



Child Protection: Preventing Unsuitable People from Working with Children and Young Persons in the Education Service

Executive Summary

Overview

This Guidance details the pre-appointment checks that should be made on all people who will have contact with children and young persons; explains the role of the Criminal Records Bureau and the circumstances under which people may be reported to the Secretary of State.

Action required

Employers should note the information contained in this Guidance.

Further information

This Guidance replaces Circular 9/93, Protection of Children: Disclosure of Criminal Background of Those with Access to Children; Circular 11/95, Misconduct of Teachers and Workers with Children and Young Persons; the Action Note issued on 14 July 1998 and the Guidance Note issued on 10 September 1998. It also replaces the guidance about criminal record checks and List 99 checks, contained in Circular 7/96, Use of Supply Teachers and in the associated Guidance Notes for Teacher Employment Businesses and Agencies. The rest of the guidance contained in Circular 7/96 and in the associated Guidance Notes remains in force.

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Headteachers, Chairs of Governors, Local Education Authorities, Independent Schools, Further Education Institutions, Supply Agencies, Initial Teacher Training Providers and University Departments of Education in England

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Related documents:

Circular 7/96, Use of Supply Teachers and the associated Guidance Notes for Teacher Employment Businesses and Agencies

Circular 4/99, Physical and Mental Fitness to Teach of Teachers and of Entrants to Initial Teacher Training

Superseded documents:

Circular 9/93, Protection of Children: Disclosure of Criminal Background of Those with Access to Children

Circular 11/95, Misconduct of Teachers and Workers with Children and Young Persons
Guidance about criminal record checks and List 99 checks, contained in Circular 7/96, Use of Supply Teachers and in the associated Guidance Notes for Teacher Employment Businesses and Agencies
Action Note dated 14 July 1998

Guidance Note issued on 10 September 1998

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Introduction

1. This Guidance provides advice for employers in the education service on preventing unsuitable people from working with children and young persons. The Guidance is in three parts.

- Part 1 details the pre-appointment checks that should be made on teachers, other workers and volunteers who will have contact with children.
- Part 2 explains the role of the Criminal Records Bureau and contains guidance on obtaining criminal record checks, List 99 checks and checks of the Department of Health's Protection of Children Act List through the Bureau's Disclosure service.
- Part 3 explains the requirement to report individuals to the Secretary of State on grounds of misconduct and the arrangements for doing so. It also contains advice on making referrals to the Department because of concerns about a teacher on medical grounds.

2. Annexes to the Guidance contain the definition of regulated positions contained in the Criminal Justice and Court Services Act 2000, and guidance for initial teacher training providers and teacher employment agencies and businesses.

3. The legislation relevant to this Guidance is:

- the Rehabilitation of Offenders Act 1974;
- sections 218(6), (6ZA), (6A) and (6B) of the Education Reform Act 1988;
- section 15 of the Teaching and Higher Education Act 1998;
- Part V of the Police Act 1997;
- section 6 of the Protection of Children Act 1999, and
- sections 35 and 36 of the Criminal Justice and Court Services Act 2000.

The relevant regulations are the Education (Teachers' Qualifications and Health Standards) (England) Regulations 1999, as amended, the Education (Restriction of Employment) Regulations 2000, as amended, and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, as amended.

Part 1: Pre-appointment checks

4. It is important that thorough checks are made on anybody who will be working in a school or further education institution (including sixth form colleges)¹, both to prevent unsuitable people from gaining access to children and to maintain the integrity of the teaching profession.

5. This part of the Guidance details the pre-appointment checks that should be made on people whose work will bring them into contact with children. Some of these checks are mandatory in law, while others are strongly recommended as good practice. All of the relevant checks should be satisfactorily completed before a person takes up a position.

What checks should be made on people who will be working with children?

6. The Department advises that the following checks should be made on **all** people (including volunteers) who seek appointment to positions which will bring them into contact with children. Checks on supply teachers should be made when they are recruited to work for an employment business or agency.

- Identity

It is important to be sure that the person is who he or she claims to be. In some cases the candidate will be known to the school or further education institution or will be employed by the local education authority or a neighbouring establishment. If not, the employer should ask to see proof of identity such as a birth certificate, driving licence, or passport. If a teacher or worker is provided by a third party, such as an employment business or agency, the school or further education institution should check that the person who comes to them is the person referred by the employment business or agency. nb. proof of identity will always be required in connection with an application to the Criminal Records Bureau (CRB) for a Standard or Enhanced Disclosure.

- Academic Qualifications

Employers should always verify that the candidate has actually obtained any academic or professional qualifications claimed in their application by asking to see the relevant certificate or diploma, or a letter of confirmation from the awarding institution. If original documents are not available, employers must see a properly certified copy.

¹ References in this Guidance to further education institutions include sixth form colleges.

