

STATUTORY INSTRUMENTS

S.I. No. 550 of 2004

**CHILD CARE (SPECIAL CARE)
REGULATIONS 2004**

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CHILD CARE (SPECIAL CARE) REGULATIONS 2004

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S.I. 550 of 2004

CHILD CARE (SPECIAL CARE) REGULATIONS 2004

I, Brian Lenihan, Minister of State at the Department of Health and Children, in exercise of the powers conferred on me by section 23K of the Child Care Act 1991 (No. 17) as inserted by section 16 of the Children Act 2001 (No. 24 of 2001), and sections 42, and 68 of the Child Care Act 1991 (No. 17 of 1991) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order 1997 (S.I. No. 308 of 1997)) and the Health and Children (Delegation of Ministerial Functions) Order 2003 (S.I. No. 474 of 2003), hereby make the following Regulations:-

CITATION

1. These Regulations may be cited as the Child Care (Special Care) Regulations 2004.

COMMENCEMENT

2. These regulations shall come into operation on 24th day of September 2004

DEFINITIONS

3. In these Regulations unless the context otherwise requires –

“authorised officer” means a person authorised by the chief executive officer of a health board to carry out functions on behalf of the board under these regulations;

“family welfare conference” means a conference convened by a health board under section 7 of the Children Act 2001;

“functional area” means the geographical area for which the health board is responsible for providing services in accordance with the Health Acts;

“guardian” means -

(a) any legal guardian of a child,

(b) any person who, in the opinion of the court having cognisance of any case in relation to a child or in which the child is concerned, has for the time being the charge or control over the child, or

(c) any person who has custody or care of a child by order of a court, but does not include a health board;

“guardian *ad litem*” means a person appointed as guardian *ad litem* by a court in accordance with section 26 of the Child Care Act 1991;

“health board” means a board established under section 4 of the Health Act 1970 and the Eastern Regional Health Authority established under the Health (Eastern Regional Health Authority) Act 1999;

“interim special care order” is an order made by a court in respect of a child in accordance with section 23C of the Child Care Act 1991, as inserted by the Children Act 2001;

“legal representative” means a solicitor appointed by a court to represent a child in accordance with section 25 of the Child Care Act 1991.

“manager” means the person in charge of or having control over a special care unit;

“parents” includes a surviving parent and, in case the child who has been adopted under the Adoption Acts 1952 to 1998, or, where the child has been adopted outside the State, whose adoption is recognized by virtue of the law for the time being in force in the State, means the adopter or adopters or the surviving adopter;

“person authorised by the Minister” means a person authorised by the Minister for Health and Children in accordance with section 69 of the Child Care Act 1991;

“relative” in relation to a child, means a brother, sister, uncle or aunt or a spouse of the brother, sister, uncle or aunt or a grandparent or step-parent, of the child;

“regulations of 1995” means either the Child Care (Placement of Children in Residential Care) Regulations 1995, the Child Care (Placement of Children in Foster Care) Regulations 1995 or the Child Care (Placement of Children with Relatives) Regulations 1995 as may be appropriate in the particular context;

“the Act” means the Child Care Act 1991 as amended by the Children Act 2001;

“the Act of 2001” means the Children Act 2001;

“the Minister” means the Minister for Health and Children;

“special care unit” means a residential centre provided and operated by a health board, voluntary body or any other person on behalf of a health board and approved by the Minister for Health and Children under section 23K of the Child Care Act 1991 as amended by the Children Act 2001;

“special care order” means an order made by a court in respect of a child in accordance with section 23A of the Child Care Act 1991 as inserted by the Children Act 2001;

“Special Residential Services Board” means the Board established under Part 11 of the Children Act 2001;

“unit” means a special care unit.

CARE PRACTICES AND OPERATIONAL POLICIES

4. (1) A health board shall satisfy itself in respect of each unit in its functional area that appropriate and suitable care practices, operational policies and rules are in place, having regard to the number of children residing in the unit and the nature of their needs.
- (2) The care practices, operational policies and rules referred to in paragraph (1) shall be set out in writing by the manager.
- (3) The manager shall put in place appropriate procedures to ensure that the staff of the unit are adequately informed about the practices, policies and rules referred to in paragraph (1).
- (4) The manager shall put in place appropriate procedures to ensure that a child placed in the unit and his or her parents or guardian or guardian *ad litem* or any other person with a *bona fide* interest in the child are made aware of the care practices, operational policies and rules of the unit.
- (5) The manager shall put in place appropriate procedures to ensure that a child placed in the unit and his or her parents or guardian or guardian *ad litem* or any other person with a *bona fide* interest in the child are made aware of any rights they may have in accordance with the provisions of the Freedom of Information Act 1997 as amended.

MANAGEMENT AND STAFFING

5. (1) A health board shall satisfy itself in respect of each unit in its functional area as to the adequacy of the number, qualifications, experience, suitability and availability of members of the staff, having regard to the number of children residing in the unit and the need to promote their health, safety, development, welfare and security.
- (2) A health board or voluntary body or any other person who is providing and maintaining a unit shall appoint an appropriately qualified and experienced person as the manager of the unit.
- (3) The manager shall ensure that appropriate and suitable care practices, operational policies and rules are put into effect in the unit.
- (4) The manager shall ensure that an appropriate level of supervision, support, training and development is provided in relation to staff and that the aforementioned is recorded.
- (5) The manager shall ensure that the appropriate staff and level of supervision are in place at all times to ensure the health, safety, development, welfare, and security of the children placed in the unit.
- (6) The manager may from time to time delegate all or some of his or her duties under these regulations to one or more appropriately qualified members of staff and shall keep a written record of when and to whom he or she delegated those duties.

