STATUTORY INSTRUMENTS

2004 No. 3136

CHILDREN AND YOUNG PERSONS, ENGLAND

The Child Minding and Day Care (Disclosure Functions) (England) Regulations 2004

Made - - - -	*25th November 2004*
Laid before Parliament	*8th December 2004*
Coming into force - -	*30th December 2004*

In exercise of the powers conferred upon the Secretary of State by sections 79N(5) of the Children Act 1989(**a**), and all other powers enabling him in that behalf, the Secretary of State for Education and Skills hereby make the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Child Minding and Day Care (Disclosure Functions) (England) Regulations 2004 and shall come into force on 30th December 2004.

(2) These Regulations apply only in relation to England.

Interpretation

2. In these Regulations—

"the Act" means the Children Act 1989;

"associate" means any person, other than a childcare provider—

(a) looking after, or likely to be looking after, children on, or

(b) living or employed or otherwise working on,

any relevant premises;

"authorised person" means a person authorised for any of the purposes of section 79U of the Act;

"childcare provider" means a child minder or a day care provider and includes a person who was a childcare provider but who, at the time of any request for, or provision of, information pursuant to these Regulations, is not providing childcare; and "childcare" shall be construed accordingly;

"early years development and childcare partnership" means a partnership established under section 119 of the School Standards and Framework Act 1998(**b**);

"enforcement action" includes the serving of any notice, and the imposition of any requirement or condition, upon a childcare provider, any suspension of registration and any

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(**a**) 1989 c. 41; section 79N was inserted by section 79(1) of the Care Standards Act 2000 (c. 14). By section 79B(7), also inserted by section 79(1) of that Act, in section 79N "regulations" means regulations made by the Secretary of State.

(**b**) 1998 c. 31; section 119 has been amended by section 150 of the Education Act 2002, c. 32.

application pursuant to section 75 or section 79K to a justice of the peace (protection of children in an emergency);

"local government area" has the meaning given in section 270 of the Local Government Act 1970(**a**), save that the words "Greater London" shall be omitted for this purpose;

"relevant premises" means, in relation to a childcare provider, any premises on which he is, or is likely to be, or was at a material time, providing childcare;

"setting", in relation to childcare, means the premises on which childcare takes place or, as the case may be, is intended to take place, or took place at a material time, together with any equipment and personnel associated with the provision of that childcare.

Function of disclosure of information

3. The Chief Inspector shall disclose information relating to child minding and day care in accordance with these Regulations.

General provisions in relation to the function of disclosure

4.—(1) Nothing in these Regulations shall be taken as requiring the Chief Inspector to disclose information, or as the case may be, further information—

(a) in circumstances where he is not satisfied that the interests of a child, or children generally, will be served by the disclosure; or

(b) subject to paragraph (2), on any occasion where the information, or further information, has already been disclosed by him to the person or organisation to whom it would fall to be disclosed; or

(c) where the information, or further information, is available to that person or organisation by other means reasonably at their disposal; or

(d) where to disclose the information would, in the opinion of the Chief Inspector, involve disproportionate effort or expense.

(2) Paragraph (1)(b) shall not apply in the case of disclosure of information or further information—

(a) under regulation 6 or 7 where the prior disclosure was made under regulation 8; or

(b) under regulation 8 where the prior disclosure was made under regulation 6 or 7.

(3) Nothing in these Regulations shall be taken as requiring the Chief Inspector—

(a) to disclose information or, as the case may be, further information where it appears to him that the information is or may be sought in contemplation or furtherance of civil proceedings against him or any other person or body; or

(b) to disclose information which he is required under any enactment other than the Data Protection Act 1998(**b**), by any rule of law or by the order of a court not to disclose.

Disclosure to parents

5.—(1) In this regulation, "parent" means a person who is, or has been a parent of, or has, or has had, parental responsibility for, a child.

