



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Children Social Care (Coronavirus)
(Temporary Modification of
Children's Social Care) Regulations
(NI) 2020**

May 2020

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Summary of Recommendations

The Northern Ireland Human Rights Commission (NIHRC):

- 1.6 recommends that the Department provides an analysis of the Child Protection Register figures and that it also sets out what additional measures are in place to meet increased demand.**
- 1.18 taking into account responses elsewhere, recommends that the Department should clarify why legislation is necessary in Northern Ireland.**
- 1.20 invites the Department to set out whether redeployment could be used to assist social services meet their statutory duties to children in care.**
- 2.4 recommends that the Department provides the Committee with agreed periodic reports and statistics covering the application of these regulations. Decision makers should record instances of decisions made under these regulations and should provide evidence of their necessity in each instance.**
- 2.6 recommends that the Committee is informed in advance of plans to amend the guidance.**
- 2.7 recommends that the Department conducts robust children's rights impact assessments for any further legislative and policy changes which relax statutory requirements.**
- 3.6 recommends that the Committee asks the Department to confirm what steps are being taken by Trusts to ensure that children are able to speak freely during remote visits using IT and to supplement the existing guidance on this issue.**
- 3.19 advises that consideration is given as to how to ensure that online inspections are thorough and independent.**

- 3.20** advises that consideration is given as to how to ensure children can participate in remote inspections. The VOYPIC Independent Advocacy Service may perhaps be able to assist.
- 3.25** recommends that looked after children's reviews are held at least every three months.
- 3.27** recommends that the Department outlines the measures it is taking to ensure that children in care are made aware they can request an earlier review.
- 3.30** recommends that the Department outline the measures it is taking to pro-actively ensure young people are aware they can request an earlier review.
- 3.35** advises that the focus should be on speeding up the process rather than removing safeguards.
- 3.36** recommends that the Department is asked to report on any instances of where an emergency placement is used for reasons not related to COVID-19. In addition, the Department should record and report instances cases where a person is exempted from the usual fostering limit of three children. Further, the Department should monitor and report on the use of unapproved foster placements throughout the pandemic.
- 3.41** urges the Department to commit to developing fostering legislation, the Looked After Children strategy and comprehensive updated foster care standards.
- 3.45** recommends that the Department of Health and Department of Justice should work together to implement the WHO Interim guidance and release all children from secure accommodation, where safe to do so.
- 3.48** notes the important role played by VOYPIC in the complaints process and encourages the Department to ensure the organisation is sufficiently funded.

1.0 Overview

- 1.1 The NIHRC is offering its advice under our statutory requirements drawing on international and domestic human rights standards as outlined in the Annex.
- 1.2 The Children Social Care (Coronavirus) (Temporary Modification of Children’s Social Care) Regulations (NI) 2020 were laid before the NI Assembly on 6 May 2020. The regulations came into force on the following day without adherence to the 21 day rule.
- 1.3 The international human rights framework permits the adoption of extraordinary measures during times of public emergencies. The NIHRC recognises that the COVID-19 pandemic requires the adoption of such extraordinary measures to protect the health and well-being of the population. The international human rights framework also sets parameters within which any emergency powers may be used.¹ Thus, in addition to the general human rights requirements of legality, necessity and proportionality, the following principles apply in the context of emergency measures, these should:
 - be time-bound and temporary in scope;
 - aim should to restore a state of normalcy as soon as possible;
 - be the least intrusive to achieve the stated public health goals.²
- 1.4 The rationale for the regulations is that flexibility is needed to deal with services pressures expected as a result of the COVID-19 crisis. These pressures are arising from staff absences and requirements to act in accordance with public health advice. Additional pressures may arise at the end of the COVID-19 crisis as relaxation of the ‘lockdown’ occurs.³ Indeed, recent statistics published by Department of Health in mid May 2020 show that the number of children in need has seen a modest increase during COVID-19. As

¹ Article 4, UN International Covenant on Civil and Political Rights 1966. See *also* UN Commission on Human Rights, ‘The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights’, 28 September 1984.

² Office of High Commissioner for Human Rights, ‘Guidance: Emergency measures and COVID-19’, 27 April 2020, at 2.

