

INFORMATION SHARING INDEX: CONSULTATION ON DRAFT INFORMATION SHARING INDEX (ENGLAND) REGULATIONS AND PARTIAL REGULATORY IMPACT ASSESSMENT

The closing date for this consultation is: 14 December 2006

Your comments must reach us by that date.

department for
education and skills
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A Consultation

To

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1 Executive Summary

Introduction

This consultation seeks views on the draft regulations made under section 12 of the Children Act 2004. The regulations, once in force, will provide a legal framework for the operation and maintenance of the information sharing index.

Section 12 requires that regulations are made in respect of:

- what specific information is to be included on the index, and making it clear that the index cannot contain any other information;
- those persons or bodies required or permitted to supply data to the index;
- conditions of access to the index;
- how long information can be retained on the index; and
- ensuring accuracy of the information held on the index.

These draft regulations are issued for consultation only. They may be revised in the light of consultation before being laid before Parliament where they are subject to the approval of both Houses.

Further details about the operation, maintenance and security of the index including issues such as how a record will be created, maintained or transferred, the conditions upon which access to the index will be granted and how access will be controlled will be set out in statutory guidance. The Statutory Guidance will be issued for consultation and published in 2007.

We will continue to work closely with key stakeholders including local authorities, key national organisations, children, young people and families during the consultation, giving further opportunities for key stakeholders to discuss their views on the draft regulations. The consultation ends on 14 December 2006. We aim to publish a response to the consultation, on www.dfes.gov.uk/consultations_early_in_2007.

2 Background and Context

When Lord Laming published the report of his enquiry into the events surrounding the death of Victoria Climbié, an important finding was that information about Victoria had not been properly recorded and communication between professionals from different agencies had been poor. Lord Laming recommended that the Government explore the benefits of developing a national database containing basic information in respect of all children and young people.

A series of Trailblazer projects across England were established to test new ways of information sharing and multi-agency working, including through the development

of information sharing indexes. The experiences of the Trailblazers contributed to the development of the national approach. They confirmed the belief that an index in which children, young people and parents can have confidence - and which will help local authorities and a wide range of children's services practitioners to do their jobs more effectively and provide better services - is achievable.

The Government announced on 8 December 2005 a decision to implement a fully operational information sharing (IS) index in all areas of England by the end of 2008. In response to the announcement, Lord Laming said:

"The case of Victoria Climbié illustrated the importance of more effective information sharing. I congratulate the Government for having tackled so well one of the more challenging recommendations of the report of my Enquiry. In warmly welcoming the Index I can do no better than say I wish this system, and all it offers, had been available at the time I was working at the frontline."

What is the information sharing index?

The index will only hold basic details including name, address, gender, date of birth, identifying number, contact details for the child's parent or carer, educational setting and GP practice. It will provide contact information for practitioners engaged with that child, and indicate whether they have completed a Common Assessment Framework (a generic assessment form completed by practitioners in relation to children with additional needs), have taken action or have information to share. It will not hold any case details, clinical data, SEN statements or academic and attendance records ¹.

We have applied three key principles at the heart of the concept for the index design:

- **security** so that people are assured that it is used properly by those who are entitled to access the information;
- **accuracy** so people have confidence that that all reasonable steps will be taken to ensure that the information held on the index is accurate and up-to-date; and
- **simplicity** so that practitioners can see how it will save them time rather than add burdens to their already busy lives.

It is important to be clear that the Index is not being introduced in isolation. It is a key part of a much wider package of reforms and tools to enable practitioners to deliver earlier support and intervention. These include:

- guidance and training on information sharing practice;
- guidance and training on the use of the Common Assessment Framework for

¹ Statutory guidance will issue in 2007 to provide guidance on how practitioners will use the index.

shared, holistic, initial assessments;

- coordinated delivery for children needing multiple services through the Lead Professional role;

- a Common Core of Skills to help develop and retain staff within children's services; and

- support for new ways of working in multi-agency teams.

The index will be an important tool to help improve the communication between the key professionals needed for the effective delivery of services for children and families and, when necessary, to protect children. It will help practitioners delivering services to children to identify and contact one another easily and quickly, so that they can then, where appropriate, share relevant information about children who need services or about whose welfare they are concerned – sharing information in the same way as they already do in these circumstances. In this way, the index makes existing good practice easier.

