EXPLANATORY MEMORANDUM TO

THE CHILDREN ACT 2004 INFORMATION DATABASE (ENGLAND) (AMENDMENT) REGULATIONS 2010

2010 No. [Draft]

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This statutory instrument amends The Children Act 2004 Information Database (England) Regulations 2007 ("the ContactPoint Regulations"). Eight amendments to the ContactPoint Regulations are proposed.

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

3.1 None.

4. Legislative Context

4.1 The Children Act 2004 Information Database (England) (Amendment) Regulations 2010 ("the ContactPoint Amendment Regulations") are made under section 12(4),(5),(6) and (10) and section 66(1) of the Children Act 2004. They amend the Children Act 2004 Information Database (England) Regulations 2007 (SI 2007/2182) ("the ContactPoint Regulations") and will come in to force on the day after the day on which they are made. A draft of the instrument has been laid before both Houses of Parliament for approval, in accordance with section 66(3) of the Children Act 2004.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

6.1 The Parliamentary Undersecretary of State for Children, Schools and Families, Baroness Morgan, has made the following statement regarding Human Rights:

> "In my view, the provisions of the Children Act 2004 Information Database (Amendment) (England) Regulations 2010 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The ContactPoint Regulations provide a legal framework for the operation and maintenance of ContactPoint (formerly known as the Information Sharing Index). ContactPoint is established under section 12 of the Children Act 2004. Its purpose is to support practitioners, local authorities and other organisations in fulfilling their duties under section 10 (co-operation to improve well-being) and section 11 of the Children Act 2004 (arrangements to safeguard and promote welfare) and section 175 of the Education Act 2002 (duties of LEAs and governing bodies in relation to welfare of children).

7.2 ContactPoint provides a quick way for authorised practitioners in different services to find out who else is working with the same child, to enable them to work together. It is a database that holds basic identifying information on all children in England until they reach the age of 18 (although in the case of young people with learning disabilities or those leaving care, the record can be retained up to the age of 25 with their consent); contact details for those with parental responsibility for or, care of, them; and names and contact details for those providing education, the GP with whom the child is registered, and other practitioners providing additional services (or specialist and targeted services) to a child.

7.3 From January 2009 ContactPoint was implemented in 18 early adopter local authorities and with two national partners, Barnado's and Kids. Following an overwhelmingly positive response from the early adopters, on 6th November 2009 the Secretary of State for Children, Schools and Families announced that ContactPoint was being implemented nationally, with local authorities and national partners in England able to train practitioners to use it.

7.4 Practical experience in designing and building ContactPoint and in its use by the early adopters, as well as extensive testing of ContactPoint, have highlighted the need to amend the ContactPoint Regulations. Also, Sir Roger Singleton's report "*Keeping our Schools Safe: Review of Safeguarding Arrangements in Independent Schools, Non-Maintained Special Schools and Boarding Schools in England"* (March 2009) included a recommendation about ContactPoint : *'That DCSF take steps to ensure that pupils who receive education in schools in England, but who are not ordinarily resident in England, are covered by ContactPoint.'* On 24th March 2009 the Secretary of State for Children, Schools and Families gave a Written Ministerial Statement confirming that his Department accepted all of the recommendations in the Singleton review (Hansard 24th March 2009 Column 9WS). The amendments included at regulations 4 and 6 of the ContactPoint Amendment Regulations reflect this commitment.

7.5 The amendments do not affect the fundamental principles and design of ContactPoint. Rather, they are intended to make practical adjustments in the light of the experience of using ContactPoint. The amendments to the ContactPoint Regulations and the rationale behind them are explained in turn, below.

7.6 As Sir Roger Singleton's recommendation highlights, using 'ordinary residence' as a criterion for inclusion on the database, as the ContactPoint Regulations do, means there are important groups of children in England who are currently excluded from ContactPoint. Under common law, a child is deemed to have the same place of ordinary residence as their parents, and is treated as not being capable of establishing a place of ordinary residence independently, save in exceptional circumstances. So, a person under the age of 18 is normally not ordinarily resident in England if their parents are not ordinarily resident in England. Such children include those who attend boarding schools in England and whose family home and parents are abroad, as well as children privately fostered in England whose parents live abroad. In order to address Sir Roger Singleton's recommendation, the ContactPoint Amendment Regulations replace "...who is ordinarily resident in England" at Paragraph 4(1) with "...who is in the area of a local authority". Additional amendments pick up on this to ensure consistency through the regulations. "In the area of a local authority" means that children physically present in a local authority's area regardless of their ordinary residence status, including any child living in England (regardless of where they go to school) and any child from outside England who attends school in England, whether or not they are at a boarding school, will be included on the database. It also mirrors the terminology used in section 10 of the Children Act 2004, which requires children's services authorities to make arrangements "with a view to improving the well-being of children in the authority's area" and it is for the purpose of these arrangements that ContactPoint was established. "Local authority" is defined in the ContactPoint Regulations as "a children's services authority in England within the meaning of section 65(1) of the (Children) Act (2004)".