³ Department of Health, ‘COVID-19: Guidance to Accompany the Children’s Social Care (Coronavirus) (Temporary Modification of Children’s Social Care) Regulations (Northern Ireland) 2020’ (DoH, 2020), at para 31.

of 18 May, 2,361 children are on the Child Protection Register (an increase from 2,246 pre COVID-19) and 3,397 children are in care (an increase from 3,362 pre COVID-19).⁴

- 1.5 The increase of children on the Child Protection register is concerning particularly in the context of increased domestic abuse during the COVID-19 lockdown.⁵
- 1.6 **The NIHRC recommends that the Department provides an analysis of the figures and that it also sets out what additional measures are in place to meet increased demand.**
- 1.7 The NIHRC acknowledges the need for the Department of Health to ensure it is able to respond effectively and flexibly to increased demands.
- 1.8 It is clear, then, that these regulations have not been developed as a means to improve children's rights, but rather have been driven by the need to manage issues relating to staff capacity and increased demands. This is a cause of unease for the NIHRC, as is the fact that protections are being reduced for a vulnerable group of children in a time of great uncertainty. The NIHRC is also concerned that the fast-tracked approach to developing these regulations has significantly limited scope for scrutiny. The Commission recognises and welcomes that some of the original proposals were modified following consultation with stakeholders and this illustrates the value of such engagements.
- 1.9 The NIHRC considers that the exercise of some of the powers contained in these regulations may negatively impact children's human rights. We have particular concerns about the:
 - best interests principle (Article 3, UN CRC);
 - right of the child to be heard and to participate in decision making (Article 12, UN CRC);
 - right to freedom of expression, including the right to seek, receive and impart information (Article 13, UN CRC; Article 19);

⁴ Department of Health, 'NI Children's Social Services Statistics during COVID-19: 20 May 2020' (DoH, 2020).

⁵ 'More than 3,700 domestic abuse calls to PSNI during Coronavirus lockdown in Northern Ireland', *Belfast Telegraph*, 13 May 2020.

- right to due process, as contained in the right to a fair trial (Article 6, ECHR);
- right to private and family life (Article 8, ECHR; Article 9, UN CRC);
- right of a child in care to a periodic review of their treatment and placement (Article 25, UN CRC);
- right to protections against unlawful deprivation of liberty (Article 37, UN CRC).

1.10 The NIHRC welcomes that the regulations contain a sunset provision and will therefore cease to have effect six months after their operation. Any extension will require a further set of Regulations. This is a necessary safeguard and reflects the aforementioned principles of emergency measures. Likewise, the NIHRC welcomes the possibility for the regulations being revoked at an earlier stage if possible,⁶ as well as the intent for the modified guidance to apply “only where absolutely necessary and until normal services can be resumed”.⁷

Approach in other jurisdictions

1.11 COVID-19 places similar demands on social services across the UK and Ireland. It is noted that the jurisdictions have taken very different approaches to ensuring that they have flexibility to respond to the pandemic.

1.12 In England, the Adoption and Children (Coronavirus) (Amendment) Regulations 2020 came into force on 24 April 2020. The regulations apply for a six month period and can be extended by a further statutory instrument. These regulations serve a similar purpose to the NI regulations although are more extensive in terms of the powers they provide to local authorities. The Children’s Commissioner for England has argued that the Department of Health has not justified the changes and that the regulations should be revoked.⁸

⁶ Department of Health, ‘COVID-19: Guidance to Accompany the Children’s Social Care (Coronavirus) (Temporary Modification of Children’s Social Care) Regulations (Northern Ireland) 2020’ (DoH, 2020), at para 2; UNICEF and the Alliance for Child Protection in Humanitarian Action, ‘Protection of Children During the COVID-19 Pandemic: Children and Alternative Care’ (UNICEF, 2020).

⁷ Department of Health, ‘COVID-19: Guidance to Accompany the Children’s Social Care (Coronavirus) (Temporary Modification of Children’s Social Care) Regulations (Northern Ireland) 2020’ (DoH, 2020), at para 6.

⁸ Children’s Commissioner for England, ‘Press Release: Statement on changes to regulation affecting children’s social care’, 30 April 2020.