(7) The health board or voluntary body or any other person who is providing and maintaining a unit shall ensure that all staff and any person, in the course of his or her employment, who has access to a child in a unit are appropriately vetted, by reference to past employer references, in particular the most recent employer and by requesting criminal record checks from the Garda Síochána or, where appropriate, ensuring that prospective employees provide the necessary clearance from other appropriate police authorities.

(8) The health board or voluntary body or any other person who is providing and maintaining a unit shall ensure that all vetting procedures set out in paragraph (7) are carried out prior to any person being appointed or assigned to the unit or being allowed access to a child, in the course of his or her employment, in the unit.

ACCOMMODATION

6. A health board shall satisfy itself in respect of each unit in its functional area that adequate and suitable accommodation is provided, having regard to the number of children residing in the unit and the nature of their needs, and, in particular, that—

- (a) each child is provided with his or her own room,
- (b) adequate and suitable furnishings are provided,
- (c) a sufficient number of lavatories, wash basins, baths and showers, supplied with hot and cold running water and which ensure privacy are provided,
- (d) adequate laundry facilities are provided,
- (e) the premises are adequately lit, heated and ventilated,
- (f) the premises are clean, appropriately decorated and maintained in good structural condition,
- (g) adequate indoor and outdoor recreational facilities are provided, and
- (h) an appropriate and adequate level of security is provided so as to ensure that children can be safely detained in the unit.

PROVISION OF FOOD AND COOKING FACILITIES

7. (1) A health board shall satisfy itself in respect of each unit in its functional area that children residing in the unit are provided with food in quantities adequate for their needs which is properly prepared, wholesome and nutritious, involves an element of choice and takes account of any special dietary requirements.

(2) For the purposes of this regulation a health board shall satisfy itself that—

- (a) suitable and sufficient catering equipment, crockery and cutlery are provided,
- (b) there are proper facilities for the refrigeration, storage, preparation, cooking and serving of food, and

- (c) a high standard of hygiene is maintained in relation to the storage and preparation of food and the disposal of domestic refuse.
- (3) This regulation is without prejudice to the provisions of the Health Act 1947 and any regulations made pursuant to the European Communities Act 1972, relating to food safety.

FIRE PRECAUTIONS

8. (1) A health board shall obtain in respect of each unit in its functional area written confirmation from a chartered engineer or a properly and suitably qualified architect with experience in fire safety design and management that the relevant statutory requirements relating to fire safety and building control have been complied with and that—

- (a) adequate precautions have been taken against the risk of fire, including smoke and fire detection and alarm systems and the provision and maintenance of adequate means of escape in the event of fire,
 - (b) adequate arrangements are in place for detecting, containing and extinguishing fires, and for the maintenance of smoke and fire detection and alarm systems and fire fighting equipment, and
 - (c) all reasonable measures have been taken to ensure that materials contained in bedding and the internal furnishings of the unit have adequate fire retardancy properties and have low levels of toxicity in the event of a fire.
- (2) Where structural alterations to a unit are carried out, a health board shall seek a new written confirmation and the provisions of paragraph (1) of this regulation shall apply.
- (3) A health board shall satisfy itself in respect of each unit in its functional area that adequate arrangements are in place, by means of fire drills and practices, to ensure that the staff of the unit and, in so far as is practicable, the children residing in the unit know the evacuation and other procedures to be followed in the event of a fire.
- (4) The provisions of this regulation are without prejudice to the provisions of the Fire Services Act 1981.

SAFETY PRECAUTIONS

9. (1) A health board shall satisfy itself in respect of each unit in its functional area that adequate arrangements exist to guard against the risk of injury occurring on the premises, particularly with regard to the structure and fabric of the unit including stairways, electrical and gas appliances and fittings, windows and doors, glazing and the storage of medicines, cleaning and other materials.

(2) A health board shall satisfy itself in respect of each unit in its functional area that adequate arrangements are in place for the reporting and recording of accidents and injuries affecting children residing in the unit.

(3) The provisions of this regulation are without prejudice to the provisions of the Safety, Health and Welfare at Work Act 1989.

INSURANCE

10. A health board or voluntary body or any other person who is providing and maintaining a unit shall ensure that the unit is adequately insured against accidents or injury to children placed in the unit.

ACCESS ARRANGEMENTS

11. (1) Subject to the provisions of section 37 of the Act a health board shall satisfy itself in respect of each unit in its functional area that appropriate arrangements are in place to facilitate reasonable access and contact between children residing in the unit and their parents or guardian, relatives, guardian *ad litem* or any legal representative of the child or any other persons who, in the opinion of the board or the court, have a *bona fide* interest in the children.

(2) The health board or voluntary body or any other person who is providing and maintaining a unit shall ensure that appropriate facilities are provided to enable visits, held in accordance with paragraph (1), to be held in private.

(3) The manager shall record in writing all visits, held in accordance with paragraph (1) and shall keep that record as part of the care record established in accordance with regulation 20.

