



Department
for Education

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Consultation on Registration of Providers of Social Work Services

Consultation on Registration of Providers of Social Work Services

To Local authorities and LA representative bodies, (potential) providers of social work services e.g. fostering/adoption agencies, social workers and representative bodies, children in care/care leavers and representative bodies

Issued 19 September 2013

Enquiries To If your enquiry is related to the policy content of the consultation you can contact the Department on 0370 000 2288 or email:

SocialServiceFunctions.CONULTATION@education.gsi.gov.uk

Contact Details

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the Ministerial and Public Communications Division by e-mail: consultation.unit@education.gsi.gov.uk or by telephone: 0370 000 2288 or via the Department's '[Contact Us](#)' page.

1 Introduction

- 1.1 The Government is seeking views on a set of regulations around fitness and registration that will apply to organisations that discharge social care functions on behalf of local authorities.
- 1.2 In January and February of this year the Department consulted on proposals to commence Part 1 of the Children and Young Persons Act 2008 (CYPA) to allow all local authorities in England to delegate care functions to external providers of social work services. At the same time the Department consulted on using a Legislative Reform Order to remove the requirement envisaged in the CYPA for these providers to register with Ofsted (<https://www.gov.uk/government/news/proposal-to-delegate-looked-after-children-work>).
- 1.3 Following scrutiny of the second proposal, the House of Lords Delegated Powers and Regulatory Reform Committee concluded it was not appropriate to use a Reform Order to remove the registration requirement. The Government would still prefer to remove this requirement but, mindful of the Committee's recommendation, and mindful of a sunset provision contained in Part 1 of the CYPA which means that the legislation can no longer have effect if it is not brought into force by November 2013, has decided to proceed with a registration regime for the time being. It is therefore consulting on regulations for registration and fitness that will underpin this regime.

2 Summary of Proposals

- 2.1 The Department is seeking views on draft regulations concerning:
- the registration of providers of social work services;
 - the fitness of individuals to own, manage or work for a provider of social work services; and
 - the fitness for purpose of their premises.

These regulations will complement contractual arrangements between authorities and providers, helping to ensure that, where local authorities choose to delegate social care functions under the CYPA, appropriate measures are in place to protect children and young people and ensure that the provider meets the requirements of relevant legislation.

- 2.2** These regulations will apply in relation to England only.
- 2.3** We propose to give effect to these regulations before bringing Part 1 of the CYPA fully into force in England at the end of the current piloting period in November 2013. This will mean that where local authorities choose to delegate functions under the CYPA, they will only be able to do so to providers who have demonstrated to Ofsted that they meet the provisions of the regulations. We also propose transitional arrangements for those providers and authorities that have entered into delegated arrangements for piloting purposes since 2008.
- 2.4** Although the Government maintains its view that a registration regime is unnecessary in light of local authorities' obligations to impose appropriate contractual arrangements, and Ofsted's ability to hold them to account for these arrangements, it is mindful of the Lords Committee's differing view, and mindful of a sunset provision contained in Part 1 of the CYPA which means that the legislation can no longer have effect if it is not brought into force by November 2013. It has therefore decided to proceed with a registration regime for the time being and views these regulations as complementary safeguards to help ensure authorities meet all their legal duties for the appropriate discharge of these functions, and meet their obligations as the corporate parent to children in their care.

3 Background to the Policy and Legislation at Issue

- 3.1** The CYPA, has allowed certain local authorities in England to delegate relevant care functions through a contract with a provider of social work functions for a 5-year pilot period until November 2013. This has allowed these LAs a degree of flexibility in deciding how best to discharge their responsibilities to the children in their care, and to consider a range of innovative approaches to service delivery.
- 3.2** The relevant care functions which can be delegated under Part 1 are a local authority's social services functions in relation to a child who is looked after by it; and its advice and assistance functions under the Children Act 1989¹. There are a number of restrictions on the delegation of such functions², including:
- Local authority functions in relation to independent reviewing officers may not be delegated;
 - Functions as an adoption agency may only be delegated where the other party is a registered adoption society;

- Any restrictions that apply to a local authority as regards geographical operation apply also to the contracted party.
 - Delegated functions must be discharged by, or under the supervision of, a registered social worker.
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¹The advice and assistance functions under sections 23B to 24D of the Children Act 1989.

²See section 2 of the CYPA for the restrictions on delegation arrangements.

3.3 Those local authorities that have been allowed to delegate functions since 2008 have been supported by Government to develop a Social Work Practice model of service delivery under the devolved functions allowed by the CYPA. Under this model a small, autonomous, social worker led "professional practice", often based on a social enterprise, a co-operative, or a voluntary or private organisation operates outside the hierarchy of LA decision making, has greater autonomy budgetary control, and is able to work more closely and innovatively with looked after children and care leavers.

3.4 Following evaluation of the pilots (<https://www.gov.uk/government/publications/social-work-practices-report-of-the-national-evaluation>) the Government consulted early in 2013 on fully commencing part 1 of the CYPA to give all LAs the flexibility to consider whether delegation arrangements in their areas might help realise benefits. Government has decided to pursue this proposal, but not the associated proposal to remove the requirement for Ofsted registration of providers.

This consultation therefore seeks views on draft regulations concerning registration and fitness of owners, managers and workers in such providers, and the fitness of the properties from which they operate.

4 The Draft Regulations

4.1 The draft regulations can be found in the document accompanying this consultation form – The Providers of Social Work Services (England) Regulations 2013 – and should be read alongside the following explanatory text and questions.

