

EXPLANATORY MEMORANDUM TO
THE CARE STANDARDS ACT 2000 (REGISTRATION) (ENGLAND)
(AMENDMENT) REGULATIONS 2013

2013 No. 446

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 These Regulations amend regulation 7 of the Care Standards Act 2000 (Registration) (England) Regulations 2010 (“the Registration Regulations”) in order to allow Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (“HMCI”) to share the names and addresses of children’s homes with the police, the Office of the Children’s Commissioner and the Secretary of State for Education.

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

3.1 None.

4. Legislative context

4.1 A person who carries on or manages a children’s home without being registered commits an offence under section 11 of the Care Standards Act 2000 (“the CSA 2000”). HMCI is the registration authority for a range of agencies and establishments, including children’s homes and must keep a register in respect of those agencies and establishments under regulation 7 of the Registration Regulations. HMCI is required, under section 36(1) of the CSA 2000, to make copies of those registers available at its offices to any person. That subsection also provides that any person who asks HMCI for a copy of, or an extract from, a register, shall be entitled to have one.

4.2 Section 36(3) provides that the duty at subsection (1) shall not apply in such circumstances, or to such parts of the register, as may be prescribed by regulations. Regulation 7(5) of the Registration Regulations is made under that regulation making power. It provides that, when HMCI make the register in respect of a children’s home available for inspection at its offices, or when the copies of, or extracts from, that register are being provided to any person, the information listed in paragraphs 1, 2, 3 and 10 of Schedule 5 to the Registration Regulations (such as the name and address of a children’s home) cannot be disclosed to any person other than a local authority. The effect of regulation 7(5) is that HMCI can share the full contents of the register in respect of children’s homes regularly with local authorities but cannot share all of that information in the register, on a regular basis, with the police (or any other person).

4.3 These Regulations amend regulation 7 to enable HMCI to disclose details of the names and addresses of children’s homes that are included in its register of children’s homes to the Secretary of State for Education, the chief officers of police forces and

the office of the Children's Commissioner if those persons request that information under section 36 of the CSA 2000.

5. Territorial Extent and Application

5.1 These Regulations apply in relation to England.

6. European Convention on Human Rights

6.1 As these Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 In summer 2012 Government was presented with two reports¹ highlighting the particular vulnerability of children in children's homes to being targeted for sexual exploitation. Those children placed in children's homes a long way from their home communities outside the local authorities responsible for their care could be particularly at risk

7.2 As part of its response to tackling these serious concerns, the Minister for Children made a commitment that any regulatory barriers preventing HMCI from sharing information about the location of children's homes with police forces should be removed in order to ensure that children's homes are properly protected and safely located.

7.3 The Written Ministerial Statement outlining the government's response to the two reports referred to in paragraph 7.1 can be found at:

<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120703/wmstext/120703m0001.htm>

7.4 These Regulations, therefore, amend regulation 7(5) of the Registration Regulations and will have the effect of allowing HMCI to release information about the names and addresses of children's homes in its register to chief officers of local police forces on a request to inspect the register of children's homes.

7.5 The amendments being made will also have the effect of allowing HMCI to disclose this information to the office of the Children's Commissioner and to the Secretary of State for Education. This change is needed as, if proposals introduced by the Children and Families Bill receive Royal Assent, the office of the Children's

¹ (1) The "Joint Inquiry into Children who Go Missing from Care", by the All-Party Parliamentary Groups for runaway and missing children and adults and for looked-after children and care leavers (18 June 2012). (2) The report of the office of the Children's Commissioner on emerging findings from the inquiry into child sexual exploitation in gangs and groups, which focused particularly on risks facing looked-after children living in children's homes (3 July 2012).

Commissioner will become responsible for giving advice and assistance to children and young people who are set out in new section 8A of the Bill. That includes children placed in children's homes. An aspect of that position is to seek the views of children and young people who live away from home and communicate these to local authorities, regulators and central government and to other services responsible for their welfare. The Secretary of State for Education is the Government Minister responsible for policy concerning looked after children. Disclosing the location (that is, names and addresses) of children homes to him will enhance government's understanding of the children's homes sector. In particular, this will enable his Department to carry out the necessary analytical and research work to understand this complex market and help inform the development of continuing reform work for the sector.

8. Consultation outcome

8.1 The Department for Education consulted on these Regulations for six weeks from 29 November 2012 to 10 January 2013. The Department held four consultation events attended by representatives from a very wide range of services. Forty nine written consultation responses were received from services including children's homes providers in the local authority and private sectors; children's charities; HMCI; the Child Exploitation and Online Protection Centre; the National Missing Persons Bureau and the Youth Justice Board.

8.2 94% of respondents to the consultation supported the proposal to amend the 2010 Regulations so that HMCI is able to routinely share the names and addresses of registered children's homes with the chief officers of local police forces; the OCC and the Secretary of State for Education. They saw what is being proposed as a common sense measure designed to improve how children are safeguarded at local level, as the police would know the locations of the homes of the most vulnerable children in their communities.

8.3 The response to this consultation will be available on the Department's consultation website from 28.2.2013.

9. Guidance

9.1 We do not plan to introduce guidance for practitioners on the amendments to the Registration Regulations introduced by this instrument.

9.2 However, the Department for Education, in partnership with HMCI, The Association of Chief Police Officers and other interested parties, are planning to issue a protocol that sets out the practical arrangements for sharing information held about registered children's homes' names and addresses in order to maintain appropriate confidentiality. The protocol will set out the Department's expectations as to how the information is stored, used and shared. That protocol will be in place from April 2013.

10. Impact

10.1 These Regulations are concerned with the functions of HMCI and, as such, they do not have any financial impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring and review

12.1 Once these Regulations come into force, HMCI will have the power to provide information about the names and addresses of registered children's homes to the chief officers of local police forces; to the office of the Children's Commissioner; and to the Secretary of State for Education. Once these parties have received that information from HMCI, they will be responsible for safely managing this data and complying with their duties under the Data Protection Act 1998, the Human Rights Act 1998 and the law of confidence.

12.2 Local Safeguarding Children's Boards (LSCBs) have strategic oversight of processes for safeguarding children at local authority level. LSCBs are well placed to monitor how these amendments are being implemented in practice.

13. Contact

13.1 Contact Claire Owens at the Department for Education - Tel: 01142 742712 or e-mail: Claire.Owens@education.gsi.gov.uk with any queries regarding the instrument.