- Professional and Character References.

References should always be taken up, and should be obtained directly from the referee. It is not good practice to rely solely on references or testimonials provided by the candidate. We strongly advise that a reference should be obtained from the current or most recent employer.

- Previous Employment History

Employers should always ask for information about previous employment and obtain satisfactory explanations for any gaps in employment. If a candidate for a teaching post is not currently employed as a teacher, it is also advisable to check with the school, further education institution or local education authority at which they were most recently employed, to confirm details of their employment and their reasons for leaving. The General Teaching Council for England (GTC) may also be able to confirm details of a registered teacher's previous employment history.

- Criminal Record Check

All applicants for positions which are excepted from the provisions of the Rehabilitations of Offenders Act 1974 should be asked to declare any convictions, cautions or bind-overs which they have incurred, including any that would be regarded as 'spent' under the Act in other circumstances.

If a person who is, or who has been, resident in the UK is subsequently selected for appointment, the employer should ask them to apply to the CRB for a Disclosure to verify their declaration (see Part 2 for further information about the Disclosure service).

For the purposes of working with children, the exceptions to the Rehabilitation of Offenders Act 1974 are the positions detailed in section 36 of the Criminal Justice and Court Services Act 2000 (see Annex A) and any work involving regular contact with children in a further education institution. The positions include:

- any work in a school or a sixth form college, on day care premises, or in a children's home or hospital;
- any position in which the normal duties include caring for, training, supervising or being in sole charge of children under the age of 18;
- any position involving unsupervised contact with a child under arrangements made by the child's parents or guardian, the child's school or a registered day care provider; and
- a position as a governor of a school or sixth form college.

- List 99

List 99 is a confidential document, maintained by the Department, which contains the names, dates of birth, national insurance numbers and teacher reference numbers of people whose employment in relevant employment² has been barred or restricted by the Secretary of State. Employers are required by the Education (Restriction of Employment) Regulations 2000 to check the List to ensure that they do not appoint someone to a post from which they have been barred. A person whose employment has been restricted by the Secretary of State may only work in a post which does not contravene the terms of the restriction.

When a person applies for a Standard or Enhanced Disclosure to verify their suitability to work with children, the Disclosure will contain details of whether they are included on List 99 and/or the Protection of Children Act (PoCA) List which is maintained by the Department of Health (see Part 2 for further information about the Disclosure service).

- Health

Anyone appointed to a post involving regular contact with children or young people should be medically fit (see The Education (Teachers' Qualifications and Health Standards) (England) Regulations 1999). Further information is given in DfEE Circular 4/99, Physical and Mental Fitness to Teach of Teachers and of Entrants to Initial Teacher Training.

What additional checks should be made on teachers?

7. As well as the checks listed above, employers must contact the GTC for England to obtain the following checks on people who are selected for appointment to teaching posts:

² Relevant employment means:

- a) any employment by a local education authority, or the proprietor of an independent school, as a teacher, or a worker with children or young persons under the age of 19;
- b) employment by any other body as a teacher at a maintained school, a non-maintained special school, or a further education institution; and
- c) employment by a governing body of a maintained school, a non-maintained special school or further education institution as a worker with children or young persons under the age of 19.

It also includes people who provide their services as teachers in school, but are not directly employed under a contract, such as supply teachers and student teachers. A worker with children or young persons is a person who is not a teacher, but whose work brings him or her into regular contact with persons under the age of 19.

- Registration with the GTC

All teachers working in maintained schools and non-maintained special schools and pupil referral units in England are required to register with the GTC, unless they are exempt from the requirement to hold Qualified Teacher Status (see below). Employers must check with the GTC whether teachers applying for positions in such schools are registered with the Council and whether any restrictions are in force against the teacher.

- Qualified Teacher Status (QTS)

Anyone appointed or engaged to teach in a maintained school or non-maintained special school must either have QTS or come within one of the exceptions set out in the Education (Teachers' Qualifications and Health Standards) (England) Regulations 1999, as amended. Those exempted from the requirement to hold QTS are:

- trainee teachers undertaking teaching practice;
- teachers working towards QTS through an employment based programme;
- teachers trained overseas (outside the European Economic Area) and
- unqualified teachers (eg, instructors), where the school has been unable to find a qualified teacher with the necessary skills and expertise.

These exceptions do not apply to candidates for head teacher and deputy head teacher posts in maintained schools: they must have QTS. If a candidate has a DfES reference number this does not necessarily mean that they have QTS.

- Induction

Teachers who obtained QTS after 7 May 1999, including those who have followed an employment-based training programme, must have successfully completed a statutory induction period if they are to work in maintained schools and non-maintained special schools in England.

8. Employers should be aware that the checks obtained through the GTC are complementary checks and must not be regarded as a substitute for other pre-appointment checks.

What checks should be made on overseas teachers?

