

Criminal Justice and Court Services Act 2000

Protection of children

Guidance

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Preface by Home Secretary

1. We all value and recognise the importance of safeguarding the health and safety of the children in our society. Unfortunately, there are always dangers to which our children are exposed. Some of these may be accidents – we cannot create an entirely risk-free environment. However, we are often faced with sad reminders that there are also those in our society who seem to have little or no compunction about abusing children either violently or sexually. Evil is not too strong a word to describe those who perpetrate such crimes. Others, by their conduct towards children in environments where children ought to be secure, such as schools and children's hospitals, demonstrate their unsuitability for such work.

2. I believe that there *is* something that we can do about such individuals by minimising the risk they present and depriving them of the opportunity to gain access to children through work. Where we can protect our children from such risk of harm, we ought to do so which is one of the purposes of the *Criminal Justice and Court Services Act 2000*. In particular, Part II of this legislation completes the integrated scheme we have introduced to prevent unsuitable people working with children.

3. We do not seek to presume the guilt of individuals without due process of law. However, when it comes to our attention that someone has committed a serious crime that indicates a propensity towards the violent or sexual abuse of children, we must not hesitate to ensure that, so far as we are able, they will not have the same opportunities to abuse again.

4. We believe such individuals deserve not only a full and appropriate punishment, but should have no right of access to children of the sort that would give them further opportunities to exploit the vulnerable. Neither should there be any assumption that he or she will ever have such access again in the future.

5. We do not believe that this is too strong a measure to take in order to protect children, and I hope that these provisions will provide reassurance to the public that we are doing all that lies within our power to prevent further abuse of children. I trust that those who are responsible for caring for children will find here tools that they can use to help ensure that the children for whom they care are secure in their environment. I hope that enforcers and administrators of the law will find that we have given them the means to deal vigorously and appropriately with those who offend against children. And it is my intention that we send a powerful message to those who would or do perpetrate such crimes.

The Rt. Hon. Jack Straw MP

Secretary of State for the Home Department

December 2000

1: Scope and status of guidance

1.1 This guidance contains advice on the procedures and practice to be adopted by the police, the probation service, the CPS, those involved in the administration of justice in the courts, the prison service and other organisations in administering and enforcing the means by which unsuitable people are disqualified from working with children. The considerations and main steps involved in making a disqualification order, and its subsequent administration, are set out for ease of reference. The guidance is intended for use by all those involved with disqualification orders for the protection of children.

1.2 This guidance has been prepared following consultation with a number of organisations, including – among others – the police and probation services; voluntary child care organisations; the Criminal Records Bureau; and other Government departments.

1.3 Please note that **for the present** disqualification orders can be made in **England and Wales** only. However individuals disqualified in England and Wales from working with children are committing an offence if they seek such work in **England, Wales, or Northern Ireland**. Similar schemes are being considered in Scotland and Northern Ireland. Provision has been made in the legislation to ensure that once such schemes are in place those who are made subject to equivalent disqualifications in Scotland and Northern Ireland will be recognised as disqualified in England, Wales and Northern Ireland.

1.4 *The guidance is non-statutory, and should not be regarded as authoritative legal advice. If there is any doubt as to the application or interpretation of the legislation, advice should be sought from a legal adviser. An early draft of this document was made available to Members of Parliament during the later stages of the passage of the Criminal Justice and Court Services Bill, and it reflects discussion that took place in Parliament about how the provisions should operate in practice.*

1.5 Limited further copies of this guidance are available, and it can be viewed on the Internet (see [Annex F](#)). This guidance may be freely reproduced provided the source is acknowledged. A copy of Part II of, and Schedule 4 to, the *Criminal Justice and Court Services Act 2000* is set out at [Annex A](#), and is also available at the Parliament website. These sections of the Act come into force on 11 January 2001.

2: Background and foundations

2.1 The child protection provisions in Part II of the *Criminal Justice and Court Services Act 2000 (CJCSA)* must be seen as part of an integrated system for the protection of children. The *Education Reform Act 1988*, the *Education Act 1996* and the *Protection of Children Act 1999* provide some of the key building blocks on which the child protection provisions of *CJCSA* are founded.

2.2 The three pieces of legislation mentioned above provide for lists to be kept by the Secretary of State or National Assembly for Wales of individuals disqualified from working with children in organisations in the areas of healthcare, social services and education. Further information on these lists is at [Annex C](#).

2.3 In addition, Part V of the *Police Act 1997* provides for new arrangements allowing employers, voluntary organisations, and other recruiters, greater access to criminal records information, at three different levels of certification according to the nature of the post or position. The Criminal Records Bureau (CRB)¹ is being set up to supply this service (see [Annex D](#) for a more detailed description of the role and function of the CRB). The *Protection of Children Act 1999* makes provision for the Criminal Records Bureau also to provide information from the lists of those who have come to notice as being unsuitable to work with children, and have been placed on the lists maintained by the Secretary of State (a function exercised within the Departments of Health, and for Education and Employment).

2.4 *CJCSA* builds on these various systems and processes to help create a comprehensive and integrated system of child protection.

See *Table One: Basic questions answered*

¹ The Scottish Criminal Record Office provides the appropriate means for checking in Scotland whether or not an individual is disqualified from working with children.

3: Basic structure and principles of provisions

3.1 Currently, an individual can be kept away from work with children by inclusion on the lists maintained by the Department of Health of people considered unsuitable to work with children, or on the list maintained by the Department for Education and Employment (or National Assembly for Wales) on grounds of not being a fit and proper person to be employed as a teacher or worker with children or young persons.

3.2 The child protection measures in Part II and Schedule 4 of *CJCSA*² contain four main provisions. They:

- create a **new way for the courts to disqualify unsuitable people from working with children**, in addition to the existing schemes in the education and childcare areas; this means that those who commit a serious offence against a child can be prevented from all such work by means of a disqualification order by a judge, as part of their sentence or the disposal of their case;
- provide a **review process** for the disqualified person;
- provide **strong criminal sanctions** against those who breach the disqualification, whether the new order imposed by the courts or as a result of being listed, barred or disqualified by the existing schemes; those identified as unsuitable to work with children and therefore disqualified from working with children by any of the means available will be subject to a new criminal offence if they breach the disqualification. It will also be an offence for someone to offer the opportunity to work with children to an individual who they know is subject to disqualification from such work or to allow such an individual to continue such work; and,
- provide a **new comprehensive definition of working with children** which will form the area to be covered by the disqualification, whether imposed by the courts or under the existing schemes; this will apply to work with children in all sectors, including voluntary work, and irrespective of whether the work is paid or unpaid.

The measures thus build on and bind together existing legislation to provide an integrated system covering the various ways in which a person might be disqualified and extending the protections over all work with children.

Main Roles

Judiciary and Court Officers: to ensure that disqualification orders are considered in all qualifying cases and imposed where appropriate.

Police: to enforce breach of the disqualification order.

Organisations: to maintain a culture of vigilance, and to report all breaches of disqualification orders to the police.

² Please note that sections 39 and 40 provide for a change in the age of the child in the offence of indecency with children, and that section 41 has to do with an increase in penalties for possession of indecent photographs of children. While these have to do with child protection, they do not form an integral part of the related package of measures that constitute the rest of Part II.

3.3 This guidance sets out the main elements of the scheme, and the main stages in the process of disqualifying unsuitable people from working with children, together with the enforcement of the disqualification order as follows:

(1) **Disqualification orders.** The circumstances under which a disqualification order is to be made, and the process to be used, are set out in Section 4 of the guidance.

(2) **Appeals.** Section 5.

(3) **Review.** The review process, together with information about the Tribunal, is explained in Section 6.

(4) **Offences.** Section 7 identifies and explains the new offences created for breach of the disqualification order.

(5) **Working with children.** The new and comprehensive definition of ‘working with children’ is explained in Section 8. This is also set out as a table.

(6) **Operation of the scheme.** Elements of the scheme as it should work in practice are explained in Section 9.

3.4 In addition to the sections above, there are five annexes:

Annex A contains sections 26 to 40 of, and Schedule 4 to, the *Criminal Justice and Court Services Act 2000*.

Annex B provides a copy of the Notification Form informing offenders that they have been disqualified from working with children under the terms of *CJCSA*.

Annex C gives some information on the administration of the two lists maintained by DfEE and DH.

