

## **EXPLANATORY MEMORANDUM TO**

### **THE EDUCATION (PUPIL REFERRAL UNITS) (APPLICATION OF ENACTMENTS) (ENGLAND) (AMENDMENT) REGULATIONS 2006**

**2006 No. 1068**

**1.** This explanatory memorandum has been prepared by The Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 The instrument makes the requirement to carry out a Criminal Records Bureau (CRB) check mandatory for all new appointments of staff to Pupil Referral Units (PRUs).

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative Background**

4.1 These Regulations amend the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005 (“the PRU Regulations”) by inserting a new paragraph 14A into Schedule 1 to those Regulations.

4.2 The PRU Regulations apply a number of provisions of the Education Acts and subordinate legislation made under them to PRUs. New paragraph 14A applies regulation 11 of the School Staffing (England) Regulations 2003, which requires staff of maintained schools to be subject to a CRB check before or as soon as practicable after appointment. (Regulation 11 of the School Staffing (England) Regulations 2003 was itself amended to impose such a requirement by amending regulations coming into force on the same date as these Regulations.)

4.3 On 19 January 2006, the Secretary of State for Education and Skills made a statement to Parliament, and lodged a report in the Libraries of both Houses, detailing a number of commitments following public concern resulting from reports that a small number of individuals who appeared on the sex offenders register were working in schools. One specific commitment was to make Criminal Records Bureau checks mandatory for all new appointment to the schools workforce, which includes PRUs.

## **5. Extent**

5.1 This instrument applies to England.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The amendment made by these Regulations means all new appointments of staff to work in PRUs, must, with certain exceptions be subject to an enhanced CRB check.

7.2 These Regulations are an important measure designed to strengthen existing arrangements for the safeguarding of children in schools and help to maintain continuing confidence in these arrangements. CRB Disclosures are already strongly recommended in guidance issued by the Secretary of State; these regulatory changes serve to strengthen and clarify the requirements on employers.

7.3 The Regulations stem from the Secretary of State's 19 January statement and report to Parliament mentioned in paragraph 4.1 above. They meet part of the commitment given to make CRB checks mandatory in schools. (The remainder of the commitment is met by the amendment to the School Staffing (England) Regulations 2003 mentioned in paragraph 4.2 above. Similar obligations were imposed on independent schools by the Education (Independent School Standards)(England) Regulations 2003 (S.I. 2003/1910)

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum.  
However, there is no impact on business or voluntary sector organisations.

8.2 The impact on the public sector is contained in the attached RIA, and is considered nominal.

## **9. Contact**

Shahid Bashir at the Department for Education and Skills can answer questions relating to this instrument. E-mail: [Shahid.bashir@dfes.gsi.gov.uk](mailto:Shahid.bashir@dfes.gsi.gov.uk)

# **FINAL REGULATORY IMPACT ASSESSMENT FOR MAKING ENHANCED CRIMINAL RECORDS BUREAU DISCLOSURES MANDATORY FOR NEW APPOINTMENTS TO THE SCHOOLS WORKFORCE (INCLUDING PUPIL REFERRAL UNITS)**

## **PURPOSE AND INTENDED EFFECT**

### **Objective**

To make compulsory the existing strong guidance to carry out CRB checks for all new staff appointed to the schools workforce, either prior to appointment or as soon as possible following appointment. Government proposes to enable this via an amendment to Regulations made under sections 35 and 36 of the Education Act 2002 (and s.72 of the School Standards Framework Act (SSFA) 1998) – currently the School Staffing (England) Regulations 2003. And in the case of pupil referral units, via a proposed amendment to the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005 (“the PRU Regulations”).

### **Background**

Currently, strong guidance recommends that members of the school workforce should have CRB checks prior to or as soon as possible following appointment. These checks are in addition to the usual pre appointment and interview checks, for example, previous employer references and List 99 checks.