9. Similar pre-appointment checks should be made on overseas teachers. However, if an applicant has never previously lived in the UK, no purpose will be served by seeking a Disclosure through the CRB on their arrival in this

country. The person will not have a criminal record in this country, nor will he or she appear on List 99 or the PoCA List.

10. People from some other countries may apply to their home police force for a certificate of good conduct. The level of information contained in these certificates varies from country to country: some are complete extracts from the criminal record; others are partial.

11. Certificates of good conduct are not available in Eire and there are no arrangements in connection with child protection for checking criminal background with the Irish authorities. However, many applicants from Eire may have trained and/or lived in the UK for some years, and in such circumstances checks can be made with the local police forces concerned.

12. Further information about the criminal record information, which may be obtained from overseas police forces, is available from the Teachers' Misconduct Team (contact details are given at the start of the Guidance). The CRB is researching the position in other countries and is likely to publish more up to date material later this year.

13. Where an applicant is from a country where criminal record checks cannot be made for child protection purposes, employers must take extra care in taking up references and carrying out other checks on a person's background.

14. It should also be noted that teachers who have trained overseas are currently exempt from the requirement to be registered with the GTC, hold QTS or complete a statutory induction period. However, the Education Bill, which is currently before Parliament, contains proposals that will require overseas trained teachers to be provisionally registered with the Council (whether or not they are pursuing QTS).

What checks should be made on applicants for teacher training courses?

15. Applicants for initial teacher training courses that started after March 2002 should be asked to apply for an Enhanced Disclosure once they have received a provisional offer of a place at a teacher training institution. Students who started their courses before the introduction of the Disclosure service in March 2002 should not be checked retrospectively.

16. The current Education Bill contains proposals that will require trainee teachers on initial teacher training courses or on employment based routes to QTS to be provisionally registered with the Council.

17. Guidance to initial teacher training providers about obtaining Disclosures on people who have provisionally been offered a place on a teacher training course is contained at Annex B.

What should a prospective employer do if a candidate's application is found to be fraudulent or contain false information?

18. Serious, deliberate fraud or deception in connection with an application for employment may amount to a criminal offence (Obtaining Pecuniary Advantage by Deception). In such cases the employer should consider reporting the matter to the police. The case should also be reported to the Secretary of State (see Part 3 for further information about reporting misconduct).

Part 2: The Criminal Records Bureau (CRB)

What does the CRB do?

19. The CRB aims to help employers and voluntary organisations make safer recruitment decisions by identifying candidates who may be unsuitable for certain work, especially work which involves children or vulnerable adults, through a service called Disclosure. Employers can ask successful candidates to apply to the Bureau for a Disclosure, which will contain information about their criminal record. The Bureau issues three types of Disclosure, each representing a different level of check. The level of check is determined by the duties of the particular position or job involved. The CRB will advise applicants and employers what type of Disclosure is appropriate in individual cases. However, in general, work with children or vulnerable adults qualifies for the most detailed checks.

What are the different types of Disclosures?

20. There are three types of Disclosure:

Basic Disclosures show details of any convictions which are not spent under the Rehabilitation of Offenders Act 1974. They are available to individuals on payment of a fee and production of proof of identity. Basic Disclosures are not appropriate for people who will be working with children or vulnerable adults.

Standard Disclosures show spent and unspent convictions and cautions. These Disclosures are only available to applicants seeking paid or voluntary work or training in an occupation which is exempt from the Rehabilitation of Offenders Act 1974. This includes paid or voluntary work with children under 18 years of age, and will also be relevant for people entering certain occupations such as the legal profession and accountants.

Enhanced Disclosures show spent and unspent convictions and cautions. The police may also provide details of acquittals or other non-conviction information held on local police records, which are relevant to the job or voluntary position being sought. Enhanced Disclosures are only available to people seeking paid or voluntary work or training in a position whose normal duties include regularly caring for, training, supervising, or being in sole charge of children under 18 years of age or vulnerable adults, and are also relevant for people entering the medical profession, seeking judicial appointments and for certain statutory licensing purposes.

21. Standard and Enhanced Disclosures must be signed by the applicant and authorised by an employer or other person, who is registered with the Bureau. The original Disclosure will be provided to the applicant and a copy will be sent simultaneously to the person or body who authorised the application, in order to safeguard against fraud.

What is the ‘one-stop-shop’ service?

22. The CRB will act as a central access point to criminal records information held on the Police National Computer, the Department’s List 99 and the Department of Health’s Protection of Children Act List, which contains details of people considered unsuitable to work in child care organisations. Disclosures may also contain information about whether a person is subject to a disqualification order under the Criminal Justice and Court Services Act 2000, banning them from all work with children.