3 The Proposals

Section 12 Regulations

The Children Act 2004 provides the legal underpinning for Every Child Matters: Change for Children - the programme aimed at transforming children's services.

Section 12(1) of the Children Act 2004 makes provision for the Secretary of State to make regulations for the establishment and operation of an information sharing index for the purposes of arrangements under sections 10 and 11 of the Children Act 2004, or under section 175 of the Education Act 2002.

The draft Regulations are made under section 12 of the Children Act 2004. They apply to England only.

Regulation 1: Citation and commencement

This provides that the Regulations come into force on the seventh day after the day on which they are made. They will be made by the Minister signing the Regulations.

Regulation 2: Interpretation

The definition of local authorities includes all 150 local authorities in England.

The definition of the broad categories of 'sensitive service' – sexual health, mental health, substance abuse – is as agreed by the Government for the purposes of these Regulations and announced in a written Parliamentary statement on 25 April 2006.

Regulation 3: Participation by local authorities in the operation of the index

There will be one index operated by the central index function² but each local authority will be responsible for its own "compartment" of the index. This places a duty on local authorities to participate in the operation of the index in respect of Regulation 6, user access, Regulation 8, ensuring accuracy and Regulation 9, requirement to establish a complaints procedure in relation to the operation of the index in their area.

Regulation 4: Information to be contained on the index

This requires the index to contain records of all children aged under 18 who are ordinarily resident in England and for whom a record can be compiled from data sources provided to the central index function. Records relating to some young people aged up to 25 – because they are care leavers or have a learning difficulty - may be retained on the index with consent. This is to help facilitate the transition to adult services where that is considered appropriate.

The information that comprises a child record is set out in Schedule 1. The information that will be visible to users is: name; address; gender; date of birth (and death, where appropriate); an identifying number (which will be a scrambled version of the Child Reference Number that underpins the Child Benefit system and becomes the National Insurance Number at age 15 and three quarters); name and contact details of any person with parental responsibility (as defined by section 3 of the Children Act 1989) or who has care of the child; name and address of school or college attended, with a facility to state that the child is being educated elsewhere, for example at home or in a hospital; GP practice contact details; name and contact details of health visitor, school nurse or named midwife (where appropriate); name and contact details of practitioners providing specialist or targeted services (except for 'sensitive services'); name and contact details of practitioners who have important information to share, have undertaken a Common Assessment

² It is intended that the DfES will contract out the running of the central functions of the index once it is operational. Responsibilities of the index central function include sourcing, loading and managing data from national sources, operation and maintenance of the hardware and associated infrastructure, enforcing agreed interoperability and technical architecture standards, assigning child records to a local authority, establishing and maintaining appropriate levels of security, the retention and archiving of records and maintaining the archive, local authority support, production of national statistics, and monitoring local authority performance.

Framework or who have taken action in relation to the child. No further information will be held.

Regulation 5: Disclosure of information for inclusion to the index

This provides for all listed in Schedule 2 (required to provide information) and Schedule 3 (permitted to provide information) to supply information to the index either as part of the basic record for each child or to indicate that a practitioner is providing a specialist or targeted service. It also provides for a practitioner to indicate that they have important information to share, have undertaken a Common Assessment Framework or have taken action in relation to a child. The information may be provided either to the central index function or to a local authority. The information from data sources will be supplied at frequencies agreed with the Secretary of State, depending on the source organisation.

Paragraph (3) requires both those required and those permitted to supply information to update their information where they are aware that new information is available and to delete the superceded information where appropriate.

Paragraph (6) provides that a practitioner with access to the index may access any child record in England rather than just records in their own local authority area. This would enable, for example, a practitioner in Torbay who is providing a specialist or targeted service to a child from Sheffield whose family are on holiday in the area to identify and contact other practitioners in Sheffield if they have concerns about the child. It would also enable a practitioner providing a service to a child in an authority other than the one in which the child resides to access the child's record.

Paragraph (5) provides that information relating to a sensitive service – sexual health, mental health and substance abuse – may only be supplied to the index with the explicit consent of the child or young person to whom it relates, or their parent or carer if exercising consent on their behalf. If consent is gained the index will only indicate that an, unspecified, service is being provided. A practitioner who wanted to contact the specialist service about a child would make a case to the index management team who would broker contact with the sensitive service practitioner as appropriate. A sensitive services practitioner can override a lack of consent where they have reasonable cause to suspect that the child is suffering or is likely to suffer significant harm³.

