STATUTORY INSTRUMENTS

2009 No. 1895

CHILDREN AND YOUNG PERSONS, ENGLAND

SOCIAL CARE, ENGLAND

The Care Standards and Adoption (Regulation of Establishments, Agencies and Adult Placement Schemes) (Amendment) Regulations 2009

Made - - - -	*15th July 2009*
Laid before Parliament	*16th July 2009*
Coming into force - -	*12th October 2009*

The Secretary of State for Children, Schools and Families makes the following Regulations in exercise of powers conferred by section 12(2)(a), section 16(1)(a), section 22(1) and (2)(a) and (b), section 48(1)(a) and section 118(1) and (6)(a)of the Care Standards Act 2000(**a**) and section 9(1), section 10(1)(a) and (3)(a) and (e) and section 140(1) and (7) of the Adoption and Children Act 2002(**b**):

PART 1

Introduction

Citation, commencement and application

1.—(1) These Regulations may be cited as the Care Standards and Adoption (Regulation of Establishments, Agencies and Adult Placement Schemes) (Amendment) Regulations 2009 and come into force on 12th October 2009.

(2) These Regulations apply to England only.

PART 2

Establishments and agencies - children

Amendment to the Adoption Agencies Regulations 2005

2.—(1) The Adoption Agencies Regulations 2005(**c**) are amended as follows.

(1) For paragraph (1) of regulation 23 (requirement to carry out police checks) substitute—

(**a**) 2000 c. 14.
(**b**) 2002 c. 38.
(**c**) S.I. 2005/389.

"(1) In respect of the prospective adopter and any other member of the prospective adopter's household who is aged 18 or over, an adoption agency must obtain an enhanced criminal record certificate issued under section 113B of the Police Act 1997(**a**) which includes suitability information relating to children (within the meaning of section 113BA(2)(**b**) of that Act).".

Amendment to the Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005

3. The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005(**c**) are amended as follows.

(1) For paragraph 2 of Schedule 2 (information required in respect of persons seeking to carry on, manage or to work for the purposes of an agency) substitute—

"**2.** Either—

(a) where the certificate is required for a purpose related to registration under Part 2 of the 2000 Act or the position falls within regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002(**d**), an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes suitability information relating to children (within the meaning of section 113BA(2) of that Act); or

(b) in any other case, a criminal record certificate issued under section 113A(**e**) of the Police Act 1997.".

Amendment to the Children's Homes Regulations 2001

4.—(1) The Children's Homes Regulations 2001(**f**) are amended as follows.

(2) For paragraph 2 of Schedule 2 (information required in respect of persons seeking to carry on, manage or work at a children's home) substitute—

"**2.** Either—

(a) where the certificate is required for a purpose related to registration under Part 2 of the Act or the position falls within regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002, an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes suitability information relating to children (within the meaning of section 113BA(2) of that Act) and, where applicable, suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act); or

(b) in any other case, a criminal record certificate issued under section 113A of the Police Act 1997.".

Amendments to the Fostering Services Regulations 2002

5.—(1) The Fostering Services Regulations 2002(**g**) are amended as follows.

(2) For paragraph 2 of Schedule 1 (information required in respect of person seeking to carry on, manage or work for the purposes of a fostering service) substitute—

(**a**) 1997 c. 50. Section 113B was inserted by the Serious Organised Crime and Police Act 2005 (c. 15). Sub-section (2) of section 113B is amended by the Safeguarding Vulnerable Groups Act 2006.
(**b**) Section 113BA was inserted by section 63(1) of, and paragraph 14 of Schedule 9 to, the Safeguarding Vulnerable Groups Act 2006 (c. 47).
(**c**) 2005/2720.
(**d**) S.I. 2002/233. Regulation 5A was inserted by S.I. 2006/748. Further amendments are being drafted to regulation 5A and these will be in force from 12th October 2009.
(**e**) Section 113A was inserted by the Serious Organised Crime and Police Act 2005 (c. 15)
(**f**) S.I. 2001/3967.
(**g**) S.I. 2002/57 as amended by S.I. 2002/865.