23. When someone applies for a Standard or Enhanced Disclosure in connection with work with children or regular contact with vulnerable adults, the Disclosure will contain information about whether he or she is included on the Department’s List 99, the Department of Health’s PoCA List, or is subject to a disqualification order banning him or her from all work with children.

Who should register with the CRB?

24. In the Department’s view the following organisations and establishments in the education sector will, or may, need to register to authorise applications for Standard and Enhanced Disclosures:

- LEAs and other organisations that provide personnel services to schools;
- diocesan authorities that provide personnel services to aided schools, or intend to make checks on people they nominate as foundation governors of aided schools;
- independent schools and any maintained schools that provide their own personnel services;
- further education institutions that provide their own personnel services;
- employment agencies and businesses that provide supply teachers and/or other staff to schools and/or further education institutions;
- Connexions service partnerships
- higher education institutions which provide initial teacher training, or other training that involves students in working with children as part of their course, or that routinely includes students under 18 years of age.

Should schools register with the CRB?

25. LEAs should act as the registered body and authorise all applications for Disclosure for the schools they maintain and for which they provide personnel services. Other organisations that provide personnel services to

schools should also register and arrange checks for their client schools. Only independent schools and any other schools that provide their own personnel services in-house should register with the Bureau in their own right.

26. In the case of community schools that do not obtain personnel services from their LEA, the authority will need to make arrangements with the school, or the body that provides the school's personnel services, to ensure that it is given the assurance that the check on a new employee shows that he or she is not barred. This is necessary to fulfil the authority's statutory duty not to employ a barred person.

How long will it take the CRB to process an application for Disclosure?

27. The CRB undertakes to provide 95% of Standard Disclosures within one week of receiving a correctly completed application form, and 90% of Enhanced Disclosures within three weeks of receiving a correctly completed form.

Who should be asked to apply for Disclosure?

28. People who are selected for appointment to a position in which the normal duties involve regular contact with children under the age of 18 in a further education institution, and anyone who is selected for appointment to a position in a regulated position set out in section 36 of the Criminal Justice and Court Services Act 2000.

29. Pupils who undertake short periods of work experience that involve contact with children in other schools or education establishments need not be checked. However, students who are required to work with children as a necessary part of a training course, eg student teachers, nursery nurses, etc, will need to be checked when they are accepted onto the course.

What sort of Disclosure is appropriate for education staff?

30. Teachers, other staff and volunteers whose job involves regularly caring for, training, supervising or being in sole charge of children under 18 years of age should obtain an Enhanced Disclosure. This includes applicants for teacher training courses, and trainee teachers.

31. People appointed to any of the other positions that are described above should obtain a Standard Disclosure. This is also the appropriate level of Disclosure for a school governor. The DfES School Governors Centre website (<http://www.dfes.gov.uk/governor/index.cfm>) and the A-Z of School Leadership and Management (<http://www.dfes.gov.uk/a-z/home.html>) contain further information about obtaining Disclosures on school governors.

Is there a charge for Disclosure?

32. Yes. The CRB charges individuals £12 for each Disclosure. It will be up to employers and organisations which ask for the Disclosure, to decide whether or not they wish to reimburse the applicant or pay on his or her behalf. Volunteers will not be charged for a Standard or Enhanced Disclosure, but will have to pay for a Basic Disclosure.

What is meant by additional information?

33. This is information held on local police records, which does not form part of a person's criminal record. It is often called 'non-conviction' information. Each Chief Constable decides what, if any, non-conviction information should be released in response to an application for Disclosure. While non-conviction information can be included on both copies of the Disclosure, particularly sensitive information, such as details of a police investigation, will not form part of the Disclosure document, and will be sent to the registered body only. In these circumstances, the employer's copy of the Disclosure document will indicate that the police are sending further information by letter. This information must not be passed on to the applicant.

Can a registered person or body share information from a Disclosure?

34. The Police Act 1997 makes unauthorised disclosure of any information revealed in a Standard or Enhanced Disclosure a criminal offence. However, the Act provides for information to be passed on in various circumstances. For example:

- the person who countersigned an application for Disclosure can share the information with another member of the registered body if the other person needs to know the information for the purpose of his or her duties;
- if the person countersigned the application on behalf of another body (eg. an LEA arranged a check for a school) the countersignatory can pass the information to that body;
- where a body receives information from a registered person as above, the information can be shared with members of that body who need to know it for the purposes of their duties, and
- information can be passed to a government department.

35. If anyone in possession of Disclosure information is in any doubt about whether he or she can pass on the information to someone else, he or she should seek advice from the lead countersignatory of the registered body which authorised the check.

Arrangements for keeping Disclosure information secure must conform to the CRB Code of Practice and any supplementary guidance from the Bureau.

36. If a Disclosure reveals that the Secretary of State has placed restrictions on a person's employment, the person must not in any circumstances be placed in a post which would infringe those restrictions, and the registered person should tell the head teacher or college principal about the terms of the restrictions which the Secretary of State has placed on the person's employment.

