

Subject:

**CHILD PROTECTION: RECRUITMENT OF
PEOPLE TO WORK WITH CHILDREN AND
YOUNG PEOPLE IN COLLEGES OF
FURTHER EDUCATION**

**Guidance for Colleges on pre-employment checking and
safer recruitment practices**

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- Chairs of Governing Bodies
- FE College Finance Officers

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This Circular replaces previous guidance on pre-employment checking in Circular 1990/28, *Disclosure of Criminal Background of Persons with Access to Children*. It offers guidance to Colleges on their duties in relation to the selection and vetting of persons for working with children and young people, in either a paid or unpaid capacity, and on safer recruitment practices. It includes a summary of the implications for Colleges of the Protection of Children and Vulnerable Adults (NI) Order 2003 and of the new Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2006.

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**CHILD PROTECTION: RECRUITMENT OF PEOPLE TO WORK WITH CHILDREN
OR YOUNG PEOPLE IN EDUCATIONAL SETTINGS**
**Guidance for Colleges on pre-employment checking and safer recruitment
practices**

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CHILD PROTECTION: RECRUITMENT OF PEOPLE TO WORK WITH CHILDREN AND YOUNG PEOPLE IN EDUCATIONAL SETTINGS

Introduction

1. This Circular replaces DE Circular 1990/28, "Disclosure of Criminal Background of Persons with Access to Children". It offers guidance to Colleges on their duties in relation to the selection and vetting of persons for working with children and young people, in either a paid or unpaid capacity, and on safer recruitment practices. It includes a summary of the implications for Colleges of the Protection of Children and Vulnerable Adults (NI) Order 2003 and of the new Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2006.
2. This Circular deals only with child protection in the context of the selection and recruitment of staff. For further guidance on child protection issues in Further Education, see "*Pastoral Care: Child Protection*", issued under DE Circular 1999/10 and available on the Department of Education's website, www.deni.gov.uk. This document is being revised and updated, but still contains relevant and useful guidance for Further Education Colleges.
3. This Circular gives guidance only. It is not an authoritative interpretation of the law; that is exclusively a matter for the courts.

The Protection of Children and Vulnerable Adults (NI) Order 2003 (POCVA)

4. The Protection of Children and Vulnerable Adults (NI) Order 2003 (POCVA) came into effect on 1 April 2005 (with the exception of Article 46). POCVA aims to improve existing safeguards for children and vulnerable adults by preventing unsuitable people from working with them in paid or voluntary positions. This Circular deals only with those aspects of POCVA relating to children and young people in an educational setting.
5. Under POCVA (and regulations made under it¹), the Department of Health, Social Services and Public Safety (DHSSPS) and the Department of Education are both required to maintain lists of individuals who are **unsuitable to work with children** in a 'regulated position' (see below). The DHSSPS List, which deals with people in the care sector, is known as the Disqualification from Working with Children List (**DWC(NI) List**), and the

¹ The Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2006, which will come into effect on 3 April 2006

Department of Education's List, which deals with people in the education sector, is known as the List of Unsuitable People (**UP List**).

6. POCVA introduces "offences against a child" – these offences are listed in the Schedule to the Order. Where a person is convicted of committing an offence against a child and has a sentence imposed on him or her of 12 months' imprisonment or more, the court must order the individual to be **disqualified from working with children** (unless it states that it is satisfied, in all the circumstances, that the person is unlikely to re-offend against the child).
7. POCVA also introduces two important new offences:
 - **It is an offence for an individual on either of the Departments' Lists, or is the subject of a disqualification order from the courts, to apply for, offer to do, accept or do any work, paid or unpaid, in a regulated position; and**
 - **It is an offence for an individual knowingly to employ, or offer work in a regulated position to, or procure work in a regulated position for, such a person, or to fail to remove such a person from such work.**

Anyone convicted of these offences is liable to punishment by imprisonment or fines or both.

8. A 'regulated position' is defined in the Order as including "a position whose normal duties include work in ...an educational institution". It also includes "a position whose normal duties include caring for, training, advising, counselling, supervising or being in sole charge of children". "Educational institution" is defined as "an institution which is exclusively or mainly for the provision of full-time education to children".
9. The guidance in this Circular should therefore be taken to apply to posts in any Further Education College or in any outcentre run by a Further Education College.

