



Staff in further education

The persons providing education at Further Education Institutions in Wales
(Conditions) Regulations 2007



Consultation

Date of issue: 1 May 2007

Action required: Responses by 26 June 2007

Staff in further education

Audience	Principals and Governing Bodies of Further Education Institutions (FEIs); Estyn; Fforwm; Unions; Professional Associations; General Teaching Council for Wales, supply agencies in Wales.
Overview	This consultation seeks views on draft Regulations designed to strengthen existing safeguarding arrangements in FE institutions. The draft regulations require certain conditions to be complied with in respect of persons providing education at further education institutions in Wales.
Action required	The deadline for submission of comments to this consultation is 26 June 2007 . Responses should be made on the enclosed proforma and returned electronically to the mailbox below (please enter FE draft Regulations in the subject box of your e-mail), or in hard copy to the address below.
Further information	Further information about this consultation can be obtained from: Helen Jones Tel: 01745 538500 Or e-mail: Learning.Policy@wales.gsi.gov.uk
Additional copies	This consultation document is available on the internet on www.new.wales.gov.uk and can be copied from there.
Postal address	Department for Education Lifelong Learning and Skills Welsh Assembly Government Unit 6 St Asaph Business Park, St Asaph, Denbighshire, LL17 0LJ
Related documents	Further Education Teachers' Qualifications (Wales) Regulations 2002 Child Protection: Preventing Unsuitable People from Working with Children and Young Persons in the Education Service - Circular 34/2002 Criminal Records Bureau: CRB Checks on Volunteers - Circular 02/2003 Safeguarding Children: Working Together under the Children Act 2004 Reporting Cases of Misconduct or Professional Incompetence in the Education Service - Circular 33/2005 Safeguarding Children in Education: The Role of Local Authorities and Governing Bodies under the Education Act 2002, Consultation March 2007.

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Summary

This consultation document invites comments on the draft The Persons Providing Education at Further Education Institutions in Wales (Conditions) Regulations 2007 which can be found at Annex A.

The objective of these draft regulations is to make mandatory the existing guidance to carry out the following checks **on all new staff** who are providing education and appointed to the workforce of further education (FE) institutions, either prior to appointment, or as soon as possible following appointment:

- identity;
- right to work in the UK;
- relevant qualifications;
- List 99;
- enhanced Criminal Records Bureau (CRB) disclosures (where the person's position will involve regularly caring for, training, supervising or being solely in charge of persons under 18); and
- where appropriate, additional checks on those who have lived overseas (for example, via the embassy or police force of the relevant country/countries).

These draft regulations will also require FE institutions to maintain a single record which shows, in respect of each person providing education, whether the relevant check was done and when. The record keeping requirements **apply to new and existing staff**. A transitional period of 12 months is proposed in respect of the completion of the single record for existing staff.

The draft regulations apply to staff directly appointed by the FE institution and to staff supplied by employment agencies who 'provide education' and, in the case of CRB checks, who are also regularly caring for, training, supervising or being in sole charge of persons under the age of 18.

The draft regulations are an important measure designed to strengthen existing child protection and safeguarding arrangements in FE institutions. These measures will not only help to improve further safeguards for children but will help to maintain public confidence in the education system.

The process for managing the proposed transitional arrangements for compilation of a single record for existing members of staff will be the subject of a separate communication with the FE institutions, the detail of which will be agreed with Fforwm.

It should be noted that the responses to this consultation will be made public. Normally the name and address (or part of the address) of the author are published along with the response. If you do not wish to be identified as the author of your response please state this expressly in your response.

The consultation period ends on 26 June 2007.

Section 1: Background

On 24 January 2006, the Minister for Education, Lifelong Learning and Skills wrote to relevant stakeholders, including FE institutions, notifying them of the actions she intended to take in order to strengthen child protection arrangements in Wales. The Minister's letter reiterated existing policy about the need for employers to exercise robust pre-appointment procedures to prevent unsuitable people from working with children. The Minister also gave notice to stakeholders of the intention to introduce new legislation to make Criminal Records Bureau (CRB) checks compulsory across the school work force in Wales.