1.13 In contrast, Wales has not made any legislative changes but has instead issued operational guidance.⁹ The guidance took effect on 17 April 2020 and will remain in place under further notice. The guidance's stated aims include to encourage a 'flexible and pragmatic' approach to maintain support for looked after and vulnerable children during the pandemic. The guidance acknowledges the practical difficulties faced by local authorities in meeting statutory requirements particularly in relation to assessing and reviewing needs within existing timescales. However, the guidance specifies the importance of compliance:

local authorities should make every effort to fully comply with the legislation during this emergency and continue to fully take into account the needs and wishes of children in their care. It is imperative the development of care and support plans/pathway plans continues and these are completed, with the full involvement of professionals specified and facilitating the views of children and families, as is reasonably practicable. However, it is recognised there will be practical implications in the delivery and review of care and support plans within timescales and the effective input of health and education professionals in the current emergency.¹⁰

1.14 Similar to England and Northern Ireland, Scotland has implemented changes through guidance and legislation. The Coronavirus Act 2020 (Commencement No.1) (Scotland) Regulations 2020 came into force on 5 April 2020 and implemented sections 16 and 17 of the Coronavirus Act 2020. In brief, these regulations provide powers to local authorities not to comply with some of their duties to assess the needs of children. The legislation limits the use of these powers to situations where the local authority considers that it:

- a) Would not be practical to comply with the [duty] or
- b) To do so would cause unnecessary delay in providing community care services to any person.¹¹

⁹ Welsh Government, 'Guidance: Children's Social Services during the COVID-19 Pandemic' (Welsh Gov, 2020).

¹⁰ Ibid.

¹¹ Section 1(1), Coronavirus Act 2020.

- 1.15 The scope of the new powers in Scotland is relatively modest. Accompanying guidance specifies that the powers should be used only when 'absolutely necessary'.
- 1.16 In Ireland, changes have been implemented through guidance. In March 2020, Tusla (Child & Family Agency) issued guidance that aims to "support ensuring that Tusla's statutory duties to promote the protection and safety of children is continued".¹² A number of operational changes have been introduced including devising temporary foster care arrangements.¹³
- 1.17 The NIHRC acknowledges the need for flexibility, however, notes that Wales and Ireland have managed to address the same issue without legislation.
- 1.18 **Taking into account responses elsewhere, the NIHRC recommends that the Department should clarify why legislation is necessary in Northern Ireland.**
- 1.19 In addition, the NIHRC notes that there has been redeployment of Health and Social Care staff and resources, for example to assist care homes respond to COVID-19.¹⁴
- 1.20 **The NIHRC invites the Department to set out whether redeployment could be used to assist social services meet their statutory duties to children in care.**

2.0 Monitoring

- 2.1 The NIHRC has concerns about these regulations and the risk they may pose to a number of children's rights. Noting that the regulations are already in force, the NIHRC advises that monitoring should now take centre stage. The Health Committee has an

¹² Tusla, 'Additional Practice Guidance Child Protection and Welfare' (Tusla, 2020), at 2.

¹³ The process of assessment provided under the Foster Care Committee, Policy, Practice and Guidance document 2017 has been stood down for this period of emergency. A new approach has been developed to support local fostering teams and regional fostering teams to progress with assessments and approval of foster carers during this period. This process has been approved by the COVID 19 Crisis Management Team and the Department of Children and Youth Affairs (DCYA) in terms of deviation from the National Standards for Foster Care 2003, and the Placement of Children in Foster Care Regulations 1995. See Tusla, 'Guidance on Emergency Fostering Interim Assessment COVID 19 (Emergency Foster Carers COVID 19)' (Tusla, 2020).

¹⁴ NI Executive, 'Executive Daily Update: Initiatives to deal with Coronavirus: 27 April 2020' (NI Executive, 2020).

important role to play in scrutinising the use of these significant powers.

- 2.2 The guidance also makes provision for further relaxations if required, to be managed through amendments to the guidance.
- 2.3 The guidance specifies that recording and evidencing decision-making remains a key responsibility for HSC Trusts.¹⁵
- 2.4 **The NIHRC recommends that the Department provides the Committee with agreed periodic reports and statistics covering the application of these regulations. Decision makers should record instances of decisions made under these regulations and should provide evidence of their necessity in each instance.**
- 2.5 The NIHRC welcomes that the Department will seek the advice of key stakeholders including NICCY to inform any decision to amend this guidance.¹⁶ The NIHRC advises that consultation is essential, particularly given that the regulations provide significant latitude for the guidance to be amended.
- 2.6 **The NIHRC recommends that the Committee is informed in advance of plans to amend the guidance.**
- 2.7 **The NIHRC recommends that the Department conducts robust children's rights impact assessments for any further legislative and policy changes which relax statutory requirements.**

3.0 Specific Measures Implemented by the Regulations

Visits of looked after children

- 3.1 The Placement of Children with Parents etc Regulations (Northern Ireland) 1996/463, the Foster Placement (Children) Regulations (Northern Ireland 1996/467 and the Adoption Agencies Regulations

¹⁵ Department of Health, 'COVID-19: Guidance to Accompany the Children's Social Care (Coronavirus) (Temporary Modification of Children's Social Care) Regulations (Northern Ireland) 2020' (DoH, 2020), at para 10.