HEALTH CARE

12. (1) A health board shall ensure in respect of each unit in its functional area that adequate arrangements are in place for access by children placed in the unit to general practitioner and psychological services and for their referral to medical, psychiatric, dental, ophthalmic, counselling, therapeutic or other specialist services as required.

(2) The manager shall record, in writing, any services provided to a child placed in the unit, in accordance with paragraph (1) and any medication administered to a child, whether or not it was prescribed by a registered medical practitioner.

(3) The manager shall keep any record maintained in accordance with paragraph (2) as part of the care record established in accordance with regulation 20.

EDUCATION

13. (1) A health board shall ensure in respect of each unit in its functional area that adequate arrangements are in place for access by children placed in the unit to appropriate educational facilities and services.

(2) The manager shall retain a record, in writing, of the educational progress of a child placed in the unit.

(3) The manager shall keep any record maintained in accordance with paragraph (2) as part of the care record established in accordance with regulation 20.

INDIVIDUAL NEEDS, RELIGION, ETHNICITY, CULTURE AND LANGUAGE

14. (1) A health board shall satisfy itself that children placed in a unit in its functional area are facilitated, in so far as is reasonably practicable, in the practice of their religion and the manager shall record in writing the manner in which such practice is facilitated and shall keep such record as part of the care record established in accordance with regulation 20.

(2) In providing care for or any treatment to a child placed in a unit, the unit shall have regard to the individual needs, ethnic and cultural identity of the child and his or her parents or guardian and the language mainly spoken by the child and his or her parents or guardian.

(3) The provisions of paragraphs (1) and (2) are subject to the obligation of the unit to safeguard the health, safety, development, welfare and security of the child and any other child placed in the unit and the safe and effective functioning of the unit.

MANAGING BEHAVIOUR

15. (1) Any child placed in a unit shall abide by the rules of the unit and any breaches of those rules shall be managed, on the instructions of the manager, in a way that is both reasonable and within the terms of any directions which may be made by the Minister in accordance with section 69 of the Child Care Act 1991 or the Chief Executive Officer of the health board in whose functional area the unit is located, in accordance with regulation 40.

(2) Without prejudice to any directions that may be made by the Minister or a health board in accordance with paragraph (1) the following shall be prohibited-

- (a) corporal punishment or any other form of physical violence,
- (b) deprivation of food or drink,
- (c) treatment that could reasonably be expected to be detrimental to physical, psychological or emotional well-being, or
- (d) treatment that is cruel, inhuman or degrading.

(3) The manager shall record, in writing, any instructions made in accordance with paragraph (1), the reasons why such instructions were issued, the nature and duration of any action taken or sanction imposed in relation to the child and shall keep such record as part of the care record established in accordance with regulation 20.

NOTIFICATION OF SIGNIFICANT EVENTS

16. (1) A health board shall satisfy itself in respect of each unit in its functional area that procedures are in place for the prompt notification by the unit to the board in writing of any significant event which has an adverse effect on a child who has been placed in the unit.

(2) The manager shall ensure that procedures are in place to meet the unit's obligations under paragraph (1) to notify the health board in whose functional area the unit is in and if it is a different board, the health board which placed the child in the unit.

(3) Where a health board which has placed a child in a unit has been notified of a significant event, in accordance with this regulation, it shall as soon as is reasonably practicable inform the child's parents or guardian and any guardian *ad litem* or legal representative of the child.

(4) A health board on placing a child in a unit may make an arrangement with the manager of the unit authorising him or her to notify the parents or guardian and any guardian *ad litem* or legal representative of the child of any significant event which has had an adverse effect on a child who has been placed in the unit and the manager shall as soon as practicable when such an event occurs inform the person concerned.

(5) The manager shall keep a record of any events notified to a health board in accordance with provisions of this regulation as part of the care record established in accordance with regulation 20.

RESTRAINT

17. (1) A child shall not be physically restrained, save that it is necessary to protect the child or any other person from risk of injury or to protect property where the damage to such property might cause risk of injury to the child or any other person.

(2) The manager shall ensure that staff receive appropriate training in the use of physical restraint.

(3) No member of staff shall physically restrain a child, save that they have received appropriate training in accordance with paragraph (2).

(4) Where a child is restrained in accordance with paragraph (1) the manager of the unit shall ensure that procedures are in place to record in writing the circumstances which led to the restraint, the name of the child, the name of the person authorising this action, the name or names of the persons carrying out the restraint, the date on which, time at which and the length of time for which the child was so restrained.

(5) Where a child is physically restrained, in accordance with this regulation, the manager shall as soon as is reasonably practicable carry out the procedures set out in Regulation 16 in relation to the notification of significant events including notifying the health board or boards in accordance with that regulation and the health board, which placed the child in the unit, shall as soon as is reasonably practicable notify any other person that it is obliged to notify.

(6) The manager shall keep a record of any events notified to a health board in accordance with provisions of this regulation as part of the care record established in accordance with regulation 20.

(7) The manager shall review all procedures in the unit in relation to physical restraint at regular intervals and not less than every twelve months and shall record, in writing, all such reviews.

(8) Where a child is physically restrained in a manner set out in paragraph (1) the manager of the unit shall ensure that any directions made by the Minister, in accordance with section 69 of the Child Care Act 1991, or the Chief Executive Officer of the health board in whose functional area the unit is located, in accordance with regulation 40, on rules and procedures in respect of physically restraining a child in this manner are complied with.

