

2007 No. 2220 (W.175)

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, their right to work in the United Kingdom, whether they have met the relevant qualification requirements and whether they are 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 their 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 the person has worked with under 18s in a school or further education institution in Wales 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.

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EDUCATION, WALES

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

Made 26 July 2007

*Laid before the National Assembly
for Wales* 30 July 2007

Coming into force 1 September 2007

The Welsh Ministers in exercise of the powers in sections 136(c), 210(7) and 214 of the Education Act 2002(1) make the following Regulations:

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 1st September 2007.

2. These Regulations apply in relation to Wales.

Interpretation

3.—(1) In these Regulations—

“central records” (“*cofnodion canolog*”) has the meaning given by section 113A of the Police Act 1997(2);

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

(1) 2002 c.32; conferred upon the National Assembly for Wales in the Education Act 2002 and transferred to the Welsh Ministers by paragraph 30 of Schedule 11 of the Government of Wales Act 2006 (c.32)

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

“employment business” (“*busnes cyflogi*”) has the meaning given by section 13(3) of the Employment Agencies Act 1973⁽¹⁾ and includes a local authority and a person carrying on an employment business;

“enhanced criminal record certificate” (“*tystysgrif cofnod troseddol fanwl*”) means an enhanced criminal record certificate issued pursuant to Part V of the Police Act 1997;

“new member of staff” (“*aelod newydd o staff*”) means a person who receives an offer from the governing body of a further education institution on or after 1 September 2007 to work in a position providing education at the institution under a contract of service or a 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” (“*gweithgaredd perthnasol*”) means regularly caring for, training, supervising or being solely in charge of persons aged under 18;

“relevant matter” (“*mater perthnasol*”) has the meaning given by section 113A of the Police Act 1997.

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

- (a) the person meets all relevant requirements in the Further Education Teachers’ Qualifications (Wales) Regulations 2002⁽²⁾ or the Education (Induction Arrangements for School Teachers) (Wales) Regulations 2005⁽³⁾ or in regulations made under section 136(a) of the Education Act 2002 as to the qualifications that they must hold; and
- (b) the person 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 they countersign 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 that person’s 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

⁽¹⁾ 1973 c. 35.

⁽²⁾ S.I. 2002/1663 (W.158).

⁽³⁾ S.I. 2005/1818.(W.146).

- (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⁽¹⁾.

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 the person’s identity;
- (b) check that the person has a right to work in the United Kingdom;
- (c) check that the person meets all relevant staff qualification requirements;
- (d) check whether the person 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 the person where the position they are offered 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 the person’s suitability for a position that will involve a relevant activity, it is a 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(a) to (d) 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(e) must be carried out before the new member of staff begins work at the further education institution or as soon as practicable after they begin work there.

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

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

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

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 1 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 the person's identity;
- (b) a check that the person has a right to work in the United Kingdom;
- (c) a check that the person meets all relevant staff qualification requirements;
- (d) a check to establish whether the person 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 the person having lived outside the United Kingdom, carrying out an enhanced criminal record check is not sufficient for the purposes of considering their 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(e) is not required and the enhanced criminal record check referred to in regulations 14(a) and 17(b) 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 in a position which brought them regularly into contact with persons aged under 18; or
 - (ii) another further education institution in Wales 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 the person 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) 1 September 2007 in respect of persons who begin work at the institution on or after 1st September 2007; and
- (b) 1 September 2008 in respect of persons who are in post on 1 September 2008 and who began work at the institution before 1 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.

Jane Hutt

Minister for Education, Children and Young People,
one of the Welsh Ministers

26 July 2007

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 that person;
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.

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

1. whether the person's position involves a relevant activity;

2. 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(e) 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;

3. for each written notification listed in paragraph 2 that has been received, the date on which the notification was received;

4. 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;

5. whether a copy of an enhanced criminal record certificate has been provided to the governing body of the further education institution.