Annex D offers a summary of the role and functions of the CRB.

Annex E contains a list of relevant legislation.

Annex F draws attention to other available guidance covering particular related areas.

4: Disqualification orders

(See Annex A, ss.26-30, and Schedule 4)

4.1 A disqualification order is a court order, issued as part of the sentence imposed on certain offenders at conviction, which disqualifies the individual from working with children. *Table Two* sets out the main elements of the process. The ability of the court to impose such an order is the first main element of Part II of *CJCSA*. However, the disqualification order can only be made when certain criteria are met. The first criterion is *the nature of the offence*.

Trigger offences

4.2 Schedule 4 of *CJCSA* defines an ‘offence against a child’. For this purpose, a child is someone under 18 unless it is an offence for which a younger age is specified. These are offences that will trigger consideration of the disqualification order in any particular case. These are mainly offences of a sexual or violent nature (although they include the supply of class A drugs to a child), but they can only be considered ‘trigger offences’ for a disqualification order when committed against a child. In some instances, the offence is committed ‘against a child’ by its very nature. For example, offences under section 6 of the *Sexual Offences Act 1956* (intercourse with a girl under 16) are by definition committed against a child (Schedule 4, 1(d) refers). In other cases, the offences are of a more general nature, but are considered to have been committed against a child when the victim is a person under the age of 18. For example, murder would be considered a trigger offence if the victim were a child. It should be observed that equivalent armed forces offences (i.e. armed forces offences or civil offences which are – or would be, if committed in England or Wales – offences against a child), are also defined as trigger offences.

Qualifying sentence or relevant order

4.3 If an individual has committed an offence against a child, one of two further conditions must apply before a disqualification order can be made, depending on the circumstances of the case, in particular whether it has been dealt with under mental health legislation. Those conditions are the same regardless of whether the individual in question was aged 18 or over, or under 18, at the time of the offence (see below).

4.4 The first condition is the imposition of a *qualifying sentence* by a senior court; the second is the making of a *relevant order* by a senior court in respect of the act or omission charged against the individual as the offence.

4.5 A qualifying sentence can be very broadly defined as a sentence of imprisonment or detention for a term of 12 months or more, or a hospital or guardianship order within the meaning of the *Mental Health Act 1983*. A relevant order is an order made by the Crown Court, the Court of Appeal, a court-martial, or the Courts-Martial Appeal Court, that the individual in question be admitted to hospital, or a guardianship order (within the meaning of the *Army Act 1955*, the *Air Force Act 1955*, the *Naval Discipline Act 1957*, or the *Mental Health Act 1983*). Suspended sentences of 12 months imprisonment or more also count as qualifying sentences.

4.6 The only courts able to impose sentences that fulfil these conditions are the Crown Court, the Court of Appeal, a court-martial, or the Courts-Martial Appeal Court, which are referred to as ‘Senior Courts’.

Disqualification of adults

4.7 When an individual is convicted of an offence against a child committed when the individual was **aged 18 or over**, and subsequently receives a qualifying sentence, or has a

relevant order made in respect of him, the court *must* impose a disqualification order upon that individual to prevent him working with children.

4.8 There is only one circumstance in which a disqualification order might not be made. If the court believes that it is unlikely that the offender in question will commit a further offence against a child, then there is an option not to impose the disqualification order. Where this is the case, the reasons for not imposing the disqualification order must be stated and recorded.

4.9 Therefore, where the offender is an adult at the time of committing an offence against a child, and a qualifying sentence is subsequently imposed, there is a presumption that a disqualification order will also be imposed.

Disqualification of juveniles

4.10 When an individual is convicted of an offence against a child committed when the individual was *aged under 18*, and subsequently receives a qualifying sentence, or has a relevant order made in respect of him, the court can impose a disqualification order upon that individual to prevent him working with children.

4.11 However, it should only do so where it believes that there is a likelihood of the offender in question committing a further offence against a child. If the court elects to impose the order, then the reasons for doing so must be stated and recorded.

4.12 Therefore, where the offender is a juvenile at the time of committing an offence against a child, and a qualifying sentence is subsequently imposed, a disqualification order will only be imposed if there appears to be a likelihood of further offences against a child being committed by the individual.³

4.13 There are no other differences in the process of imposing disqualification orders, regardless of whether the offender is an adult or a juvenile. A disqualification order has exactly the same force and impact regardless of whether it is made with respect to on an adult or a juvenile. The only other variation is in the review process, dealt with under Section 6 of this guidance.

Court officers' responsibilities

4.14 Court officers should be aware of the provisions in sections 28 and 29 of *CJCSA*, which set out when a disqualification order is to be made together with the need to state any reasons for not imposing the disqualification order (in the case of an adult), or for imposing it (in the case of a juvenile).

4.15 Court officers will also be aware of section 80(2)(b) of the *Powers of Criminal Courts (Sentencing) Act 2000* (custodial sentences). This indicates that “*where an offence is a violent or sexual offence, [the Court may pass a sentence of imprisonment] for such longer term (not exceeding that maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender*”. This is clear and unequivocal.

³ There are some consistent findings that around a third of sex offences committed against children were committed by other children. Although a large proportion of adults who abuse children state that their deviant interests began in adolescence, the vast majority of adolescent offenders do not re-offend as adults. In this way they present a similar reaction to many young offenders of all types who do not continue their offending behaviour into adulthood. Intervention and treatment for young offenders is particularly important to ensure that as far as possible they do not continue to abuse as adults. See the discussion document *Setting the Boundaries: Reforming the law on sex offences*, volume 1, p.59.

4.16 Where the individual poses a risk to children, his sentence should reflect this, and where the risk to the public is such that a sentence of one year's imprisonment or more is imposed, a disqualification order ought also to be made.

4.17 Furthermore, in all cases where a disqualification order is imposed, it is vital that an official transcript of the judge's sentencing remarks is passed to the Tribunal (see Section 6 of this guidance). This transcript will constitute crucial evidence if and when the Tribunal comes to review any particular case. Court officers should therefore ensure that a transcript is prepared and sent to the Tribunal.⁴ The Tribunal will hold the transcript on record, thus ensuring that, should any particular disqualification come up for review, information on the original circumstances of its imposition exists.

4.18 If a disqualification order is imposed, court officers should also ensure that before the offender leaves the court, he or she is provided with written notification that they are subject to an order disqualifying them from work with children. (If the offender is aged under 18, and there is a parent of guardian present, the parent or guardian should also receive a copy of the written notification.) This notification must spell out in simple language the effect and implications of the disqualification order, and the review process. A suitable sample notification form is provided at [Annex B](#). This notification should also be given to the offender at the point he leaves prison, hospital etc. Any failure to provide this written notification to the disqualified person (or the parent or guardian) does not nullify the disqualification, nor provide a defence to breaching an order.

Checklist of responsibilities for those involved in the court disqualification process

- Consider whether or not the disqualification order might apply (taking into account section 80(2)(b) of the *Powers of Criminal Courts (Sentencing) Act 2000*, and alerting the court as necessary).
- Ensure that, where a disqualification order is likely, a transcript of the judge's sentencing remarks is prepared.
- Where a disqualification order is made a copy of the transcript of the judge's sentencing remarks should be sent to the Tribunal responsible for assessing applications for removal of the disqualification order.
- Any offender upon whom a disqualification order is imposed (and, if the offender is aged less than 18, and a parent or guardian is present in court, the parent or guardian also) should receive a completed copy of the notification form ([Annex B](#)).

See *Table Two: Disqualification order - conviction and disposal*

⁴ Where an appeal is made, a transcript will anyway be made of these remarks. Otherwise, the court officer should ensure one is prepared.

5: Appeals

(See Annex A, s.31)

5.1 A disqualification order is part of a sentence imposed by a court. As such, it is subject to appeal in the normal way. An offender is entitled to appeal against the order as if it were a sentence passed on him for the offence.

5.2 It is not possible to appeal against the order separately outside the normal appeal process. An appeal against the making of the order should not be confused with an application for review of the order (see Section 6: Review).

5.3 Where the offence is one for which an appeal by the prosecution against an unduly lenient sentence is possible, such an appeal could include appeal against a decision not to impose a disqualification order.