(2) The Chief Inspector shall, in response to a written request by a parent of a child who is or, at any time prior to the request, was being—

(a) looked after by a registered child minder; or

(b) provided with care by a registered day care provider,

(**a**) 1970 c.70; the definition of "local government area" was amended by the Local Government (Wales) Act 1994 (c. 19)
(**b**) 1998 c. 29.

for information relating to that childcare provider, provide that parent with such information of a kind falling within paragraph (3) in his possession as he considers appropriate to meet that request.

(3) The information referred to in paragraph (2) shall be—

(a) information concerning the setting for the childcare provided by that childcare provider;

(b) the date of, purpose of, and any conditions attaching to, the registration of the childcare provider;

(c) information relating to the quality of the childcare obtained by an authorised person;

(d) information as to any enforcement action taken against the childcare provider by the Chief Inspector, by an authorised person, or by a local authority acting under Part X of the Act.

(4) Nothing in this regulation shall require the Chief Inspector to disclose to the parent the following information—

(a) information as to the identity of a child other than a child of the parent without the consent of a parent of the child identified;

(b) information as to the identity of a parent or relative of such a child, unless the parent or relative in question is the childcare provider, without the consent of the parent identified;

(c) information which the Chief Inspector does not consider reliable having regard to its age, provenance or the degree of substantiation available to him in relation to it.

Disclosure to childcare organisations

6.—(1) In this regulation, "childcare organisation" means one of the organisations listed in the Schedule to these Regulations.

(2) In this regulation,

"area", except in the definition of "relevant qualification", means geographical area;

"relevant childcare provider" means, in relation to a childcare organisation, a childcare provider who provides, or may, in the opinion of the Chief Inspector having regard to information at his disposal, be about to provide childcare within—

(a) the area within which the childcare organisation provides its services; or

(b) the areas of any childcare organisations that are adjacent to that area,

(and "relevant childcare" shall be construed accordingly);

"relevant qualification" means a qualification evidencing competence or level of competence in an area that is, or areas that are, or in the opinion of the Chief Inspector may be, relevant to the assessment of the childcare provider's suitability; and

"relevant services" means services of the childcare organisation acting in that capacity provided to the public within an area within which the childcare provider provides or may, in the opinion of the Chief Inspector having regard to information at his disposal, be about to provide childcare.

(3) The Chief Inspector shall provide a childcare organisation—

(a) at reasonable intervals, and otherwise

(b) in response to a request in writing from that organisation,

with so much of the information listed in sub-paragraph (4) as is in his possession relating to relevant childcare providers.

(4) The information referred to in sub-paragraph (3) is—

(a) the names of the childcare providers; and

(b) in relation to each childcare provider—

(i) any unique reference number or other identifier used by the Chief Inspector;

(ii) the date and purpose of registration, in so far as it relates to the provision of relevant childcare;

(iii) the date and number of any current certificate of registration;

(iv) the business name, if any, under which the childcare is, or is to be, provided;

(v) the address of the childcare provider;

(vi) the address, if different from the address at (v), of any premises at which relevant childcare is, is to be, or may be provided

(vii) any telephone number, fax number or e-mail address of the childcare provider or of the premises supplied to the Chief Inspector by the childcare provider;

(viii) any relevant qualifications.

(5) The Chief Inspector shall, upon the taking of any enforcement action against a childcare provider by the Chief Inspector or by an authorised person, provide to any childcare organisation he considers appropriate information of the kind falling within sub-paragraph (7)(d).

(6) The Chief Inspector shall, in response to a written request from a childcare organisation providing relevant services for information relating to a childcare provider named in the request, provide that organisation with such information of a kind falling within paragraph (7) in his possession as he considers appropriate to meet that request.

(7) The information referred to in paragraphs (5) and (6) shall be—

(a) information concerning the setting for relevant childcare provided by that childcare provider;

(b) the date of, purpose of, and any conditions attaching to the registration of the childcare provider in respect of that childcare;

(c) information relating to the quality of the childcare obtained by an authorised person;

(d) information as to any enforcement action taken against the childcare provider by the Chief Inspector, by an authorised person, or by a local authority acting under Part X of the Act.

