

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

Consultation Response Form

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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The information you provide in your response will be subject to the Freedom of Information Act 2000 and Environmental Information Regulations, which allow public access to information held by the Department. This does not necessarily mean that your response can be made available to the public as there are exemptions relating to information provided in confidence and information to which the Data Protection Act 1998 applies. You may request confidentiality by ticking the box provided, but you should note that neither this, nor an automatically-generated e-mail confidentiality statement, will necessarily exclude the public right of access.

Please tick if you want us to keep your response confidential.

Name	Deborah Cullen
Organisation (if applicable)	British Association for Adoption & Fostering (BAAF)
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If your enquiry is related to the policy content of the consultation you can contact Chris Hirst on:

Telephone: 0207 273 4921

e-mail: chris.hirst@dfes.gsi.gov.uk

If you have a query relating to the consultation process you can contact the Consultation Unit on:

Telephone: 01928 794888

Fax: 01928 794 311

e-mail: consultation.unit@dfes.gsi.gov.uk

Please check one of the boxes that best describes you as a respondent:

<input type="checkbox"/> Child/young person	<input type="checkbox"/> Parent/carer	<input type="checkbox"/> Education – LA Staff
<input type="checkbox"/> Education – School/College Staff	<input type="checkbox"/> Health – PCT/SHA Staff	<input type="checkbox"/> Health – GP/Staff
<input type="checkbox"/> Social Services Staff	<input type="checkbox"/> Early years and childcare	<input type="checkbox"/> Local Authority
<input type="checkbox"/> ISA Team/Trailblazer	<input type="checkbox"/> Children’s Trust	<input type="checkbox"/> Connexions service
<input type="checkbox"/> Youth justice and probation	<input type="checkbox"/> Police	<input type="checkbox"/> Voluntary and x Community Sector
<input type="checkbox"/> Youth Services	<input checked="" type="checkbox"/> Representative bodies	<input type="checkbox"/> Other (please specify below)

Please Specify:

BAAF is BAAF is the leading charity and membership organisation in fostering and adoption in the UK. We:

- promote the highest standards of child-centred policies and services
- speak out on behalf of looked-after children
- influence UK-wide policy and legislation
- provide much-needed information and advice
- promote greater public understanding of adoption and fostering
- support our members in their work

Accessing the Index – Regulation 6

We propose to grant access to the index based on a practitioner's role within the Children's Workforce. The roles we propose are listed at (6)(3) of the regulations.

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

If so, please use the comments box to list them.

Yes

x No

Not Sure

Comments:

The list is – if anything – too long. Our particular concerns relate to:

- (a) The inaccessibility of the language used in this regulation.
- (b) Regs 6(3)(f) and 6(3)(j) refer to non-existent paragraphs of schedules 2 and 3 respectively. We presume that it is intended to refer to paragraph 28 of schedule 2 and paragraph 38 of schedule 3.
- (c) The fact that it is not enough to **obtain** a CRB check; there needs to be a process for considering whether any information disclosed as a result of a check means that the person is not suitable to access the index.
- (d) The local authority's power to delegate decisions about access to another body under reg 6(9); the consultation paper suggests that this is intended to enable a partner organisation to decide which of its own employees should be able to access the index, but the draft regulation is far wider than this.

Conditions of Access – Regulation 6

We propose (regulation (6)(5)) to grant access to the index only to people who are working with children and young people or their information, that have a enhanced Criminal Records Bureau disclosure and have undergone appropriate training.

2 Should there be other conditions for access?

If so, please use the comments box to say what other conditions you believe should be added.

Yes

No

Not Sure

Comments: see response to Q 1 above.

The key condition should relate to the individual's need to know.

Retaining Information on the Index – Regulation 7

We propose in regulation (7)(5) to retain contact details for practitioners for one year after their involvement with a child has ceased and that practitioners may decide that their contact details should remain on the index for a period of up to five years so that recent, relevant information can be shared between practitioners if appropriate.

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

If you have any additional comments, please use the comments box below.