List 99

10. The Department of Education already maintains a List of those persons whose **eligibility to teach has been withdrawn** ("List 99"). This List is a section of the List statutorily maintained by the Department for Education and Skills. A teacher whose eligibility to teach has been withdrawn will not be registered by the General Teaching Council (NI), or will be removed from the GTC's register.
11. Eligibility to teach may be withdrawn on medical grounds or for misconduct, whether or not on foot of a conviction.

12. Any person whose name is on List 99 is prohibited from working as a teacher (although he or she is not committing an offence by so doing).
13. Individuals who are prohibited from teaching and listed on List 99 will appear on the Department of Education's UP List only if their case has been separately considered by the Department and a decision taken for this purpose. Individuals may be included on List 99 for reasons which render them unsuitable to teach but, possibly, not unsuitable for employment in positions around children or young people in other circumstances. For the purposes of the UP List the Department of Education will consider the cases of individuals who are already listed on List 99 for inclusion on the new List, and will be contacting the individuals concerned as necessary.

Colleges must not offer work in any capacity in any educational setting to any person who is:

- on the Department of Education's List of persons considered unsuitable to work with children (UP List);
- on the Department of Health, Social Services and Public Safety's Disqualification from Working with Children List (DWC(NI) List); or
- the subject of a disqualification order by a court.

Moreover, Colleges must not offer employment as a teacher to any person on List 99.

A single Pre-Employment Check conducted through the Criminal Records Office (see below), as well as checking criminal background, will identify anyone who is on any of these three lists.

Recruitment of people to work in educational settings - general

14. Keeping safe the children and young people in their care must be the top priority for everyone in charge of an educational setting, and indeed Governing Bodies of Colleges already have a statutory duty of care towards their students. All reasonable steps must be taken to guard against employing people who might harm children, or put them at risk of harm, and incorporating a child protection focus in the recruitment process is an essential part of that. Following good recruitment practices also provides reassurances for Colleges themselves.

15. The following box offers brief guidance on the key steps to follow in the recruitment process. Previous guidance on the vetting of people to work in educational settings focused on whether the post involved substantial unsupervised access to children (although this has now been superseded by the concept of work in a “regulated position” – see paragraph 8 above). However, there is an awareness that children or young people commonly perceive all adults in Schools, Colleges or youth settings as safe and trustworthy. So following the steps listed below is important for all posts in an educational setting, teaching and non-teaching, and **Further Education Colleges are strongly advised to follow them in every case.**

Key steps in recruitment for people working in an educational setting

- Recruitment advertising and all applicants’ information, including the job description and person specification, should contain a prominent child protection statement.
- An original birth certificate and/or a marriage certificate (as appropriate) should be requested at the time of application.
- Applicants should be asked to supply the names of at least two referees, including a referee from their last post where they were working with children or young people.
- Where the job requires qualifications, proof of claimed qualifications should be obtained, either by sight of originals or by confirmation with the accrediting authority if originals have been lost, before confirmation of appointment.

- With immediate effect, at least one person on the interview panel should have been trained in child protection for recruitment purposes. (Colleges should aim to have everyone who may sit on an interview panel for a post in an educational setting trained as soon as possible.)
- Interviewees should be asked to bring photographic proof of identity, ie a passport, driving licence or electoral identity card.
- Both the candidate's suitability to work with children or young people and their suitability for the advertised post need to be explored at interview.
- Any points of concern, such as gaps in employment history, need to be pursued and satisfactorily explained.
- Independent written references in respect of the preferred applicant must always be taken up. Rather than accept references or testimonials supplied by the applicant, the employer should supply referees with a form to complete which includes specific questions about the applicant's past performance and seeks any information which might indicate their unsuitability to work with children or young people.
- It can be useful to follow up written references with a personal call which may be more revealing.
- A pre-employment checking form should be completed by the preferred applicant, requiring him or her to list any previous convictions (spent or unspent) and pending prosecutions, and to give permission for a pre-employment check to be made.
- A pre-employment check through CRO should be conducted only on the preferred candidate and before the appointment is made.
- The appointment should only be confirmed after all pre-employment checks have been completed satisfactorily.
- All new staff and volunteers should have an induction that includes appropriate training in the organisation's child protection policy and procedures.

