EXPLANATORY MEMORANDUM TO

The Regulation and Improvement Authority (Independent Health Care) (Fees and Frequency of Inspection) (Amendment) Regulations (Northern Ireland) 2011

2011 No. 17

1. **Introduction**

1.1 This Explanatory Memorandum has been prepared by the Department of Health Social Services and Public Safety to accompany the Statutory Rule (described above) which, subject to negative resolution, is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under the Articles 2 (2), (7) to (9), 6(1)(e),13(2),16(3) and (5),17(3),23 (1), (2) (a) to (d) and (f) to (j), (3) (5), (7)(a) to (h), (j) and (k),25 (1),30,31 (1),32,40(7) and 48(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 ("the Order").

1.3 **The Rule is to come into operation on 1st April 2011.**

1.4 The Independent Health Care Regulations (Northern Ireland) 2005 (No. 174) [the 2005 Regulations] were introduced on 1st April 2005 to regulate independent health care providers in Northern Ireland. [Independent health care providers encompass eg independent hospitals, clinics and medical agencies – See also meaning of Independent Health Care at paragraph 3 below].

2. The Department proposes, subject to consultation:

2.1 **Modification of Article 2 (7) of the Order**

(i) to modify Article 2 (7) (b) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 to substitute "(b) dental treatment under anaesthesia or sedation" with the words:
"(b) dental treatment"
thereby ensuring that all forms of private dental treatment, including orthodontics, are subject to regulation by the Regulation and Quality Improvement Authority[RQIA]. - This modification is effected by inserting new Regulation 4A into the 2005 Regulations as contained in Regulation 2 (5) of the 2011 Regulations.
[NB: The Order provides at Article 2 (9) that regulations may modify the definition of "listed services" in paragraph (7).

Regulation 2 (5) of these proposed 2011 amending Regulations is the vehicle by which paragraph (7) of Article 2 of the Order is amended],

(ii) and to further amend the Independent Health Care Regulations (Northern Ireland) 2005 (the 2005 Regulations) along the following lines:

2.2 **Regulation 3 (Exceptions to the Definition of Independent Hospital) of the 2005 Regulations**

(i) to clarify Regulation 3 (h) of the 2005 Regulations in relation to surgeries or consulting rooms which are excepted from the definition of Independent Hospitals, where medical practitioners provide services only under arrangements made by employers and certain others [inserted by Regulation 2 (3) (b) of the 2011 Regulations] , and

(ii) to add a further exception to the definition of "independent hospital" in relation to dentists delivering exclusively HSC related dental services.[inserted by Regulation 2(3) (b) of the 2011 Regulations]

2.3 **Regulation 4 (Prescribed techniques or technology) of the 2005 Regulations**

Haemodialysis & Peritoneal Dialysis

(i) to include in "listed services" under the Order, for purposes of regulation as "independent hospital", treatments not carried out within the HSC, such as haemodialysis and peritoneal dialysis **(not previously regulated in Northern Ireland)** [inserted by Regulation 2 (4) of the 2011 Regulations]. Such treatment can be carried out in other parts of the UK in the independent sector in a range of settings (eg Butlins; Scout Association Voluntary homes and private satellite units) where dialysis is provided under contract to the Health Service. The provision does not apply in a patient's home. The provision is intended to assure, if and when they exist, that providers in Northern Ireland meet appropriate standards of quality and safety.

Hyperbaric Oxygen Therapy

(ii) to include, for purposes of regulation as "independent hospital", certain hyperbaric oxygen therapy delivered in sealed compressed air chambers delivering oxygen under higher than atmospheric pressures and which takes place under medical supervision, **not previously regulated in Northern Ireland.** Such independent facilities do not presently exist in Northern Ireland) eg chambers used to treat decompression illness in divers; crush injury; thermal burns) [inserted by Regulation 2 (4) of the 2011 Regulations].

[NB: Hyperbaric oxygen therapy offered to eg MS sufferers, which are not necessarily carried out under medical supervision and which because of their nature are subject to a range of rigorous, regular

inspections in order to satisfy maintenance, insurance and health and safety requirements will not be subject to regulation.

2.3 **Regulation 5 (Meaning of independent clinic) of the 2005 Regulations**
To clarify and expand exceptions in the definition of an "independent clinic" where medical services are provided only under arrangements made by employers, government departments, prisons or insurance providers [inserted by Regulation 2 (6) of the 2011 Regulations].

2.4 **Regulation 6 (Exception of undertaking from the definition of independent medical agency) of the 2005 Regulations**
To substitute regulation 6, in order to clarify and expand exceptions from the definition of "independent medical agency" where medical services are provided only by a medical practitioner under arrangements by employers, government departments, prisons or insurance providers [substituted by Regulation 2 (7) of the 2011 Regulations .

2.5 **New Regulation 9A (Requirements for statements of policies and procedures)] to the 2005 Regulations** is inserted to require certain policies and procedures to be implemented in relation to arrangements for patients [inserted by Regulation 2 (8) of the 2011 Regulations]. This provision is considered particularly important in anticipation of the arrival of private mental health hospitals into Northern Ireland and, in order to have the provisions in place, in the event, although this provision will apply to any private hospital. [A Private Hospital is defined in the Order as a "hospital which is not vested in the Department or managed by an HSS trust" See also new Regulations 39A to 39 E below applying specifically to mental health hospitals].

