

**EXPLANATORY MEMORANDUM TO**  
**THE POLICE ACT 1997 (CRIMINAL RECORDS) (AMENDMENT) (No. 3)**  
**REGULATIONS 2014**

**2014 No. 2122**

**1.** This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

**2. Purpose of this instrument**

2.1 The Police Act 1997 (Criminal Records) Regulations 2002 (“the 2002 Regulations”) set out the purposes for which an enhanced criminal record certificate may be obtained. The purpose of this instrument is to add to the list of categories of activity or work with children for which such a certificate may be required to take account of the establishment of childminder agencies (“CMAs”), and provide for proprietors and certain staff of CMAs to be eligible for enhanced certificates.

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

3.1 None

**4. Legislative Context**

4.1 Section 113B(2) of the Police Act 1997 enables the Secretary of State to prescribe the purposes for which an enhanced criminal record certificate must be provided in response to an application made to the Disclosure and Barring Service (DBS). An enhanced certificate includes, in addition to certain criminal convictions or cautions, details of any information which a chief officer of police reasonably believes to be relevant to the purpose of the application. These purposes are set out in the 2002 Regulations. Considering a person’s suitability to work with children in the circumstances set out in the 2002 Regulations is one such prescribed purpose.

4.2 This instrument supports amendments made to Part 3 of the Childcare Act 2006 (“the 2006 Act”) by sections 84 of, and Schedule 4 to, the Children and Families Act 2014. The amendments to the 2006 Act will, when they come into force on 1 September 2014, provide for the establishment of CMAs and permit any person who wishes to provide childcare on domestic premises who would otherwise be obliged to apply to register with Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (“the Chief Inspector”) to register instead with a CMA (that is an agency which is itself registered on one of the registers maintained by the Chief Inspector under Part 3 of the 2006 Act).

4.3 The amendments to the 2002 Regulations made by this instrument add to the list of circumstances in which an enhanced criminal record certificate must be provided to account for the establishment of CMAs. Registration as a CMA, management of a CMA and work for a CMA in a capacity which involves entering childcare premises are all circumstances in which such a certificate can be obtained in respect of a particular applicant.

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

5.1 This instrument applies to England and Wales.

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

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

## **7. Policy background**

7.1 CMAs will be a new type of organisation in the childcare market. They will carry out a similar role to that of the Chief Inspector in registering and inspecting childminders and will be responsible for ensuring that those they register to offer childcare provision are suitable to do so. As part of that ongoing assessment of a provider's suitability and the quality of the care and education provided, CMA monitoring staff will be making visits to childminders' homes while they are taking care of children. CMAs will themselves be registered with, and inspected by, the Chief Inspector.

7.2 The purpose of these amendments to the 2002 Regulations is to enable an enhanced criminal record certificate to be obtained in respect of any person applying for registration as a CMA. The Chief Inspector will require such certificates before making a decision on a person's suitability to register as a CMA. In the case of a body corporate seeking registration as a CMA, that will include obtaining an enhanced criminal record certificate in respect of all the directors and other officers of the company and those who are nominated to run the agency on their behalf. Similarly, by virtue of these amendments, applicants will be able to obtain an enhanced criminal record certificate in respect of work for a CMA which involves entering premises on which childcare takes place, where there is an opportunity for contact with children. It will be a requirement of a CMA's own registration that all those it appoints to work in such a capacity are subject to enhanced disclosure.

7.3 It is important that any information which a local chief officer of police reasonably believes to be relevant to any work or other activity with children is available:

i) to the Chief Inspector when making an assessment as to a person's suitability to register as a CMA (since those persons will be taking on responsibility for making decisions about the suitability of prospective childcare providers); and

ii) to registered CMAs when appointing staff to positions which enable them to make visits to childminders' homes while they are taking care of children.

## **8. Consultation outcome**

8.1 There was a consultation on the 'draft Childcare (Childminder Agencies) Regulations 2014' between 28 March and 22 May 2014. Those draft regulations made clear that an enhanced criminal record certificate would be required for registration as a CMA and appointment to certain positions within a CMA. A separate consultation on the amendment to the 2002 Regulations is not considered necessary.

## **9. Guidance**

9.1 The Government will be producing advice to assist anyone wishing to establish and operate as a CMA and childcare providers who may seek to register with a CMA. This will shortly be available via the following link:

<https://www.gov.uk/government/policies/improving-the-quality-and-range-of-education-and-childcare-from-birth-to-5-years/supporting-pages/childminder-agencies>

## **10. Impact**

10.1 An Impact Assessment has not been prepared for this instrument. No person or body is compelled to establish, or register with, a CMA and there is therefore no impact on the private or voluntary sectors. The establishment of CMAs may give rise to a small increase in the number of applications for enhanced criminal records certificates but the impact on the public sector is expected to be minimal.

## **11. Regulating small business**

11.1 The legislation applies to small businesses that register as CMAs. No specific action was taken to minimise the impact on such businesses. The legislation is required to ensure that only those suitable to work with children occupy roles in a CMA that would enable them to make visits to childminders' homes while they are taking care of children. Small businesses will be free to decide whether or not to register as a CMA. Therefore, it was not considered appropriate or necessary to differentiate between small businesses and larger businesses that register as CMAs.

## **12. Monitoring & review**

12.1 The introduction of CMAs supports the Government's aim to make more childcare available for children, and to provide more choice and flexibility for parents. It is intended that the Childcare and Early Years Provider Survey and the Early Years Annual Census will be used to monitor the effect of the regulatory changes under Part 3

of the 2006 Act. A separate review of the amendment to the 2002 Regulations is not considered necessary.

**13. Contact**

Stewart Baxter, Home Office on 0207 035 3265 for these regulations; Margaret Leopold, Department for Education on 0207 783 8004 with regard to CMAs.