Pre-employment checking

16. It should be noted that legislation is now before Parliament (the Safeguarding of Vulnerable Groups Bill) which, if given Royal Assent, will enact Recommendation 19 of the Bichard Report which proposed a national vetting and barring system. The new legislation will extend to Northern Ireland, and will make pre-employment checking for posts in educational settings mandatory.
17. In addition, the Northern Ireland Office is in the process of implementing Part V of the Police Act 1997. Once this work is completed the criminal records disclosure system in Northern Ireland will be based in statute rather than in common law. As a result, every employer seeking a criminal records disclosure will have to make application to the new disclosure body which will be established. Further Education Colleges will also have to be registered to use this new service. Existing Criminal Record Office (CRO) users will be contacted in due course and provided with guidance on the change-over.
18. Pre-employment checking in Northern Ireland is carried out through the CRO of the Police Service of Northern Ireland (PSNI). When the CRO receives a vetting request, a check is conducted against the DHSS&PS's DWC(NI) List, the Department of Education's UP List and List 99, as well as a full criminal records check (which will include whether a disqualification order has been issued by the courts and whether a person is required to register as a sex offender).
19. The result of the check, which is returned to the employer will indicate whether the individual concerned is on any of the three Lists, as well as details of any criminal convictions, spent and unspent, including cautions and bind-over orders, any prosecutions pending and any non-conviction information which the Police consider reliable.
20. The decision on whether to employ a person rests with the employer in the light of full consideration of all the information available. **However, employment in an educational setting may not be offered under any circumstances to any person listed on the DHSSPS, DWC(NI) list or the UP List as unsuitable to work with children or young people or who has a disqualification order from the courts. Nor may a person on List 99 be offered employment as a teacher.**

When to check

21. A pre-employment check should be requested after a person has been selected at interview, but before he or she is appointed to a position in an educational setting. This applies to prospective employees and volunteers,

whether full-time or part-time, permanent or temporary. The check can be commissioned while written references are being pursued. It is for each employer to determine whether they wish to keep applicants informed about the stage that their application has reached, or whether they wish to complete the full pre-employment process before informing applicants of the success or otherwise of their application.

22. Where a pre-employment check will be required, preferred applicants should be asked, as part of the recruitment procedures, to complete a form giving written permission for the check to be carried out and listing all convictions and pending prosecutions. Because the post is one working with children or young people, applicants are exempt from the provisions of the Rehabilitation of Offenders (NI) Order 1979. This means that they are obliged to give written details of all cautions, bind-over orders, pending prosecutions and criminal convictions, including those which would normally be regarded as 'spent' under this legislation. It should be pointed out that refusal could prevent further consideration of the application.
23. It is important that the most efficient and economical use is made of the arrangements. Requests for checks should not, therefore, be made when interview short-lists are being drawn up, but only when the final candidate has been selected and in respect of that candidate alone. To check a number of candidates for each position could entail long and unacceptable delays and could greatly overload the capacity of the CRO checking system. **Nor should the Police be asked to conduct a check where an applicant has indicated that he/she is on one of the Departments' Lists prohibiting work with children, or admitted a conviction which would clearly render him or her unsuitable for work with children or young people.**
24. Pre-employment checks through CRO normally take around 2 weeks to complete but, where checking with another Police Service is required or at busy periods (eg the beginning of the academic year), may take up to 4 – 6 weeks. The time that it will take for a pre-employment check to be conducted should be built into the overall timescale for recruitment.

Temporary staff

25. Temporary staff, teaching and non-teaching, in all educational settings should also be subject to checks, exactly as a permanent post-holder would be.

Emergencies and Exceptions

- 26 In emergency situations, however, it is accepted that temporary replacements for non-teaching staff (eg a classroom assistant for a person with a disability) may have to be made before a check can be carried out if no-one who has been checked is available. There will also be circumstances in which a contracted employee may have to enter the premises, eg to make good repairs, without a check having been undertaken. There will also be individuals entering for limited periods on an ad hoc basis, eg to make deliveries, or visitors for a meeting, who will obviously not be checked.
- 27 In such circumstances all reasonable steps should be taken to ensure that:
- the individual concerned prominently wears identification, eg a visitor's pass, showing that she or he is not a member of staff;
 - she or he is not left unsupervised with children or young people;
 - the locations where she or he has to work or visit, including access routes, are as far as possible restricted; and
 - visitors for meetings are accompanied to the location of the meeting.

As a general principle, the presence of unvetted people around Colleges should be exceptional, short-term, controlled, and (except for visitors) only if vetted people have been sought and are not available.