### **Rationale**

Following press reports at the beginning of this year that sex offenders are being allowed to work in schools, the Secretary of State for Education and Skills ordered a review. As part of the List 99 review, the Secretary of State made a commitment in a statement and report to Parliament, on Thursday 19<sup>th</sup> January 2006, to “introduce new regulations which will make an on-appointment CRB check compulsory for all new appointments to the schools workforce”. This is one of a raft of measures that is designed to further improve safeguards for children, and help to maintain public confidence in the system.

It is envisaged that strengthening the existing strong guidance and making CRB checks mandatory will help to reduce further the possibility that unsuitable people could gain access to children through the schools workforce. This in turn will reduce the risk of harm and associated costs, both social and economic.

### **Consultation**

The Secretary of State’s 19/1 statement and report received cross government support. The content of the statement was discussed with key stakeholders and the commitment to make CRB checks mandatory was well received.

In addition, the Government carried out a targeted consultation on the proposed regulations with 44 stakeholders, including the teaching unions, ADSS, NSPCC,

LGA, The Childrens Commissioner, Ofsted, Commission for Social Care Inspection, Association of Parent Teacher Associations. Full list attached.

All those that responded were strongly in favour of the requirement to make checks mandatory and felt that this would strengthen the existing system.

A few respondents felt that the Government needed to go further and were in favour of making checks compulsory for existing as well as new appointments.

One or two also felt that these checks needed to be pre employment.

### **Public Consultation**

A targeted consultation has been carried out with specific stakeholders.

### **OPTIONS**

#### **Option 1**

Do nothing.

#### **Option 2**

Make CRB checks mandatory for the all new appointments to the schools workforce, and those who have not worked within the workforce for more than three months.

#### **Option 3**

Make CRB checks compulsory for all school workforce staff, existing as well as new.

### **COSTS AND BENEFITS**

#### **Sectors and groups affected**

Schools workforce, schools, local authorities

#### **Benefits**

##### Option 1

Allows schools to continue as present. However, this will lead to inconsistent practice. The Government has concluded that the system does need to be strengthened in advance of the vetting and barring scheme scheduled to be introduced in 2008, and that leaving the current system untouched is not an option. The Secretary of State made a commitment to make CRB checks compulsory for all new staff appointed to the schools workforce, in her statement of 19 January 2006. The Government considered that this would help to strengthen the existing system, further help to safeguard children from harm and help to maintain public confidence in the system.

## Option 2

This option strengthens existing guidance at minimal cost and effort. For new staff, where there is no track record of performance and limited knowledge of their history, a CRB check as part of the recruitment process will provide important additional safeguards. It is proposed that CRB checks will also be required for all staff who have been out of the schools workforce for more than three months.

## Option 3

Government does not believe it is necessary to CRB check all existing staff, where there will be history of performance, a range of checks will already have been carried out, including List 99 and in many cases police checks where staff were in post prior to CRB. In addition, the police notifying scheme should have captured relevant individuals where they were in relevant employment. There is a balance to be struck between child protection, always the first priority, and the need to CRB check an entire workforce, the vast majority of whom pose no risk whatsoever.

In some circumstances, checks will be appropriate for existing staff. But in many cases, when considering existing staff, the employer as the key decision-maker must strike the right balance. The employer needs to decide when there is a case for making a CRB check, for example if there is evidence of behaviour giving cause for concern, or if there is a potential for harm.

## **Costs**

### Option 1

No additional direct costs. However, there could be considerable costs to society if children are harmed as a result of individuals slipping through the net as a result of not having an enhanced disclosure.

### Option 2

The proposed regulations do not put entirely new responsibilities on schools or local authorities. They are based on good practice that is already applied in many of these settings as a result of strong guidance that has been issued by the Department over a number of years. Statistics from CRB suggest that the vast majority of schools are already carrying out these checks. In the event that some may not have adopted the strong guidance and good practice, some additional costs will be incurred. However, the responsibility for paying for these checks rests with the prospective employee. Where schools decide to meet these costs, it is expected that the costs will be small and can be met from within existing budgets.