The commencement of section 175 of the Education Act 2002 introduced a statutory duty on local education authorities, governing bodies of schools and FE institutions to exercise their functions with a view to safeguarding and promoting children's welfare. Also they must have regard to any guidance issued by the National Assembly in determining what arrangements they must make to comply with their duties. This duty came into force on 1 September 2006. A consultation on the exercise of these duties is available on the consultation pages of the Welsh Assembly Government website¹ and provides information about the wider role and responsibilities of governing bodies of FE institutions in relation to the safeguarding of children in education.

In spring 2006 Estyn carried out a survey of existing vetting practice in a sample of LEAs, schools and FE institutions in Wales². The Cabinet Sub-Committee for Children and Young People considered the recommendations arising from the Estyn survey in June 2006³. Overall, the survey confirmed that there were satisfactory arrangements in place:

- for Enhanced Criminal Records Bureau checks to be carried out on job applicants whose work would involve contact with children;
- to confirm applicant's identity;
- to take up of professional and character references; and
- for ensuring supply staff have the necessary CRB clearance.

However, the survey also identified a number of areas as being unsatisfactory and which need to be addressed. These relate to:

- confirming an applicant's registration with the General Teaching Council for Wales (GTCW) and their medical fitness;
- the availability of information about staff employed from overseas;
- record keeping;

¹ Safeguarding Children in Education: The Role of Local Authorities and Governing Bodies under the Education Act 2002, Consultation March 2007

http://new.wales.gov.uk/consultations/currentconsultation/educat_skills/1335587/?lang=en

² A Survey of Procedures for Vetting School Staff and Other Adults, Estyn 2006

³ Cabinet Sub Committee on Children and Young People Paper: CYP(05-06)35

- pupils receiving education off-site; and
- checking adults other than teachers who may have access to children on the school site.

The need to ensure the provision of a safe environment and application of robust pre-appointment procedures also impact on the delivery of the 14-19 Learning Pathways developments through which young people will access a range of appropriate learning opportunities including outside of school settings.

The majority of issues highlighted are already covered by Assembly Government guidance. However, it is recognised that consideration needs to be given to how best to ensure that employers understand and apply their responsibilities as part of an effective recruitment and reporting procedure. In this respect it has been considered necessary to tighten up the current legislative framework with regard to pre-employment checks and record keeping arrangements in FE institutions.

The Safeguarding Vulnerable Groups Act 2006 received Royal Assent on 8 November 2006. This Act provides the legislative framework for a new vetting and barring scheme for people who work with children and vulnerable adults. The provisions of this Act will come into effect from 2008.

Section 2: Recruitment and Vetting Checks

Safeguarding children must be everybody's responsibility. Good safeguarding practice, therefore, has to be built into routine procedures and practice. Nowhere is this more important than in the selection and monitoring of people who have contact with children. It is vital that education establishments adopt robust recruitment and vetting procedures that are able to identify people who unsuitable to work with children.

Current Arrangements

In order to avoid unsuitable people working with children, the Assembly Government issued guidance to schools, local education authorities and others in the education sector about the need to exercise robust pre-appointment procedures to prevent unsuitable people from working with children and young people⁴.

Before appointing any member of staff, employers should confirm the applicant's identity, verify his or her academic or professional qualifications, and seek professional and character references from the current or most recent employer and referee, as well as details of his or her previous employment history. If the applicant is a teacher, confirmation of their registration with the General Teaching Council for Wales must be sought.

At the same time, employers should obtain an enhanced disclosure from the Criminal Records Bureau. The disclosure will contain details of any spent and

⁴ Child Protection: Preventing Unsuitable People from Working with Children and Young Persons in the Education Service - Circular 34/2002

unspent convictions, details of any cautions and warnings recorded by the police, whether the individual is barred from working with children by virtue of his or her inclusion on either of the lists of those considered unsuitable to work with children held by the Department of Health or the Department for Education and Skills, details of any acquittals and non-conviction information that a chief police officer considers may be relevant to the position being sought, including details of an individual's inclusion on the sex offenders register, or confirmation that no such records exist. Each of these elements will influence the employer's conclusions as to the suitability of the applicant.

Where staff are recruited from countries outside the UK, neither the CRB nor List 99 may be appropriate, particularly when they are newly arrived. It will, therefore, always be good practice for employers to make enquiries of the authorities in the countries from where these teachers come as to whether they have records of any factors that would make them unsuitable to work with children and young people.

However, there is no legal requirement upon institutions to undertake such checks. Instead, the Welsh Assembly Government's Department for Education Lifelong Learning and Skills (DELLS) requires through its funding agreements that FE institutions exercise care over learners. The Department's monitoring arrangements aim to ensure that safeguarding measures are adopted by those institutions with whom they contract.