Contracted-out services

28. Where Colleges contract out services to the private sector, staff employed by private contractors to provide ancillary services (eg catering, taxiing, cleaning, laundry) should also be subject to pre-employment checking where those staff will be working in educational settings or directly with children and young people. This is particularly important in the case of drivers and escorts who may be alone with vulnerable children and young people for prolonged periods.
29. In such circumstances, the College should at tender stage make it clear to private contractors that pre-employment checks must be carried out after a contract is awarded but before any work is undertaken. At the same time, the College should advise contractors that an employee may be refused entry to an educational setting, or to work as a driver or escort, where the check indicates that the employee is on the DWC(NI) List, or the UP List, or has been convicted of a relevant offence and the College considers that employee unsuitable for the intended duties.
30. Contractors routinely working in Colleges may decide that their workers meet the definition of a 'regulated position' (see paragraph 8). If they do, the

contractor should register with the Protection of Children (POC(NI)) Service of DHSSPS⁽²⁾ and submit a vetting request through them. Where the contractor confirms that this has been done, the employing authority should ask the contractor to provide, in writing, and as part of the contract, the names of each individual working on the contract and confirmation that a clear vetting check has been obtained in respect of each before that individual starts work.

31. Where the contractor has not already registered with POC(NI) and had employee checks carried out, the contractor should be required, as part of the contract, to register with POC(NI) and have vetting checks conducted on each of his workers who will be working on the contract, and to confirm in writing, in respect of each (named) individual and before work is started, that a clear check has been obtained.
32. In the case of drivers, the contract should ensure that the contractor has a reasonable number of other drivers available who have been checked, in order to be able to provide suitable cover in case of the unavailability of regular drivers.
33. It is not necessary to check a contractor's employees every time he/she works in an educational setting where a fixed term contract has been made which will involve the employees in working consecutively in a number of settings. However, such checks should be made at a minimum of one-yearly intervals, and employing authorities should keep note of the most recent check result.

Contractors employed directly

34. Where a College has arranged directly for contractors to do work other than a routine service, such as building work, including PPP contracted work, the employer should take all reasonable steps to ensure that any individuals who are likely to be seen by children on the premises routinely, for any period beyond one or two short ad hoc visits, are properly checked. Where the work will be lengthy, this may mean following the procedures set out in the previous section. Ad hoc visitors should wear a pass and be accompanied.

Existing employees

35. Further guidance will be provided by the Department on checking existing employees who may not previously have been checked, for example because they were employed before the current vetting procedures were introduced in 1990.

² The POC(NI) Service is run by the Child Care Directorate of DHSSPS and can be contacted on 028 9052 2559 or 028 9052 2951.

How checks are requested

36. The arrangements for requesting checks are unchanged: Colleges should submit their requests for pre-employment checks directly to the Criminal Records Office (CRO) at PSNI Headquarters.
Each College must have a senior officer and a deputy nominated to be responsible for requesting and receiving the results of pre-employment checks. The names of the officers so nominated, who must also be checked, should be conveyed to the CRO. They will be personally responsible for overseeing the operation of the checking procedure and for ensuring that any information revealed by the Police check is released only to those who need to see it.
37. All requests for checks will be the responsibility of the Nominated Officer who will make the formal request directly to the CRO on form POC(NI)1.
38. Request forms which have not been signed by the Nominated Officer or deputy will not be accepted by the Police. The form should be completed in full. If all details are not available from the candidate's application form, he/she should be asked to supply the missing information. After carrying out a check of their records, the Police will send the results back to the requesting officer.

Information given in response to a pre-employment checking request

39. The Police will reply, showing the results of checks against the DE and DHSSPS Lists, and, from CRO records, either that there is no trace of the person concerned on the details supplied, or advising that the person is listed together with information on prosecutions pending and convictions, including cautions and bind-over orders. The Police will also supply non-conviction information which they consider reliable.
40. Colleges must not employ anyone to work in an educational setting, who has a disqualification order from the courts or is listed on a Departmental List which would disqualify them (now or after training) from working in the post concerned. Otherwise, it is for the employer to make a judgement as to the candidate's suitability for appointment, taking into account only those offences which may be relevant to the particular job or situation in question. The fact that a person has a criminal record does not automatically render him or her unsuitable for work with children. A person's suitability should be looked at as a whole in the light of **all** the information available, including non-conviction information.
41. In deciding the relevance of any convictions, Colleges should consider the following points:

- **The nature of the conviction**

In general, convictions for sexual, violent or drug offences will be particularly strong contra-indications for work with children or young people. Colleges should also consider very carefully non-conviction information which may indicate behaviour which would render a person liable to put children or young people at risk of harm or influence by an unsuitable role-model.