6: Review

(See Annex A, ss.32-34)

6.1 The second main provision in the legislation is to provide for a review process for those disqualified from working with children. This process, set out in *Table Three: Review*, covers in broad outline both those disqualified by the court and by being listed on the lists held by the Department of Health and the Department for Education and Employment (and the National Assembly for Wales), although the precise details for those listed varies from those disqualified by a court.

6.2 The Tribunal responsible for the review of disqualification orders is that established in the *Protection of Children Act 1999*.⁵ It is to this Tribunal that court officers should send a transcript of the judge's sentencing remarks whenever a disqualification order is imposed on an offender.⁶ The Tribunal will keep all such transcripts on record; by this means, whenever an individual applies for review of the disqualification order, a record of the sentence will be available, which will be critical in assisting the Tribunal reach its decision.⁷

6.3 Note also that *this is not a review of the original sentence: it is a review of the disqualification order only*. The Tribunal is not undertaking criminal proceedings of any sort. Criminal proceedings are complete at the sentencing stage, from which point a disqualified person enjoys no right to work with children, nor any assumption that he or she will ever do so

6.4 Before an individual applies for his or her first review, certain conditions must be met.

Juvenile offenders

6.5 In the case of those who were under the age of 18 when they committed an offence, at least five years must have elapsed since the relevant date (see 6.7 – 6.8 below).

Other offenders

6.6 In the case of all other individuals, at least ten years must have elapsed since the relevant date.

Relevant dates

6.7 The periods of time noted above are to be calculated from a particular time, depending on the circumstances of the individual in question:

- (1) where an individual has received a custodial sentence, the period of time is calculated from the day on which the individual is released from custody (although note that if the disqualification order was imposed subsequent to the day of release, the period is calculated from the day on which the order was imposed);

⁵ See section 9 of and the Schedule to the *Protection of Children Act 1999*, as amended by Schedule 7 of *CJCSA*.

⁶ The mailing address for all such correspondence is *The Protection of Children Act Tribunal Secretariat, 6th Floor, St Christopher House, Southwark Street, London SE1*.

⁷ It is necessary for the Tribunal to maintain its own records as the very earliest any disqualification order can be reviewed is five years after it was imposed (in the case of a juvenile offender given a suspended sentence). However, in some cases, the application for review might occur decades after the original imposition of the order. Given this possibility, and the possibility of the appropriate court records having been destroyed by such a time, it is necessary for the Tribunal to maintain its own records.

(2) where an individual has received a suspended sentence, the period of time is calculated from the date on which the disqualification order was imposed;

(3) where an individual is detained in a hospital pursuant to an order for admission to hospital, the period of time is calculated from the day on which the individual ceased to be liable to such detention (although note that if the individual is not detained, the period is calculated from the day on which the order was imposed); or,

(4) where an individual is sentenced to a guardianship order, the period of time is calculated from the day on which the disqualification order was imposed.

6.8 The underlying principle is that, in each case, the relevant date is that from which the individual was in the community with the opportunity to demonstrate that the risk he posed really had passed, and that he is now suitable to work with children. Without such opportunity, there would be no point in a review, since he or she will need to demonstrate this positively to the Tribunal – there is no presumption that the order should be lifted.

Application and review

6.9 If they have satisfied the time conditions, individuals are entitled to make an application for leave to have their case reviewed.

Application for leave

6.10 When an eligible individual (see above) makes an application for leave to have his case reviewed, the Tribunal must decide whether or not to grant leave. In order to reach a decision, the Tribunal must consider whether or not the individual's circumstances have changed since the order was made, and whether those changes are sufficient to warrant leave to apply for a review of the disqualification order. Thus someone who has successfully reared his own children, or who once committed an act of violence towards a child when an alcoholic but can now demonstrate he is in control of his addiction, might be entitled to leave to apply for a review.

6.11 Only where the Tribunal believes that these changes are of sufficient magnitude and weight to warrant a review of the disqualification order may it grant leave for an application for review.

The review

6.12 Disqualified individuals reaching this stage must demonstrate to the satisfaction of the Tribunal that they are now suitable to work with children.⁸ Note that this is a positive demonstration. It is not sufficient for the individual to prove that they are no longer a risk to children. Rather, the individual must prove that they are now positively suitable for such work before the Tribunal can be satisfied that there are grounds for lifting the disqualification order.

The decision of the Tribunal

6.13 If the Tribunal, having undertaken the above process, is satisfied that the individual is now suitable to work with children,⁹ then the Tribunal must direct that the disqualification order is to cease to have effect. The Tribunal should pass on the fact that the disqualification has been lifted to the appropriate police force, which will update the

⁸ The provisions for those listed by the Secretary of State vary in some respects from those for people disqualified by the court. Schedule 7 to the Act, not reproduced in this document, sets out the position.

⁹ As previous note, see Schedule 7 for the position on those listed by the Secretary of State.

relevant criminal record. If the Tribunal is not satisfied that the individual is now suitable to work with children, it must dismiss the application.¹⁰

6.14 If an application is dismissed, the applicant cannot apply for a further review of the disqualification order until either a further five years (in the case of an individual who was under the age of 18 when the offence was committed) or ten years (in the case of any other individual) have elapsed since the previous application.

6.15 Given that further applications can be made after a further substantial period of time has elapsed a full and accurate record of all the proceedings of the Tribunal should be maintained alongside the transcript of the judge's sentencing remarks

Restoration of the disqualification order

6.16 A mechanism is available for restoring the disqualification order if it is proved necessary. There may be circumstances in which an individual who is no longer subject to a disqualification order acts in such a way as to give reasonable cause to believe that he may again present a risk to the wellbeing of children. Such circumstances might include a drunkard who had a history of violence against children when drunk, and who – as a result of a conviction – was made subject to a disqualification order. He might subsequently have demonstrated to the satisfaction of the Tribunal that, being apparently free of his addiction, he was therefore suitable to work with children, and the Tribunal might rightly have lifted the disqualification order. However, it may be that, subsequent to this, the individual, now working with children, returned to alcohol abuse, and began to exhibit violent tendencies when under the influence of alcohol. Such circumstances as these might rightly give rise to a concern for the safety of children.

6.17 Where a disqualification order is no longer in force on an individual, but where it appears that there is reasonable cause to believe that the person in question is acting in a fashion that gives rise to concern for the safety of children, a chief officer of police or a director of social services may apply to the High Court. If the High Court is satisfied that the behaviour of the person in question gives rise to a reasonable belief that children are at risk of serious harm from that person unless a further disqualification order is made, then it must order that the disqualification order be restored.

6.18 Chief officers of police and directors of social services can apply to the High Court at any time after a disqualification order has ceased to have effect with regard to any individual. There is no time limit; application can be made at any time after a disqualification order has been lifted.

6.19 A disqualification order restored in this way is in every respect identical to a disqualification order given as part of a sentence. However, the age of the disqualified person, any relevant dates, and any changes in circumstances of the person in question, are to be calculated as from the *re-imposition* of the order (i.e. not from the original disqualification).

See *Table Three: Review*

¹⁰ For a fuller discussion of the degree to which the Tribunal must be satisfied, please see the Hansard record of the 6th Sitting of House of Commons Standing Committee G (*Criminal Justice and Court Services Bill*), dated Thursday 18th April 2000, columns 166-172.

7: Offences

(See Annex A, s.35)

7.1 The *CJCSA* establishes two new offences. These offences relate to ‘working with children’, which applies to far more than paid employment. Work includes any kind of work, whether paid or unpaid, whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract. The definition of work therefore covers the public, private, voluntary and volunteering sectors. The full definition of working with children is spelled out in more detail in Section 8 below.

Working with children when disqualified

7.2 The first offence is committed if an individual who is disqualified from working with children knowingly applies for, offers to do, accepts or does any work with children. The individual must therefore be aware that the work involved in their application, offer, acceptance, or activity, was indeed work with children for this to be an offence. Organisations recruiting staff or volunteers to work with children should ensure that the status of such work is clear.

7.3 If an individual who is disqualified finds that they have *inadvertently* been applying for, offering to do, accepting or doing any work that falls within the definition of working with children, they should *immediately* bring that fact to the attention of person to whom they are responsible. In such instances, the disqualified person may also wish to notify his or her legal representatives, probation officers, and perhaps even the police. However, it should be noted that no culpability attaches itself to a disqualified person who was genuinely unaware of the nature of the work they were seeking or engaged in.