Should Disclosures be obtained on existing staff?

37. No. Employers, schools or LEAs should not ask existing staff who were not previously eligible for List 99 checks and/or criminal background checks to apply for Disclosure, unless they have grounds for concern about the person's suitability to work with children.

How often should people expect to obtain a Disclosure?

38. If they take up a new appointment with a different employer, are re-appointed or re-elected as a governor, have a break in service of three months or more, or move to a post with significantly greater responsibility for children, or if the employer, school, further education institution or LEA has grounds for concern about their suitability to work with children.

How can schools get assurance that supply teachers have obtained a Disclosure?

39. Head teachers may ask supply teachers to produce their copy of the Enhanced Disclosure to provide assurance that the check has been made, and may ask agencies to confirm the validity of the document. Similarly, Heads may ask teachers who were checked under previous arrangements to produce the letter certifying that the person has been satisfactorily checked. Further guidance for teacher employment agencies and businesses on obtaining criminal record and List 99 checks through the CRB is at Annex C.

How will List 99 checks be obtained on people who are not eligible for Standard or Enhanced Disclosures?

40. Teachers seeking positions in further education institutions where they will be dealing only with students over 18 years of age, will not be entitled to a Standard or Enhanced Disclosure, as those positions are not covered by the exceptions to the Rehabilitation of Offenders Act 1974. However, List 99 checks must be obtained on these people. Employers of people who fall into this category should contact the Teachers' Misconduct Team at DfES (contact details are given at the start of the Guidance) for further information.

How does an employer decide whether a person's criminal record is relevant?

41. An applicant's suitability should be judged in the light of the results of all the relevant pre-appointment checks carried out on him or her. The fact that a person has a criminal record does not automatically make him or her unsuitable for work with children. Employers, in conjunction with the registered body or person authorised to receive Disclosure information, must make a judgement about suitability, taking into account only those offences which may be relevant to the particular job or situation in question. The Department cannot advise employers whether or not they should employ a particular person. In deciding the relevance of convictions a number of points should be considered:

- The nature of the offence

In general, convictions for sexual, violent or drug offences will be particularly strong contra-indications for work with children.

- The nature of the appointment

Often the nature of the appointment will help to assess the relevance of the conviction. For example, serious sexual, violent, drug or drink offences would give rise to particular concern where a position was one of providing care. Driving or drink offences would be relevant in situations involving transport of children.

- The age of the offence

Offences which took place many years in the past may often have less relevance than recent offences. However, convictions for serious violent or sexual offences or serious offences involving substance abuse are more likely to give cause for continuing concern than, for instance, an isolated case of dishonesty committed when the person was young. The potential for rehabilitation must be weighed against the need to protect children.

- The frequency of the offence

A series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction.

42. Anyone who is barred from work in the education service on grounds that he or she is not a fit and proper person to be employed as a teacher or worker with children and young persons, will also be disqualified from all work with children in a regulated position as set out in section 36 of the Criminal Justice and Court Services Act 2000. It is an offence for a disqualified person to apply for, offer to do, accept or do any work in any of the regulated positions set out in the Act. It is also an offence for an employer knowingly to offer work in a regulated position, or to procure work in a regulated position for an individual who is disqualified from working with children, or to fail to

remove such an individual from such work. The CRB will inform the police if a disqualified person attempts to obtain work with children.

43. The CRB has also produced guidance for employers on judging the suitability of applicants.

Where can I find out more about the Bureau?

44. Further information about the Bureau can be found on its website at www.crb.gov.uk and more information about the Disclosure service is available at www.disclosure.gov.uk. Alternatively, the CRB can be contacted by post or telephone. The Bureau's address is PO Box 110, Liverpool L3 6ZZ. The information line number is: 0870 90 90 811 and the Registration application line for organisations wishing to register to authorise checks is 0870 90 90 822.

Part 3: Reporting Individuals to the Secretary of State

When must a report be made to the Secretary of State?

45. Employers have a duty, under the Education (Restriction of Employment) Regulations 2000, to make a report to the Department when a person is dismissed from relevant employment on grounds of misconduct or resigns in circumstances which would have led to their dismissal, or consideration of their dismissal, on those grounds, if they had not resigned.

46. Teacher training institutions or further education institutions, which provide courses of training for nursery nurses and other childcare workers may also report cases involving students on those courses.

47. Proposals contained in the current Education Bill provide that any body that arranges the supply of teachers or workers with children to a school or further education college will have a duty to report misconduct to the Department (i.e. employment businesses and agencies). The duty will no longer only fall on the employer of the teacher. Therefore, both an employment business or agency which supplied the teacher (whether or not it is the employer of the teacher) and the institution at which the teacher is working (whether or not it is the employer of the teacher) will be under a duty to report.

