

EXPLANATORY MEMORANDUM TO
THE PROVIDERS OF SOCIAL WORK SERVICES (ENGLAND) REGULATIONS 2013

2013 No. 2668

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument sets out the fitness requirements for organisations exercising certain social care functions on behalf of local authorities (providers of social work services). These requirements apply to those carrying on and/or managing such an organisation, their employees and the premises from which they operate. The instrument also sets out the process and requirements for obtaining and maintaining registration as a provider of social work services with Her Majesty's Chief Inspector of Education, Children's Services and Skills ('HMCI').

2.2 The instrument also disapplies the Care Standards Act (Registration) (England) Regulations 2010 in relation to these providers in favour of these new regulations.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Part 1 of the Children and Young Persons Act 2008 ("the 2008 Act") enables local authorities to delegate specified relevant care functions to a provider of social work services. Part 1 has to date only been brought into force for piloting purposes, but the Government is bringing it fully into force in England before sunset provision would otherwise take effect on 13 November 2013.

4.2 The relevant care functions of a local authority which may be delegated to a provider of social work services are its social services functions in relation to individual children who are looked after by it and its functions in relation to former looked after children (under sections 23B to 24D of the Children Act 1989).

4.3 Commencing Part 1 will also bring into force the requirement in section 4 of the 2008 Act that providers of social work services must be registered as agencies (to the extent that they are not already registered as establishments) with HMCI under the Care Standards Act 2000. In late July 2013 the Delegated Powers and Regulatory Reform Committee recommended that a Legislative Reform Order seeking to remove this requirement should not be made. Consequently this instrument is needed to set out

registration and fitness requirements for persons who wish to enter into arrangements with local authorities as providers of social work services.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 The Government intends to bring Part 1 of the 2008 Act fully into force by 12 November 2013. This will enable local authorities to delegate the care functions specified in the 2008 Act (currently social services functions in relation to looked after children and care leaver functions) to an independent provider of social work services.

7.2 The 2008 Act requires registration by Her Majesty's Chief Inspector of such providers. This instrument sets out the minimum fitness requirements and the process for achieving registration.

7.3 We do not anticipate large scale moves towards the delegation of local authority functions and associated registration immediately, but are confident that a number of local authorities and providers will wish to take advantage of the new flexibilities in the first year. Others might be expected to follow suit in future years if these approaches yield the benefits anticipated.

7.4 The level of public interest in this policy is relatively low. There have now been two open consultations on the principle of registration and the detailed regulations. The first attracted just 20 responses, the latter 24.

- Consolidation

7.5 For the most part these regulations stand alone, although they do make minor amendments to the Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) Regulations 2007.

8. Consultation outcome

8.1 A consultation exercise was conducted between 19 September and 9 October 2013. Consultation timings were necessarily compressed as a result of sunset provision in the 2008 Act and decisions taken following the comments of the Lords Committee on

the proposed Legislative Reform Order. The consultation was published on the Department for Education website, and likely interested parties were notified directly. These included:

- All respondents to the January consultation on delegation of functions
- All LAs participating in pilot arrangements
- All LAs who had expressed an interest in participating in pilot arrangements
- All providers participating in pilot arrangements.
- All providers who had expressed an interest in participating in pilot arrangements.
- The Association of Directors of Children's Services
- The Local Government Association
- Social Worker Representative organisations
- Provider representative organisations
- Children's representative organisations
- Members of the pilot evaluation team
- Members of the expert group advising on pilot and evaluation arrangements
- Members of the Social Work Reform Board
- Ofsted

8.2 A total of 24 responses were received.

- five from current or former social work academics
- four from potential providers
- four from local authorities
- four from organisations representing social workers
- two from organisations representing children
- two from interested members of the public
- one each from ASCL, Ofsted and the Fostering Network.

8.3 There is near universal support for the principle of regulations in these circumstances – of those who answered the relevant questions, 100% agreed that requirements should be placed on the fitness of the registered provider, the manager and employees, and all but one agreed with requirements on the providers premises.

8.4 When it came to the detail of the regulations there was also broad support for the proposal with 67% agreeing with the requirements of the registered provider, 59% agreeing with those of the registered manager, 50% agreeing with those of employees, 72% agreeing with those dealing with staff employment and 80% agreeing with those concerning the provider's premises. Some amendments have been made to the regulations concerning premises, and those covering the registration process to reflect consultation responses. Other detailed points are either already covered in the proposed regime, or fall outside the scope of fitness and registration regulations.

8.5 Of those who answered the relevant question 88% agreed that charging a registration fee was appropriate, while the remaining 12% were unsure.

8.6 Of those answering this question 79% agreed with transitional provisions for Social Work Practice pilot sites.

9. Guidance

9.1 Local authorities and potential providers will be informed through the Department for Education's website, and Ofsted's publication of its registration mechanism.

10. Impact

10.1 The impact on business, charities or voluntary bodies is to set the requirements they must meet in order to secure registration as a provider of social work services. The ability to provide certain social care functions on behalf of local authorities has not previously been available to these bodies.

10.2 The impact on the public sector is to make clear to local authorities the requirements a provider of social work services must meet before it can secure registration and take on the provision of certain local authority social care functions. Local authorities have not previously been able to delegate relevant care functions to these bodies except in relation to certain adoption functions where the other party to the arrangements is a registered adoption society.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to keep the fitness and registration requirements to the minimum required to effectively manage the registration regime.

11.3 The basis for the final decision on what action to take to assist small business was taken following open consultation on the proposed regulations. These regulations are part of wider proposals which for the first time will allow the independent and voluntary

sector to take on certain social care functions on behalf of local authorities. In that context the legislation is deregulatory. Consultation responses included 4 submissions from potential providers, all of which were supportive of the proposed arrangements.

12. Monitoring & review

12.1 The purpose of this instrument is to introduce a registration regime in relation to providers of social work services who enter into delegation arrangements with local authorities under Part 1 of the 2008 Act. We intend to monitor the extent to which local authorities delegate functions to providers under the 2008 Act, including through analysis of Ofsted inspection reports.

13. Contact

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