Strong though these measures are, the Minister for Education, Lifelong Learning and Skills has concluded that until the provisions of the Safeguarding Vulnerable Groups Act come into force, the potential risk to children from unsuitable persons requires the introduction of Regulations which place the above mentioned checks on a statutory basis. These draft Regulations are an important measure designed to strengthen existing safeguarding arrangements in FE institutions.

Parallel provision for mandatory checks across the school workforce will be considered by the Assembly before the election. Similar provision is also being made covering pupil referral units.

Section 3: Draft Regulations

Scope of Pre-Employment Checks

The draft Regulations require FE institutions in Wales to undertake a range of pre-appointment checks on all new staff providing education in the institution. It is the Government's view that persons 'providing education' in FE institutions would include teachers and trainers, teaching assistants, laboratory technicians, and classroom/workshop demonstrators. These requirements also apply to staff who have had a break from employment in a school or FE institution of more than three months. Checks also have to be carried out in respect of staff supplied by a supply agency. The mandatory elements comprise:

- identity;
- right to work in the UK;

- relevant qualifications;
- List 99;
- enhanced Criminal Records Bureau (CRB) disclosures (where the person's position will involve regularly caring for, training, supervising or being solely in charge of persons under 18); and
- where appropriate, additional checks on those who have lived outside the UK (e.g. via the embassy or police force of the relevant country/countries).

The draft regulations apply to staff directly appointed by the FE institution and to staff supplied by employment agencies who 'provide education'. It is the Government's view that persons 'providing education' in FE institutions would include teachers and trainers, and also teaching assistants, laboratory technicians, and classroom/workshop demonstrators.

There is no scope under existing legislation to introduce regulations either to make these checks mandatory for staff who are **not** providing education or to make enhanced CRB checks mandatory for those whose roles do not require them to have regular contact with children. Existing legislation also prevents these draft regulations from making enhanced CRB checks mandatory for those teaching vulnerable adults in an FE institution. Nor do these draft regulations have application beyond FE institutions.

Requirement to Maintain a Single Record

The draft regulations will also require FE institutions to maintain a single record which shows, in respect of each person providing education, whether the relevant check was done and when. This requirement applies to staff employed directly by the FE institution and staff who are employed as supply staff providing education to the FE institution whether employed directly by the institution or through an agency.

It is expected that such a register would be **kept from 1 September 2007** in respect of all staff who begin work at FE institutions on or after 1 September 2007.

In respect of all staff who are in post on **1 September 2008** and who are in employment before 1 September 2007 it is expected that a register would be kept **from 1 September 2008**.

FE institutions are **not required to ask existing staff**, in post prior to 1 September 2007, who were not previously eligible (including those recruited before the establishment of the CRB) for criminal background checks to apply for a CRB disclosure unless:

- they have concerns about the person's suitability to work with children; or
- the individual moves to work that involves greater contact with children and their previous work did not require a CRB Enhanced disclosure.

A new CRB disclosure is not required when someone moves school, local education authority or FE institution. A new CRB Disclosure is only required for newly appointed staff **who within the three months before his or her appointment has not worked in:**

- a school in England or Wales in a post which brought the person into regular contact with children;
- an FE institution in England or Wales in a position which involved the provision of education and regularly caring for, training, supervising or being solely in charge of children or young people under the age of 18.

However employers are reminded that they must ensure that all the other recommended and mandatory checks are carried out, including list 99 checks.

Ongoing Arrangements

Comments on the draft regulations will be reviewed and considered in developing final regulations with an anticipated coming into force date of 1 September 2007.

Whilst these legislative proposals are being developed the appointment procedures set out in National Assembly guidance circular 34/2002 “Child Protection: *Preventing Unsuitable People from Working with People and Young Persons in the Education Service*” should continue to be followed.

As part of the inspection process, under the Common Inspection Framework, Estyn report on whether institutions have effective procedures for the protection of children and young people and in particular whether:

- there is a designated and suitably trained person with responsibility for child protection; and
- that the institution operates according to Welsh Assembly Government guidance to promote learners’ welfare and protect them from abuse and neglect.