¹⁶ Ibid, at para 12.

(Northern Ireland) 1989/253 are amended to remove or reduce statutory duties in relation to visits of looked after children. Visits must be taken in accordance with guidance, which specifies, *inter alia*, that the Trusts should continue to comply with the normal timescales for visits where it has the capacity to do so. The guidance permits face to face meetings to be replaced with remote contact, via audio-visual communication technology. Such remote contact may only occur after a risk assessment that deems that a face to face visit is not necessary. Cases are kept under continuous review.

- 3.2 The NIHRC is concerned that the modified framework may not sufficiently recognise the importance of children's rights to participate in decision-making. This is because reduced visits limits the opportunity of children exercising their right to be heard. Article 12, UN CRC provides:

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

- 3.3 The UN Committee on the Rights of the Child confirms that the right of the child to be heard and taken seriously constitutes one of the fundamental values of the Convention.¹⁷ Indeed, the Committee identifies Article 12 UN CRC as one of the UN CRC's four core principles.¹⁸

- 3.4 The child's right to be heard imposes procedural obligations on States Parties to provide an environment that enables the child to exercise her or his right to be heard.¹⁹ NI guidance specifies that every effort should usually be made to see the child or young person alone during statutory visits.²⁰ This is an important step in helping create the requisite environment where a child feels s/he can speak freely.

¹⁷ CRC/C/GC/12, 'UN Committee on the Rights of the Child General Comment No 12: Right of the Child to be Heard', 20 July 2009, at para 2.

¹⁸ The other UN CRC principles are the right to non-discrimination, the right to life and development and the primary consideration of the child's best interests.

¹⁹ CRC/C/GC/12, 'UN Committee on the Rights of the Child General Comment No 12: Right of the Child to be Heard', 20 July 2009, at para 11.

²⁰ Department of Health, 'COVID-19: Guidance to accompany the Children's Social Care (Coronavirus) (Temporary Modification of Children's Social Care) Regulations (Northern Ireland) 2020' (DoH, 2020), at 7.

3.5 The NIHRC acknowledges that the use of audio-visual communication tools will assist communication during the pandemic. However, NIHRC is concerned whether it is feasible to provide privacy for children during remote visits using IT. The guidance issued by the Department does not adequately address this issue. Privacy concerns increase in situations where children use shared or communal internet-enabled devices.

3.6 The NIHRC recommends that the Committee asks the Department to confirm what steps are being taken by Trusts to ensure that children are able to speak freely during remote visits using IT and to supplement the existing guidance on this issue.

3.7 The right of the child to be heard is inextricably linked to the 'best interests principle enshrined in UN CRC, Article 3(1):

in all actions undertaken concerning children, by a public or private welfare institution, courts, administrative authorities or legislative bodies, the best interests of the child are a primary consideration.

3.8 The UN Committee on the Rights of the Child advise that "there can be no correct application of the best interests principle if the components of Article 12 (i.e. the voice of the child) are not respected".²¹ Accordingly, relaxing the statutory visiting duties has the potential of risking two UN CRC core principles and highlights the need for Trusts to explore measures to ensure that children can fully contribute to issues relating to their care.

3.9 Concerns about digital exclusion have also been raised with the NIHRC by civil society organisations. Guidance acknowledges that not all children have access to the internet, laptops or electronic devices.²² Social workers are required to take this into consideration when deciding how contact should be maintained.²³

²¹ CRC/C/GC/12, 'UN Committee on the Rights of the Child General Comment No 12: Right of the Child to be Heard', 20 July 2009, at para 74.

²² Department of Health, 'COVID-19: Guidance to accompany the Children's Social Care (Coronavirus) (Temporary Modification of Children's Social Care) Regulations (Northern Ireland) 2020' (DoH, 2020), at 8.

²³ Ibid.