2.6 **New Regulations 39A to 39 E (Requirements applying to mental health hospitals)**
New regulations to apply to independent mental health hospitals, in anticipation of their arrival to Northern Ireland, and in order to have the provisions in place [inserted by Regulation 2 (9) of the 2011 Regulations. [See also new Regulation 9A above, applying also to independent hospitals as appropriate].

2.7 **Regulation 42 (Offences)** is substituted to include contravention of relevant additional regulations as an offence [inserted by Regulation 2 (10) of the 2011 Regulations].

2.8 **Schedule 2** (Information required in respect of persons seeking to carry on, manage or work at an establishment or agency) is amended to up-date requirements under the Police Act provisions [inserted by Regulation 2 (11)) of the 2011 Regulations].

2.9 **Schedule 3** is amended for the purposes outlined in paragraph 2.6 and to increase time-scales for retention of certain records.

2.10 **Amendment of the Regulation and Improvement Authority (Fees and Frequency of Inspection) Regulations (Northern Ireland) 2005**.

These Regulations are amended to provide for annual fee charges to private dental establishments according to the number of dental practitioner chairs.

3. Statutory Background

3.1 Meaning of Independent Health Care

Independent clinics, hospital and medical agencies must be registered with the Regulation and Quality Improvement Authority.

3.2 The Order defines "**Independent clinic"** as an establishment of a prescribed kind* (not being a hospital), in which services are provided by medical practitioners (whether or not any services are also provided for purposes of the establishment elsewhere), but an establishment in which, for the purposes of which, services are provided by medical practitioners in pursuance of the Health and Personal Social services (Northern Ireland) Order 1972 ….is not an independent clinic"
(* establishments are prescribed within the Independent Health Care Regulations (Northern Ireland) 2005 as:
"(a) a walk-in centre, in which one or more medical practitioners provide services of a kind which, if provided in pursuance of the 1972 Order, would be provided as primary medical services; and
(b) a surgery or consulting room in which a medical practitioner who provides no services in pursuance of the 1972 Order provides medical services of any kind (including psychiatric treatment) otherwise than under arrangements made on behalf of the patients by their employer or another person ."

3.3 An **"independent hospital"** is defined in the 2005 Regulations as "a hospital* which is not vested in the Department or managed by an HSS trust". ("hospital" is separately defined in the Order)

3.4 An "**independent medical agency**" means…an undertaking (not being an independent clinic) which consists of or includes the provision of services by medical practitioners, but if any of the services are provided for the purposes of an independent clinic, or by medical practitioners in pursuance of the Health and Personal Social Services (Northern Ireland) Order 1972, it is not an independent medical agency.

3.5 Fee charges

Article 17 (3) of the Order provides for annual fees to be prescribed in regulation for purposes of registration with the RQIA. The Fees and Frequency of Inspection Regulations (Northern Ireland) as amended, provide for the charging of fees.

An amendment to the Regulation and Improvement Authority (Fees and Frequency of Inspections) Regulations (Northern Ireland) 2005 is also be made to correspond.

A fee of £952 for initial registration will be charged by the Regulation and Quality Improvement Authority in accordance with the Regulations. Thereafter an annual fee of £46 per approved place or dental chair will be charged. Fee charges are subject to review.

4. Enforcement Sanctions and Offences

Article 12 (Requirement to register) of the Order provides at paragraph (1) that any person who carries on or manages an establishment or agency without being registered with the RQIA is guilty of an offence. Independent Health Care providers fall within this provision.

5. Matters of Special Interest to the Health and Personal Social Services and Public Safety Committee

None.

6. Consultation

The Department consulted with all dentists, independent health care providers and bodies which have an interest in the provision of independent mental health hospitals in Northern Ireland during a twelve week period from 26th July 2010 until 15th October 2010.

7. Position in Great Britain

Private dentistry

The Department of Health in England proposes from April 2011, to regulate activities under the Health and Social Care Act 2008, where the activity involves or is connected with, the provision of health or social care. This proposal will incorporate all dental and orthodontic treatments by or under the direction of a dentist or clinical dental technician, including all high street dentistry and orthodontics.

Remainder of proposed regulations

The remainder of the proposed regulations broadly reflect those currently applying in England and Wales.

8. Equality Impact

As the measure has no adverse impact upon Section 75 Groups the Department has concluded that it is not necessary to submit this matter to a full EQIA

9. **Regulatory Impact**

A regulatory impact assessment was not considered necessary as the impact of the regulations will have no adverse impact upon business, charities or voluntary bodies.

10. **Financial implications**

Private dental establishments will be charged a fee for initial registration. Where an establishment has a separate practice manager that individual will also be charged a fee for registration. Annual renewal of registration will be charged according to the number of dental chairs.[See Fee Charges at paragraph 3.5].

Similarly independent mental health hospitals will be charged initial registration fees and thereafter a fee per bed for annual renewal of registration.

11. **Section 24 of the Northern Ireland Act (Fair Employment)**

The proposed legislation is considered compatible with Section 24 of the Northern Ireland Act 1998.

12**.** **E.U implications**

None.

13. **Additional Information**

None