4.2 Regulations 1 11: fitness regulations

Regulations 1 – 11 concern the fitness of those carrying on (in general the owners/directors of) a provider of social work services, the fitness of those managing such a provider, the fitness of those working for such a provider, and the fitness of the premises from which the provider operates.

4.3 Regulations 1 and 2 provide largely technical explanation of the scope of these regulations and their interpretation. Regulation 1 (2) explains that these regulations apply specifically to those providers to whom local authorities choose to delegate care functions under the 2008 Children and Young Persons Act. They are not intended to replace provisions already in effect concerning, for example, foster care and adoption.

4.4 Regulation 3 places requirements on the fitness of those carrying on an enterprise that is a provider of social work services (described as the registered provider). It requires them to be of integrity and good character, to demonstrate relevant skills, qualifications and experience, and to be physically and mentally fit for the role. It also requires them to supply Her Majesty's Chief Inspector with appropriate administrative details, and in certain financial circumstances bars the carrying on of a provider. Regulation 6 requires the registered provider to notify HMCI of any criminal convictions. Regulation 11 requires that HMCI be notified of any changes in these arrangements.

Question 1

Do you agree it is appropriate to place requirements on the fitness of the registered provider?

Question 2

Do you agree with the specific fitness requirements for the registered provider described in regulation 3 and 6?

- 4.5** Regulation 4 requires the registered provider to appoint a dedicated manager of the provider of social work services. It also requires them to notify HMCI of this appointment. Regulation 5 places a similar set of requirements for the fitness of the manager as those described for the registered provider at 4.4, as well as requiring them to undertake appropriate training to maintain the currency of their skills and experience. Regulation 6 requires the registered provider to notify HMCI of any criminal convictions. Regulation 11 requires that HMCI be notified of any changes in these arrangements.

Question 3

Do you agree it is appropriate to place requirements on the fitness of the manager of the provider of social work services?

Question 4

Do you agree with the specific fitness requirements for the manager described in regulation 5?

- 4.6** Regulation 7 requires the registered provider to employ an adequate number of appropriately qualified staff to discharge the functions for which the provider has contracted with a local authority/authorities. Regulation 8 places a similar set of fitness requirements on employees as those described for registered providers at paragraph 3.4 and requires the registered provider to seek evidence that these requirements have been met. Regulation 8 (4) requires appropriate supervision of any non-employees on the provider's premises. Regulation 9 requires the registered provider to make clear to employees their responsibilities, to operate a disciplinary policy for their employees, and to ensure they receive supervision and training to support their practice and maintain appropriate skills.

Question 5

Do you agree it is appropriate to place requirements on the fitness of the employees and supervision of non employees?

Question 6

Do you agree with the specific fitness and supervision requirements for the employees described in regulation 8?

Question 7

Do you agree with the requirements around staff employment described in regulation 9?

- 4.7** Regulation 10 requires that any premises used by the provider of social work services for direct work with children and young people should meet requirements as to their safety, suitability and security.

Question 8

Do you agree it is appropriate to place requirements on the premises from which a provider of social work services can operate?

Question 9

Do you agree with the specific requirements concerning the premises described in regulation 10?

4.8 Regulation 12 Fees

Regulation 12 allows Her Majesty's Chief Inspector to charge a fee for registration and associated inspection of providers of social work services. The Department's starting assumption is that the fee should seek to cover the full costs of the regime.

Question 10

Do you agree that charging a registration fee is appropriate?

Question 11

What are your views on the merits of full cost recovery and the appropriate level for registration fees?

4.9 Regulations 13-24: Registration regulations

Regulations 13 to 24 describe the practical process of applying for registration, the documentation that needs to be provided and its format, and the information that needs to be supplied to HMCI during the registration period. They detail the process that Ofsted will follow in maintaining a register and issuing registration

certificates. They also set out the process for varying the conditions of a registration or cancelling a registration. These regulations reflect the comparable registration regulations that already apply to other registered agencies.

Question 12

Do you have any comments on the processes and requirements described in regulations 13-24?

4.10 Regulation 25: Transitional arrangements

Regulation 25 provides transition arrangements for providers already discharging the delegated functions of a local authority under the Social Work Practices pilot scheme. These providers will automatically be considered to have met the registration requirements for an interim period in order to allow them to continue their work without disruption. From November 2014 they will need to register in the same way as any other provider under these regulations.

Question 13

Do you support the inclusion of transitional arrangements in these regulations to avoid disruption in the Social Work Practices pilot sites?

4.11 Inspection

HMCI will consult separately on inspection arrangements where local authorities delegate functions under the CYPA 2008. One possibility is that this is done as part of the usual round of local authority inspections, reflecting the authority's responsibility to ensure functions are effectively discharged under its contractual arrangements with the provider. HMCI will set out proposed inspection arrangements in a forthcoming Ofsted consultation. This will include consideration of issues where a provider serves more than one authority.

5 How to Respond

- 5.1** Responding to this consultation document is your first and main opportunity to make your views known as part of the consultation process. You can respond to the consultation by completing the online response form at www.education.gov.uk/consultations by emailing SocialServiceFunctions.CONULTATION@education.gsi.gov.uk or by downloading a response form which should be completed and sent to:

Social Work Reform Unit, Department for Education, Ground Floor, Sanctuary Buildings, Great Smith Street, Westminster, SW1P 3BT

6 Additional Copies

- 6.1** Additional copies are available electronically and can be downloaded from the Department for Education e-consultation website at: www.education.gov.uk/consultations

7 Plans for making results public

- 7.1** The results of the consultation and the Department's response will be published on the DfE e-consultation website in autumn 2013.