3.10 The ICCPR, Article 19, protects the right to freedom of opinions and expression. It is accepted that Article 19 encompasses a right of access to information and that this right places procedural obligations on States Parties to “make every effort to ensure easy, prompt, effective and practical access to... information”.²⁴

3.11 The UN Special Rapporteur has recently highlighted the importance of access to the internet during COVID-19:

In a moment of global pandemic, the right of access to the internet should be restated and seen for what it is: a critical element of health-care policy and practice, public information and even the right to life.²⁵

3.12 More generally, the UN Special Rapporteur on Extreme Poverty and human rights has highlighted that lack of affordable access to the internet impedes the ability of people to realise their human rights.²⁶

3.13 The NIHRC welcomes the recent announcement by Education Minister Peter Weir that the Department will lend thousands of digital devices to school children in coming months as a means to assist with remote education.²⁷ The Department of Education will prioritise groups of vulnerable children including looked after children. The NIHRC notes that additional support may be necessary to ensure that households are able to fully engage in online learning.²⁸

Visits of children homes

3.14 The Children’s Homes Regulations (NI) 2005/176 are amended to provide that visits by the registered provider to a children’s home should be undertaken in accordance with the guidance. The guidance specifies that direct visits should no longer take place. Instead, contact should continue on at least a monthly basis using

²⁴ CCPR/C/GC/34, ‘UN Human Rights Committee General Comment No 34: Freedom of Opinions and Expression’, 12 September 2011, at para 19.

²⁵ A/HRC/44/49, ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression on Disease Pandemics and the Freedom of Opinion and Expression’, 23 April 2020, at para 24.

²⁶ A/74/493, ‘Report of the Special Rapporteur on Extreme Poverty and Human Rights Extreme on Poverty and Human Rights: Use of Digital Technologies’, 11 October 2019.

²⁷ NI Executive, ‘Press Release: Executive Daily Update – Initiatives to Deal with Coronavirus’, 21 May 2020.

²⁸ Sutton Trust, ‘Research Brief: COVID-19 and Social Mobility: School Shutdown’ (Sutton Trust, 2020).

remote engagement methods. Monthly monitoring reports should continue to be produced and submitted to the RQIA, the manager and the placing authority.

- 3.15 The NIHRC is concerned that the temporary cessation of in-person inspection visits will impact on the child's right to be heard and on the impact on the ability of social workers and others to make 'best interests' decisions as to ongoing care needs.
- 3.16 The UN Guidelines for the Alternative Care of Children encourages States to ensure that an independent monitoring mechanism of care facilities is in place. The Guidelines specify that functions of the monitoring mechanism should include "consulting in conditions of privacy with children in all forms of alternative care".²⁹
- 3.17 The NIHRC acknowledges that some aspects of inspections can be conducted remotely, and that documents, such as case files and logs, can be shared electronically with the assessor. However, it is difficult to see how other aspects of the inspections will be able to work. For example, will it be possible for unannounced inspections to continue; and how will inspectors include the views of the children and young people who use the service as well as the staff on duty on the day of the inspection.³⁰
- 3.18 The NIHRC is concerned that online inspections are not a substitute for in-person inspections and that, through relying on children's homes to provide the relevant information, that independence of the reviews will be compromised.
- 3.19 **The NIHRC advises that consideration is given as to how to ensure that online inspections are thorough and independent.**
- 3.20 **The NIHRC advises that consideration is given as to how to ensure children can participate in remote inspections. The VOYPIC Independent Advocacy Service may perhaps be able to assist.**

²⁹ A/RES/64/142, 'UN General Assembly Guidelines for the Alternative Care of Children', 24 February 2010, at para 130.

³⁰ Regulation and Quality Improvement Authority, 'Provider Guidance 2018-19 – Children's Homes', (RQIA, 2019), at 3.