7.7 The ContactPoint Regulations currently requires that, the name and contact details of *"of any person with parental responsibility for the child or who has care of the child at any time"* is to be included on a child's record on ContactPoint (Schedule 1 Paragraph 6). This means that the details of natural parents who do not have parental responsibility for or care of the child, are not included on the database. However, natural parents without parental responsibility still have a range of rights and responsibilities in relation to their child and so, in some circumstances, it will be appropriate for practitioners to consult them about decisions regarding the child. For example, where a child is 'looked after' by a local authority, the local authority has a statutory duty to consult the child's parents about decisions that affect the child, unless it is not reasonably practicable or consistent with the child's welfare, regardless of whether the parent has parental responsibility (section 22(4) of the Children Act 1989). Including the parents' contact details in ContactPoint will make it easier to ensure such consultation takes place. There is also an inconsistency with the data collected and held by schools under the Education (Pupil Registration) (England) Regulations 2006. This requires schools to hold information about parents (as defined in section 576 of the Education Act 1996) in their admission register. This definition of parent includes natural parents who do not have parental responsibility or care of their children. The amendment ensures that schools (and other data providers) can disclose all this data to ContactPoint, removing the administrative burden on schools of stripping out the details of those parents without care of the child or parental responsibility. The ContactPoint Amendment Regulations insert a definition of parent into regulation 2, similar to that in section 576 of the Education Act 1996, which includes natural parents without parental responsibility and people with care of the

child. The references in Schedule 1 paragraph 6, to 'any person with parental responsibility, or care of the child' are also replaced with 'parent', so that this information can be included on the database.

7.8 A third amendment to the ContactPoint Regulations concerns the terminology used to describe non-universal services. Currently, the phrase 'specialist or targeted services' is used at regulation 2 and Schedule 1 paragraph 9. However, stakeholders have told the Department for Children, Schools and Families that they prefer the term 'additional services', which is more commonly used and perceived to be less stigmatizing to the users of these services. This change is simply a change in terminology; the definition of these services is unchanged.

7.9 Under regulation 6(5) of the ContactPoint Regulations, only local authorities have responsibility for shielding child records on ContactPoint. 'Shielding' limits the information visible to ContactPoint users, where, for example, there are concerns about the child's safety. However, a small number of cases require shielding for reasons of witness or victim protection. It has become clear that it would be impractical to expect local authorities to deal with such cases, due to their sensitive nature and local authorities have raised concerns that to do so could present a security risk for their officials. Handling this information requires the necessary security controls to manage data classified at Business Level Impact 5, 'Secret'.

7.10 Regulation 5 of the ContactPoint Amendment Regulations allows the Secretary of State for Children, Schools and Families (as well as local authorities) to determine when records must be shielded. In practice, the Secretary of State will only exercise this power in appropriate witness protection cases. This will enable the security risks over this information to be managed centrally and in the most appropriate manner.

7.11 The remaining amendments to the ContactPoint Regulations concern minor changes that have arisen as a result of further work on the development of the ContactPoint system and policy, as well as feedback from stakeholders and early adopters. These concern: removing the parent/carer name from view on a child record that has been 'shielded', in order to reduce the risk of this information being used to trace the child; allowing previous addresses for a child to be stored on a child's record on ContactPoint, where these are available; changing the terminology used in the Regulations to accommodate the fact that one of the ContactPoint national partners has changed its name; and removing an unnecessary reference in Schedule 3 to another national partner, the Child Exploitation and Online Protection Centre.

Consolidation

7.12 This is the first time that these regulations have been amended and therefore consolidation is not appropriate at this time.

8. Consultation outcome

8.1 The Department for Children, Schools and Families undertook a public consultation from 2nd October 2009 to 29th December 2009. The scope of the consultation was the first three amendments discussed above, which are the more

substantive and which relate to: the criteria used to determine which children should be included on ContactPoint; the definition of 'parent' used for ContactPoint purposes; and the terminology used to describe some of the services provided to children. The further five amendments are minor in nature, but reflect further technical changes necessary to ensure that ContactPoint can operate effectively and in accordance with the original policy intention. The need for these minor changes has come to light as a result of with the experience of early adopter local authorities and national partners. Consultation responses were not sought on these more minor amendments. The consultation document was posted on the Department's Live Consultations webpage and it was highlighted in communications with local authorities and stakeholders, as well as in a Departmental press release. 47 responses to the consultation were received from a wide range of stakeholders including local authorities (13 responses), organisations that work with children and young people (8 responses), teachers' and school professionals' associations (3 responses) and 8 individuals responded in the capacity of parents/carers. An analysis of the results and the full Government response to the consultation will be published on the Department's website at the same time as the Regulations are laid in Parliament.

8.2 47% of respondents either agreed or strongly agreed that the details of parents without parental responsibility should be included on ContactPoint. 47% of respondents disagreed or strongly disagreed. 7% of respondents felt that this change widened the scope of ContactPoint without adequate justification. 13% of respondents were concerned that including this information could lead to practitioners making mistakes over the appropriate person to contact about decisions relating to a child; for example, if practitioners wrongly assume that a parent listed on a ContactPoint child record has parental responsibility. 20% of respondents were concerned that this proposed amendment could involve safeguarding risks; for example, on the grounds that parents without parental responsibility may in some cases (such as domestic violence) pose a threat to a child and mother.