(8) Nothing in this regulation shall require the Chief Inspector to disclose the following information—

(a) information as to the identity of any child to whom childcare is or has been provided without the consent of a parent of the child identified;

(b) information as to the identity of a parent or relative of such a child, unless the parent or relative in question is the childcare provider, without the consent of the parent identified;

(c) information which the Chief Inspector does not consider reliable having regard to its age, provenance or the degree of substantiation available to him in relation to it.

(9) For the purposes of paragraphs (3), (5) and (6), disclosure by the Chief Inspector to any person carrying out services of a childcare organisation on behalf of that organisation shall be treated as disclosure by the Chief Inspector to that organisation.

Disclosure to child protection agencies and police forces

7.—(1) In this regulation, "child protection agency" includes any body or authority exercising within the United Kingdom statutory functions relating to the protection of children.

(2) The Chief Inspector shall, if he considers it appropriate having regard to the welfare of any child or children, disclose to such child protection agencies and police forces as he considers appropriate any information of a kind falling within paragraph (3).

(3) The information referred to in paragraph (2) shall be—

(a) information obtained in the course of ascertaining the suitability of a person to be a childcare provider or, as the case may be, an associate of a childcare provider;

(b) information obtained by an authorised person;

(c) information connected with any enforcement action taken against a childcare provider by the Chief Inspector, by an authorised person, or by a local authority acting under Part X of the Act.

(4) Without prejudice to the generality of paragraph (2), the Chief Inspector shall, in response to a written request from a child protection agency or a police force for information relating to a person named in the request—

(a) if that person is, or has been, a childcare provider or an associate of a childcare provider, or

(b) if that person's suitability to be a childcare provider or an associate of a childcare provider has been considered by him,

provide that agency or, as the case may be, that police force with such information of a kind falling within paragraph (5) in his possession as he considers appropriate to meet that request.

(5) The information referred to in paragraph (4) shall be—

(a) information concerning the setting for the childcare provided by that person;

(b) if the person has at any time been a registered childcare provider, the date of, purpose of, and any conditions attaching to the registration;

(c) information obtained in the course of considering the suitability of the person to be a childcare provider or, as the case may be, the associate;

(d) other information about the person or, in the case of a person who has acted as a childcare provider, the setting in which the childcare was provided obtained by an authorised person;

(e) information concerning any child receiving childcare from that person or in that setting;

(f) information as to any enforcement action taken against the person by the Chief Inspector, by an authorised person or by a local authority acting under Part X of the Act.

(6) For the purposes of paragraph (2), disclosure by the Chief Inspector or by an authorised person to any person having authority or ostensible authority to receive on behalf of a child protection agency or, as the case may be, a police force the information so disclosed shall be treated as disclosure by the Chief Inspector to the agency or police force in question.

Disclosure to other government departments and local authorities

8.—(1) In this regulation—

"government department" includes a Northern Ireland department and any body or authority exercising functions on behalf of the Crown; and

"local authority" means a local authority acting in pursuance of any of its statutory functions other than those functions to which regulation 6 relates.

(2) The Chief Inspector shall, in response to a written request from another government department for information relating to a childcare provider named in the request, provide that government department with such information of a kind falling within paragraph (3) in his possession as he considers appropriate to meet that request.

(3) The information referred to in paragraph (2) shall be information concerning—

(a) the setting for the childcare provided by the childcare provider;

(b) the date of, purpose of, and any conditions attaching to the registration of the childcare provider;

(c) information relating to the quality of the childcare provided obtained by an authorised person;

(d) information as to any enforcement action taken against the childcare provider by the Chief Inspector, by an authorised person or by a local authority acting under Part X of the Act.

(4) Nothing in this regulation shall require the Chief Inspector to disclose the following information—

(a) information as to the identity of any child to whom childcare is or has been provided without the consent of a parent of the child identified;

(b) information as to the identity of a parent of such a child, unless the parent or relative in question is the childcare provider, without the consent of the parent identified;

(c) information which the Chief Inspector does not consider reliable having regard to its age, provenance or the degree of substantiation available to him in relation to it.

