

**EXPLANATORY MEMORANDUM TO**

**THE CARE STANDARDS ACT 2000 (ENFORCEMENT OF CARE STANDARDS) (NOTIFICATION) (ENGLAND) REGULATIONS 2011**

**2011 No. 552**

1. This explanatory memorandum has been prepared by the Department for Education (DfE) and is laid before Parliament by Command of Her Majesty.
  
2. **Purpose of the instrument**
  - 2.1 Under section 30A of the Care Standards Act 2000 (“the CSA”) the registration authority (Her Majesty’s Chief Inspector for Education, Children’s Services and Skills (“HMCI”) in relation to establishments and agencies in England) must notify all local authorities in England and Wales when certain action has been taken against a person carrying on or managing an establishment or agency (“P”). That action is set out in section 30A(2). These Regulations set out the information which must be contained in such notifications. Section 30A(3) imposes a further duty on the registration authority to inform local authorities when the authority becomes aware of prescribed circumstances relating to P. The Regulations prescribe those circumstances.
  
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
  
4. **Legislative Context**
  - 4.1 The Children and Young Persons Act 2008 (“CYPA”) introduced a package of measures designed to strengthen the types of enforcement action available to HMCI where providers are not meeting certain requirements and standards. New provisions included in CYPA amended the CSA to increase the range of enforcement options open to HMCI by giving HMCI the power to serve a notice on P where they are failing to comply with certain requirements imposed on them under the new section 22A and to restrict new admissions to children’s homes and residential family centres under new section 22B.
  - 4.2 Section 30A of the CSA (inserted by section 29 of the CYPA) introduces a notification procedure. The procedure applies where the registration authority has adopted a proposal under section 17(4)(a) to cancel P’s registration, has brought proceedings against P for a ‘relevant offence’

4.3 The Regulations also prescribe the circumstances relating to P which trigger notifications under section 30A(3) of the CSA.

## **5. Territorial Extent and Application**

5.1 These Regulations apply in relation to England only. The Welsh Ministers will be making Regulations under section 30A CSA (the registration authority in relation to establishments and agencies in Wales is the National Assembly for Wales).

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 All local authorities in England and Wales will be informed when HMCI has taken any of the actions specified in order to ensure that the authority has up to date information on which to base decisions in relation to the establishment or agency – for example whether they wish to continue using the establishment or agency. That decision will be a matter for the authority. Under regulation 28 of the Care Planning, Placement and Case Review (England) Regulations 2010 (frequency of visits) (“the 2010 Regulations) where the local authority has placed a child in a children’s home and has received a section 30A notification which refers to that home the authority is required to ensure that a representative visits the child as part of their arrangements for supervising the child’s welfare within one week of first receiving that notification. If as a result of the visit the authority’s assessment is that the child’s welfare is not adequately safeguarded and promoted by the placement the authority must review the child’s case in accordance with the 2010 Regulations.

7.2 The policy intention is to ensure that all local authorities in England and Wales are made aware of action taken by HMCI that may be relevant to their decision to use or continue to use the establishment or agency in question. It is intended that this information will raise standards and enable authorities to make better-informed decisions about the provision they use.

## **8. Consultation outcome**

8.1 The then Department for Children, Schools and Families undertook a 12 week consultation in February 2010. There was a limited response to the consultation. The draft Regulations were welcomed by stakeholders.

8.2 One concern was that where the action taken by the registration authority was successfully challenged on appeal the fact that a notification had been sent out at all may still count against the home in what was perceived to be a ‘no smoke without fire’ culture. However the notification process has been designed to ensure that the reputation of the establishments and agencies is protected by providing that LAs are notified as soon as practicable where P challenges HMCI’s decision or action. LAs will also be notified of the outcome of any appeal to a Tribunal or the Court. These additional notifications should safeguard against any potential risk to P’s reputation.

## **9. Guidance**

9.1 No guidance is being produced by the Department but HMCI has amended its Handbook to include guidance on the use of the new enforcement powers and the notification requirements. This information is also available on HMCI’s website.

## **10. Impact**

10.1 The impact on businesses, charities or voluntary bodies is minimal.

10.2 The impact on the public sector is below the 5 million pound threshold and therefore out of scope of an impact assessment.

10.3 An impact assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 It is essential that local authorities in England and Wales base their decisions on accurate and up to date information and the notification procedure set out in these Regulations aims to ensure that this is the case.

12.2 DfE will continue to work with HMCI to review the processes for notification to ensure that they are robust and to monitor the level of information required in the notifications to ensure it continues to be appropriately regulated.

### **13. Contact**

- 13.1 Contact **Shelley Stewart-Murray** at the Department for Education, Tel: 020 7783 8089 or email: [shelley.stewart-murray@education.gsi.gov.uk](mailto:shelley.stewart-murray@education.gsi.gov.uk) with any queries regarding this instrument.