

**2008 No. 3080**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The National Child Measurement Programme Regulations 2008**

*Made* - - - - 27th November 2008

*Laid before Parliament* 4th December 2008

*Coming into force* - - 5th January 2009

The Secretary of State for Health, in exercise of the powers in sections 7, 8, 19, 272 and 273(4) of, and paragraph 7B of Schedule 1 to, the National Health Service Act 2006(a), makes the following Regulations:—

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Child Measurement Programme Regulations 2008 and shall come into force on 5th January 2009.

(2) In these Regulations—

“the Act” means the National Health Service Act 2006;

“height measure” means a stadiometer on which a person stands to be measured by means of a vertical rule and a sliding horizontal rod or paddle;

“the National Child Measurement Programme” means the annual programme under which Primary Care Trusts weigh and measure children in schools;

“parent” in relation to a relevant child includes any person who has parental responsibility for, or has care of, the child and, in determining whether a person has care of the child, any absence of the child at a hospital or boarding school and any other temporary absence shall be disregarded;

“parental responsibility” has the same meaning as in section 3 of the Children Act 1989(b);

“process” and “processed” are to be interpreted in accordance with the meaning of “processing” in section 1(1) of the Data Protection Act 1998(c);

“reception year” means the school year in which the majority of the children are aged either 4 or 5 years;

“relevant child” means a child in the reception year or year 6;

“relevant health professional” means a registered medical practitioner or a registered nurse;

“scales” means an electronic device on which a person stands to be weighed;

“school year” has the same meaning as in section 579(1) of the Education Act 1996(d); and

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(a) 2006 c.41; paragraph 7B was inserted by section 143(1) of the Health and Social Care Act 2008 c.14; and *see* section 275(1) for the definition of “regulations”.

(b) 1989 c.41.

(c) 1998 c.29.

(d) 1996 c.56.

“year 6” means the school year in which the majority of the children are aged either 10 or 11 years.

### **Gathering and further processing height and weight information**

2.—(1) Subject to paragraph (4) and to any directions given by the Secretary of State, the functions of the Secretary of State under paragraph 7A(1) and (2) of Schedule 1 to the Act<sup>(a)</sup>, to make arrangements with local education authorities and proprietors of independent schools to weigh and measure children, are to be exercisable by Primary Care Trusts in relation to schools present in their area.

(2) Each Primary Trust may, as provided for under such arrangements, weigh and measure children and further process resulting information for the purposes of the National Child Measurement Programme where the conditions laid down in paragraph (3) are met.

(3) The conditions are —

- (a) the child to be weighed and measured is a relevant child who is able and willing to stand unaided on scales and under a height measure;
- (b) a parent of the relevant child has not withdrawn the child from participation in the weighing and measuring exercise;
- (c) the weighing and measuring exercise is conducted in a room or screened area where information on the measurements is secure and cannot be seen or heard by anyone who is not assisting in the conduct of the exercise or overseeing it; and
- (d) the arrangements are managed on behalf of the Primary Care Trust by a relevant health professional.

(4) The functions exercisable by a Primary Care Trust under these Regulations may, by arrangement with that trust and subject to such restrictions and conditions as it may think fit, be exercised by another Primary Care Trust.

### **Parental involvement**

3.—(1) A Primary Care Trust which is conducting a weighing and measuring exercise for the purposes of the National Child Measurement Programme under arrangements made under paragraph 7A(1) or (2) of Schedule 1 to the Act must take steps to give each parent of a relevant child to whom such exercise relates a reasonable opportunity to withdraw their child from participation in the exercise.

(2) When conducting such a weighing and measuring exercise, a Primary Care Trust must take steps not to record or otherwise process any information in relation to a relevant child where it is aware that a parent has withdrawn that child from participation in the exercise.

### **Additional purposes for which information may be processed**

4. Information gathered in accordance with these Regulations may be further processed by or on behalf of a Primary Care Trust with a view to—

- (a) releasing it, together with advisory material relating to children’s weight, to a parent of the relevant child to whom it relates;
- (b) providing advice to a parent of the relevant child in relation to such information;
- (c) releasing the information in a form in which the child cannot be identified to a relevant health professional, or to a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if that person were a relevant health professional, for use in accordance with good practice for surveillance, research, monitoring or audit and the planning of health services.

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(a) Paragraph 7A was inserted by section 143(1) of the Health and Social Care Act 2008.

Signed by authority of the Secretary of State.

27th November 2008

*Dawn Primarolo*  
Minister of State,  
Department of Health

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations which apply only to England are made under the National Health Service Act 2006 (“the Act”). They provide for the functions of the Secretary of State under paragraph 7A(1) and (2) of the Act, to make arrangements with local education authorities and proprietors of independent schools to provide for the weighing and measuring of children in schools, to be exercisable by Primary Care Trusts. The Regulations make provision for the gathering and further processing of information under the National Child Measurement Programme (NCMP) (an annual programme under which Primary Care Trusts weigh and measure children in schools).

Regulation 1 includes definitions of parent (which includes carers) and relevant child (defined as a child in reception year or year 6).

Regulation 2 provides for the functions of the Secretary of State under paragraph 7A(1) and (2) of the Act to be exercisable by Primary Care Trusts. It specifies the children whose height and weight information may be gathered and further processed for the purposes of the NCMP as all relevant children who are able and willing to stand unaided to be measured and weighed, other than those who have been withdrawn from the NCMP by their parents. It also specifies the manner in which the information is to be gathered.

Regulation 3 makes provision for parents to have an opportunity to “opt-out” their child from the NCMP.

Regulation 4 sets out the purposes for which information gathered under the Regulations may be further processed. Those purposes are: the release of height and weight information, together with related advisory material, to the parent of a child who has participated in the NCMP; providing advice to such a parent in relation to such information; and, the release of such information, in a form in which an individual child cannot be identified, to relevant health professionals and other persons under similar obligations of confidence where making the information available is required for surveillance, research, monitoring or audit (including research into the causes and effects of weight related problems and the facilities and treatments which might be made available to such persons) and the planning of health services.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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STATUTORY INSTRUMENTS

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£4.00