety of service users where there are significant failings and/or lack of improvement in the quality of service provision. Under the 2003 Order, the following enforcement actions may be taken:

- **An Improvement Notice** may be served where RQIA decides an establishment or agency is failing to meet DHSSPS minimum standard (Article 39)
- **A Notice of Proposal** may be issued by RQIA at any time to give notice of decisions it intends to take with respect to applications for registration, cancellation of registration or any changes to the conditions of registration (Article 18)
- **A Notice of Decision** may be issued which confirms the actions RQIA intend to take as outlined in the Notice of Proposal (Article 20)
- **Cancellation of Registration** of a registered person may be commenced by RQIA at any time, but would not normally be the first step in enforcement action. It is more likely to be used where other actions have failed to ensure compliance and quality improvement by the establishment or agency (Article 15)
- **An urgent procedure for cancellation** or imposing/changing conditions on an establishment/agency, may be taken via application to a Lay Magistrate for an order, if RQIA believes there is serious risk to the life, health and wellbeing of any service user and urgent action is required. (Article 21)

5.6.1 Regulations also make provision for RQIA to serve:

- **A Failure to Comply Notice** where RQIA decides 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. **(Refer to Appendix 3)**

6.0 Prosecution for Specified Offences

Purpose

6.1 The use of prosecution is an important part of enforcement. It aims to punish wrongdoing, to avoid a recurrence and to act as a deterrent to others. It follows that it may be appropriate 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.

- 6.2** RQIA recognises 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 the principles in the Code for Crown Prosecutors and legal advices. (www.cps.gov.uk/victims_witnesses/code.html)
- 6.3** 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.

7.0 Right to Make Representation and Appeals

- 7.1** All subordinate regulations pertaining 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 this policy and good governance, all registered persons have the opportunity to make formal written representation to RQIA regarding 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.**
- 7.2** On receipt of a written representation, the Chief Executive will convene an Enforcement Review Panel (the Panel) whose membership will comprise a Board member as chair, two Directors (not connected to the establishment/agency making the representation) and a Head of Programme who will provide independent advice to the Panel as necessary. The Panel will consider the representation and as indicated at 7.1, will review the serving of the notice on matters relating to a point of law and/or fact. In line with the associated enforcement procedures, the Chief Executive will inform the registered person of the Panel's decision.
- 7.3** If the registered person's representation is upheld and the Failure to Comply Notice was issued in error, the Chief Executive will make remedy by:
- Confirming the Panel's decision in writing to the registered person and advising them to attach the decision to the notice
 - 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.

- 7.4** Any other matters relating to enforcement action, should be brought to the attention of the relevant Head of Programme/inspector for the service in the first instance, as part of the inspection process.
- 7.5** The 2003 Order makes provision for **all** registered persons to have the right to make written representations to RQIA concerning any matter which that person wishes to dispute following the issue of a Notice of Proposal. (Article 19) The associated enforcement procedures outline the process to be followed by an Enforcement Review Panel (Panel) on receipt of a representation from a registered person.
- 7.6** Following consideration of the registered person's representation by the Panel, the registered person will be notified in writing of the Panel's decision as follows:
- RQIA's decision is **not** to implement the Notice of Proposal and the notice is lifted, 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.
- 7.7** Registered persons or prospective registered persons have the right of appeal to the Care Tribunal in two circumstances:
- Following the issue of a Notice of Decision which has either refused, cancelled, varied or placed conditions on registration under Article 20 of the 2003 Order
 - When an order has been made by a Lay Magistrate to immediately cancel or make changes to the registration of an establishment or agency under Article 21 of the 2003 Order.
- 7.8** Any appeals must be lodged by the registered/prospective registered person within 28 days of the issue of the Notice of Decision or court order being served.

8.0 Communication with Relevant Stakeholders

- 8.1** As part of RQIA's regulatory framework, we publish inspection reports and quality improvement plans which identify areas where further improvements in health and social care are required. Completed inspection reports for service specific establishment/agencies are available on our website. RQIA also publishes an annual report which incorporates information about our inspection activities and enforcement action.
(<http://www.rqia.org.uk/home/index.cfm>)
- 8.2** 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 health and social care.

- 8.3 This will include:
- commissioners including the Health and Social Care Board and the Public Health Agency where appropriate and the relevant Trust(s)
 - referral to the Safeguarding Board for Northern Ireland
 - liaison with relevant professional regulators if codes of conduct have been breached.