7.4 If the disqualified individual continues to work in a position from which he knows he is disqualified, then he is committing a criminal offence. It is therefore imperative that, upon a disqualified person’s discovery that they are working in a regulated position, he or she immediately informs the necessary people, and immediately ceases to work in that particular role.

7.5 Proof that such an individual did not know, and could not reasonably be expected to know, that he or she was disqualified from working with children, constitutes a valid defence. Thus, if there were legitimate reasons why the individual would be unaware of the disqualification order, they would have a defence. However the defence is limited by the phrase ‘reasonably expected to know’. Thus a child care worker who was aware that he or she faced possible disqualification for misconduct of some sort, but changed addresses before being informed of his inclusion on the Department of Health list, could not use those circumstances as a defence if he or she then took voluntary work in another area of work with children. Under those circumstances, despite the lack of formal notification, they could reasonably be expected to know about their disqualification.

Recruiting disqualified individuals

7.6 The second offence is if an individual knowingly offers work with children to, or procures work with children for, an individual who is disqualified from working with children, or allows such an individual to continue in such work.

7.7 No statutory defence is provided for this offence but it will only be committed if the individual acts knowingly. Organisations with any degree of responsibility for children should have the utmost concern to ensure that children within their care are being cared for in the best possible fashion (see also Section 9 below). However, the focus of this legislation is to prevent or punish deliberate or reckless misdoing. There is no requirement to check records built into the legislation, although that requirement may apply to some organisations in the education and child care sectors through other

legislation.¹¹ This second offence is aimed at individuals, not organisations. It applies to those who, despite knowing that the potential recruit with whom they are dealing has been disqualified from working with children, nevertheless offers work with children to, or procures work with children for, that individual, or allows such an individual to continue in such work, thereby knowingly deliberately or recklessly exposing children to risk.

7.8 Thus the abuser within such an organisation, who may be seeking to offer work with children to those with whom he or she shares an affinity, would fall within this legislation. Equally, a malicious individual who - for whatever reason - deliberately exposes the children in his or her care to risk of abuse by knowingly recruiting a disqualified person would be committing an offence.

7.9 It is important to note in this context that there are *four* ways by which an individual can be disqualified from working with children, of which the disqualification order is only one. The others involve inclusion on the lists maintained by the Department of Health of people considered unsuitable to work with children, or on the list maintained by the Department for Education and Employment (or National Assembly for Wales) on grounds of not being a fit and proper person to be employed as a teacher or worker with children or young persons. (More detail on these other means can be found in section 35 (4) of *CJCSA* [see [Annex A](#)] or in [Annex C](#)). In all such cases, the disqualified individual is liable to prosecution if he or she commits the offence set out above, together with anyone who offers or procures work or continues to offer work in a regulated position to such a person.

7.10 An individual who is guilty of either offence is liable

- (1) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both;
- (2) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both.

¹¹ The *Protection of Children Act 1999*, the *Education Act 1996* and the *Education Reform Act 1988*.

8: Working with children

(See Annex A, ss.36 and 42)

8.1 Section 36 (taken in conjunction with the definitions provided in section 42) of *CJCSA* provides a new and comprehensive definition of working with children. The *Protection of Children Act 1999* has now been amended to use this definition as the definition of childcare position within which its provisions have an impact.

8.2 The basic building block of the new definition of working with children is called a '*regulated position*'. An individual disqualified from working with children through any of the various means available is guilty of an offence if he or she knowingly applies for, offers to do, accepts or does any work in a *regulated position*. An individual commits an offence if he or she knowingly offers work in a *regulated position* to, or procures work in a *regulated position* for, any individual who is disqualified from working with children, or allows such an individual to continue in such work (see Section 7 above, and compare paragraphs 7.2 and 7.6).

8.3 Note that the definition of work is itself very broad. It applies to far more than paid employment. It includes any kind of work, whether paid or unpaid, whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract. The definition of work therefore covers the public, private, voluntary and volunteering sectors. If there is any doubt as to whether a particular position involving the provision of any skill or labour, no matter what the terms and conditions, falls within this definition of 'work', it should be assumed that it does, unless specific legal advice is obtained to the contrary.

8.4 *Any work in a 'regulated position' is classified as 'working with children'*. Section 36 of *CJCSA* sets out the various meanings of regulated positions. There are eight basic sets of regulated positions, some of which are broad and comprehensive, covering particular roles in all organisations, others of which are aimed at particular functions or specific places of work or areas of concern. The majority of the regulated positions are then expanded upon and clarified in the legislation, in order to ensure that each is fully understood. The descriptions below are intended only generally to explain regulated positions; they are not intended to replicate or replace the precise definitions in *CJCSA*, which should be the starting point for all relevant considerations.

8.5 With one exception (see paragraph 8.15 below), all the definitions of *regulated position* are limited to *normal duties*. The intention is to exclude the one-off work. Thus if a parent rings a mini cab firm and arranges for a driver to take their child to some activity on a one-off basis, the driver's position would not be *regulated*. But if a mini-cab firm offers a service to parents for driving unaccompanied children, such work would form a normal part of the duties of such drivers and would be *regulated*.

8.6 Apart from where children are in employment, a child is defined as anyone under 18. Where children in employment are concerned, a child is someone under 16.

Employment in certain establishments

(sub-paragraph 36 [1] [a] of *CJCSA*)

8.7 The first regulated position depends not on the nature of the work, but on the **nature of the establishment** in which the work is carried out. These are areas of work providing functions of various sorts exclusively or mainly for children. In each of these establishments it is considered right that all members of staff, whether primary or secondary carers, or ancillary staff, should fall within the definition of working with children. This is to meet the legitimate expectation of parents and society at large in

respect of all staff in certain environments, such as schools or children's homes or children's hospitals, whether or not they have direct access to children.

Day care premises

(sub-paragraph 36 [1] [b] of CJCSA)

8.8 Similarly the second position depends not on the nature of the work, but on the **nature of the establishment** in which the work is carried out. However, although normal duties that include work on day care premises are covered, work is not counted as being done on day care premises if it takes place in another, discrete part of the premises in which the day care premises are situated, or if it occurs during times when children are not being looked after. For example, a crèche that runs in a particular room of a building during the school holidays might count as day care premises. A cleaner who worked in another part of the building, or who only entered the crèche room at the end of the day, after the children had left, or who only entered the room during days on which the crèche was not running, would not be considered as holding a regulated position.

Caring for, training, supervising or being in sole charge of children

(sub-paragraph 36 [1] [c] of CJCSA)

8.9 This sub-paragraph sets out the various **roles** that turn a position into a *regulated position*, irrespective of what organisation or area of work it is within. It is a key part of the definition as it affects a wide range of organisations. Any position whose *normal duties* include caring for, training, supervising, or being in sole charge of children is considered a regulated position. Examples might include nurses working every day on a children's ward in a hospital (other than a hospital exclusively or mainly for children), coordinators of youth groups, or Sunday School teachers.

8.10 Those caring for, training, supervising or in sole charge of **children in employment** are specifically excluded from this part of the definition, and that in sub-paragraph 36 (1) (d), as this aspect is dealt with separately (see below).

8.11 It may be helpful to note that this definition is also that used as the gateway for enhanced disclosure of criminal records by the Criminal Records Bureau to be set up under the *Police Act 1997*.¹²

Unsupervised contact

(sub-paragraph 36 [1] [d] of CJCSA)

8.12 This is another fundamental and comprehensive part of the whole definition of working with children. Again it is based on the *role* being undertaken by the individual, not the area of work. Any position whose *normal duties* involve unsupervised contact with children under arrangements made by a responsible person (for example, a parent, guardian, or primary carer) is considered a regulated position. This would cover for example the mini-cab firm whose drivers are employed to transport children as discussed above on a regular basis.