SINGLE SEPARATION

18. (1) A child shall not be locked on his or her own in any room in the unit, other than his or her bedroom during usual bedtime hours or be deliberately separated from other children placed in the unit, with a view to preventing contact with the other children, unless it is necessary to protect the child or any other person from risk of injury or to protect property from significant damage.

(2) The manager shall ensure that staff receive appropriate training in the use of procedures to confine or separate a child under the provisions of paragraph (1).

(3) No member of staff shall be involved in confining or separating a child, save that they have received appropriate training in accordance with paragraph (2).

(4) Where a child is confined or separated in accordance with paragraph (1) the manager of the unit shall ensure that procedures are in place to record in writing the circumstances which led to the confinement or separation, the name of the child, the name of the person authorising this action, the name or names of the persons carrying out the procedures to confine or separate the child, the date on which, time at which and the length of time for which the child was so confined or separated.

(5) Where a child is confined or separated, in accordance with this regulation, the manager shall as soon as is reasonably practicable carry out the procedures set out in Regulation 16 in relation to the notification of significant events including notifying the health board or boards in accordance with that regulation and the health board which placed the child in the unit shall, as soon as is reasonably practicable, notify any other person that it is obliged to notify.

(6) The manager shall keep a record of any events notified to a health board in accordance with provisions of this regulation as part of the care record established in accordance with regulation 20.

(7) The manager shall review all procedures in the unit in relation to the confinement or separation of children at regular intervals and not less than every twelve months and shall record, in writing, all such reviews.

(8) Where a child is confined or separated in a manner set out in paragraph (1) the manager of the unit shall ensure that any directions made by the Minister, in accordance with section 69 of the Child Care Act 1991, or the Chief Executive Officer of the health board in whose functional area the unit is located, in accordance with regulation 40, on rules and procedures in respect of such confinement or separation of a child in this manner are complied with.

COMPLAINTS PROCEDURE

19. (1) A health board shall ensure in respect of each unit in its functional area that procedures are in place for the timely investigation of complaints made by children placed in the unit, their parents or guardian, any guardian *ad litem* or legal representative or by any person with a *bona fide* interest in a child placed in the unit or staff in the unit, in respect of the care of the child in the unit.

(2) The manager shall ensure that children placed in the unit, their parents or guardian and staff are given a copy in writing of the procedures established in accordance with paragraph (1) and of the procedures established in accordance with paragraph (5) and that a copy is given at their request to any guardian *ad litem* or legal representative or any other person with a *bona fide* interest in a child placed in the unit.

(3) The manager shall ensure that all complaints are addressed in a timely manner and that complaints and any actions taken in response to those complaints are recorded in writing.

(4) The manager shall, in writing, inform the health board, that placed the child in the unit, about any complaints made in accordance with this regulation and any actions taken in response to those complaints.

(5) The health board, in whose functional area the unit is, shall put in place a procedure whereby any person who has made a complaint, in accordance with the procedure established under paragraph (1), is not satisfied with the action taken by the manager may refer the matter to the Chief Executive Officer of the health board in whose functional area the unit is for consideration and investigation as appropriate in accordance with any directions issued by the Minister.

(6) If the health board which placed the child in the unit is not the board in whose functional area the unit is in, the latter board shall inform the aforementioned board, as soon as is reasonably practicable, of any referrals initiated in accordance with paragraph (5) and the result of any such referrals.

(7) In respect of any complaint that is made to a manager in accordance with this regulation, the manager shall ensure that a member of staff is assigned to give

reasonable assistance to a child or his or her parents or guardian or guardian *ad litem* or any other person with a *bona fide* interest in the child in making a complaint.

(8) In respect of any referral made to the chief executive officer of a health board in whose functional area the unit is located in accordance with this regulation, the health board shall ensure that an authorised officer of the board is assigned to give reasonable assistance to a child or his or her parents or guardian or guardian *ad litem* or any other person with a *bona fide* interest in the child in making a referral under the provisions of this regulation.

(9) This regulation is without prejudice to the right of a child placed in a unit to complain to his or her parents or guardian or any guardian *ad litem* or legal representative or any other person who has a *bona fide* interest in the child, about any aspect of his or her care in the unit.

(10) This regulation is without prejudice to any provision in the Act which imposes duties and powers on the health board to investigate matters relating to the protection and welfare of any child placed in a unit.

CARE RECORD

20. (1) The manager shall establish and keep a care record in respect of every child placed in the unit.