8.4 RQIA also has a statutory duty under the 2003 Order to inform the Department of Health, Social Services and Public Safety (DHSSPS) about the quality of health and social care services.

9.0 Responsibilities

9.1 **RQIA Board** - is responsible for approving this policy and holds the Chief Executive accountable for its implementation.

9.2 **The Chief Executive** - is accountable for the effective implementation of this policy and associated procedures. S/he will delegate responsibility to the Director of Operations for the operational management of the policy and procedure.

9.3 **The relevant Director with responsibility for the regulation of services** - is responsible for the effective operation of this policy and associated procedures, supported by other staff referred to in 9.4 to 9.7. S/he will ensure that appropriate training and guidance is provided to all appropriate staff.

9.4 **Heads of Programmes** - are responsible for the day-to-day operation of this policy and associated procedures and will ensure that 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 information relating to enforcement activity is kept up to date and shared with the information / registration team as appropriate.

9.5 **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 associated procedures. They must actively provide peer support for colleagues where enforcement action is being considered.

9.6 **Communication Manager** - is responsible for the management of communication activities regarding all aspects of the Enforcement Policy and associated procedures.

9.7 **Information Manager** - S/he must ensure that systems are in place to record enforcement action and to update RQIA's register of establishments and agencies, and for re-issuing Certificates of Registration where necessary, following enforcement action.

(See Appendix 4 – Flowchart of Responsibilities)

10.0 Training

10.1 Mandatory training on this policy and procedure will be provided on an annual basis by Heads of Programme and/or Senior Officers for all relevant staff involved in the process of regulating and inspecting establishments or agencies, to ensure its effective implementation.

10.2 Areas covered will include shared learning from a reflection on enforcement action undertaken in the previous year and the following:

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

11.0 Equality

11.1 This policy was equality screened on the 8 October 2008, 19 January 2009 and 21 June 2011 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.

12.0 Review of the Policy

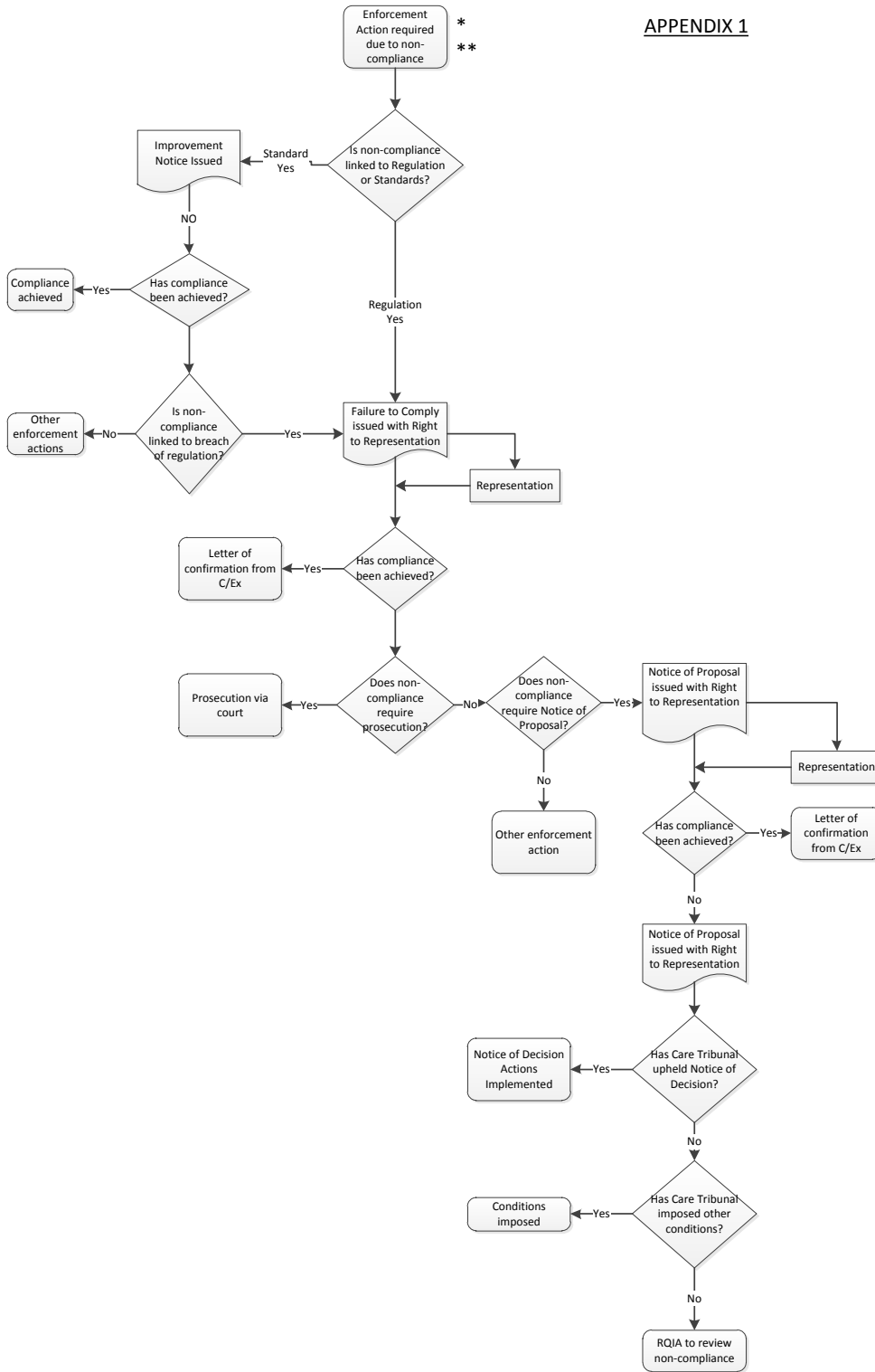
12.1 This policy will be reviewed in September 2013.