Agree

Disagree

Not sure

Comments:

Archiving Information from the Index – Regulation 7

In accordance with the Limitation Act 1980, we propose to archive material for a period of 6 years once it is no longer appropriate to hold it on the index. We have proposed in regulation (7)(13) a list of circumstances under which access would be provided to the information in the archive.

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

If so, please use the comments box to detail what other circumstances.

Yes

No

Not Sure

Comments:

Accuracy of Index Information – Regulation 8

The Data Protection Act and regulation 8(1)-(3) requires every person or body that supplies information to the index to take reasonable steps to ensure that the information they provide is and remains accurate.

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

If you believe there are further safeguards that could be introduced to ensure accuracy of information held on the index please use the comments box to expand on your answer.

Yes

No

Not Sure

Comments: The regulations in themselves **cannot** ensure this. We note that it is left to the Secretary of State to determine the times when information has to be disclosed under reg 5. A great deal will hinge on this – by and large the most vulnerable children may be those who move, or whose circumstances change, most frequently, but a heavy administrative burden could fall on agencies who are required to notify each change of address or carer. (We are unconvinced by the optimistic assertion in the draft RIA that the information will be fed in automatically from practitioners' information systems.)

Local Authority Complaints Procedure – Regulation 9

We propose at regulation 9, to require local authorities to put in place, and publicise, a complaints procedure relating specifically to their responsibilities under Regulation 6 (Access) and Regulation 8 (Accuracy).

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

Please use the comments box if you wish to expand on your answer.

Agree

Disagree

Not sure

Comments: Those wishing to complain are far more likely to be concerned about one of the matters listed in the draft regulation on which no complaint may be made to the local authority!

Information to be held on the Index – Schedule 1

Section 12 of the Children Act 2004 sets out what information will be held on the index. We propose, under Schedule 1 (11-16) to add the following items to the information to be included on the index.

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

7 a) name and contact details of the child's health visitor (a key contact for under 5s)

<input checked="" type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Not sure
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7 b) name and contact details of the child's school nurse (a key contact for school age children)

<input checked="" type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Not sure
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7 c) name and contact details of the lead midwife (a key contact for babies and for young girls who become mothers themselves)

<input checked="" type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Not sure
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7 d) where the child has died, the date of death (we believe that this will help avoid practitioners making enquiries to the family without the knowledge of the child's death)

<input checked="" type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Not sure
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7 e) any number used by any person or body to identify the record relating to the child (although these will be used for data matching purposes and will not be visible to the users of the index)

<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input checked="" type="checkbox"/> Not sure
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7 f) metadata (which will not be visible to users but will include information such as the source of the data and the date it was last updated – to enable quality of data to be assessed)

<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input checked="" type="checkbox"/> Not sure
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Please use the comments box to expand on any of your answers above.

Comments:

Although we have answered in the affirmative to most of the above specific questions, we must reiterate that we lack confidence that the Index will achieve benefits overall for children and young people and their families.

Disclosing Information to the Index – Schedules 2 and 3

Schedule 2 of the regulations lists the persons and bodies 'required' to disclose information for inclusion in the index.

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

Please use the comments box to let us know which persons or bodies you believe should be required to disclose information for inclusion on the index and why.

Yes

No

Not Sure

Comments: Immigration service. A high proportion of vulnerable children will be in the group of those who have been brought from overseas, perhaps for private fostering, or for adoption, or maybe for more sinister purposes. Where the immigration service grants entry clearance it would be a potential additional safeguard if they have responsibility to refer the details to the Index. However, this raises questions about the advisability of restricting the scope of the index to children 'ordinarily resident' in this country – on which see our additional comments in our response.

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

Please use the comments box to let us know if there are persons or bodies listed at Schedule 2 that you believe should not be required to disclose information to the index and why.