48. Reports should be made promptly, preferably within a month of the person's dismissal or resignation.

49. Employers should also contact the Department if they have concerns that there may be medical grounds for barring an employee, trainee teacher or prospective trainee teacher from relevant employment. Information about barring on medical grounds is contained in DfEE Circular 4/99, Physical and Mental Fitness to Teach of Teachers and of Entrants to Initial Teacher Training.

What information should be provided to the Department?

50. Employers are required by the Regulations to report the facts of the case and provide **all** relevant information, relating to the circumstances of the dismissal or resignation to the Secretary of State. When a person has not been convicted of an offence, the Secretary of State can only act if the allegation of misconduct has been substantiated by other means. It is particularly important that, wherever possible, reports about these cases contain copies of any supporting evidence, such as statements relating to the misconduct, notes of any interviews with the person and minutes of any disciplinary interviews. Employers should also inform the staff member that their case is being reported to the Department and advise them to retain any relevant paperwork which they may need if it is necessary to consider their case further.

Will information provided to the Department be disclosed to anyone else?

51. Yes. Any information that we receive will be disclosed to the teacher or worker whose case we are considering. If it is appropriate to obtain a medical report from a consultant forensic psychiatrist or from the person's treating physician, the information will also be disclosed to the Department's Medical Advisor and to the consultant or physician.

52. In addition, if a teacher appeals to the Care Standards Tribunal against a decision by the Secretary of State to bar or restrict their employment or against a decision not to remove their name from List 99, any information provided about the case may be passed to the Tribunal.

53. Medical evidence obtained in connection with a case may be withheld from the teacher or worker, only if it is considered that it would be detrimental to the person to allow them to see it. Similarly, both medical evidence and advice provided by the Department's medical adviser may be provided to the Care Standards Tribunal, but withheld from the teacher or worker concerned. In these circumstances, the information may be made available to the person's representative.

What about teachers who are registered with the General Teaching Council for England or the General Teaching Council for Wales?

54. When we receive a report about a teacher who is registered with the General Teaching Council for England or the General Teaching Council for Wales, we will determine whether the case involves issues relating to the safety and welfare of children and, if it does not, we will pass the papers to the relevant Council, which will then consider the case under its disciplinary functions.

Will employers be informed of the outcome of a report?

55. If an employer (or employment business or agency) has informed the Department of a person's misconduct, we will also let them know the outcome of the Department's consideration of the case. When a person is working in relevant employment, we will consult their employer before any decision is taken to bar them or place a restriction on their employment.

How does the Department deal with these cases?

56. Guidance on the processes that we follow in dealing with cases of misconduct and potential medical barring is contained in Preventing Unsuitable People from Working with Children: Guidance for Education Staff, which is available from the Teachers' Misconduct Team and will shortly be available on the Department's website.

Criminal Justice and Court Services Act 2000³

Meaning of "regulated position".

36. - (1) The regulated positions for the purposes of this Part are -

- (a) a position whose normal duties include work in an establishment mentioned in subsection (2),
- (b) a position whose normal duties include work on day care premises,
- (c) a position whose normal duties include caring for, training, supervising or being in sole charge of children,
- (d) a position whose normal duties involve unsupervised contact with children under arrangements made by a responsible person,
- (e) a position whose normal duties include caring for children under the age of 16 in the course of the children's employment,
- (f) a position a substantial part of whose normal duties includes supervising or training children under the age of 16 in the course of the children's employment,
- (g) a position mentioned in subsection (6),
- (h) a position whose normal duties include supervising or managing an individual in his work in a regulated position.

(2) The establishments referred to in subsection (1)(a) are -

- (a) an institution which is exclusively or mainly for the detention of children,
- (b) a hospital which is exclusively or mainly for the reception and treatment of children,
- (c) a care home, residential care home, nursing home or private hospital which is exclusively or mainly for children,
- (d) an educational institution,
- (e) a children's home or voluntary home,
- (f) a home provided under section 82(5) of the Children Act 1989.

(3) For the purposes of this section, work done on any premises is treated as not being done on day care premises to the extent that -

- (a) it is done in a part of the premises in which children are not looked after, or
- (b) it is done at times when children are not looked after there.

³ The Criminal Justice and Court Services Act 2000 is published by The Stationery Office Limited, ISBN 0 10 544300X. It can also be found at www.hmso.gov/acts/acts2000.htm.

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(4) The duties referred to in subsection (1)(c) and (d) do not include (respectively) -

- (a) caring for, training, supervising or being in sole charge of children in the course of the children's employment, or
- (b) duties involving contact with children in the course of the children's employment.

(5) The reference in subsection (1)(d) to unsupervised contact is to contact in the absence of any responsible person or carer; and in this subsection, "carer" means a person who holds a position such as is mentioned in subsection (1)(c).