(2) The health board which placed the child in the unit shall, in so far as is reasonably practicable, provide the manager with the following information which shall form part of the care record-

- (a) the name, sex, date of birth and religion of the child,
- (b) a copy of the interim special care order or special care order made in respect of the child,
- (c) the name(s) and address(es) of the parents or guardian of the child or any guardian *ad litem* or legal representative of the child or any other person who, in the opinion of the board, has a *bona fide* interest in the child,
- (d) the name and address of an authorised officer of the health board which placed the child in the unit and who can be contacted at all reasonable times,
- (e) a copy of the care plan drawn up in accordance with regulation 26 and any subsequent amendments to the care plan,
- (f) any other appropriate information which the board considers necessary to assist the unit in promoting the health, safety, development, welfare and security of the child,

(3) The manager shall also record the following in the care record-

- (a) a record of any services provided for the child in the unit in accordance with the care plan,
 - (b) a record of the child's care and any treatment while he or she is placed in the unit,
 - (c) a record of any visits made in accordance with regulation 11,
 - (d) a record maintained in accordance with regulation 12 (2),
 - (e) a record maintained in accordance with regulation 13(2),
 - (f) a record maintained in accordance with regulation 14(1)
 - (g) a record maintained in accordance with 15(3),
 - (h) a record of any significant event recorded under regulation 16,
 - (i) a record of any physical restraint recorded under regulation 17,
 - (j) a record of any confinement or separation recorded under regulation 18,
 - (k) a record of any complaints and any appeals and actions taken in respect of those complaints or appeals in accordance with regulation 19,
 - (l) a record of any occasion which the child was absent without authority as set out in regulation 30,
 - (m) any other information which may assist the health board which placed the child in the unit in promoting the health, safety, development, welfare and security of the child.
- (4) The manager shall make available to the health board which placed the child in the unit all information as prescribed in regulations 16,17,18,19 and 30 and shall make all other information as set out in paragraph (3) available to that board at regular intervals or when the board requests such information.
- (5) The manager shall also maintain, as part of the care record:-
- (a) a record of all visits to a child made in accordance regulation 27,
 - (b) any visits to the child pursuant to regulations 28 or 29,
 - (c) a copy of any report submitted to the health board which placed the child in the unit in accordance with regulation 28.

RECORDS

21. A health board shall satisfy itself in respect of each unit in its functional area or on whose behalf the unit is being provided and operated that the appropriate records are

maintained by the unit in a safe and secure manner and that such records are open to examination by a person authorised by the Minister, in accordance with section 69 of the Child Care Act 1991, or an authorised officer appointed by the Chief Executive Officer of the health board in accordance with regulation 40, or any person authorised by a court as appropriate.

MONITORING OF STANDARDS

22. (1) A health board, in whose functional area the unit is located or on whose behalf the unit is being provided and operated, for the purpose of satisfying itself that the requirements of regulations 4 to 21 herein are being complied with in respect of the unit, shall ensure that—

- (a) adequate arrangements are in place to enable an authorised officer to enter and inspect the unit and all relevant records at all times, and
- (b) the unit is visited at least every three months by an authorised officer.

(2) Where, following a visit to a unit in accordance with paragraph (1), a health board is of opinion that any of the requirements of regulations 4 to 21 are not being complied with in respect of the unit, the board shall instruct the manager to take the necessary steps to ensure compliance with these regulations.

(3) It shall be the responsibility of the health board, in whose functional area the unit is, to monitor standards in the unit, in accordance with this regulation and to ensure that regulations 4 to 21 are enforced.

(4) This Regulation shall not effect the legal responsibilities on a health board placing a child in a unit arising under these Regulations or otherwise.

MEDICAL EXAMINATION

23. (1) Whenever a health board places a child in a unit, that board shall arrange for the examination of the child by a registered medical practitioner unless the board is satisfied, having regard to available information and reports on the child, that such examination is unnecessary.

(2) Where a child returns or is returned to a unit after being absent without authority as set out in regulation 30, the manager, if he or she sees fit, may request the health board in whose functional area the unit is in to arrange for an examination of the child in accordance with paragraph (1).

(3) Where the health board that placed the child in the unit is not the health board in whose functional area the unit is in, the latter board shall inform the aforementioned board about any examinations carried out in accordance with paragraph (2)

MAINTENANCE OF A REGISTER

24. (1) A health board in whose functional area there is a unit shall establish and keep a register in which shall be entered particulars in relation to every child placed in a unit.

(2) Where a child is placed in a unit by a board, other than the board in whose functional area the unit is, the board which placed the child shall provide the latter board with all appropriate particulars in respect of the child placed in the unit.

(3) An entry in the register with respect to a child in a unit shall include such of the following particulars as are available to the health board—

- (a) the name, sex and date of birth of the child,
- (b) the name(s) and address(es) of the parents or guardian of the child, any guardian *ad litem* or legal representative of the child and any other person who has a *bona fide* interest in the child,
- (c) a copy of the interim special care order or special care order made in respect of the child,
- (d) the date on which the child was placed in the unit and where appropriate the date on which the child was discharged from the unit,
- (e) the name of the health board which placed the child in the unit.

(4) Every change in the particulars entered in the register with respect to a child shall be recorded in the register.

(5) Every register kept by a health board under this article shall be preserved in perpetuity.

CASE RECORD

25. (1) A health board that places a child in a unit shall compile a case record of every child placed in a unit by it and the said record shall be kept up to date.