In addition the Department has recently published revised and guidance for consultation which sets out the responsibilities of FE institutions, schools and local authorities to safeguard children and young people. Copies of “*Safeguarding Children in Education: The Role of Local Authorities and Governing Bodies under the Education Act 2002*”⁵ can be accessed through the consultation pages on the Assembly Government’s web site.

⁵ Safeguarding Children in Education: The Role of Local Authorities and Governing Bodies under the Education Act 2002, Consultation
http://new.wales.gov.uk/consultations/currentconsultation/educat_skills/1335587/?lang=en

Section 4: Consultation Questions

This section deals with the detail of the draft regulations (Annex A). Consultation questions are posed below. A response proforma is provided at Annex B.

The draft Regulations specify conditions to be complied with in respect of persons providing education at a FE institution in Wales.

Regulations 5 – 9: New Staff

These draft regulations deal with conditions to be complied with in respect of new members of staff. Governing bodies of FE institutions must:

- check the applicant's identity;
- check that he/she has a right to work in the United Kingdom;
- check that he/she meets all relevant staff qualification requirements;
- check whether he/she is subject to any direction made under section 142 of the Education Act 2002; and
- carry out an enhanced criminal record check in respect of the applicant where his/her position will involve a relevant activity.

Regulation 10: Staff who transfer positions

This regulation specifies arrangements to be complied with in respect of staff employed by a FE institution who move position within a single institution, and as a consequence of the change to their role will undertake relevant activities with young people under the age of 18. Such staff must be treated as new members of staff in respect of draft regulations 5 to 9 from the date of transfer into their new position.

Consultation questions:

1. Is the extent of the checks to be carried out in respect of new members of staff sufficient for determining an applicant's suitability?
2. Are there any additional checks which should be undertaken? If so, what other elements should be included?
3. Are the draft regulations sufficiently clear about who should be checked, what checks should be made and who should undertake them?

Regulations 11 – 19: Supply Staff

These draft regulations deal with conditions to be complied with in respect of supply staff. Governing bodies of FE institutions must not accept a person offered by an employment business to provide education at the institution unless the governing body has received written confirmation from the employment business that the checks specified in regulation 18 have been carried out in respect of that person.

Where supply staff are employed directly by the FE institution they will be subject to the provisions of regulations 5-9 in respect of 'New Staff' and it will be the responsibility of the governing body to ensure that all relevant checks are completed.

Consultation question:

4. Will the information provided about supply staff enable colleges to make a reasonable judgement about an individual's suitability? If not, what other information should be included?

Regulations 20 – 25: Record keeping

It is a condition that a governing body of a FE institution must keep a register in respect of all persons who are providing education at the institution.

It is expected that such a register would be kept from 1 September 2007 in respect of staff who begin work at further education institutions on or after the 1 September 2007.

It is expected that a register would be kept from 1 September 2008 in respect of staff who are in post on 1 September 2008 and who were in employment before 1 September 2007.

Schedule 1: detailed information to be recorded in respect of regulations 22 and 23.

Information to be recorded by the governing body of a FE institution in respect of persons providing education who have not been supplied by an employment business.

- whether the person's position involves a relevant activity;
- whether the identity of the person has been checked;
- whether a check has been carried out to establish whether the person is subject to any direction made under section 142 of the Education Act 2002;
- whether a check has been carried out to ensure that the person meets all relevant staff qualification requirements;
- where the person's position involves a relevant activity, whether an enhanced criminal record check has been carried out in respect of him;
- whether further checks of the kind described in regulation 6 that were considered appropriate in respect of the person have been carried out;
- whether a check has been carried out to confirm that the person has a right to work in the United Kingdom;
- for each check listed in this Part that has been carried out, the date on which the check was completed.

Information to be recorded by the governing body of a FE institution in respect of persons providing education who have been supplied by an employment business.

- whether the person's position involves a relevant activity;
- whether written notification has been received from the employment business that-
 - the identity of the person has been checked;
 - a check has been carried out to establish whether the person is subject to any direction made under section 142 of the Education Act 2002;
 - a check has been carried out to ensure that the person meets all relevant staff qualification requirements;
 - any further checks of the kind described in regulation 18(5) that were considered to be appropriate in respect of the person have been carried out;
 - a check has been carried out to confirm that the person has a right to work in the United Kingdom;
- where the person's position involves a relevant activity-
 - an enhanced criminal record check has been carried out in respect of that person; or
 - an enhanced criminal record certificate has been applied for and a children's suitability statement submitted by or on behalf of the employment business in respect of that person;
- for each written notification listed in paragraph 2 that has been received, the date on which the notification was received;
- where the employment business has obtained an enhanced criminal record certificate, whether it gives details of any relevant matter relating to the person which is recorded in central records or gives any information provided in accordance with section 113B(4) of the Police Act 1997 or whether any information has been provided in accordance with section 113B(6) of the Police Act 1997;
- whether a copy of an enhanced criminal record certificate has been provided to the governing body of the further education institution.