Looked After Children's Reviews

- 3.21 The Review of Children's Cases Regulations (Northern Ireland) 1996, the Children (Secure Accommodation) Regulations (Northern Ireland) 1996 and the Adoption Agencies Regulations (NI) 1989 have been amended to extend the timescales for reviews of looked after children, including children in secure accommodation, and reviews by adoption agencies. For example, the timescale for the first review of a looked after children is extended from 2 to 6 weeks and the second review is extended from 3 to 6 months.
- 3.22 The accompanying guidance states that Trusts should "continue to comply with the normal timescales for reviews" where they have the capacity to do so.³¹ Some safeguards are in place, for example, as per normal practice a review must take place sooner if requested by a child or young person. Further, Trusts are required to maintain a clear record of decisions taken in relation to reviews.
- 3.23 UN CRC, Article 25, enshrines the right of a child in care to a periodic review of their treatment and placement. The NIHRC is concerned that the new timescales for the second looked after child review now exceed those stipulated by the UN Guidelines on Alternative Care:
- States should ensure the right of any child who has been placed in temporary care to regular and thorough review – preferably at least every three months – of the appropriateness of his/her care and treatment.³²
- 3.24 The NIHRC's primary concern is again that the new arrangements may diminish the child's right to be heard. This has knock on effects for best interests principle and to fair process (ECHR, Article 6).
- 3.25 **The NIHRC recommends that looked after children reviews are held at least every three months.**

³¹ Department of Health, 'COVID-19: Guidance to accompany the Children's Social Care (Coronavirus) (Temporary Modification of Children's Social Care) Regulations (Northern Ireland) 2020' (DoH, 2020), at 11.

³² A/RES/64/142, 'UN General Assembly Guidelines for the Alternative Care of Children', 24 February 2010, at para 67.

3.26 Given the reduced timescales, it is essential that the Department pro-actively makes sure that children and young people are fully aware of their ability to request a review.

3.27 The NIHRC recommends that the Department outlines the measures it is taking to ensure that children in care are made aware they can request an earlier review.

Review of pathway plans

3.28 The Children (Leaving Care) Regulations (NI) 2005 are amended to provide for the extension of timescales for reviews of pathway plans. Reviews must now be carried out at intervals of not more than 9 months, previously 6 months.

3.29 Guidance confirms that the Trusts should continue to comply with the normal timescales where it has the capacity to do so and that the 9 months is a limit and not a target timescale.³³ Reviews must take place sooner, if requested by the young person or personal adviser.

3.30 The NIHRC recommends that the Department outline the measures it is taking to pro-actively ensure young people are aware they can request an earlier review.

Foster care

3.31 The Foster Placement (Children) Regulations (NI) 1996 are amended to make a number of changes relating to foster care. A new process is introduced whereby foster carers can be approved more quickly. Trusts are permitted to place children in an emergency placement for a period of not exceeding 14 days (previously 24 hours) so as to facilitate self-isolation. Immediate placements can be extended to 20 weeks (previously 12 weeks) and children can be placed with an approved prospective adopter or with a registered child minder. The timeframe for annual reviews of foster carers is extended from 12 months to a maximum period of 15 months.

³³ Department of Health, 'COVID-19: Guidance to Accompany the Children's Social Care (Coronavirus) (Temporary Modification of Children's Social Care) Regulations (Northern Ireland) 2020' (DoH, 2020), at 13.

- 3.32 The NIHRC commends the measures taken by the Department to support foster carers during Coronavirus. This includes: a one-off payment of £100 to carers in recognition of the extra costs of children being at home; ensuring that children in foster care have access to school; distributing IT equipment to children in foster care.
- 3.33 These regulations enable the approval of foster carers to proceed even if a full enhanced disclosure is still outstanding. This only applies if an application for a full enhanced disclosure has been made and if AccessNI has confirmed that the individual (or any adult member of their household) is not included on the Children's Barred List. Access NI aims to provide such information within 24 hours.
- 3.34 Fostering and adoption organisations have highlighted that the foster carer approval process can be very slow especially the Trust fostering service approval process. Accordingly, there is some hope that this new process will speed up the process and potentially act as an impetus for other measures that may have the same effect. Notwithstanding this positive potential outcome, the NIHRC is concerned about persons being approved as foster parents where the full enhanced disclosure process remains incomplete.³⁴ The NIHRC recalls that the safety of the child is essential:
- in all matters relating to the placement of a child outside the care of the child's own parents, the best interests of the child, particularly his or her need for affection and right to security and continuing care, should be the paramount consideration.³⁵
- 3.35 **The NIHRC advises that the focus should be on speeding up the process rather than removing safeguards.**
- 3.36 **The NIHRC recommends that the Department is asked to report on any instances of where an emergency placement is used for reasons not related to COVID-19. In addition, the Department should record and report instances cases where a person is exempted from the usual fostering limit of three**

³⁴ The enhanced disclosure process is much more comprehensive than the Children's Barred List.