(2) A case record of a child kept by a health board in accordance with this regulation shall include, in so far as is reasonably practicable the following information and documents:-

- (a) the name, address, sex and religion of the child,
- (b) the name(s) and address(es) of the parents or guardian of the child and any guardian *ad litem* or legal representative of the child and any other person who, in the opinion of the board, has a *bona fide* interest in the child,
- (c) a copy of the interim special care order or special care order in respect of the child,
- (d) a copy of any other court order in respect of the child,
- (e) a copy of the birth certificate of the child,

- (f) medical, psychological and social reports on the child, including background information on the child's family,
 - (g) reports on the child's education,
 - (h) a copy of the plan for the care for the child and any subsequent amendments prepared by the health board under regulation 26,
 - (i) a note of the date on which the care plan was approved by the health board and submitted to the unit,
 - (j) a record of all information submitted by the unit in accordance with regulation 20(4),
 - (k) a note of every visit to the child in accordance with regulation 27,
 - (l) a note of every review of the child's case pursuant to regulations 28 or 29, together with particulars of any action taken as a result of such review,
 - (m) any other records which the board may have in relation to the child and his or her family,
 - (n) a copy of any recommendations made by a family welfare conference, in accordance with section 8 of the Act of 2001, made in respect of the child,
 - (o) a copy of any views given by the Special Residential Services Board, in accordance with section 227(1)(e) of the Act of 2001,
 - (p) any other reports or relevant information that will assist the board to promote the health, safety, development, welfare and security of the child.
- (3) Every record compiled by a health board under this regulation shall be preserved in perpetuity.

CARE PLAN

26. (1) Subject to paragraph (2) of this regulation, a health board, which is placing a child in a unit in accordance with a special care order, shall before placing the child in the unit-

- (a) if the child has otherwise not been placed in the care of the health board or if the child has recently been taken into or placed in the care of the health board and a care plan does not exist then prepare a plan for the care of the child,

or

- (b) if the child is in the care of the health board, in accordance with the provisions of sections 4, 13, 17 or 18 of the Act and a plan for the care of the child has been prepared, amend the plan for the care of the child drawn up in accordance with the regulations of 1995 and the amendment to such plan, for the purposes of these regulations, shall also be known as the plan and the said plan shall, among other matters, deal with-

- (i) the aims and objectives of the placement,
- (ii) the arrangements for access to the child by a parent, guardian, relative, guardian *ad litem*, legal representative or other named person or persons, subject to any order, as to access, made by a court,
- (iii) the support to be provided to the child, the unit concerned and, where appropriate, the parents or the guardian of the child by the health board,
- (iv) any arrangements made with another health board or voluntary body or any other person to provide services, support or treatment for the child or his or her family,
- (v) where applicable, any arrangements the board proposes to put in place in accordance with section 23B(7) of the Act, and
- (vi) the arrangements and dates for the review of the plan in accordance with regulation 28.

(2) Where it is not reasonably practicable for a health board to prepare a plan before a child is placed in a unit, such plan shall be prepared within fourteen days from the date of placement.

(3) A health board which is placing a child in a unit in accordance with an interim special care order shall, within seven days,

- (a) if the child has otherwise not been placed in the care of the health board or if the child has recently been taken into or placed in the care of the health board and a care plan does not exist then prepare a plan for the care of the child,

or

- (b) if the child is in the care of the health board, in accordance with the provisions of sections 4, 13, 17 or 18 of the Act and a plan for the care of the child has been prepared, amend the plan for the care of the child drawn up in accordance with the regulations of 1995 and the amendment to such plan, for the purposes of these regulations, shall also be known as the plan and said plan shall, among other matters, deal with-

- (i) the aims and objectives of the placement,
- (ii) the arrangements for access to the child by a parent, guardian, relative, guardian *ad litem*, legal representative or other named person or persons, subject to any order, as to access, made by a court,
- (iii) the support to be provided to the child, the unit concerned and, where appropriate, the parents or the guardian of the child by the health board,
- (iv) any other arrangements that may be necessary to assist a family welfare conference or the Special Residential Services Board to perform their functions.

(4) In preparing a plan under this regulation, a health board which is placing a child in a unit shall consult the manager and, in so far as is reasonably practicable, the child and his or her parent or guardian and any guardian *ad litem* of the child.

(5) The board may also consult any other person who has a *bona fide* interest in the child or who because of his or her knowledge of the child or the child's family or his or her expertise could in the opinion of the board assist in preparing the plan.

(6) In drawing up a plan under this regulation the health board which is placing a child in a unit shall have regard to the individual needs, religion, ethnic and cultural identity of the child and the language mainly spoken by the child and his or her parents or guardian.

(7) The provisions of paragraph (6) are subject to the obligation of the health board and the unit to promote the health, safety, development, welfare and security of the child in accordance with these regulations.

(8) A copy of the plan prepared by a health board which is placing a child in a unit under this regulation shall be given by the board to the manager and, in so far as is reasonably practicable, particulars of the plan shall be made known to the child and his or her parent or guardian and any guardian *ad litem* of the child and, if the board considers it to be in the best interests of the child, may be made available to any person consulted under paragraph (5).

(9) A plan prepared under this regulation shall, in so far as is reasonably practicable, be consistent with any recommendations made by a family welfare conference in accordance with section 8 of the Act of 2001 and shall have due regard to any views given by the Special Residential Services Board in accordance with section 227(1)(e) of the Act of 2001.

(10) Any changes that are made to a plan prepared under this regulation shall be recorded in the case record established in accordance with regulation 25 and notified to the manager and recorded on the care record established in accordance with regulation 20.

SUPERVISION AND VISITING OF CHILDREN

27. (1) A child who has been placed in a unit by a health board shall be visited by an authorised officer of that board, having regard to the plan for the care of the child prepared under regulation 26 and any review of such plan carried out in accordance with regulation 28 or 29, as often as the board considers necessary but in any event within fourteen days after the child is placed in the unit and at least once every month thereafter.