8.13 As before, such duties as are covered here but relate to child employment are specifically excluded.

Child employment

(sub-paragraphs 36 [1] [e] and [f] of CJCSA)

8.14 In every other respect, Part II of *CJCSA* considers children to be those under the age of 18. For the purposes of these two sub-paragraphs of the definition of working with

¹² Section 115 of the *Police Act 1997*.

children alone, a child is considered to be someone under the age of 16. This is because this is the age at which a child may leave education and join the workforce at large. If a child finishes formal education at the age of 16 and immediately enters employment it is not reasonable for a manager to be obliged either to reject the child as a worker, or impose constraints on his or her current employees. Someone supervising supermarket workers should not have to move his or her job or be dismissed because a 16 or 17 year old is one of those being supervised. However, where a child is under the age of 16, then those responsible for caring for them in the course of their employment would be in *regulated positions*. This would cover, for example, the persons caring for children working in the entertainment industry. In addition, those a *substantial part of whose normal duties* include supervising or training children under the age of 16, are considered to be ‘working with children’.

Other positions

(sub-paragraph 36 [1] [g] of CJCSA)

8.15 These are positions that are considered to grant those who hold them the kind of access to children, or the kind of influence and position which, if the holder of the position were disqualified, could place the children at risk. These include charity trustees of a children’s charity, relevant local government bodies (with certain specific social services and education functions), members of the Youth Justice Board, and the Children’s Commissioner for Wales. Such positions may provide privileged access to children. They may imply that the individual concerned is a person who can be properly trusted with children. They are therefore included even if contact with children is not a regular part of the position. Note that when this legislation is applied in Northern Ireland, additional positions relevant to that part of the United Kingdom are included.

Supervising or managing someone in a regulated position

(sub-paragraph 36 [1] [h] of CJCSA)

8.16 Those who supervise or manage individuals in regulated positions are covered by this part of the definition. This sweeps up individuals who, though otherwise not holding regulated positions, by virtue of their authority over others who do, could thereby facilitate or cover up any misconduct or abuse which occurred. As well as immediate managers and supervisors, it covers those with the authority to dismiss an individual in a regulated position. The need for such positions to be regulated has been demonstrated by events in various children’s homes where abuse was not uncovered until long past the event.

See *Table Four: Working with children*

9: The operation of the scheme in practice

9.1 Please note that this Section of the guidance is *not* intended to provide comprehensive guidance to individuals, groups and organisations about – for example - safe recruitment processes, how to obtain criminal record checks, or how to achieve optimum value from the establishment of the Criminal Records Bureau ‘one-stop-shop’. The Criminal Records Bureau will in due course issue detailed advice on criminal records checks. Proper recruitment practices form a crucial part of proper child protection policies and go beyond simply making appropriate checks through the Criminal Records Bureau. They involve other common sense measures such as asking for and taking up references, personal interviews, identifying and asking questions about any unaccounted for periods in a job history, etc. In addition, there should be continued vigilance even after an appointment is made. Advice on framing child protection policies can be obtained by contacting the major children’s charities.

9.2 Rather, this Section of the guidance aims to provide such organisations and individuals (both recruiters and those seeking work with children) with a brief overview of what is available and what is required in order to use this legislation to maximum effect. The disqualification order will only have the desired effect if individuals, groups, and organisations accept and properly use the tools available to them for the protection of children. We hope that this will be the case.

Who should read this section?

9.3 If you have not already done so, please read and familiarise yourselves with the description of working with children contained in *CJCSA* (see section 36 of the Act reproduced in [Annex A](#), and Section 8 of this guidance). If you fall into any one of these categories, or are responsible for recruiting or managing people in any of these categories, or have any manner of administrative responsibility for such positions, you should read this section of the guidance.

9.4 If you are a child care employer in the statutory sector, you should also consider your obligations under the *Protection of Children Act 1999*, which include the need to check the list of those deemed unsuitable to work with children. Further information is available from the Department of Health, at the address given in [Annex F](#). If you do not fall into the statutory sector, Department of Health guidance might be useful to help you appreciate the various responsibilities involved in working with children, and alert you to means of ensuring the safety and security of the children for whom you are responsible.

What will this legislation mean?

9.5 If you have read the previous sections of this guidance, you should have a good idea of the various aspects of the legislation, and how they work. We hope you will agree that it provides those who work with children with a further effective means of preventing unsuitable people from working with children. However, this legislation is not the end of the story. We cannot identify in advance all those who might pose a risk to the health and safety of children. The availability of disqualification orders will not prevent those who have never committed a serious criminal offence against a child, but who may do so in the future, from obtaining access to children. Neither does it provide any sort of guarantee that those already within organisations are suitable to work with children.

‘A culture of vigilance’

9.6 Although the child protection measures in *CJCSA* are intended to provide a further tool to assist in preventing unsuitable people from working with children, it is critical that all involved in such work understand that *none of this will replace, or lessen the need for, a continuing culture of vigilance. Careful recruitment processes,*

including taking up references and other good practice, will still be essential. However, used properly, these measures will provide those who wish to work with children with a means of proving one aspect of their suitability to prospective recruiters. It will provide recruiters with a means of checking prospective recruits and employees and thereby improving their own and public confidence in those who work with children; and it will provide the public – particularly parents - with some reassurance that all reasonable steps have been taken by organisations and individuals to ensure that their children are safe from harm.

Do I have to do this?

9.7 In many cases these checks are voluntary. If you are a recruiter, you may not be obliged to carry out these checks on anyone whom you wish to recruit.¹³ If you are a prospective employee or volunteer, you cannot be forced to undergo the checking process. However, potential recruiters will be fully within their rights not to offer jobs involving work with children to those who refuse to agree to the relevant criminal record checks, or about whom they do not have all the relevant information.

9.8 However, although these checks are voluntary for some organisations, they are very strongly recommended. No responsible individual, group, or organisation that is involved in working with children should take on someone without making enquiries as to their background. While these may not always involve criminal record checks (for example where a recent check has been made and the subsequent period is fully accounted for) a check should always be considered. There should be a common sense approach. The welfare of children should be paramount.

Will I be liable for prosecution if I do not carry out checks?

9.9 If you do not make use of the various safeguards described here and elsewhere to help ensure the suitability of people who work with children, you will not be committing a criminal offence. However, maintaining a culture of vigilance (including carrying out checks, together with other good recruitment and employment practices) may help to demonstrate that all available means were used to protect children should any manner of legal difficulty later arise.

What is the Criminal Records Bureau?

9.10 Under amendments made to Part V of the *Police Act 1997*,¹⁴ the CRB will be a 'one-stop-shop' for checks made *on regulated positions* in respect of working with children. This means it will act as a central access point for criminal record information, and the lists of those deemed unsuitable to work with children, which are maintained by the Departments of Health and for Education and Employment (and the National Assembly for Wales).

9.11 In general, when an application is made, the CRB will issue disclosures containing details of an individual's criminal record. Three levels of disclosure will be available:

- **enhanced disclosures** (EDs) will be available for those applying for positions which involve regularly caring for, training, supervising or being in sole charge of persons aged under eighteen, for certain statutory licensing purposes, and for those being considered for judicial appointments. An ED will contain information on spent and unspent convictions and cautions held at national level but, in addition, will include information from local police records including relevant non-conviction information. The Act also

¹³ The exception to this is those organisations with statutory obligations under the *Protection of Children Act 1999*, the *Education Act 1996* or the *Education Reform Act 1988*.

¹⁴ By the *Protection of Children Act 1999*.

contains provisions for these disclosures to be made available for those caring for vulnerable adults;

- **standard disclosures** (SDs) will be available for posts or purposes which are exceptions to the *Rehabilitation of Offenders Act*.¹⁵ Groups eligible to apply for this disclosure include those whose duties involve working with children under the definition of regulated position in the *CJCSA*, those working with elderly, sick or disabled people, those involved in the administration of the law, and those employed in certain other sensitive areas and professions. The disclosure will include details of convictions, including convictions ‘spent’ under the *Rehabilitation of Offenders Act*, and cautions held at national level (i.e. this disclosure will not contain relevant non-conviction information);
- **basic disclosures** (BDs) will be issued only to individuals, who will be able to choose whether to show it to recruiters or anyone else who wishes to see it. BDs will show all convictions held at national level which are not ‘spent’ under the *Rehabilitation of Offenders Act 1974* but will not show ‘spent’ convictions or cautions.

9.12 It is the two higher levels of disclosure that will have greatest value in seeking the protection of children, although the information contained in the BD will provide a basic level of safeguard. These two levels of disclosure will carry the information on those barred by the Secretary of State from working with children. As with the BD, the individual will need to begin the process by applying for a certificate, but individuals will not be able to apply direct to the CRB. Applications will need to be submitted through a body that is registered with the CRB for this purpose. Any employer, recruiter, organisation or individual who is entitled to ask exempted questions under the *Rehabilitation of Offenders Act 1974* will be able to be registered with the Bureau. The application will need to be countersigned by a registered person and accompanied by a statement that the case meets the criteria for the type of certificate requested. Copies of the disclosure will then be issued to the applicant and to the registered body.