"**2.** Either—

(a) where the certificate is required for a purpose related to registration under Part 2 of the 2000 Act or the position falls within regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002, an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes suitability information relating to children (within the meaning of section 113BA(2) of that Act); or

(b) in any other case, a standard criminal record certificate issued under section 113A of the Police Act 1997.".

(3) For paragraph 13 of Schedule 3 (information about a prospective foster parent and other members of the household) substitute—

"**13.** In relation to the prospective foster parent and any other member of his household who is aged 18 or over, an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes suitability information relating to children (within the meaning of section 113BA(2) of that Act).".

Amendment to the Local Authority Adoption Service (England) Regulations 2003

6.—(1) The Local Authority Adoption Service (England) Regulations 2003(**a**) are amended as follows.

(2) For paragraph 2 of Schedule 3 (information required in respect of persons seeking to manage or work for the purposes of the adoption service) substitute—

"**2.** Either—

(a) where the certificate is required for a position that falls within regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002, an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes suitability information relating to children (within the meaning of section 113BA(2) of that Act); or

(b) in any other case, a criminal record certificate issued under section 113A of the Police Act 1997.".

Amendment to the Residential Family Centres Regulations 2002

7.—(1) The Residential Family Centres Regulations 2002(**b**) are amended as follows.

(2) For paragraph 2 of Schedule 2 (information required in respect of persons seeking to carry on, manage or work at a residential family centre) substitute—

"**2.** Either—

(a) where the certificate is required for a purpose related to registration under Part 2 of the 2000 Act or the position falls within regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002, an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes suitability information relating to children (within the meaning of section 113BA(2) of that Act) and, where applicable suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act); or

(b) in any other case, a criminal record certificate issued under section 113A of the Police Act 1997.".

(**a**) S.I. 2003/370.
(**b**) S.I. 2002/3213.

PART 3

Services and facilities – adult social care and health

Amendments to the Adult Placement Schemes (England) Regulations 2004

8.—(1) The Adult Placement Schemes (England) Regulations 2004(**a**) are amended as follows.

(2) For paragraph 2 of Schedule 2 (information and documents in respect of persons providing, managing or working for the purposes of a scheme (excluding adult placement carers)) substitute—

"**2.** Either—

(a) where the certificate is required for a purpose related to registration under Part 2 of the Act or the position falls within regulation 5A of the Police Act (Criminal Records) Regulations 2002, an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes suitability information relating to vulnerable adults (within the meaning of section 113BB(2)(**b**) of that Act); or

(b) in any other case, a criminal record certificate issued under section 113A of the Police Act 1997.".

(3) For paragraph 2 of Schedule 3 (information and documents in respect of adult placement carers), substitute—

"**2.** Either—

(a) where the certificate is required for assessing the fitness of a person to be an adult placement carer and the position falls within regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002, an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act); or

(b) in any other case, a criminal record certificate issued under section 113A of the Police Act 1997.".

Amendments to the Care Homes Regulations 2001

9.—(1) The Care Homes Regulations 2001(**c**) are amended as follows.

(2) In regulation 19 (fitness of workers)—

(a) in paragraph (4A), for the words "a criminal record certificate pursuant to section 113 of the 1997 Act, or an enhanced criminal record certificate pursuant to section 115 of that Act" substitute "an enhanced criminal record certificate pursuant to section 113B of the 1997 Act";

(b) omit paragraph (7)(**d**); and

(c) for paragraph (10), substitute—

"(10) The conditions are—

(a) the new worker will not be engaging in regulated activity relating to children;

(b) an enhanced criminal record certificate has been applied for in respect of the new worker pursuant to section 113B of the 1997 Act; and

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(**a**) S.I. 2004/2071.
(**b**) Section 113BB was inserted by section 63(1) of, and paragraph 14 of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006 (c. 47).
(**c**) S.I. 2001/3965. Relevant amending instrument is S.I. 2004/1770.
(**d**) Omit paragraph (7) which was inserted by S.I. 2004/1770.

(c) notification has been received under section 113E(4)(a) of the 1997 Act that the new worker is not included on a specified adults' list (within the meaning of section 113E of that Act).".

