

**HUMAN RESOURCES DIRECTORATE
PAY AND EMPLOYMENT UNIT**

**Chief Executive of each HSS Board, HSC
Trust, the Central Services Agency and
each Special Agency¹**

**Owners of Establishments, Bodies or
Agencies subject to Inspection by the
Regulation and Quality Improvement
Authority**

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Your Reference: **HSS GEN 8 2008**

8 August 2008

Dear Colleagues

ACCESSNI DELAYS

Summary

Introduction of temporary emergency arrangements to facilitate employment in certain areas of health and social care within strictly defined parameters, pending receipt of enhanced criminal record disclosure certificates requested from AccessNI.

Expiry Date

These are temporary arrangements only, introduced on an emergency basis. They will be terminated at a date appointed by the Department. At this stage, it is intended that they will not extend beyond the end of 2008. All recipients of this circular will be advised one week before the temporary emergency arrangements cease. Following termination of the temporary arrangements, existing legislative and policy requirements in this area will resume with immediate effect.

¹ Health and Social Services Boards, HSC Trusts, the Central Services Agency (CSA), the Health Promotion Agency, the Northern Ireland Blood Transfusion Service Agency, the Northern Ireland Regional Medical Physics Agency, the Northern Ireland Guardian ad Litem Agency, the Northern Ireland Practice & Education Council for Nursing, Midwifery & Health Visiting (NIPEC), the Northern Ireland Social Care Council (NISCC), the Northern Ireland Regulation and Quality Improvement Authority and the Northern Ireland Medical and Dental Training Agency (NIMDTA)

1. Introduction

1.1 You will be aware of the delays in the production of Enhanced Disclosure Certificates by AccessNI. We have been assured by AccessNI that they are doing everything possible to enable them to meet their published Enhanced Disclosure Certificate performance standards.

1.2 At this stage, AccessNI is carrying a significant backlog. Until AccessNI is back on track and meeting published performance standards [90% of enhanced disclosures turned around within 4 weeks], we have agreed with Access NI to introduce temporary arrangements that will operate on a time-limited basis. It is not intended that the arrangements will extend beyond the end of 2008. The temporary arrangements will not operate in all areas of health and social care. For information on those areas which are excluded from these temporary arrangements, see **Section 2.8** and **Annex 2**. In some areas of the care sector, amendment to legislation has been necessary as detailed at **Section 2.5**. Where applicable, the operation of the temporary arrangements will be subject to inspection by the Regulation and Quality Improvement Authority (RQIA). These temporary arrangements will operate within very strictly defined parameters, some of which will be set out in emergency legislation. Please refer to **Section 3** and **Annex 1**.

1.3 It should be noted that the Department has taken this unusual step to ensure the maintenance of critical and essential services, where it is anticipated that staffing levels will fall below the numbers required to meet statutory requirements or to ensure continuity of service provision to vulnerable adults and children, who may otherwise be at risk of significant hardship or harm.

1.4 The situation with AccessNI will be monitored on a weekly basis and the temporary arrangements will be terminated when the Department is satisfied that AccessNI has returned to full service. AccessNI expects to be able to return to full service by the end of 2008.

1.5 Termination of the temporary arrangements will mean that all amendments to legislation made to facilitate the arrangements will be revoked and all legislative and policy requirements to take receipt of an enhanced disclosure from AccessNI prior to employment will be restored in full.

1.6 The use of the term 'police information' throughout this circular is deliberate and reflects that existing requirements in relation to obtaining criminal records are referred to variably in statute and in policy documents. The term is intended to cover enhanced disclosures, criminal record information, criminal history and police checks.

2. How the temporary arrangements will work

2.1 Within days of receipt of this Circular, employers will begin to receive letters from AccessNI, initially relating to each enhanced disclosure request that has been submitted between 4 June and 25 July and is outstanding. The letter will indicate that the applicant has been checked against each of the Northern Ireland disqualification lists (a POCVA check) and that the individual is not included in any of the lists. Employers should not take any action until they receive a letter from AccessNI, confirming that a POCVA check has been conducted. This is a statutory requirement under Articles 16 and 46 of the Protection of Children and Vulnerable Adults (NI) Order 2003 (POCVA). If an individual is included on any of the Northern Ireland disqualification lists, the employer will be informed verbally and a completed enhanced disclosure certificate will be issued by AccessNI as a matter of urgency.

What does this mean?

2.2 On receipt of the letter from AccessNI, it is possible that an **employer will respond in one of four ways**. The type of response will depend on whether there are additional statutory requirements to obtain 'police information'. The four possible responses are summarised below.