(2) Where, following a visit to a child in a unit, the health board which placed the child in the unit is of opinion that any matter relating to the child's placement is not in compliance with these regulations, the board shall take appropriate action to ensure compliance with these regulations.

(3) A note of every visit to a child in accordance with this regulation shall be entered in the case record relating to the child, together with particulars of any action taken as a result of such visit.

REVIEW OF CASES

28. (1) A health board which has placed a child in a unit shall arrange for the case of the child and, in particular, the plan for the care of the child prepared under regulation 26 to be reviewed by an authorised officer as often as may be necessary in the particular circumstances of the case but, in any event, at intervals not exceeding one month after the date in which the child was first placed in the unit and once every month thereafter.

(2) Where a health board initiates a review of the case of a child in a unit, the board shall consult the manager and, in so far as is reasonably practicable, the child and his or her parents or guardian and any guardian *ad litem* or legal representative of the child and afford them an opportunity to be heard in person at the review or otherwise to be consulted in relation to the review.

(3) The board may also consult any other person who has a *bona fide* interest in the child or who because of his or her knowledge of the child or the child's family or his or her expertise could in the opinion of the board assist in the review.

(4) In reviewing the case of a child in a unit, the health board shall, having regard to—

- (a) any views or information furnished by the child, the parents or guardian of the child and any guardian *ad litem* or legal representative of the child and any other person whom the board has consulted in relation to the review,
- (b) a report from the unit in which the child is placed,
- (c) a report of a visit to the child in accordance with regulation 27,
- (d) in the case of a child attending school, the latest available school report relating to the child, and
- (e) any other information which in the opinion of the board is relevant to the case of the child,

consider—

- (i) whether all reasonable measures are being taken to promote the health, safety, development, welfare and security of the child,
- (ii) whether the care being provided for the child continues to be suitable to the child's needs,
- (iii) whether the circumstances which led to the granting of a special care order have changed and whether it is necessary to continue to detain the child in the unit,
- (iv) whether it would be appropriate to place the child in other accommodation in accordance with section 23B(7)(a), and

(v) in the case of a child who is due to leave the care of the health board the child's need for assistance in accordance with the provisions of section 45 of the Act.

(5) Decisions taken by a health board as a result of a review under this regulation shall be made known by the board to the manager and, so far as reasonably practicable, to the child and his or her parents or guardian or any guardian *ad litem* of the child, any other person who the board considers ought to be informed.

(6) A note of every review under this regulation shall be entered in the case record relating to the child, together with particulars of any action taken as a result of such review.

SPECIAL REVIEW

29. (1) A child or his or her parents or guardian or any guardian *ad litem* or legal representative of the child or any other person having a *bona fide* interest in the case of a child placed in a unit, may make a request in writing to the health board that placed the child in the unit to carry out a review of the case of the child and the board shall accede to such request unless it considers, having regard to the available information and reports on the child, that a review is unnecessary.

(2) Where a health board declines to accede to a request to review the case of a child in a unit, the board shall inform in writing the person who made the request of its decision and the reasons for not acceding to the request.

(3) The relevant provisions of regulation 28 shall apply to a review carried out by a health board under this regulation with any necessary modifications.

ABSENCE WITHOUT AUTHORITY

30. (1) A child placed in a unit shall not leave the unit save with the express permission of the manager or the health board that placed the child in the unit or where he or she is being discharged from the unit in accordance with regulation 31.

(2) The manager shall ensure that there are written procedures in place to notify the Garda Síochána, the health board in whose functional area the unit is and the health board that placed the child in the unit, in the event of a child being absent without permission from the unit.

(3) Where a child is absent without permission the health board that placed a child in a unit shall, as soon as is reasonably practicable, notify the child's parents or guardian and any guardian *ad litem* or legal representative of the child.

(4) A health board in placing a child in a unit may make an arrangement with the manager of the unit authorising him or her to notify the parents or guardian and any guardian *ad litem* or legal representative of the child of any absence without authority of the child being placed in the unit.

DISCHARGE

31. (1) A child shall not be discharged from a unit save that:–

- (a) the child has reached eighteen years of age, or
- (b) the interim special care order or special care order made in respect of the child ceases to be in force, or
- (c) a court has discharged the interim special care order or special care order in accordance with section 23B(5) or section 23F of the Act, or
- (d) the board responsible for placing the child in the unit has made on a temporary basis other arrangements for the child in accordance with section 23B (7)(a) of the Act, or
- (e) the board responsible for placing the child in the unit has made arrangements for the temporary release of the child in accordance with section 23B (7)(b) of the Act.

(2) Where a child is about to be discharged from a unit the board which placed the child in the unit shall inform the manager of its intention to remove the child from the unit and the reason thereof and the manager shall discharge the child into the care of the health board on such date and at such time and place as may be agreed between the board and the manager, subject to the provisions of the special care order or interim special care order.

(3) Where a child is to be discharged from a unit by the health board, that placed the child in the unit and if that board is not the board in whose functional area the unit is in, the manager shall inform the latter board and that board shall note the release of the child in the register maintained under regulation 24.

(4) This regulation is without prejudice to the power of a health board to apply for an order under Part III, IV or IVA of the Act.

CERTIFICATION OF UNIT

32. (1) A unit may not accept any child in respect of whom an interim special care order or a special care order has been made save that the unit is certified in accordance with section 23K of the Act.