(6) The positions mentioned in subsection (1)(g) are -

- (a) member of the governing body of an educational institution,
- (b) member of a relevant local government body,
- (c) director of social services of a local authority,
- (d) chief education officer of a local education authority,
- (e) charity trustee of a children's charity,
- (f) member of the Youth Justice Board for England and Wales,
- (g) Children's Commissioner for Wales or deputy Children's Commissioner for Wales,
- (h) member, or chief executive, of the Children and Family Court Advisory and Support Service.

(7) For the purposes of subsection (6), a person is a member of a relevant local government body if -

- (a) he is a member of, or of an executive of, a local authority and discharges any education functions, or social services functions, of a local authority,
- (b) he is a member of an executive of a local authority which discharges any such functions,
- (c) he is a member of -
 - (i) a committee of an executive of a local authority, or
 - (ii) an area committee, or any other committee, of a local authority,

which discharges any such functions.

(8) In its application to Northern Ireland, subsection (6) is to be read as mentioning also the following positions -

- (a) member, or director of social services, of a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972,

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(b) member, or executive director of social work, of a Health and Social Services trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991,

(c) member, or chief education officer, of an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986.

(9) Any reference in subsection (7) to a committee includes a reference to any sub-committee which discharges any functions of that committee.

(10) For the purposes of subsection (1)(h), the holder of a position -

(a) only supervises an individual if he supervises the day-to-day performance of the individual's duties, and

(b) only manages an individual if the individual is directly responsible to him for the performance of his duties or he has authority to dismiss the individual.

(11) For the purposes of this section, a charity is a children's charity if the individuals who are workers for the charity normally include individuals working in regulated positions.

(12) For the purposes of this section, an individual is a worker for a charity if he does work under arrangements made by the charity; but the arrangements referred to in this subsection do not include any arrangements made for purposes which are merely incidental to the purposes for which the charity is established.

(13) For the purposes of this section, the following are responsible persons in relation to a child -

(a) the child's parent or guardian and any adult with whom the child lives,

(b) the person in charge of any establishment mentioned in subsection (2) in which the child is accommodated, is a patient or receives education, and any person acting on behalf of such a person,

(c) a person registered under Part XA of the Children Act 1989 for providing day care on premises on which the child is cared for, and

(d) any person holding a position mentioned in subsection (6).

(14) In this section -

"area committee" has the same meaning as in section 18 of the Local Government Act 2000,

"detention" means detention by virtue of an order of a court or under an enactment,

"education functions", in relation to a local authority, means any functions with respect to education which are conferred on the authority in its capacity as a local education authority,

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"education functions", in relation to a local authority, means any functions with respect to education which are conferred on the authority in its capacity as a local education authority,

"executive", in relation to a local authority, has the same meaning as in Part II of the Local Government Act 2000,

"social services functions", in relation to a local authority, has the same meaning as in the Local Authority Social Services Act 1970.

(15) For the purpose of amending the definition of "regulated position", the Secretary of State may by order make any amendment of this section (apart from this subsection) which he thinks appropriate.

Guidance about Disclosure for Institutions in England providing Initial Teacher Training and other Higher Education Institutions in England

Should initial teacher training institutions and other higher education institutions register with the CRB?

1. Institutions may register with the CRB to authorise, ie, countersign applications for Standard and Enhanced Disclosures in their own right. Alternatively, they may come to an arrangement with another registered body, an umbrella body, to authorise applications on the institution's behalf. The feasibility of the latter arrangement will depend on the number of checks that the institution is likely to make, the amount that the umbrella body will charge for its services, and the extra time that dealing with another body might add to the process.

Who should obtain a Disclosure for child protection purposes?

2. Students who will undertake teaching practice in schools; students who will be responsible for caring for, training, supervising or being in sole charge of children as part of their course or who will have unsupervised access to children as part of the course; and staff or volunteers in the institution whose normal duties will include caring for, training, supervising, or being in sole charge of children under 18, or whose normal duties will include unsupervised access to children under 18.

When should student teachers apply for Disclosure?

3. Students should be asked to obtain a Disclosure after the institution has decided to offer a place and before the start of the course. Possibly the best way forward will be for institutions to offer a place conditional on a satisfactory check.

Should Disclosures be obtained on existing staff and students?

4. No. Institutions should not ask existing staff or students to apply for Disclosure unless they have grounds for concern about the person's suitability to work with children. Nor should people be re-checked at regular intervals unless they change employer, have a break in service of 3 months or more, or move to a post with significantly greater responsibility for children.

How should a person's suitability be judged?