Response 1

POCVA Requirements Only

2.3 Where employers are subject to POCVA requirements only (checks against the POCVA lists) **employers may employ the enhanced disclosure applicant, pending receipt of the full enhanced disclosure subject to the conditions set out in Section 3 being met in full. In all cases, individuals will be employed subject to a satisfactory enhanced disclosure from AccessNI.**

Response 2

POCVA and other Statutory Requirements to obtain 'police information' **Other Statutory Requirements have been relaxed**

2.4 In some areas, in addition to POCVA requirements to check against the disqualification lists, there are statutory requirements to obtain 'police information'. From the commencement of Part V of the Police Act 1997 in 2008 (which effectively established AccessNI), this information will only be available from AccessNI in the form of a disclosure certificate. Information on additional statutory requirements is set out in **Annex 2**.

2.5 The Establishments and Agencies (Fitness of Workers) Regulations (Northern Ireland) 2008, which will come into operation on the 13th August 2008, amends legislation in each of the following areas:

- *Children's Homes*
- *Residential Care Homes*
- *Nursing Homes*
- *Adult Day Care Settings*
- *Domiciliary Care Agencies*
- *Nursing Agencies*

2.6 In each of these areas, the amending legislation permits employment of staff prior to receipt of an enhanced disclosure certificate, subject to the necessary supervisory arrangements being put in place. This arrangement does not extend to the determination of the fitness of either a registered provider or manager to practice. It relates solely to the determination of the fitness of other staff employed in each of these establishments or supplied by a nursing or domiciliary care agency. Employers should note that under **The Establishments and Agencies (Fitness of Workers) Regulations (Northern Ireland) 2008, it will be a statutory requirement to put the necessary supervisory arrangements in place.** If they cannot be put in place, then employment, prior to receipt of the outstanding enhanced disclosure certificate, must not take place. Details of the statutory supervisory arrangements necessary in each area are set out in **Annex 1.**

2.7 In addition, the employer must have received a letter from AccessNI, confirming that a POCVA check has been conducted on the individual and that he is not included on any of the Northern Ireland disqualification lists. The conditions set out in **Section 3** must **also** be fully satisfied. Employers are reminded that the operation of the temporary arrangements in each of these areas will be subject to inspection by RQIA, which will seek evidence of compliance with **Section 3** conditions **prior to employment** and that the required supervisory arrangements have been put in place for **the duration that a full enhanced disclosure certificate is outstanding. In all cases, individuals will be employed subject to a satisfactory enhanced disclosure from AccessNI.**

Response 3

POCVA and other Statutory Requirements to obtain 'police information' **Other Statutory Requirements have not been relaxed**

2.8 In some areas of health and social care we have not amended the legislation requiring 'police information' on the basis that there is no significant

evidence that AccessNI delays are having a critical impact in the areas covered by the legislation. This includes fostering, childminding, children's daycare, residential family centres, independent health care and adult placement agencies. It also includes the legislation governing RQIA registration processes. Details of the legislation requiring 'police information', which has not been amended by **The Establishments and Agencies (Fitness of Workers) Regulations (Northern Ireland) 2008**, are set out in **Annex 2**.

2.9 As a result, when employers/decision-makers in these areas receive a letter from AccessNI confirming that an individual has been checked against the disqualification lists, **they must wait for a full enhanced disclosure from AccessNI prior to employing/registering**. Where applicable, RQIA will inspect the operation of the temporary arrangements and will be looking for evidence that **Section 3** conditions have been met in full prior to employment.

Response 4

POCVA Requirement and/or Policy requirement to obtain 'police information'

2.10 Where departmental policy requires that 'police information' is obtained for the purposes of determining suitability to be employed or fitness to practice, this requirement will be relaxed until the date on which this circular expires. As a result, employers/decision-makers, who are subject to the policy requirement, **may employ the enhanced disclosure applicant, pending receipt of the full enhanced disclosure, subject to the conditions set out in Section 3 being met in full. In all cases, individuals will be employed/approved/permitted to practice subject to a satisfactory enhanced disclosure from AccessNI. On the basis that the adoption approval process takes a considerable time to complete and is unlikely to be impacted by AccessNI delays, the relaxation of policy requirements to obtain 'police information' does not extend to adoption.**

Adoption Agencies should wait for full enhanced disclosures when considering the suitability of prospective adopters.