- **The nature of the appointment**

Often, the nature of the appointment will be helpful in assessing the relevance of the conviction. For example, offences involving sexual abuse, violence or the misuse of drugs would give rise to particular concern where the position was one of providing care or supervision; offences involving dishonesty would be particularly relevant where the position was one involving the handling of money: those involving drunkenness or driving convictions would be of concern in situations involving transport of pupils or staff.

- **When the offence occurred**

Offences which took place many years in the past may often have less relevance than recent offences. However, convictions for violent or sexual offences are more likely to give cause for continuing concern than others for, say, dishonesty.

- **Frequency of offence**

A pattern of related or similar offences over a period of years, or non-conviction information indicating repeated behaviour, is more likely to give cause for concern than an isolated minor conviction.

42. Where a College is in any doubt about how to interpret the information given in a vetting report, or whether to proceed with an appointment, advice should be sought from the Social Services or the Police.
43. **In general terms, where a College is concerned that the information in a vetting report indicates behaviour that may put children or young people at risk, the person should not be offered employment or work as a volunteer.**

Discrepancies and disagreements

44. Where the information on convictions provided by the CRO differs from that provided by the candidate, the College must, before taking a final decision on the appointment, discuss the discrepancy with the candidate. Where there is disagreement, or where the decision not to employ is made on non-conviction grounds, the candidate should have the opportunity to see the information provided by the Police. A candidate who believes that the information is incorrect and wishes to make representations to the Police should do so in the first instance through the Nominated Officer. Thereafter, if still dissatisfied, he/she should be advised to pursue the matter with the Police direct.
45. If the dispute continues, it is for the College to decide whether or not to proceed with the appointment, taking into account the nature of the offence(s) to which the disputed information relates.

Safekeeping of information

46. The information which the Police will provide is of a confidential nature. It must be used only to judge the suitability or otherwise of a candidate for the position in question and it must be kept securely while the decision is being made. Once this has been done, the information should be destroyed, with due regard to its confidentiality.
47. An indication should, however, be made on the employee's records that a pre-employment check has been carried out and the result of this. Where the check has identified minor sexual or other relevant offences and the decision to offer employment has been made notwithstanding, the record should indicate such.

Checks with other Police Services

48. Where the candidate lives or has lived in another part of the United Kingdom or in the Republic of Ireland, the Criminal Records Office will make enquiries as to the existence of a criminal record with the relevant Police Services.
49. There are no formal arrangements for checking Police records in countries outside the UK and the Republic of Ireland. However, citizens of some countries can obtain official statements giving details of convictions or confirming a clean record (see Appendix A). Overseas applicants, should be asked either to provide such a document, or to confirm that such a document

is not available in their country. Where it is not available, meticulous care must be taken with other checks such as references.

Reporting of convictions of staff during employment

50. Under agreed arrangements in place between PSNI and the education sector, the Police already report new investigations or convictions of individuals whom they know to be working in a school or other educational setting to the relevant Nominated Officer of their employer. These arrangements will continue. Only relevant convictions will be reported, ie those involving sex or indecency, dishonesty, violence, drink or drugs.
51. Action to be taken on receipt of such a report is a matter for the College concerned, but the subject of the report should be informed of its receipt and given the opportunity to confirm its accuracy.

Police indemnity

52. The Police require to be indemnified by Colleges against any liability incurred as a result of the provision of information in response to requests made under the new arrangements and the reporting convictions. The indemnity should be provided in the following form each time a Nominated Officer changes:

“*[Name of employer]* undertakes to indemnify the Police against any liability or civil claim which may be incurred by any serving or former Police Officer or serving or former member of Police civil staff as a result of the provision by the Police to *[Name of Nominated Officer / Deputy]* of reports of convictions, cautions or bind-over orders.”

Nominated Officers

53. Colleges should ensure that the fact that a person is a Nominated Officer or a deputy should be included in the job descriptions for appropriate posts. When a post-holder changes, the name and specimen signature of the new post-holder should be submitted to the CRO. Notifications about changes to Nominated Officers to the CRO should be sent to:

The Chief Constable
Criminal Justice Department
Criminal Records Office
Police Service of Northern Ireland
Brooklyn
Knock Road
Belfast
BT5 6LE.

54. At the same time, the College should arrange to draw up a written indemnity in the form set out in paragraph 52 and forward this to: The Chief Constable, Criminal Justice Department, Criminal Records Office at the address above.

Training

55. It is vital that those taking over the role of Nominated Officer or Deputy Nominated Officer receive appropriate training. A check should also be made to ensure they have copies of all the relevant guidance, in particular the College's child protection policy, this Circular and any related Circulars.