³ Cross-Government guidance Information Sharing: Practitioner's Guide, published in April 2006 and available on the Every Child Matters website <http://www.everychildmatters.gov.uk/resources-and-practice/IG00065/> provides guidance on how practitioners should share information related to a sensitive service without consent.

Regulation 6: Access to the index

Paragraph (1) provides that a child record on the face of the index shall not contain any number used by an organisation to identify the child record (such as the NHS number in the case of data supplied by the NHS). It also provides that in the case of a record relating to a sensitive service that the contact details of the sensitive service provider do not appear on the face of the index.

Access to the index will be granted according to the role of the practitioner. Regulation 6 sets out the types of practitioner who may be granted access by their local authority. These are:

- local authority index management teams;
- social workers;
- health care professionals and administrators working for them;
- police and British Transport police;
- members of a probation board;
- members of a youth offending team;
- prison or secure training centre governors or directors if a prison or centre is contracted out;
- Connexions advisers;
- in school and FE colleges, head teachers, deputy head teachers, administrators, heads of year or teachers with pastoral or child protection responsibilities, teachers of children with special educational needs, SENCOs, education welfare officers or those who the local authority considers to have an equivalent role;
- proprietors of independent schools;
- staff in voluntary and community sector organisations;
- social workers employed by the NHS.

Q1: Are there other practitioner roles that you believe should be added?

No user can be granted access without an enhanced CRB certificate, or the equivalent in the case of the police, and without undertaking training devised by the DfES and provided by or on behalf of the local authority. Certain users will be granted access to the index under arrangements specified in Paragraphs (9) to (12), below.

Q2: Should there be other conditions for access?

A top priority for the index is ensuring that the information held on the index is secure and is accessed only by those who have a right to access it. Paragraphs (6) and (7) provide that a local authority may shield from view on the index – based on a case by case assessment - a child or parent/carer's home or school address if a practitioner or parent/carer has good reason for deeming that disclosure of this information would place a child or parent/carer at risk. It would, for example, help protect children and parents who are fleeing domestic violence. This, we believe, is consistent with the 7th Data Protection Principle which requires security to be appropriate to the harm that may be suffered by the individual.

Paragraph (8) provides for authorised users who do not have access to a computer to have “mediated” access through another authorised user or the local authority index management team.

Paragraph (9) allows local authorities to accredit local bodies, such as a local charity, and to delegate access arrangements so that the local body can grant access to their employees. The same conditions relating to practitioner roles, CRB checks and training apply.

Paragraph (10) allows the Secretary of State to determine that certain bodies listed in Schedule 2 or 3, for instance NHS organisations, should be allowed to make their own access arrangements in respect of their employees. Again, the same conditions relating to practitioner roles, CRB checks and training apply.

Paragraph (13) provides that nothing in this Regulation affects subject access rights to data under s7 of the Data Protection Act 1998 or prevents disclosure of information in a form that does not identify individuals.

Regulation 7: Retention of information

Paragraph (2) provides that a child record will be moved to a secure archive to be maintained by the central index function on the earliest of:

- the date when a child reaches age 18, or 25 if the record is held under arrangements under Regulation 4;
- the date when the local authority in which the child was last ordinarily resident has determined when the child has left England and does not intend to return; or
- the date one year after a child has died.

Paragraphs (3) and (4) provide that the name and contact details of practitioners providing specialist or targeted services to a child or who have important information to share or who have taken action will remain on the index until the earlier of the date in paragraph (2), above, or the date one year after the service has ceased to be provided or the information or action are considered no longer to be relevant. Paragraph (5), however, allows practitioners to decide that their contact details should remain on the index for a period of up to five years. It is expected that statutory guidance will advise that this should be subject to annual review.

Q3: Do you agree that there should be a facility to retain these contact details beyond one year but for no longer than five?

A child’s record will be held in the archive for six years (Paragraph (12)) and will then be totally and automatically deleted. Paragraph (11) provides that the archive is not to be regarded as part of the index in relation to Regulation 4(2) (which

provides for the records of certain young people aged over 18 to be retained on the index with consent to ease the transition to adult services) and Regulation 6 (user access to current records on the index). Paragraph (13) provides for access to archived child records to be determined by the Secretary of State and sets out a list of restricted circumstances in which access may be given to archived records.