13.0 Development and Stakeholder Consultation

13.1 The Enforcement Policy has been revised in consultation with relevant staff and managed by a Project Team.

ENFORCEMENT FLOWCHART

APPENDIX 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 - **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

LEGISLATION	OFFENCE	PENALTY*
Article 12	Failure to register	Fine not exceeding Level 5 (£5,000) 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 (£5,000)
Article 25	Failure to comply with regulations	Fine not exceeding Level 4 (£2,500)
Article 26	False descriptions of establishments and agencies	Fine not exceeding Level 5 (£5,000)
Article 27	False statements in application	Fine not exceeding Level 4 (£2,500)
Article 28	Failure to display certificate of registration	Fine not exceeding Level 2 (£500)

***Maximum Financial Penalties for Northern Ireland under The Criminal Justice (Northern Ireland) Order 1994, s.3.**

- Level 1 - £200
- Level 2 - £500
- Level 3 - £1,000
- Level 4 - £2,500
- Level 5 - £5,000
- Level 6 - £25,000

APPENDIX 3

Service Specific Regulations which deal with Offences and Failure to Comply Notices					
Service Specific Regulations	A	B	C	D	E
The Residential Care Homes Regulations (Northern Ireland) 2005	36(1)	36(3)	36(4)	37	36(2)
The Nursing Homes Regulations (Northern Ireland) 2005	36(1)	36(3)	36(4)	37	36(2)
The Nursing Agencies Regulations (Northern Ireland) 2005	28(1)	28(3)	28(4)	27	28(2)
The Independent Health Care Regulations (Northern Ireland) 2005	42(1)	42(3)	42(4)	41	42(2)
The Children's Home Regulations (Northern Ireland) 2005	40(1)	40(3)	40(4)	41	40(2)
The Domiciliary Care Agencies Regulations (Northern Ireland) 2007	32(1)	32(3)	32(4)	31	32(2)
The Day Care Setting Regulations (Northern Ireland) 2007	35(1)	35(3)	35(4)	36	35(2)
The Residential Family Centres Regulations (Northern Ireland) 2007	36(1)	36(3)	36(4)	37	36(2)
The Adult Placement Agencies Regulations (Northern Ireland) 2007	39(1)	39(3)	39(4)	38	39(2)

Column A: refers to the service specific regulation which makes provision for specified offences; and confirms the regulations which if breached may be considered to be an offence by the registered person.

Column B: refers to the service specific regulation which confirms those matters to be included in a Failure to Comply Notice.

Column C: refers to the service specific regulation which confirms that RQIA may bring proceedings against a person who was once, but no longer is, a registered person, regarding a breach of the regulation concerning records.

Column D: refers to the service specific regulation regarding 'compliance with regulations'. The regulation confirms that where there is more than one registered person in a service, anything required to be done under regulations by a registered person will, if done by one of the registered persons, not be required to be done by any of the other registered persons.

Column E: refers to the service specific regulation regarding specified offences and the regulation confirms that legal proceedings cannot commence against a registered person unless the four legislative requirements indicated are met.

Flowchart of responsibilities for implementation of Enforcement Policy and Procedures