5. Institutions must refer to paragraphs 41 - 43 of the main Guidance.

6. Institutions must not disclose information gained from a Disclosure to a third party such as a school or an LEA without the person's written consent. Under the terms of the Police Act 1997, unauthorised disclosure of such information is an offence. It is the responsibility of the institution to decide

whether to accept a candidate onto a course in light of any criminal record the person may have. Clearly, however, institutions will need to take account of the views of LEAs and Head teachers in whose schools they normally place student teachers, and the kind of offences that they would regard as unacceptable.

Should any cases be reported to the Secretary of State?

7. Institutions are not required by law to report cases. However, the Department advises that an institution should report a case to the Secretary of State if the circumstances indicate that the person is unsuitable to work with children and should be barred and placed on List 99 to prevent him or her seeking work with children in another area. Such circumstances might arise where:

- an applicant's criminal record indicates that he or she is unsuitable to work with children (the Police Act allows information to be disclosed to the Department); or
- an institution withdraws a person from a training course as a result of a conviction or misconduct involving children, or
- an institution dismisses a person from work with children, or a person resigns or ceases to act as a volunteer in such a capacity, as a result of a conviction or misconduct involving children.

Guidance for Teacher Employment Agencies and Businesses: Criminal Record and List 99 Checks via the Criminal Records Bureau

General

1. This guidance replaces the guidance about criminal record and List 99 checks contained in the DfEE document entitled Guidance Notes for Teacher Employment Businesses and Agencies. **The rest of the guidance in that document remains in force, but all checks must be completed satisfactorily before a teacher is placed in a school**
2. Different checks apply in respect of applicants who are, or have been, resident in the UK and applicants who have not previously been resident in the UK. However, anyone applying to teach is exempt from the provisions of the Rehabilitation of Offenders Act 1974. This means that they must give written details of all criminal convictions, including those that would normally be regarded as 'spent'. Agencies which recruit supply teachers must make all applicants aware of that obligation and ask them to provide written details of any criminal record they may have, regardless of where or when incurred.

Applicants who are or have been resident in the UK

3. The Criminal Records Bureau provides a 'one-stop-shop' for checks of criminal records, DfES List 99 and the Department of Health's Protection of Children Act (PoCA) List of people who are unsuitable to work with children. Information about the CRB's Disclosure service and how to obtain Disclosures can be found on the Bureau's web site at <http://www.disclosure.gov.uk> or can be obtained by telephoning the CRB information line on 0870 90 90 811.
4. Agencies should obtain an Enhanced Disclosure in respect of all supply teachers they recruit before the person is placed in a school. The Disclosure may include information from local police records and DfES List 99 in addition to information about any spent and unspent convictions, cautions, reprimands and warnings. The Police information could include details of acquittals, pending prosecutions, or other non-conviction information. It will also state whether the person is on the PoCA List or is disqualified from working with children.

Frequency of checks

5. Agencies should obtain an Enhanced Disclosure when they first register or engage a teacher, and should obtain a fresh Enhanced Disclosure every 3 years, or earlier if the teacher has a break in service of 3 months or more, or if there are grounds for concern about the person's suitability to work with children.
6. Teachers who are on the books of more than one agency at the same time need not be asked to obtain a separate Enhanced Disclosure by each agency. In those circumstances the second or subsequent agency should

require the teacher to produce his or her copy of the Disclosure obtained by the first agency, and should verify the validity of the document by checking with the first agency. **The second agency will, however, need to obtain a separate Disclosure if the first agency advises that the police disclosed non-conviction information that was not included on the teacher's copy of the Disclosure.**

Checks on existing teachers

7. Similarly, a teacher who is already on an agency's books and has been checked under the existing arrangements should not be re-checked automatically simply because the CRB has become operational. All those teachers should be able to produce a letter confirming that they have been the subject of a police check arranged through a named local education authority and that the check was satisfactory. That letter should be regarded as valid for a period of three years after the date of the check, or until the teacher has a break in service of three months or more, whichever comes first.

Using Disclosure information

8. Agencies must refer to paragraphs 41 - 43 of the main Guidance.

9. If there is any doubt about an applicant's suitability for appointment, the agency should consult the personnel manager of the local education authority responsible for the schools in which the applicant is likely to work.

Applicants who have not previously been resident in the UK

10. If an applicant has never previously lived in the UK, no purpose will be served by seeking a Disclosure through the CRB on their arrival in this country. The person will not have a criminal record in this country, nor will he or she appear on List 99 or the PoCA List. For those applicants, agencies should ensure that checks in the person's country of origin are made wherever possible, in accordance with the guidance in Annex E of the Guidance Notes for Teacher Employment Businesses and Agencies.

11. Agencies should provide teachers from overseas with a letter certifying that all the checks required under DfES guidance have been satisfactorily completed that they can produce to a Head teacher on request. Subsequently these teachers should be checked via the CRB on the same basis as other UK supply teachers, i.e. every 3 years, or earlier if they have a break in service of 3 months or more or there are grounds for concern about the person's suitability to work with children.

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