Q4: Are there circumstances, other than those listed at Regulation 7(13), that would justify providing access to archived information?

Paragraph (6) provides that the name and contact details of a practitioner who has completed a Common Assessment Framework (CAF) should remain on the index until the earlier of the date in paragraph (4) or the date on which a subsequent CAF has been completed by the same or a different practitioner.

Paragraph (7) provides that the name and contact details of the child's named midwife, or the midwife of the child if she has a child of her own, should remain on the index for 15 months after the birth.

Paragraph (9) provides for a child record to be archived before the due date, for example if the child is adopted and a new record is created, to prevent any link being made between the pre-adoption and post-adoption identities.

Paragraph (10) enables the record of a child who has returned to England to be released from the archive and be placed on the index.

Regulation 8: Accuracy of the index

This Regulation provides that data controllers carry their duties under the fourth Data Protection Principle.

Paragraph (1) provides for all those listed in Schedules 2 and 3 to take all reasonable steps to ensure that the information provided to the index is and remains accurate.

Paragraph (2) provides that where data for a child record has been provided by a Government Department headed by a Secretary of State under section 12(9) of the Children Act 2004, then that Secretary of State shall take all reasonable steps to ensure that the information is and remains accurate.

Paragraph (3) provides that where a local authority considers that a record relating to a child who is ordinarily resident in the area is inaccurate or incomplete, the authority shall undertake all reasonable investigation and shall notify the source of the data.

Q5: Do you believe the Regulations contain the necessary safeguards to ensure that information on the index is kept accurate and up to date?

Regulation 9: Local authorities' complaints procedures in respect of the index

This Regulation provides for all local authorities to establish procedures for handling complaints that are reasonably connected with the authority's responsibilities in respect of the index in relation to Regulation 6 (access) and Regulation 8 (accuracy). The type of complaint would include that the local authority had granted access to a practitioner whose role falls outside the scope of Regulation 6, or that an authority has failed to take reasonable steps to ensure that the information on the index is and remains accurate. This Regulation also includes handling complaints where a local authority has delegated access arrangements under Regulation 6(9) to another organisation. Paragraph (2) provides for a designated "Complaints Manager" within the index management team. The procedure is to be set out in writing and made freely available (Paragraph (3)).

Paragraph (5) sets out complaints that are outside the local authority procedure. These include complaints about any action or decision by the Secretary of State or about these Regulations or any guidance or directions under section 12 of the Children Act, which should be directed to the DFES. Other complaints that lie outside the scope of the procedures, because it would be inappropriate to include them or they are covered by other procedures and arrangements are: complaints about other local authorities in relation to the operation of the index; complaints about any action or decision made by a practitioner who has access to the index; a complaint about an organisation with delegated access rights; a complaint by a local authority employee in relation to a contract of employment; a complaint by a local authority contractor; a complaint in relation to subject access rights under the Data Protection Act or a request for information under the Freedom of Information Act; a complaint where the complainant has indicated in writing that they intend to instigate legal proceedings.

Complaints are subject to a one year time limit (Paragraph (6)), though Paragraph (7) provides that the complaints manager may investigate if there is good reason for not making the complaint within that period and it is still possible to investigate the complaint effectively and efficiently.

Paragraph (8) provides that the complaints manager shall respond to a complaint within 20 working days. Paragraph (9) defines "working days".

Q6: Do you agree that there should be a local authority complaints procedure specifically for the index?

Regulation 10: General provisions in respect of disclosure of information, etc

This Regulation provides that any information supplied to the index by those listed in Schedule 3 as permitted to disclose information or supplied by a Government Department, headed by a Secretary of State, under section 12(9) of the Children

Act 2004 or by authorised users, may be given notwithstanding any common law duty of confidentiality which would otherwise have prohibited or restricted the disclosure. This does not apply to the arrangements relating to sensitive services.

Regulation 11: Revocation

This revokes the Information Sharing Index (England) Regulations 2006, which provided a basis for data matching trials, undertaken between April and August 2006, of samples of data from Department of Health, Department for Work and Pensions, Department for Education and Skills and nine local authorities.