Consultation questions:

5. Do you agree with the proposed timescale for the coming into force of the record-keeping obligations for new employees as of 1 September 2007?
6. Do you agree that a transitional period of 12 months should apply for the inclusion of existing staff details on the single record?

7. Is the information to be recorded on the register sufficient?
8. Would a standard format for the single record be useful?
9. Are there any other comments you wish to make?

Annex A Draft Regulations

NATIONAL ASSEMBLY FOR WALES

STATUTORY INSTRUMENTS

2007 No. (W.)

EDUCATION, WALES

The Persons Providing Education at Further Education Institutions in Wales
(Conditions) Regulations 2007

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations require certain conditions to be complied with in respect of persons providing education at further education institutions in Wales. The conditions relate to checks that must be carried out and a register that must be kept in respect of such persons.

The required checks are specified in regulations 5 and 6 (for persons appointed by a governing body) and regulations 11 – 19 (for persons supplied by an employment business).

The checks relate to the verification of the person's identity, his right to work in the United Kingdom, whether he has met the relevant qualification requirements and whether he is subject to a direction under section 142 of the Education Act 2002. Where the person will be regularly caring for, training, supervising or being solely in charge of persons under 18, there is a requirement for an enhanced criminal record check. In addition, if it is considered that by reason of the person having lived outside the United Kingdom, an enhanced criminal record check is not sufficient for the purposes of considering his suitability for a position working with under 18s, further checks as may be considered appropriate must be carried out, having regard to guidance issued by the Welsh Ministers.

A person is exempt from the requirement to have an enhanced criminal record check and, where applicable, further checks outside the United Kingdom, where he has worked with under 18s in a school or further education institution in Wales or England within the preceding three-month period.

Where a person is to be appointed by the governing body of the institution, the governing body is required to carry out the checks. Where a person is supplied by an employment business (including a local authority) to provide education at an institution, the governing body must not accept that person to work at the institution until written confirmation has been received from the employment business that all the relevant checks have been carried out. The governing body must also ensure that its contract or other arrangements with the employment business include provisions requiring the employment business to carry out the checks.

The governing body of an institution must also maintain a register of all persons providing education at the institution. The register must show whether the checks listed in the Schedule to these Regulations have been carried out or the relevant written confirmations received in respect of each person providing education and the dates that the checks were completed or confirmations received.

2007 No. (W.)

EDUCATION, WALES

**The Persons Providing Education at Further Education
Institutions in Wales (Conditions) Regulations 2007**

Made [] 2007

Coming into force 1st September 2007

The Welsh Ministers in exercise of the powers conferred on them by the National Assembly for Wales by section 30 of Schedule 11 of the Government of Wales Act 2006⁽⁶⁾ make the following Regulations in exercise of the powers conferred by sections 136(c), 210(7) and 214 of the Education Act 2002⁽⁷⁾:

Title, commencement and application

1. These Regulations are called the Persons Providing Education at Further Education Institutions in Wales (Conditions) Regulations 2007 and shall come into force on [].

2. These Regulations apply in relation to Wales.

Interpretation

3.—(1) In these Regulations—

“central records” has the meaning given by section 113A of the Police Act 1997⁽⁸⁾;

“children’s suitability statement” has the meaning given by section 113C(2) of the Police Act 1997;

“employment business” has the meaning given by section 13(3) of the Employment Agencies Act 1973⁽⁹⁾ and includes a local authority and a person carrying on an employment business;

“enhanced criminal record certificate” means an enhanced criminal record certificate issued pursuant to Part V of the Police Act 1997;

“new member of staff” means a person who receives an offer from the governing body of a further education institution on or after 1st September 2007 to work in a position providing education at the institution under a contract of service or a

⁽⁶⁾ 2006 c.32.

⁽⁷⁾ 2002 c.32.