Yes

No

Not Sure

Comments: Further thought is needed about:

- (a) The broad category of local authorities and district councils. These authorities are responsible for the provision of a wide range of services. Is it really intended that, for example, the public library should have a duty to put its child borrowers' details on the Index? Or the Recreation department providing cycle or sports training? Will housing departments be required to provide details?
- (b) Schools and further education institutions. Surely these should only be required to refer a child or young person who is actually registered as a pupil/student at the institution? Otherwise all those children who have applied for places would have to be referred.
- (c) NHS trusts and foundation trusts – is it the intention that each of these should have to refer any child with whom it has contact at any time, for example a one-off out-patient appointment, or orthodontic treatment? Where the relevant establishment is treating or seeing a child who is not ordinarily resident in its own area will the technology really permit the information to be automatically fed in to the correct part of the IS Index (as claimed on page 10 of the partial RIA)?

The persons or bodies listed at Schedule 3 of the regulations are 'permitted' to disclose information for inclusion in the index.

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

If so, please use the comments box to say what other persons or bodies you believe should be added and why.

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

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

Please use the comments box to let us know if there are persons or bodies listed at Schedule 3 that you believe should not be permitted to disclose information to the index and why.

Yes

No

Not Sure

Comments: We remain unhappy about the overriding of the rules of common law regarding disclosure of information (reg 10). Further thought is needed as to the possible harmful effect of reducing the confidence of young people and their families is accessing services provided by voluntary organisations. Such organisations would have responsibility to override confidentiality in any case in the interests of safeguarding a child at risk of significant harm. It would be preferable for all other referrals to be made subject to the informed consent of the individuals concerned.

Partial Regulatory Impact Assessment

We have produced a partial regulatory impact assessment setting out the impact of the draft Regulations on stakeholders. A full regulatory impact assessment will accompany the final Regulations when they are laid before Parliament.

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

If you answer No, please use the comments box to expand on your answer.

Yes

No

Not Sure

Comments: We assume this question relates to the bodies set out on pages 5-6 who have been involved in consultation. We wonder to what extent those within local authorities involved in the provision of services other than social services and education have been involved and consulted. We are doubtful that the current consultation exercise is in practice engaging the public at large. There has been a little media publicity which has tended to focus on the anxieties of 'celebrity' families, and we consider that far more needs to be done to raise public awareness generally about these proposals and actively seek their views. When there is so little awareness it can hardly be said that lack of objection implies acquiescence with the plans.

The partial Regulatory Impact Assessment contains an assessment of the costs and benefits of enacting these regulations.

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

If you answer No, please use the comments box below to expand on your answer.

Yes

No

Not Sure

Comments: We believe there is a serious underestimation of the administrative burden and costs likely to be imposed, and an over-optimistic view of the likely benefits. Experience to date does not inspire confidence in any Government sponsored IT based system, and the current problems being encountered by the NHS computerisation provide a stark warning. There are particular issues about risks of breaches of confidentiality for adoptive and adopted children and their families. Even if the costs are no greater than estimated in the RIA (which we doubt), we feel strongly that there are other ways in which this money could be better spent to enhance the welfare of children.

General Comments

We are keen to know your views and welcome any further general comments that you might have on these draft Regulations.

14 Have you any further general comments? Please use the comments box below.

Comments:

Please see our attached response. We hope it is not too late for the Government to think again about the fundamental purpose of this extremely expensive project, particularly in the light of the report from the Foundation for Information Policy Research. As far as promoting the well being of children and families is concerned the Index risks alienating further the most vulnerable families and diverting resources from the front line services where they are needed.

If the Index is to be pursued a radical rewriting of the regulations is needed. The draft regulations are defective in many ways as we have outlined in our attached response.

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply x

Here at the Department for Education and Skills we carry out our research on many different topics and consultations. As your views are valuable to us, would it be alright if we were to contact you again from time to time either for research or to send through consultation documents?

xYes

No

All UK national public consultations are required to conform to the following standards:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

Further information on the Code of Practice can be accessed through the Cabinet Office Website: <http://www.cabinetoffice.gov.uk/regulation/consultation-guidance/content/introduction/index.asp>

Thank you for taking time to respond to this consultation.

Completed questionnaires and other responses should be sent to the address shown below by 21 December 2006

Send by post to:

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