(3) For paragraph 7 of Schedule 2 (information and documents in respect of persons carrying on, managing or working at a care home) substitute—

"**7.** Either—

(a) where the certificate is required for a purpose related to registration under Part 2 of the Act or the position falls within regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002, an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act) and, where applicable, suitability information relating to children (within the meaning of section 113BA(2) of that Act); or

(b) in any other case, a criminal record certificate issued under section 113A of the Police Act 1997.".

Amendments to the Domiciliary Care Agencies Regulations 2002

10.—(1) The Domiciliary Care Agencies Regulations 2002(**a**) are amended as follows.

(2) In regulation 12 (fitness of domiciliary care workers supplied by an agency)—

(a) in paragraph (1), omit "(4)";

(b) omit paragraphs (3) and (4); and

(c) for paragraph (6), substitute—

"(6) The conditions are—

(a) the new worker will not be engaging in regulated activity relating to children;

(b) an enhanced criminal record certificate has been applied for in respect of the new worker pursuant to pursuant to section 113B of the 1997 Act; and

(c) notification has been received under section 113E(4)(a) of the 1997 Act that the new worker is not included on a specified adults' list (within the meaning of section 113E of that Act).".

(3) For paragraph 2 of Schedule 2 (information required in respect of registered providers and managers of an agency) substitute—

"**2.** Either—

(a) where the certificate is required for a purpose related to registration under Part 2 of the Act or the position falls within regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002, an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act) or suitability information relating to children (within the meaning of section 113BA(2) of that Act) or both; or

(b) in any other case, a criminal record certificate issued under section 113A of the Police Act 1997.".

(4) For paragraph 13 of Schedule 3 (information required in respect of domiciliary care workers), substitute—

"**13.** Either—

(a) where the certificate is required for assessing the fitness of a domiciliary care worker and the position falls within regulation 5A of the Police Act 1997

(**a**) S.I. 2002/3214. Relevant amending instruments are S.I. 2003/2323 and 2004/1770.

(Criminal Records) Regulations 2002, an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act) and, where applicable, suitability information relating to children (within the meaning of section 113BA(2) of that Act); or

(b) in any other case, a criminal record certificate issued under section 113A of the Police Act 1997.".

Amendments to the Nurses Agencies Regulations 2002

11.—(1) The Nurses Agencies Regulations 2002(**a**) are amended as follows.

(2) In regulation 12 (fitness of nurses supplied by an agency)—

(a) omit paragraphs (5) and (6); and

(b) for paragraph (8), substitute—

"(8) The conditions are—

(a) the nurse will not be engaging in regulated activity relating to children;

(b) an enhanced criminal record certificate has been applied for in respect of the nurse pursuant to section 113B of the 1997 Act; and

(c) notification has been received under section 113E(4)(a) of the 1997 Act that the new worker is not included on a specified adults' list (within the meaning of section 113E of that Act).".

(3) in paragraph (9)(i), for "a criminal record certificate" and a "full criminal record certificate" substitute "an enhanced criminal record certificate".

(4) For paragraph 2 of Schedule 2 (information required in respect of registered providers and managers of an agency and nurses responsible for selecting nurses from supply to service users) substitute—

"**2.** Either—

(a) where the certificate is required for a purpose related to registration under Part 2 of the Act or the position falls within regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002, an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes, as applicable, suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act) or suitability information relating to children (within the meaning of section 113BA(2) of that Act) or both; or

(b) in any other case, a criminal record certificate issued under section 113A of the Police Act 1997.".

(5) For paragraph 13 of Schedule 3 (information required in respect of nurses to be supplied by an agency), substitute—

"**13.** Either—

(a) where the certificate is required for assessing the fitness of a nurse to be supplied by an agency and the position falls within regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002, an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes, as applicable, suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act) or suitability information relating to children (within the meaning of section 113BA(2) of that Act) or both; or

(b) in any other case, a criminal record certificate issued under section 113A of the Police Act 1997.".

(**a**) S.I. 2002/3212. Relevant amending instruments are S.I. 2003/2323 and 2004/1770.