### Option 3

Whilst statistics from CRB show that much of the workforce has been CRB checked, asking for checks for the entire workforce at this stage represents an unnecessary burden. The workforce will, however, be captured over a period of time following introduction of the Vetting and Barring Scheme.

## **SMALL FIRMS IMPACT TEST**

1. These proposals do not have any significant impact on small businesses. There will be a small impact on teacher and school staff supply agencies. The requirement in these regulations places a duty on supply agencies to obtain CRB Disclosures, by virtue of existing DTI regulations, the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

However, Government believes that good supply agencies are already carrying out these checks. Indications are that the vast majority of agencies are carrying out CRB checks, and welcome these regulations, which will help to create even greater consistency across the workforce.

## **COMPETITION ASSESSMENT**

The standard RIA competition test has been applied, and there is no indication of adverse effects.

## **ENFORCEMENT, SANCTIONS AND MONITORING**

As part of their inspections, Ofsted will look ensure schools have correctly followed recruitment processes, including CRB checks where appropriate.

Ofsted are currently in the process of carrying out a survey of recruitment processes, including the use of CRB checks as strongly recommended in DfES guidance. It is envisaged the results of this survey will assist with the setting of benchmarks.

## **IMPLEMENTATION AND DELIVERY PLAN**

Regulations will be published. We will publicise the strengthened requirements via websites and newsletters. In addition, existing DfES guidance will be updated to reflect the new arrangements.

## **POST-IMPLEMENTATION REVIEW**

We will ask Ofsted to confirm all new appointments to the schools workforce are receiving an enhanced Disclosure, and notify us of any concerns.

## **SUMMARY AND RECOMMENDATION**

We undertook a targeted consultation with a number of key stakeholders, including the teaching unions, ADSS, NSPCC, LGA, and others; and are very grateful for the input received.

All those that responded were strongly in favour of the requirement to make checks mandatory and felt that this would strengthen the existing system.

A few of the respondents felt that we need to go further and were in favour of option 3, to make checks compulsory for existing as well as new appointments.

Having carefully reconsidered the options and discussed, we are moving forward with option 2, for the reasons previously stated.

## **DECLARATION AND PUBLICATION**

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed .....*Maria Eagle*

Date .....*8th April 2006*

Maria Eagle MP

Parliamentary Under Secretary of State for Children, Young People and Families

Department for Education and Skills

10 April 2006

## **CONTACT POINT**

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Stakeholders consulted as part of the targeted consultation

Sir Michael Bichard
Sir Roger Singleton
Children's Commissioner
Local Government Association LGA
The Confederation of Education and Children's Services Managers ConFed
Criminal Records Bureau (CRB)
Association of Directors of Social Services (ADSS)
National Society for the Prevention of Cruelty against Children
NHS Confederation
NCH - Children's Charity
Ofsted
Association of Chief Police Officers (ACPO)
Association of School & College Leaders (formerly known as SHA)
National Association of Schoolmasters Union of Women Teachers (NASUWT)
Children's Society
Children's Workforce Development Council (CWDC)
Barnardos
Kidscape
Local Government Association LGA
General Social Care Council (GSCC)
Commission for Social Care Inspection (CSCI)
General Teaching Council (GTC)
Information Commissioner
National Family & Parenting Institute (NFPI)
National Confederation of Parent Teacher Associations (NCPTA)
National Council of Voluntary Child Care Organisations (NCVCCO)
Association of Colleges
Association & Teachers & Lecturers (ATL)
Catholic Education Services
Day to Day Teachers
Founded & Aided Schools National Association (FASNA)
GMB - Britain's General Union
Independent Schools Council
National Association of Head Teachers (NAHT)
6th Form Colleges Employers Forum
National Union of Teachers (NUT)
National Assembly for Wales
Professional Association of Teachers (PAT)
Recruitment & Employment Confederation
Teacher Development Agency (TDA)
Transport & General Workers Union (T&GWU)
Unison (representing non-teachers in schools)*
National Employee's Organisation for School Teachers (NEOST)
Employers Organisation for Local Government