8.3 There was a positive response to the proposed amendment to replace the term 'specialist and targeted services' with 'additional services'. 58% of respondents agreed or strongly agreed with this suggestion.

8.4 59% of respondents either strongly agreed or agreed with the proposal that all children 'in the area of a local authority' should be included ContactPoint, rather than the requirement that children are 'ordinarily resident' in England. There was an overwhelmingly positive response from local authorities to this proposal; 10 out of the 13 local authorities that responded agreed or strongly agreed. A significant minority of respondents (21%) were concerned that 'in the area of a local authority' is an unclear term, and that it may be interpreted to widen the scope of ContactPoint inappropriately.

8.5 Two sets of key issues emerged in the consultation. Firstly, some stakeholders were concerned that the proposal to include children 'in the area of a local authority' was an unclear and ambiguous requirement, and risked including on ContactPoint children who were in England temporarily – on holiday, for example. To address this concern, the Department will clarify who is 'in the area of the local authority' for the purposes of ContactPoint in revised ContactPoint guidance. This guidance will set out how the expression has been interpreted in case law, and will reassure ContactPoint

users that it should not mean that children passing through England on holiday should be included on ContactPoint. A child who lives in England, or attends school in England, is however 'in the area of a local authority', regardless of their place of ordinary residence.

8.6 Secondly, some stakeholders raised concerns about the amendment to include the name and contact details of all parents, including natural parents without parental responsibility. There was a concern that the change was a significant widening of the scope of ContactPoint. The Department for Children, Schools and Families has contacted stakeholders to reassure them that the change is not simply being made for administrative convenience, but rather for the reasons outlined above, in paragraph 7.7. This contact information will help practitioners perform their statutory duties to consult with parents on a range of decisions.

8.7 Also, after careful consideration the Department does not agree that including the contact details of parents without parental responsibility will increase the risk of practitioners contacting a parent inappropriately about decisions regarding a child. Practitioners should not assume that all parents listed on a ContactPoint record have parental responsibility. Practitioners' consultations with parents regarding a child will always be a matter of professional judgment – even where a parent has parental responsibility. Many factors have to be taken into consideration – not least of which is the child's wishes. Currently, many organisations (such as schools) hold contact details for parents who may or may not have parental responsibility, and practitioners within these organisations should always ascertain that they are contacting the appropriate individuals. This amendment does not alter this principle.

8.8 Nevertheless, in order to minimise the residual risk of practitioners making inappropriate contact with some parents, the revised ContactPoint guidance will make clear that the parents' details on a Child Record can include parents and carers who do not have parental responsibility.

8.9 In order to ensure that the information on ContactPoint does not put children or parents/carers at risk, records can be 'shielded'. In cases where there are safeguarding concerns, a child's record should be shielded; this means that only very minimal information about the child (their name, gender, date of birth and a unique identifying number) are visible to ContactPoint users.

8.10 After carefully considering the issues raised in the public consultation, the Department has decided to proceed with the amendments that were consulted upon, unchanged from the consultation document. This decision was informed by the generally positive consultation responses to the proposed amendments, and the responses outlined above to the concerns that were raised. However, the Department acknowledges the need for revised guidance to clarify the meaning of 'in the area of a local authority', and to emphasise to practitioners that some of the parents listed on a child's record on ContactPoint may lack parental responsibility.

9. Guidance

9.1 The Department for Children, Schools and Families' ContactPoint guidance will be revised in 2010 to reflect the amended regulations. This guidance includes

both statutory guidance, which applies to local authorities and national partners, and non-statutory guidance, which applies to anyone who will have access to ContactPoint, whether as a user, administrator or manager. This guidance will be available to download on the Department's website.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument. An impact assessment was completed for The Children Act 2004 Information Database (England) Regulations 2007. This was attached an annex to the Explanatory Memorandum for the ContactPoint Regulations, and is available at: http://www.opsi.gov.uk/si/si2007/uksi_20072182_en_1 .

10.4 The amendments are not anticipated to have further impact on private and public bodies and charities, beyond those already assessed in the Explanatory Memorandum for the ContactPoint Regulations. The amendments may simplify the process of disclosing data to ContactPoint, as data sources will not be required to confirm a child's ordinary residence before disclosing data.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 Currently, each local authority is supported by a dedicated regional coordinator, who is able to offer one-to-one support, help address issues and enquiries and gather feedback on implementation of ContactPoint. Local authorities are also supported by a central service management team. Both arrangements ensure the Department can monitor robustly the operation of ContactPoint. The Department will also regularly survey users of ContactPoint to measure benefits delivery. These mechanisms will allow the Department to continue to monitor and review arrangements and the impact of these amendments.

13. Contact

Simon Hampson, at the Department for Children, Schools and Families, can answer any queries regarding the instrument and can be contacted as follows:
Tel: 0207 340 8178, or email simon.hampson@dcsf.gsi.gov.uk .