Amendment to the Private and Voluntary Health Care (England) Regulations 2001

12.—(1) The Private and Voluntary Health Care (England) Regulations 2001(**a**) are amended as follows.

(2) For paragraph 2 of Schedule 2 (information required in respect of persons seeking to carry on, manage or work at an establishment) substitute—

"**2.** Either—

(a) where the certificate is required for a purpose related to registration under Part 2 of the Act or the position falls within regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002, an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes, as applicable, suitability information relating to adults (within the meaning of sections 113BB(2) of that Act) or suitability information relating to children (within the meaning of section 113BA(2) of that Act or both; or

(b) in any other case, a criminal record certificate issued under section 113A of the Police Act 1997.".

PART 4

General

Amendments to the National Care Standards Commission (Registration) Regulations 2001

13.—(1) The National Care Standards Commission (Registration) Regulations 2001(**b**) are amended as follows.

(2) For paragraph 4 of Schedule 2 (documents to be supplied on an application for registration as a person who carried on an establishment or agency) substitute—

"**4.** In relation to the responsible person—

(a) an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes, as applicable, suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act) or suitability information relating to children (within the meaning of section 113BA(2) of that Act) or both; and

(b) the application for that certificate which was signed by the registration authority.".

(3) For sub-paragraph (2) of paragraph 10 of Schedule 2 substitute—

"(2) The following documents are specified—

(a) where the position falls within regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002, an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes, as applicable, suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act) or suitability information relating to children (within the meaning of section 113BA(2) of that Act) or both; or

(b) in any other case, a criminal record certificate issued under section 113A of the Police Act 1997.".

(4) Omit paragraph 12 of Schedule 3.

(5) For paragraph 13 of Schedule 3 (information and documents to be supplied on an application for registration as the manager of an establishment or agency) substitute—

(**a**) S.I. 2001/3968. Relevant amending instrument is S.I. 2002/865.
(**b**) S.I. 2001/3969.

"**13.**—(1) An enhanced criminal record certificate issued under section 113B of the Police Act 1997 and, as applicable, suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act) or suitability information relating to children (within the meaning of section 113BA(2) of that Act) or both; and

(2) the application for that certificate which was signed by the registration authority.".

Delyth Morgan
Parliamentary Under Secretary of State
15th July 2009 Department for Children, Schools and Families

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations update references in the Police Act 1997 (c. 50) in provisions contained in various sets of regulations made under the Care Standards Act 2000 (c. 14) and the Adoption and Children Act 2002 (c.38). The Regulations that are amended relate to children's homes, residential family homes, fostering agencies, adoption support agencies, care homes, nurses agencies, domiciliary care agencies, private and voluntary health care establishments and agencies and adult placement schemes.

The amendments are made in order to reflect changes that have been brought about following amendments that made to the Police Act 1997 by the Safeguarding Vulnerable Groups Act 2006 (c. 47). One of the changes is that information as to whether a person is barred from working with vulnerable groups (suitability information) will only be available in prescribed cases where an application for an enhanced criminal record certificate is made. Currently, such information is also available in specified circumstances with a standard criminal record certificate.

The majority of the amendments made in these Regulations relate to provisions that specify the information that must be available where a person intends to carry on, manage or work for the purposes of an agency or establishment in relation to which a person is required to register under Part 2 of the Care Standards Act 2000. The Regulations also include amendments that relate to provisions in the Adoption Agencies Regulations 2005 (S.I. 2005/389) which specify the checks that must be made by an adoption agency in respect of a prospective adopter and adult members of the prospective adopter's household and similar provisions in the Fostering Services Regulations 2002 (S.I. 2002/57) in relation to checks on prospective foster parents and adult members of their household.

These Regulations also update similar references (to provisions in the Police Act 1997) in the National Care Standards Commission (Registration) Regulations 2001 (S.I. 2001/3969). These 2001 Regulations apply to adult, health and children-related establishments and agencies and govern the information and documents that must be provided when making an application to register under Part 2 of the Care Standards Act 2000.

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The Care Standards and Adoption (Regulation of Establishments, Agencies and Adult Placement Schemes) (Amendment) Regulations 2009

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