⁽⁸⁾ 1997 c. 50; sections 113A, 113B and 113C were inserted by the Serious Organised Crime and Police Act 2005 (c. 15), section 163(2).

⁽⁹⁾ 1973 c. 35.

contract for services with the governing body or otherwise than under a contract and does not include a person supplied by an employment business;

“relevant activity” means regularly caring for, training, supervising or being solely in charge of persons aged under 18;

“relevant matter” has the meaning given by section 113A of the Police Act 1997.

(2) A person meets the relevant staff qualification requirements if—

(a) he meets all relevant requirements in the Further Education Teachers’ Qualifications (Wales) Regulations 2002⁽¹⁰⁾ or the Education (Induction Arrangements for School Teachers) (Wales) Regulations 2005⁽¹¹⁾ or in regulations made under section 136(a) of the Education Act 2002 as to the qualifications that he must hold; and

(b) he meets all relevant conditions with respect to health or physical capacity in regulations made under section 141 of the Education Act 2002.

(3) For the purposes of these Regulations a person applies for an enhanced criminal record certificate if he countersigns an application for the certificate as a registered person (within the meaning of section 120 of the Police Act 1997) or if an application is countersigned on his behalf, and the application is submitted to the Secretary of State in accordance with Part V of that Act.

(4) In order to carry out an enhanced criminal record check a person must—

(a) apply for and obtain an enhanced criminal record certificate; and

(b) submit a children’s suitability statement with the application for the enhanced criminal record certificate.

Conditions to be complied with

4. These Regulations specify conditions to be complied with in respect of persons providing education at a further education institution ⁽¹²⁾.

New members of staff

5. It is a condition in respect of a new member of staff that the governing body of a further education institution must—

(a) check his identity;

(b) check that he has a right to work in the United Kingdom;

(c) check that he meets all relevant staff qualification requirements;

(d) check whether he is subject to any direction made under section 142 of the Education Act 2002; and

(e) carry out an enhanced criminal record check in respect of him where his position will involve a relevant activity.

6. Where the governing body of a further education institution considers that, by reason of a new member of staff having lived outside the United Kingdom, carrying out an enhanced criminal record check is not sufficient for the purposes of considering his suitability for a position that will involve a relevant activity, it is a

⁽¹⁰⁾ S.I. 2002/1663.

⁽¹¹⁾ S.I. 2005/1818.

⁽¹²⁾ “further education institution” has the meaning given in section 140(3) of the Education Act 2002.

condition that the governing body must make such further checks as it considers appropriate, having regard to any guidance issued by the Welsh Ministers or the Secretary of State.

7. Subject to regulation 9, the checks specified in regulations 5(1) to (4) and 6 must be completed before the new member of staff begins work at the further education institution.

8. Subject to regulation 9, the check specified in regulation 5(5) must be carried out before the new member of staff begins work at the further education institution or as soon as practicable after he begins work there.

9. The checks specified in regulations 5(5) and 6 do not need to be carried out where the new member of staff—

(a) has worked in either—

(i) a school in Wales or England in a position which brought him regularly into contact with persons aged under 18; or

(b) another further education institution in Wales or England in a position which involved the provision of education and a relevant activity; and

(2) is due to begin work at the further education institution on a date which is not more than three months after the date on which he ceased to work in a position of the kind referred to in paragraph (1).

Staff who move positions

10. A person not supplied by an employment business who moves from a position which did not involve the provision of education to a position which involves the provision of education at the same further education institution on or after 1st September 2007 is treated as a new member of staff for the purposes of regulations 5 to 9, and references in those regulations to beginning work shall be construed as references to taking up the position providing education.

Supply staff

11. It is a condition that the governing body of a further education institution must not accept a person offered by an employment business to provide education at the institution (a “relevant person”) unless the governing body has received from the employment business written confirmation that the checks specified in regulation 18 have been carried out in respect of the relevant person.

12. Where the relevant person’s position will involve a relevant activity, the governing body of a further education institution must not accept the relevant person to provide education at the institution unless the conditions in regulation 13 or 14 have been complied with.

13. The conditions in this regulation are that the governing body has received from the employment business written confirmation that a children’s suitability statement has been submitted and an enhanced criminal record certificate applied for by or on behalf of the employment business but the certificate has not yet been received.