9.13 It will thereby be possible to obtain current information about whether any individual applying to work with children (i.e. applying for a regulated position) has come to notice (by any of the means available) as being unsuitable to work with children.

9.14 Annex D sets out in more detail the role and functions of the CRB. Any individual, group, or organisation wanting more information about how the CRB operates, the services provided, and how those services can be accessed to give added value to recruitment processes, should contact the CRB (see details at Annex F) for further direction.

How can we put this into practice?

Recruiters

9.15 As indicated above, recruiters should ensure that the tools provided which can provide added value to their recruitment processes, especially where they relate to the health and safety of children, should be properly and sensibly used as part of their child protection policy.

9.16 However, recruiters using any of the checks available through the CRB should take care to ensure that they do not use information obtained through any of the available certificates to discriminate unfairly against those with convictions irrelevant or unrelated to the application in hand.

¹⁵ There will be a new Exceptions Order in place before the CRB comes on line that will contain a new definition of working with children based on the provisions in *CJCSA*.

9.17 With particular reference to child protection, all recruiters should ensure that their good practice for recruitment is carefully set out for all those directly involved in recruitment for regulated positions, preferably in a written document or child protection policy. For example, a recruitment process for a regulated position might include:

- a detailed application form for the recruit to fill out;
- face to face interviews, involving careful scrutiny of the applicant's details;
- appropriate background checks, including asking for and taking up references; and,
- application to the CRB for an SD or ED once the position has been offered to an applicant (in accordance with the CRB Code of Practice).

9.18 Recruiters should be aware that no recruitment process can definitively identify an individual as permanently suitable to work with children. Although recruiters should seek to ensure that their recruitment processes are sufficiently robust to allow them and others confidence in those working in regulated positions, a culture of vigilance must be maintained at all times to ensure that children are not left exposed to risk.

Those in regulated positions

9.19 If someone currently working with children is a disqualified person, then that individual is committing a criminal offence (see below).

9.20 If you are currently working with children (i.e. in a regulated position) and are in any way concerned about your status or any of the advice contained in this guidance, you should discuss the matter with whoever has responsibility for your role. You should be aware that at some point in the future you may be required to undergo a check carried out by the CRB to identify that you are indeed a suitable person to work with children. We appreciate that for many people this will seem an unnecessary burden, or tantamount to an accusation, particularly if they have been working with children for any length of time, or are particularly well qualified for the task. We therefore ask those undertaking such checks to do so sensitively and appropriately, but we also ask those undergoing checks to appreciate that these checks are not being made available to make life more difficult for those working with children, but rather to enhance the protection available to children. We hope that those working in such spheres will overlook the inconvenience in order to obtain the benefit.

9.21 You should also be aware that employers, recruiters, and others in similar positions cannot use the information so obtained to discriminate against you unfairly.

9.22 More information on dealing with current employees or volunteers is available from the CRB (see below).

Potential holders of regulated positions

9.23 Those considering applying for, offering to do, accepting or doing any work in a regulated position need to be aware that they will be committing a criminal offence if they are disqualified from working with children.

9.24 If you are applying for, offering to do, or accepting work in a regulated position then you should be prepared to undergo a check from your potential recruiter to ensure that you are not disqualified from working with children. Again, we appreciate that this may appear to be an inconvenience. Everything possible has been done to ensure that this process is fast and accurate, and will not in itself jeopardise the opportunities of those seeking work in regulated positions. As before, please remember that the intention of this check is not to inconvenience you, but to add to the protection available to children. If

you are seeking such work, we trust that you will consider this a suitable price to pay for such a benefit.

Parents and others with parental responsibility for children

9.25 Parents, together with others exercising care for and authority over children, will doubtless wish to be assured that, if they are committing their children into the hands of another person or organisation of any sort, that person or organisation is capable and qualified to provide the care and service it is offering, and is taking the necessary precautions to ensure that the children are safe from any harm.

9.26 Such confidence can be promoted by very simple processes. Those who undertake such care for children should have written child protection policies that can be made available to parents, or those exercising parental responsibility for children. Questions should be asked about the suitability and qualifications of the staff, and the recruitment processes in place. Take time to ask about management and training practices, walk around the facilities being offered to assess their suitability, ask particular and pointed questions about matters over which you have particular concern (either arising from your own experience, or from previous answers to questions). Most reputable and creditable people and organisations should be both willing and able to provide you with answers to any questions you may have.

9.27 You are entitled to a degree of confidence that your child will be safe in the care of this person or people or organisations. If you are not confident for any reason, and you do not wish to entrust your child to the person or organisation in question, then you are not under any obligation to do so.

9.28 If you have a detailed and particular concern about the general care of children by the person or organisation in question (for example, you believe that health and safety standards are below acceptable limits, or have evidence that abuse may be taking place), then you should pursue that concern through the appropriate channels (e.g. the social services, or the police).

What do I do if I find a disqualified person seeking work or working in a regulated position?

9.29 Any disqualified person applying for, offering to do, accepting or doing any work in a regulated position is committing a criminal offence.

9.30 Recruiters and others will be committing an offence if they, knowing someone to be disqualified, offer work in a regulated position to them, or procure work in a regulated position for them.

9.31 It is also an offence if, subsequent to discovering that someone is disqualified, recruiters continue to allow that individual to hold a regulated position. For example, if checks are carried out on current staff, and it comes to light that someone in a regulated position is disqualified, it will be an offence to allow that person to continue working in that position. Similarly, if – for example - a worker commits an offence, and receives a custodial sentence and a disqualification order, it would be an offence to hold the individual's regulated position open and allow them to return to it upon their release.

9.32 Recruiters should immediately remove disqualified persons from regulated positions, or they may face prosecution. Bear in mind that, in almost every case, the disqualified individual will be aware of their disqualification, and will therefore be committing an offence by working in that position. In such instances, the police should be contacted immediately, and will take appropriate action.

9.33 If it comes to light that a disqualified person is genuinely unaware that he or she is disqualified, or there has been genuine confusion as to whether a position classifies as a regulated position, then recruiters might legitimately offer other available work in a non-regulated position to disqualified individuals. However, if no alternative positions are available, then section 98(1) of the *Employment Rights Act 1996* justifies the dismissal of the disqualified individual from the regulated position.

9.34 If you suspect or discover that any individual is committing any of these offences, you should contact the police.

What do I do if I suspect someone in the organisation is abusing children?

9.35 If you suspect that an individual in your organisation is abusing children, you should follow whatever appropriate action is set out in the relevant child protection policy, written guidance, or other such documentation.¹⁶ Where such guidance is not available for any reason, action should be taken to prevent the individual from obtaining or providing access to children which could potentially place that child or those children at risk. **In any case, you must contact the police immediately and inform them of your suspicions or discovery.** The police will then take appropriate action.

Legal advice

9.36 If you believe you need a fuller understanding of this legislation, and its effects and implications for you or your organisation, you are strongly advised to seek professional legal advice.

¹⁶ Organisations should refer to the Department of Health and National Assembly for Wales publications *Working Together to Safeguard Children*, and the Training and Resource Manual *Towards Safer Care*. Advice to voluntary organisations on principles of good practice relating to the protection of children is set out in *Safe from Harm*, produced by the Home Office, and in *Our Duty to Care*, funded by DHSS Northern Ireland. Examples of codes on sexual or other abuse or guidance on such codes include *Safe and Alert*, published by the National Centre for Volunteering; and the codes issued by the General Medical Council (GMC), the United Kingdom Central Council for Nursing, Midwifery and Health Visiting (UKCC), and the Council for Professions Supplementary to Medicine (CPSM); but there are numerous others.

Annexes

Annex A: Criminal Justice and Court Services Act 2000, ss.26-42 and Schedule 4.

Note: Schedule 7 to the Act, not reproduced here, sets out the amendments made to other legislation as a result of the new provisions. In particular, it contains important amendments to the Protection of Children Act 1999, the Education Act 1996 and the Education Reform Act 1988 and should be referred to in respect of the tribunal process for those whose disqualification arises as result of being included in lists kept under those pieces of legislation.