³⁵ A/RES/41/85, 'UN General Assembly Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally', 3 December 1986, Article 5.

children. Further, the Department should monitor and report on the use of unapproved foster placements throughout the pandemic.

3.37 While the Department's focus is rightly on short-term measures necessitated by COVID-19, the NIHRC notes that a number of long-term measures are needed to support foster care in NI. The international standards highlight the need for oversight and regulation:

States should ensure that all entities and individuals engaged in the provision of alternative care for children receive due authorization to do so from a competent authority and are subject to regular monitoring and review by the latter in keeping with the present Guidelines. To this end, these authorities should develop appropriate criteria for assessing the professional and ethical fitness of care providers and for their accreditation, monitoring and supervision.³⁶

3.38 In 2015, the NIHRC recommended that the Adoption and Children Bill, which would address issues regarding adoption in NI including delay and revision of the Children Order, be expeditiously brought forward.³⁷

3.39 The Department of Health and Department of Education jointly consulted on a strategy for Looked After Children in May 2018.

3.40 In 2013, the RQIA published its Review of Statutory Fostering Services Overview Report.³⁸ This report aimed to inform the development of the new fostering services standards announced by (then) DHSSPSNI in 2012. The development of standards remains incomplete.

3.41 The NIHRC urges the Department to commit to developing such legislation, the Looked After Children strategy and comprehensive updated foster care standards.

³⁶ A/RES/64/142, 'UN General Assembly Guidelines for the Alternative Care of Children', 24 February 2010, at para 55.

³⁷ NI Human Rights Commission, 'Alternative Care and Children's Rights in Northern Ireland' (NIHRC, 2015), at 162.

³⁸ Regulation and Quality Improvement Authority, 'Review of Statutory Fostering Services Overview Report' (RQIA, 2013).

Secure accommodation

3.42 The Children (Secure Accommodation) Regulations (NI) 1996 is amended to reduce the minimum number of persons to review the keeping of a child in secure accommodation from three to two.

3.43 Any further amendments must be adopted through legislation and cannot be adopted through guidance. This safeguard is necessary in acknowledgement of the “serious nature” of a decision to deprive a child of his or her liberty.³⁹ The NIHRC welcomes the Department’s position on this and concurs that close scrutiny is essential: any changes to the secure accommodation arrangements should be subject to consultation and the usual legislative process.

3.44 In accordance with international human rights law obligations on child justice,⁴⁰ and in line with the WHO Interim Guidance on the prevention and control of COVID-19 in places of detention,⁴¹ UNICEF in an approach endorsed by the UN General Secretary⁴² urges States Parties to take steps including:

- institute a moratorium on new children entering detention facilities;
- release all children who can be safely released;
- protect the health and well-being of any children who must remain in detention.⁴³

3.45 **The NIHRC recommends that the Department of Health and Department of Justice should work together to implement the WHO Interim guidance and release all children from secure accommodation, where safe to do so.**

Complaints

3.46 The Representations Procedure (Children) Regulations (NI) 1996 are amended to increase the timeframe relating to complaints. The

³⁹ Department of Health, ‘COVID-19: Guidance to accompany the Children’s Social Care (Coronavirus) (Temporary Modification of Children’s Social Care) Regulations (Northern Ireland) 2020’ (DoH, 2020), at 16.

⁴⁰ CRC/C/GC/24, ‘UN Committee on the Rights of the Child General Comment No 24: Children’s Rights in the Child Justice System’, 18 September 2019.

⁴¹ World Health Organisation, ‘Interim Guidance: Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention’ (WHO, 2020).

⁴² UN Secretary General, ‘Policy Brief: Impact of COVID-19 on Children’ (UNSG, 2020).

⁴³ UNICEF and Alliance for Child Protection in Humanitarian Action, ‘Technical Note: COVID-19 and Children Deprived of their Liberty’ (UNICEF, 2020).

timeframes for each stage of the complaint process is lengthened e.g. the local resolution stage is extended to 28 days (previously 14).

- 3.47 International standards necessitate that children in care have access to a known, effective and impartial mechanism whereby they can notify complaints or concerns regarding their treatment or conditions of placement.⁴⁴ Young people with previous care experience should be involved in this process, due weight being given to their opinions. This process should be conducted by competent persons trained to work with children and young people.
- 3.48 **The NIHRC notes the important role played by VOYPIC in this regard and encourages the Department to ensure the organisation is sufficiently funded.**

⁴⁴ A/RES/64/142, 'UN General Assembly Guidelines for the Alternative Care of Children', 24 February 2010.