14. The conditions in this regulation are that the governing body has received written confirmation from the employment business—

- (a) that, subject to regulation 19, an enhanced criminal record check has been carried out (whether by that employment business or another employment business) not more than three months before the date that the relevant person is due to begin work at the institution;
- (b) that the employment business has obtained a copy of the enhanced criminal record certificate; and
- (c) as to whether the enhanced criminal record certificate gives details of any relevant matter relating to the person which is recorded in central records or gives any information provided in accordance with section 113B(4) of the Police Act 1997 or as to whether any information has been provided in accordance with section 113B(6) of the Police Act 1997.

15. If the governing body receives written confirmation under regulation 14 that the enhanced criminal record certificate gives details of any relevant matter relating to the relevant person which is recorded in central records or gives any information provided in accordance with section 113B(4) of the Police Act 1997 or that information has been provided in accordance with section 113B(6) of the Police Act 1997, it is a condition that the governing body of the further education institution must not accept the relevant person to provide education at the institution unless a copy of the certificate has been received from the employment business.

16. It is a condition that the governing body of a further education institution must, at the institution, check the identity of a relevant person before that person may begin work at the institution (irrespective of any such check already carried out by the employment business).

17. It is a condition that in the contract or other arrangements that the governing body of a further education institution enters into with an employment business, the employment business must be required to comply with the following requirements in respect of any relevant person—

- (a) to notify the governing body in writing that the checks specified in regulation 18 have been carried out;
- (b) where the person's position involves a relevant activity, to notify the governing body in writing that—
 - (i) subject to regulation 19, an enhanced criminal record check has been carried out (whether by that employment business or another employment business) not more than three months before the date that the person is due to begin work at the institution; or
 - (ii) a children's suitability statement has been submitted and an enhanced criminal record certificate has been applied for by or on behalf of the employment business but the certificate has not yet been received; and
- (c) where the enhanced criminal record certificate gives details of any relevant matter relating to the person which is recorded in central records or gives any information provided in accordance with section 113B(4) of the Police Act 1997 or where information has been provided in accordance with section 113B(6) of the Police Act 1997, to notify the governing body and provide a copy of the certificate.

18. The checks in respect of a relevant person are—

- (a) a check of his identity;
- (b) a check that he has a right to work in the United Kingdom;
- (c) a check that he meets all relevant staff qualification requirements;
- (d) a check to establish whether he is subject to any direction made under section 142 of the Education Act 2002; and
- (e) subject to regulation 19, where the employment business considers that, by reason of him having lived outside the United Kingdom, carrying out an enhanced criminal record check is not sufficient for the purposes of considering his suitability for a position that will involve a relevant activity, such further checks as the employment business considers appropriate, having regard to any guidance issued by the Welsh Ministers or the Secretary of State.

19.—(1) Where the circumstances in paragraph (2) apply, the check specified in regulation 18(5) is not required and the enhanced criminal record check referred to in regulations 14(1) and 17(2) may have been carried out more than three months before the date that the relevant person is due to begin work at the institution.

(2) The circumstances are—

- (a) the relevant person has worked in either—
 - (i) a school in Wales or England in a position which brought him regularly into contact with persons aged under 18; or
 - (ii) another further education institution in Wales or England in a position which involved the provision of education and a relevant activity,

during a period which ended not more than three months before the date that he is due to begin work at the institution.

Record keeping

20. It is a condition that a governing body of a further education institution must keep a register in respect of all persons who are providing education at the institution.

21. The register must be kept from—

- (a) 1st September 2007 in respect of persons who begin work at the institution on or after 1st September 2007; and
- (b) 1st September 2008 in respect of persons who are in post on 1st September 2008 and who began work at the institution before 1st September 2007.

22. It is a condition that the governing body of a further education institution must ensure that there is recorded in the register against the name of each person providing education at the institution who has not been supplied by an employment business the information that is specified in Part 1 of the Schedule.

23. It is a condition that the governing body of a further education institution must ensure that there is recorded in the register against the name of each person providing education at the institution who has been supplied by an employment business the information that is specified in Part 2 of the Schedule.

24. It is immaterial for the purposes of regulations 22 and 23 whether the information to be recorded was obtained pursuant to a legal obligation.