This legislation can also be found at www.hmso.gov.uk/acts/acts2000.htm.

Annex B: Notification form

Court Code:

Date:

Name:

Date of Birth:

Date of conviction:

Convicting court:

Age at date of offence for which convicted:

Address:

- Having been convicted of the offence of [offence], and having subsequently received [sentence], you are hereby notified that the court has disqualified you from working with children, according to the provisions of the *Criminal Justice and Court Services Act 2000*. Work includes activity in the public, private, voluntary and volunteering sectors.

- You will be committing an offence if you, being disqualified, knowingly apply for, offer to do, accept or do any work in a regulated position, according to the provisions of the *Criminal Justice and Court Services Act 2000*.

- Others will be committing an offence if they, knowing you to be disqualified, offer work in a regulated position to you, or procure work in a regulated position for you, or allow you to continue working in a regulated position, according to the provisions of the *Criminal Justice and Court Services Act 2000*.

- If you, or anybody else, is found guilty of one of these offences, you will be liable (1) on conviction in a magistrate's court to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both, or (2) on conviction in the Crown Court to imprisonment for a term not exceeding five years, or to a fine, or both.

- This disqualification order will be part of your criminal record. If you apply for, offer to do, accept or do any work in a regulated position, according to the provisions of the *Criminal Justice and Court Services Act 2000*, this information may be made available through the Criminal Records Bureau to the individual or organisation seeking to recruit you.

- A review of the disqualification order is available to you. If you were

- (1) under the age of 18 on the date of your conviction, then you must wait five years

- (2) 18 or over on the date of your conviction, then you must wait ten years

from the date of your release from custody, or the cessation of your liability to detention in a hospital, or the date on which the disqualification order was imposed (whichever of these is the later date), or the date of your last application, until you are eligible to apply for leave for a review of this order.

- Should you decide to apply for review, you should write to The Protection of Children Act Tribunal Secretariat, 6th Floor, St Christopher House, Southwark Street, London SE1, and ask for instructions on how to go about your application.

- If you are in any doubt as to the precise requirements and implications of the disqualification order, or its effects, you are strongly advised to seek professional legal advice.

Annex C: DfEE and DH lists

The Department for Education and Employment (DfEE)

The Department of Education and Employment maintains a sensitive and confidential list of people who have been barred or restricted from employment in relevant employment by the Secretary of State under powers given to him by the Education (Restriction of Employment) Regulations 2000. This list is known as List 99.

Relevant employment is defined as:

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

This definition also includes people who provide their services as teachers in schools, but are not directly employed under a contract, such as supply teachers and student teachers.

A ‘worker with children or young persons’ is a person who is not a teacher, but whose work brings him or her into regular contact with persons under the age of 19. This can include people such as classroom assistants, school caretakers, care workers in special or residential schools or youth workers in the youth service.

People can be barred on the following grounds:

- misconduct;
- medical grounds;
- on grounds that the person concerned is not a fit and proper person to be employed as a teacher or worker with children or young persons; and
- on grounds that they are included in the List kept under Section 1 of the Protection of Children Act 1999 (list of people considered unsuitable to work with children).

List 99 contains the names, dates of birth and teacher reference numbers (where applicable) of people whose employment has been barred or restricted by the Secretary of State. If a person’s employment is restricted, the entry shows the types of employment in which he or she is allowed to work. People barred on medical grounds are listed separately from those barred on other grounds, but no details are given of a person’s medical condition or of the behaviour which led to their bar. Not everyone on List 99 is considered a risk to children: people can be barred for a wide variety of reasons including fraud or dishonesty and only people who are barred on grounds of being not a fit and proper person to be employed as a teacher or worker with children or young persons will be subject to disqualification under the CJCSA.

Barring is automatic in the case of any person who, on or after 1 November 1995, pleaded guilty to, or was found guilty of, one of a number of sexual offences against or involving a child under 16 years of age; or pleaded guilty to or was found guilty of an attempt to commit such an offence and was aged 18 or over and was employed in relevant employment before or at the time he committed or was convicted of the offence. Barring is also automatic for people who are included in the Protection of Children Act List. In both these cases the bar will be made on the grounds that the person concerned is not a fit

and proper person to be employed as a teacher or worker with children or young persons and these people will be subject to disqualification under the CJCSA. In all other cases barring is discretionary.

Other types of behaviour likely to lead to barring include violent behaviour towards children or young people; sexual misconduct involving children; drug trafficking and other drug related offences; stealing school money or property; false claims to teaching qualifications; or a conviction for any criminal offence, which results in a sentence of more than 12 months imprisonment. These types of behaviour, or medical conditions which directly or indirectly raise issues of risk or potential risk to the safety or welfare of children, are most likely to lead the Secretary of State to bar the person on the grounds that he or she is not a fit and proper person to be employed as a teacher or a worker with children or young persons. Behaviour that does not raise issues relating to the safety or welfare of children will lead the Secretary of State to consider imposing a bar on grounds of misconduct.

Local education authorities and other bodies concerned with the employment of teachers or childcare workers can make checks to find out whether a person applying to work with children is on List 99.

The Department of Health (DH)

The Protection of Children Act is an important step towards the Government's aim of establishing a framework of a coherent cross-sector scheme for identifying those people considered to be unsuitable to work with children. It goes a long way towards ensuring that when such people have been identified, they are prevented from gaining access to children through their work.

This new Act enhances significantly the level of protection for children. However, it remains of paramount importance that all organisations entrusted with the care of children practise the full range of pre-employment checks. This includes interviews, the full investigation of applicants employment history and taking up references.

All "child care organisations" now have a **statutory requirement** placed on them by the Act to:

- refer names to the Secretary of State in certain circumstances for possible inclusion on the PoCA List;
- to check against the PoCA List (and DfEE List 99) when proposing to appoint someone to a child care position;
- not to employ a person in a child care position if that person is included on the PoCA List (or DfEE List 99);
- to cease to employ someone in a child care position if it discovers that the individual is included in the PoCA List or (DfEE List 99).

There are many other organisations outside of the "regulated" sectors as set out above which also "care" for children in one way or another. Whilst the provisions of the Protection of Children Act 1999 are not mandatory for these organisations it is the Government's hope that they will take advantage of the scheme to its fullest extent so as to ensure that they provide a comparable level of safety to children in their care. Thus all such "*other*" organisations are encouraged to refer names to the Secretary of State for consideration of inclusion in the PoCA List and to check against the List when proposing to appoint people to child care positions.

Checking names against the Protection of Children Act List

Until the Criminal Records Bureau is established the Department of Health will continue to undertake checks against the PoCA List and List 99 and will arrange access to it via the Internet.

Organisations should seek a check on the name of an individual at the stage when they are about to make the offer of employment. Checks will be possible by two methods:

- Internet based system. Those organisations registered with the Department of Health for this service will be able to undertake checks electronically. Organisations should register 'online' at the following address, <http://194.200.241.9/pocals>.
- Paper based system. Using *Form POCA 1*. This form is available from the Department of Health and is posted on the Internet where it can be downloaded for use by those organisations not seeking checks via the Internet.

Referring names to the Protection of Children Act List

The Act sets out the circumstances where a child care organisation **must** and other organisations **may** refer names to the Secretary for State for consideration of inclusion in the Protection of Children Act List. These are:

a) that the organisation has dismissed the individual on the grounds of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm;

b) that the individual has resigned or retired in circumstances such that the organisation would have dismissed him, or would have considered dismissing him, on such grounds if he had not resigned or retired;

c) that the organisation has, on such grounds, transferred the individual to a position within the organisation which is not a child care position;

d) that the organisation has, on such grounds, suspended the individual or provisionally transferred him to such a position as in (c) above, but has not yet decided whether to dismiss him or to confirm the transfer.

Additionally and very importantly, child care organisations and other organisations **may** refer names to the Secretary of State in other circumstances. This would be where they have dismissed an individual, he has resigned, retired or has transferred to a position within the organisation which is not a child care position and where information not available to the organisation at the time has since become available. On the basis of that information the organisation has formed the opinion that, had the information been available at the time and if (where applicable) the individual had not resigned or retired, the organisation *would have*, or *would have considered* dismissing him on the grounds of misconduct which harmed a child or placed a child at risk of harm.