(5) The Chief Inspector shall, in response to a request in writing from another government department or a local authority, provide that department or authority with so much of the following information as is in his possession relating to childcare providers registered under section 79F of the Act at the date of the request as is needed to meet the request—

(a) the names of the childcare providers; and

(b) in relation to each childcare provider—

(i) any unique reference number or other identifier used by the Chief Inspector;

(ii) the date and purpose of registration, in so far as it relates to the provision of relevant childcare;

(iii) the date and number of any current certificate of registration;

(iv) the business name, if any, under which the childcare is, or is to be, provided;

(v) the address of the childcare provider;

(vi) the address, if different from the address at (v), of any premises at which relevant childcare is, is to be, or may be provided;

(vii) any telephone number, fax number or e-mail address of the childcare provider or of the premises supplied to the Chief Inspector by the childcare provider; and

(viii) any relevant qualifications.

(6) The information that may be provided to a local authority under paragraph (5) shall be limited to such information as relates to childcare providers in the area administered by that authority and the local government areas adjacent to that area.

Margaret Hodge
Minister of State
25th November 2004 Department for Education and Skills

SCHEDULE

Regulation 6

CHILDCARE ORGANISATIONS

An early years development and childcare partnership.

A local authority carrying out functions under section 118A(3) of the School Standards and Framework Act 1998(**a**).

A fostering agency within the meaning of section 4(4) of the Care Standards Act 2000(**b**).

A local authority carrying out relevant functions within the meaning of section 43 of that Act.

A voluntary adoption agency within the meaning of section 4(7) of that Act.

(**a**) Section 118A was inserted by section 149(1) of the Education Act 2002, c. 32.
(**b**) 2000 c. 14.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Under the Children Act 1989 (c.41), Her Majesty's Chief Inspector of Schools ("the Chief Inspector") has the function of regulating the provision of day care and child minding for children under the age of eight in England. These Regulations, made under section 79N(5) of the Children Act 1989, give the Chief Inspector the additional function, in prescribed circumstances, of disclosing to parents, the police and various organisations concerned with the provision of care for, or with protecting, children certain information gathered while regulating such childcare.

Regulation 5 sets out the circumstances in which the Chief Inspector must disclose information to the parents of children who are being, or have been, provided with child care. Regulation 5(3) describes the information that is to be disclosed. Regulation 5(4) protects from disclosure without consent the identity of other children and their parents and lifts the requirement to disclose in the case of any information that the Chief Inspector considers unreliable because of its age or the source of it or because it is not adequately substantiated.

Regulation 6 sets out the circumstances in which the Chief Inspector must disclose information to childcare organisations listed in the Schedule to the Regulations (and which include early years development and childcare partnerships, fostering agencies and voluntary adoption agencies as well as local authorities carrying out certain of their functions in relation to children) and the information that is to be provided in those circumstances. There is protection from disclosure without consent of the identity of other children and their parents and the Chief Inspector is not required to disclose information that he considers unreliable because of its age or the source of it or because it is not adequately substantiated.

Regulation 7 sets out the circumstances in which the Chief Inspector must disclose information to child protection agencies (bodies or organisations within the United Kingdom that have statutory functions relating to the protection of children) and to the police and the information the Chief Inspector must disclose to them.

Regulation 8 provides for disclosure of information to other government departments and to local authorities carrying out statutory functions other than as "childcare organisations" (to which regulation 6 applies).

Regulation 4 affects the extent of the duty to disclose in each of these cases. It lifts the duty: in any case where the Chief Inspector is not satisfied that the interests of a child, or of children in general, will be served by the disclosure; where the Chief Inspector has already made the disclosure to the person or organisation to whom it would otherwise have to be disclosed; and where the information is already reasonably available to the person or organisation or where the disclosure would involve disproportionate effort or expense. The regulation also lifts the duty to disclose where the Chief Inspector judges that the information is sought for the purpose of commencing, or considering commencing, a civil action, whether against the Chief Inspector or another person or body, so that the law relating to the extent of any duty to disclose in such circumstances is undisturbed. The regulation also lifts the duty to disclose in any case where the law other than the Data Protection Act 1998 (c.29) or an order of a court requires the Chief Inspector not to do so.

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