Schedule 1: Information to be included in the index

The schedule sets out the basic information that will comprise a child record on the index. Much of this was set out in section 12 of the Children Act 2004: name; address, gender, date of birth, an identifying number (which will be a scrambled version of the Child Reference Number that underpins the Child Benefit system and becomes the National Insurance Number at age 15 and three quarters); name and contact details of any person with parental responsibility (as defined by section 3 of the Children Act 1989) or who has care of the child; name and address of school or college attended, with a facility to state that the child is being educated elsewhere, for example at home or in a hospital; GP practice contact details and the date on which the child was registered with the practice (Paragraph (8)).

Paragraph (6) defines a carer as a grandparent, sibling, uncle or aunt or step-parent who looks after a child where neither of his or her parents look after him or her, or a local authority, voluntary organisation or private foster parent arrangement. It excludes a spouse or civil partner of a child's parent who is not the child's parent and childminders who look after a child for part of a day.

Paragraph (9) provides for the name and contact details of practitioners listed in schedules 2 and 3 who are providing a specialist or targeted service to a child, including an indicator where the practitioner is the lead professional for the child, together with the date on which the service started and finished. Where a sensitive service is being provided, there will be an indicator to that effect.

Paragraph (10) provides for a practitioner to indicate on the index that they have important information to share about a child, have completed a Common Assessment Framework or have taken any action in relation to a child.

Section 12 of the Children Act 2004 provides for Regulations to include information in a child record additional to that specified in that section. This allows for organisational change and for new information where that appears to be appropriate. These draft Regulations propose adding the name and contact details of the child's health visitor, school nurse and named midwife as these are all

universal services. Paragraph (14) provides for a date of death which enables the record to be closed and also to inform other practitioners who may not be aware.

Q7: Do you agree that these additional data items will support the core aims of the index?

Paragraph (15) provides for organisations and bodies supplying data to the index to include any number that identifies the record (such as an NHS number for an NHS record). These numbers will be used in the index “back office” to identify component parts of a child’s record and will not be available to index users.

Paragraph (16) requires the supply of “metadata”, information that describes and gives information about other data such as the date the information was last updated or verified.

Schedule 2: Persons and bodies required to disclose information for inclusion in the index.

Most of the bodies and organisations listed here who are required to supply information to the index were included in section 11 and 12 of the Children Act 2004: local authorities; non-metropolitan district councils where there is no county council; Strategic Health Authorities, Special Health Authorities; Primary Care Trusts; NHS trusts and foundation trusts; police and Transport Police; probation boards; youth offending teams; prison or secure training unit governors; Connexions advisers; the Learning and Skills Council; governing bodies of maintained schools and FE colleges; proprietors of independent schools.

Section 12 of the Children Act 2004 provides for the addition of organisations not specified in that section. Paragraph (18) provides for governing bodies of non-maintained special schools as they are not included in the other listed school categories. Paragraph (19) requires the Registrar General for England and Wales. Paragraph (20) brings in the Children and Family Court Advisory and Support Service (CAFCASS) into index operation.

Q8: Are there any further persons or bodies that should be added to the list at Schedule 2?

Q9: Are there persons or bodies that you believe should not be listed at Schedule 2?

Schedule 3: Persons and bodies permitted to disclose information for inclusion in the index

Most of the bodies and organisations listed here who are permitted to supply information to the index were included in section 12 of the Children Act 2004: child

care providers; voluntary organisations (though where they are providing a statutory service under contract they will be subject to the duty to be required to supply information in the same way as organisations listed in Schedule 2); Her Majesty's Revenue and Customs (who administer the Child Benefit system, though child benefit data will be supplied by Department for Work and Pensions); registered social landlords.

Section 12 of the Children Act 2004 provides for the addition of organisations not specified in that section. Paragraph (5) allows registered health care professionals to supply information to the index. Paragraph (6) permits Fire and Rescue Authorities.

Q10: Are there any further persons and bodies that should be added to the list at Schedule 3?

Q11: Are there persons or bodies that you believe should not be listed at Schedule 3?

Regulatory Impact Assessment (RIA)

Proposals for regulations, where there is an impact on the public sector, should be accompanied by a partial RIA to provide an analysis of the impact of the regulations on public services.

A partial RIA has been completed for the draft regulations made under section 12 of the Children Act 2004 and specific questions within the consultation seek views on whether the RIA correctly identifies stakeholders, costs and benefits.

A full RIA will accompany the regulations when they are laid in Parliament.

Q12: Does the partial Regulatory Impact Assessment correctly identify stakeholders in these Regulations?

Q13: Does the partial Regulatory Impact Assessment correctly identify and address the impact of these Regulations?