Protection of Children Act Tribunal

Finally, the Protection of Children Act Scheme has established an independent Tribunal to hear appeals against inclusion on the Protection of Children Act List or List 99. The Tribunal is now fully operational and can be contacted at the following address:

Protection of Children Act Tribunal
6th Floor, St Christopher House
90-114 Southwark Street
London SE1 0TE

Annex D: Criminal Records Bureau

What is the Criminal Records Bureau?

The Criminal Records Bureau (CRB) is being set up by the Home Office to improve access to criminal record checks for employment-related and voluntary appointment purposes. In particular, it will provide protection for children and other vulnerable people against those who might wish to harm them.

The CRB will provide a service to recruiters and voluntary groups of all kinds. They will be able to ask successful job and voluntary position applicants to apply for a criminal record check. The recruiter will be able to use this to help establish whether the successful candidate has a background that might make him or her unsuitable for the job or voluntary position in question.

Recruiters will not be able to apply to the Bureau to run a check without the knowledge and consent of the person concerned. There will be safeguards to ensure that conviction information is not misused and that ex-offenders are not treated unfairly.

The CRB will provide its service in England and Wales. It will be located on Merseyside. Separate arrangements are being made for other parts of the United Kingdom.

Why is it needed?

The Aim of the Home Office is to build a safe, just and tolerant society. To help us to do that, we need to do all we can to protect children and other vulnerable people in our society. Giving wider access to criminal record information will help in that task and reduce risks.

At present, the arrangements for access to criminal record checks are unsatisfactory. Although some organisations have access to checks undertaken by the police, most recruiters have no way of checking a person's background in this way. In particular, the voluntary sector has very limited and inadequate access to checks. Most recruiters have none at all. The Home Office judges this to be unacceptable.

The CRB will widen access to checks so that all recruiters and voluntary organisations will be able to ask successful candidates to apply for a check. Access to checks will be via a single, national contact point, offering a one-stop shop and a consistent service to all.

What will the CRB do?

The CRB will undertake criminal record checks for individuals, on application, in exchange for a fee. The Bureau will issue three types of certificate, each representing a different level of check. The level of check will be determined by the duties of the job or position to be taken up. The CRB will advise applicants and recruiters which kind of certificate is needed in individual cases. In general, work that brings adults into close contact with children or other vulnerable groups, and jobs that are sensitive for other reasons will qualify for the most detailed checks.

We expect the details supplied by the CRB to be only one part of a thorough appointment process for checking the suitability of people to work where trust is essential. Criminal records may not be complete and will not give a full picture of a person's fitness for the job. However, the Bureau will make an important contribution to the recruitment process for all types of position of trust.

Types of certificates

High-level checks

The first type of check available will be the enhanced disclosure (ED). This will contain details of all convictions on record, including those spent under the Rehabilitation of Offenders Act. This means that even minor convictions, perhaps dating from years ago, will be included on the certificate. An ED will also contain details of any cautions, reprimands and warnings recorded against a person. Where a job or voluntary role involves close contact with children, an ED will also contain details of whether the applicant is named on the lists (held by the Department for Education and Employment and the Department of Health) of those thought unsuitable to work with children. Finally, an ED may contain information held by the police that is not about convictions but which they feel to be relevant to the job or voluntary work sought.

This check will be available to those who apply for work that regularly involves caring for, training, supervision or being in sole charge of those aged under 18 or vulnerable adults. Among other things, they will also be issued in respect of those seeking gaming and lottery licences and judicial appointments. The certificate will be sent to the applicant, and a copy sent to the Registered body.

Intermediate level checks

The intermediate level check produces a standard disclosure (SD). This will contain similar details to the ED but without the police non-conviction information. The SD will be available to those seeking work with children in “regulated positions” but who may not meet the criteria necessary to justify an ED. An SD will also be available for those entering various other occupations, including accountancy. The certificate will be sent to the applicant, and a copy sent to the Registered body.

Basic level checks

The basic level of check will provide a basic disclosure (BD). This will be available for all types of employment or voluntary service not covered by the higher level checks. A BD will contain only details of convictions considered unspent under the Rehabilitation of Offenders Act. This disclosure will be issued only to the applicant who will be able to decide whether to show it to a recruiter. It will not be job-specific and may be used more than once.

Registration and the Code of Practice

Applications for EDs and SDs will need to be countersigned by an authorised person who has registered with the CRB and who is acting on behalf of the organisation offering the position. The disclosures will relate specifically to the position being offered and are designed to be used once only. Disclosures will be posted to the applicant and a copy sent direct to the registered counter signatory. Since these disclosures may contain particularly sensitive information, we shall be asking recruiters who wish to receive them to have registered with the Bureau. Registration will involve adherence to a Code of Practice that will help to ensure that the information released by the CRB is used sensibly and fairly. Registered individuals or bodies will be expected to have written policies on the recruitment of ex-offenders and will be expected to undertake to store certificates securely and dispose of them once used. They will be expected to consider carefully the relevance of any convictions in assessing a person’s suitability so that those with convictions are not unfairly excluded from employment opportunities.

When will the CRB open?

We expect to start registering recruiters and voluntary groups in April 2001. The first certificates will be issued in Summer 2001. Priority is being given to high level checks relating to employment or voluntary service involving contact with children.

How will I apply?

We shall encourage applicants to submit their applications through a telephone call centre. For BD applications it should, in most cases, be possible to process an application from beginning to end on the telephone, without any need for documents to be submitted or forms to be completed. Postal applications will be accepted.

Applications for higher level certificates (SDs and EDs) will need to be handled slightly differently because of the need for a countersignature from the registered person.

Customer service

We expect the CRB to receive several million applications every year. It will be important to respond to them quickly. After all, people will be anxious to know whether they can start work or not. Customer service will be high on our list of priorities.

We will be introducing and publishing service standards across the full range of our services. These will include performance targets for processing applications, dealing with correspondence, answering telephone calls, dealing with applications for registration and handling complaints. Data protection and security will also be paramount as the CRB will be handling sensitive information and the CRB disclosures will be vital documents.

Annex E: List of relevant legislation

The following legislation has been quoted or referred to in this guidance. For a more complete understanding of the relevant legislation, you are advised to seek professional legal advice on any aspects of the following:

- *Criminal Justice and Court Services Act 2000 (Part II)*
- *Protection of Children Act 1999*
- *Education Reform Act 1988*
- *Education Act 1996*
- *Police Act 1997 (Part V)*
- *Powers of Criminal Courts (Sentencing) Act 2000*
- *Mental Health Act 1983*
- *Army Act 1955*
- *Air Force Act 1955*
- *Naval Discipline Act 1957*
- *Employment Rights Act 1996*
- *Rehabilitation of Offenders Act 1974 and Exceptions Order*

Annex F: Further information available

For further information on . . .

. . . the **Criminal Records Bureau**, you should write to

Criminal Records Bureau
PO Box 91
Liverpool
L69 2UH

or call the CRB Information Line on 0870 90 90 811, or access the CRB website at www.crb.gov.uk for more information.

. . . the **Protection of Children Act 1999 and its implications**, including the *Protection of Children Act List*, you should write to the Department of Health at

The Manager
Protection of Children Act List
Department of Health
Room 134 Wellington House
Waterloo Road
London SE1 8UG

or access the Department of Health website at www.doh.gov.uk/scg/childprotect.

. . . the **Department for Education and Employment's measures**, including List 99 (those who have come to notice as unfit to teach, etc.), you should write to the Department for Education and Employment at

Teachers' Misconduct Team
Department for Education and Employment
Mowden Hall
Staindrop Road
Darlington
County Durham DL3 9BG

or access the Department for Education and Employment website at www.dfes.gov.uk.

. . . the **National Assembly for Wales' child protection measures**, you should write to

Children and Families Division
National Assembly for Wales
Cathays Park
Cardiff
CF 10 3NQ

Or access the National Assembly for Wales' website at www.wales.gov.uk/polinifo/social/social_e.htm

If you have any further questions on this, or any other aspect of Part II of the *Criminal Justice and Court Services Act*, you should contact

Sentencing and Offences Unit
Home Office
50 Queen Anne's Gate
London SW1H 9AT

Or access the Home Office website at www.homeoffice.gov.uk.