⁴⁴ Stockholm Declaration on Children and Residential Care, International Conference on Children and Residential Care, 12-15 May 2003, at para 99.

Annex

About the NIHRC

1.1. The Northern Ireland Human Rights Commission (NIHRC), pursuant to section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI). The NIHRC may also advise the Executive Committee of the Assembly of legislative and other measures which ought to be taken to protect human rights under section 69(3). In accordance with these functions, the following advice is submitted to the Committee for Health on the Children Social Care (Coronavirus) Temporary Modification of Children's Social Care) Regulations (NI) 2020.

1.2. The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe and United Nations systems.⁴⁵ The relevant international treaties in this context include:

- European Convention on Human Rights 1950 (ECHR);⁴⁶
- United Nations (UN) International Covenant on Civil and Political Rights 1966 (UN ICCPR);⁴⁷
- UN International Covenant on Economic, Social and Cultural Rights 1966 (UN ICESCR);⁴⁸
- UN Convention on the Rights of the Child 1989 (UN CRC);⁴⁹
- UN Convention on the Rights of Persons with Disabilities 2006 (UN CRPD).⁵⁰

1.3. In addition to these treaty standards, there exists a body of 'soft law' developed by various human rights bodies. These declarations

⁴⁵ The NI Executive is subject to the obligations contained within the specified regional and international treaties by virtue of the United Kingdom (UK) government's ratification. In addition, the NI Act 1998, Section 26(1) provides that "if the Secretary of State considers that any action proposed to be taken by a Minister or NI department would be incompatible with any international obligations... she may by order direct that the proposed action shall be taken". The NIHRC further recalls that the NI Act 1998, Section 24(1)(a) states that "a Minister or NI department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act... is incompatible with any of the Convention rights".

⁴⁶ Ratified by the UK in 1951.

⁴⁷ Ratified by the UK in 1976.

⁴⁸ Ratified by the UK in 1976.

⁴⁹ Ratified by the UK in 1991.

⁵⁰ Ratified by the UK in 2009.

and principles are non-binding but provide further guidance in respect of specific topic areas. The relevant standards in this context include:

- UN Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, 1986;⁵¹
- UN Guidelines for the Alternative Care of Children, 2010;⁵²
- Stockholm Declaration on Children and Residential Care, 2003;⁵³
- Office of High Commissioner for Human Rights, Emergency measures and COVID-19, 2020;⁵⁴
- UNICEF, the Better Care Network and Alliance for Child Protection in Humanitarian Action, Protection of children during the COVID-19 pandemic: children and alternative care, 2020;⁵⁵
- UNICEF and Alliance for Child Protection in Humanitarian Action, 'Technical note: COVID-19 and children deprived of their liberty', 2020.⁵⁶
- World Health Organisation, 'Interim guidance: preparedness, prevention and control of COVID-19 in prisons and other places of detention', 2020;⁵⁷ and
- UN Secretary General, 'Policy brief: impact of COVID-19 on children', 2020.⁵⁸

⁵¹ A/RES/41/85, 'UN General Assembly Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children with Special Reference to Foster Placement and Adoption Nationally and Internationally', 3 December 1986.

⁵² A/RES/64/142, 'UN General Assembly Guidelines for the Alternative Care of Children', 24 February 2010.

⁵³ Stockholm Declaration on Children and Residential Care, International Conference on Children and Residential Care, 12-15 May 2003.

⁵⁴ Office of High Commissioner for Human Rights, 'Guidance: Emergency Measures and COVID-19'(OHCHR, 2020).

⁵⁵ UNICEF, Better Care Network and Alliance for Child Protection in Humanitarian Action, 'Protection of Children during the COVID-19 Pandemic: Children and Alternative Care' (UNICEF, 2020).

⁵⁶ UNICEF and Alliance for Child Protection in Humanitarian Action, 'Technical Note: COVID-19 and Children Deprived of their Liberty' (UNICEF, 2020).

⁵⁷ World Health Organisation, 'Interim Guidance: Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention' (WHO, 2020).

⁵⁸ UN Secretary General, 'Policy Brief: Impact of COVID-19 on Children' (UNSG, 2020).

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