(2) A certificate issued in respect of a unit shall be in the form set out in the schedule to these regulations.

INSPECTION ON BEHALF OF MINISTER

33. A person authorised by the Minister, under section 69 of the Act, may inspect, at any time the practices and procedures operated by a health board in relation to the placement of children in the unit and in relation to the operation by a voluntary body or other person of a unit in its functional area and may, in particular–

- (a) enter, at any time, any unit maintained by the board under the Act and make such examination into the state and management of the unit and the treatment of the children therein as the authorised person thinks fit, and
- (b) examine relevant records (including any care record, register, case record, care plan or any other record kept by the board or boards under regulations 20, 24, 25 and 26) and obtain copies of any such records or extracts therefrom and interview such members of the staff of the board who are involved in services provided by the unit, staff of the unit, children placed in the unit and any other person as the authorised person thinks fit.

INSPECTION BY AUTHORISED OFFICER

34. (1) Where a voluntary body or any other person provides and operates a unit in accordance with section 23K(1)(b) of the Act the registered proprietor and the manager or any member of staff of a unit shall at any time:-

- (a) permit an authorised officer from the health board in whose functional area the unit is located or from a health board on whose behalf the unit is being provided and operated to enter and inspect the unit and make such examination into the state and management of the unit and the treatment of the children therein, as the authorised officer thinks fit and they shall afford the said officer such facilities and information as he or she may require for that purpose, and
- (b) permit an authorised officer to examine records kept by the unit and to obtain copies of any such records or of extracts therefrom.
- (c) permit an authorised officer to interview staff and children placed in the unit.

REQUIREMENT TO PROVIDE INFORMATION

35. A health board or voluntary body or any other person who provides and operates a unit shall, if so directed, provide a person authorised by the Minister or an authorised officer from the health board in whose functional area the unit is located or from a health board on whose behalf the unit is being provided and operated with any reports or statistics in relation to the performance of the unit, that he or she may require.

ASSIST IN INSPECTION

36. A person authorised by the Minister or an authorised officer of a health board may ask any other person to accompany or assist him or her in an inspection carried out under regulation 33 or 34.

SUPPORT SERVICES

37. (1) A health board which places a child in a unit shall make available to the unit such support services as the board considers necessary to enable the unit to take care of the child that it has placed in it.

(2) A health board may arrange, with the agreement of the health board in whose functional area the unit is, for some or all of the functions assigned to it under these regulations, except those set out in paragraph (4), to be carried out by the latter health board.

(3) Any agreement under paragraph (2) shall be in writing and noted in the care plan for the child drawn up under regulation 26.

(4) Notwithstanding paragraph (2) a health board may not arrange for another health board to perform its responsibilities under regulations 26, 27, 28 and 29.

ARRANGEMENTS WITH VOLUNTARY BODIES AND OTHER PERSONS

38. (1) A health board may, in accordance with section 9, subject to the provisions of section 23K (9) of the Act, make arrangements with voluntary bodies or other persons to assist the board in the performance of its functions under these regulations provided the board is satisfied that those bodies or other persons are competent and qualified by their training and experience to undertake such work.

(2) A health board in making an arrangement with a voluntary body or any other person under paragraph (1) shall have a written agreement with that voluntary body or any other person regarding the operation and staffing of the unit and any other matters relating to the implementation of these regulations or any directions made by the Minister under section 69 of the Act.

FUNCTIONS OF CHIEF EXECUTIVE OFFICER

39. The functions of a health board under these regulations shall be functions of the chief executive officer of the board or any person acting as deputy chief executive officer in accordance with section 13 of the Health Act 1970 as amended.

ISSUING OF DIRECTIONS AND APPOINTMENT OF AUTHORISED OFFICERS BY CHIEF EXECUTIVE OFFICER OF HEALTH BOARD

40. The chief executive officer of a health board

(a) shall appoint such and so many of the officers of the health board as he or she thinks fit to be authorised officers to carry out functions on behalf of the board concerned in relation to these regulations and

(b) may give directions in accordance with the provisions of these regulations.

SCHEDULE

DEPARTMENT OF HEALTH AND CHILDREN

PART IVA OF THE CHILD CARE ACT 1991

AS INSERTED BY SECTION 16 OF THE CHILDREN ACT 2001

CERTIFICATE OF APPROVAL OF A SPECIAL CARE UNIT

The Minister for Health and Children in exercise of the powers vested in him by section 23K of the Child Care Act 1991, as inserted by section 16 of the Children Act 2001, hereby approves of:

.....

[Name of special care unit]

.....

[Address of special care unit]

provided by

as a special care unit for the purpose of Part IVA of the Act.

Given under my official seal this

___ day of ___

Minister for Health and Children

Given under my hand,

24th day of September 2004

BRIAN LENIHAN

Brian Lenihan

Minister of State at

The Department of Health and Children

EXPLANATORY NOTE.

(This note is not part of the instrument and does not purport to be a legal interpretation)

These regulations set out various requirements to be complied with by health boards in relation to the placing of children in special care units, the conduct of special care units provided by health boards or a voluntary body or any other person, the care, the supervision, visiting and review of children placed in special care units and the discharge of children from such units, in accordance with the relevant provisions of the Child Care Act 1991 as amended by the Children Act 2001.