25. The register required to be kept pursuant to regulation 20 may be kept in electronic form, provided that the information so recorded is capable of being reproduced in legible form.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998⁽¹³⁾

Date

The Presiding Officer of the National Assembly

SCHEDULE 1

Regulations 22 and 23

Information to be recorded

PART 1

Information to be recorded by the governing body of a further education institution in respect of persons providing education who have not been supplied by an employment business

- 1.** whether the person's position involves a relevant activity;
- 2.** whether the identity of the person has been checked;
- 3.** whether a check has been carried out to establish whether the person is subject to any direction made under section 142 of the Education Act 2002;
- 4.** whether a check has been carried out to ensure that the person meets all relevant staff qualification requirements;
- 5.** where the person's position involves a relevant activity, whether an enhanced criminal record check has been carried out in respect of him;
- 6.** whether further checks of the kind described in regulation 6 that were considered appropriate in respect of the person have been carried out;
- 7.** whether a check has been carried out to confirm that the person has a right to work in the United Kingdom;
- 8.** for each check listed in this Part that has been carried out, the date on which the check was completed.

⁽¹³⁾ 1998 c.38.

PART 2

Information to be recorded by the governing body of a further education institution in respect of persons providing education who have been supplied by an employment business

- 9.** whether the person's position involves a relevant activity;
- 10.** whether written notification has been received from the employment business that—
- (a) the identity of the person has been checked;
 - (b) a check has been carried out to establish whether the person is subject to any direction made under section 142 of the Education Act 2002;
 - (c) a check has been carried out to ensure that the person meets all relevant staff qualification requirements;
 - (d) any further checks of the kind described in regulation 18(5) that were considered to be appropriate in respect of the person have been carried out;
 - (e) a check has been carried out to confirm that the person has a right to work in the United Kingdom;
 - (f) where the person's position involves a relevant activity—
 - (i) an enhanced criminal record check has been carried out in respect of that person; or
 - (ii) an enhanced criminal record certificate has been applied for and a children's suitability statement submitted by or on behalf of the employment business in respect of that person;
- 11.** for each written notification listed in paragraph 2 that has been received, the date on which the notification was received;
- 12.** where the employment business has obtained an enhanced criminal record certificate, whether it gives details of any relevant matter relating to the person which is recorded in central records or gives any information provided in accordance with section 113B(4) of the Police Act 1997 or whether any information has been provided in accordance with section 113B(6) of the Police Act 1997;
- 13.** whether a copy of an enhanced criminal record certificate has been provided to the governing body of the further education institution.

Annex B

Consultation Response Proforma

Regulations 5 – 9: New Staff

Regulation 10: Staff who transfer positions

1. Is the extent of the checks to be carried out in respect of new members of staff sufficient for determining an applicant's suitability?

2. Are there any additional checks which should be undertaken? If so, what other elements should be included?

3. The draft regulations sufficiently clear about who should be checked, what checks should be made and who should undertake them?

Regulations 11 – 19: Supply Staff

4. Will the information provided about supply staff enable colleges to make a reasonable judgement about an individual's suitability? If not, what other information should be included?

Regulations 20 – 25: Record keeping

5. Do you agree with the proposed timescale for the coming into force of the record- keeping obligations for new employees as of 1 September 2007?

6. Do you agree that a transitional period of 12 months should apply for the inclusion of existing staff details on the single record?

7. Is the information to be recorded on the register sufficient?

8. Would a standard format for the single record be useful?

Further Comments

9. Are there any other comments you wish to make?

Annex C

Criminal Records Bureau: CRB Checks on Volunteers - NAFW Circular 02/2003
<http://new.wales.gov.uk/docrepos/40382/40382313/40382112/4038211111/403821111/NAFWC02-03-e.pdf?lang=en>

Child Protection: Preventing Unsuitable People from Working with Children and Young Persons in the Education Service – NAFW Circular 34/2002
<http://new.wales.gov.uk/docrepos/40382/40382313/40382112/4038211113/403821111/NAFWC34-02-e.pdf?lang=en>

Reporting Cases of Misconduct or Professional Incompetence in the Education Service – Circular 33/2005

Safeguarding Children: Working Together under the Children Act 2004

Safeguarding Children in Education: The Role of Local Authorities and Governing Bodies under the Education Act 2002 – Consultation March 2007
http://new.wales.gov.uk/consultations/currentconsultation/educat_skills/1335587/?lang=en

Estyn (2006): A Survey of Procedures for Vetting School Staff and Other Adults
http://www.estyn.gov.uk/publications/Remit_CRB_vetting_survey_0506.pdf

Further Education Teachers' Qualifications (Wales) Regulations 2002