2.11 A summary of the four responses is set out in the table at **Annex 3**.

3. Conditions which must be satisfied prior to employment or for the duration of an outstanding enhanced disclosure certificate

3.1 In all cases, where an employer employs prior to receipt of the full enhanced disclosure certificate, the following conditions must be met **prior to employment or, in relation to supervision, for the duration that an enhanced disclosure certificate is outstanding**. The employer must also make employment subject to the return of a satisfactory enhanced disclosure certificate from AccessNI. In addition, where statutory/policy requirements to obtain 'police information' prior to employment have been relaxed, the employer must satisfy the statutory requirement to have appropriate supervisory arrangements in place for the duration that an enhanced disclosure certificate is outstanding [see **Annex 1**]. Without exception, the following must be satisfied prior to employment and, where applicable, will be subject to inspection by RQIA:

- An enhanced disclosure certificate has been applied for and is outstanding from AccessNI;
- As required under POCVA, a check against the Northern Ireland disqualification lists has been conducted and AccessNI has confirmed in writing that the individual is not included on any of the lists;
- The applicant has not declared an address outside Northern Ireland within the last five years;
- All other information required to determine an employee's fitness to practice or work has been obtained. These include: proof of identity: written references: practicable verification of the reason why the employment or position ended; documentary evidence of any relevant qualifications and accredited training; and a full employment history, including a satisfactory written explanation of any gaps in employment;

- the applicant has declared in writing that he has no criminal convictions (either spent or unspent) to declare; and
- for the duration that an enhanced disclosure certificate is outstanding, appropriate supervisory arrangements are put in place. In areas where existing statutory requirements to obtain 'police information' have been relaxed, this will be a statutory requirement [**see Annex 1**].

4. Enquiries

4.1 Enquiries about this circular should be directed as follows:

Nature of Enquiry	Contact Person	Contact Details
General queries about the operation of the temporary arrangements	Lorraine Owens, Pay & Employment Unit or Pamela Mallon, SVGIT	028 9052 2794 lorraine.owens@dhsspsni.gov.uk 028 90 528223 pamela.mallon@dhsspsni.gov.uk
Queries relating to statutory requirements under the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003	Billy Baird, Safety and Quality Unit	028 90 522235 billy.baird@dhsspsni.gov.uk
Queries relating to statutory requirements under the Protection of Children and Vulnerable Adults	Norma Downey, Child Care Policy Directorate	028 90522005 norma.downey@dhsspsni.gov.uk

(Northern Ireland) Order 2003		
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5. Further copies of this Circular can be obtained from the Department's extranet site at <http://extranet.dhsspsni.gov.uk> or the Department's website at <http://www.dhsspsni.gov.uk>

Diane Taylor

DIANE TAYLOR
Deputy Director

Annex 1

STATUTORY REQUIREMENT TO PUT ADEQUATE SUPERVISORY ARRANGEMENTS IN PLACE UNDER The Establishments and Agencies (Fitness of Workers) Regulations (Northern Ireland) 2008

1. In all of the areas listed below the conditions specified in **Section 3** must **in all cases** be satisfied prior to employment. This includes written confirmation that the individual has been checked against the relevant Northern Ireland disqualification lists and is not included in any list. The latter is also a statutory requirement under The Establishments and Agencies (Fitness of Workers) Regulations (Northern Ireland) 2008.
2. In addition, if an employer makes the decision to employ pending receipt of an enhanced disclosure certificate from AccessNI, the supervisory arrangements specified below must be put in place for the duration of the outstanding enhanced disclosure certificate. Please note that this is a statutory requirement. If the statutory requirement cannot be fulfilled, an employer **must** wait for receipt of an enhanced disclosure certificate from AccessNI before employing. It is intended that the supervisory arrangements put in place will be additional to those expected in normal employment circumstances during a period of staff induction.
3. Failure to meet the requirements of **The Establishments and Agencies (Fitness of Workers) Regulations (Northern Ireland) 2008 will result in the automatic issuing of a Notice of Failure to Comply with Regulations.**

Children's Homes, Residential Homes, Nursing Homes and Adult Day Care Settings

4. In relation to employment in children's homes, residential homes, nursing homes and adult day care settings, the following supervisory

arrangements are required for the duration that an individual's enhanced disclosure certificate is outstanding:

The registered person must:

- appoint a member of staff ("the staff member"), who is appropriately qualified and experienced, to supervise the new worker;
- ensure that the appointed staff member, or another appropriately qualified and experienced member of staff, is on duty at the same time as the new worker and supervises the new worker's practice during each working shift; and
- ensure that the new worker does not escort service users away from the children's home, residential care home or nursing home premises unless accompanied by the staff member.

Domiciliary Care Agencies

5. In relation to individuals supplied by domiciliary care agencies or nursing agencies, the following supervisory arrangements are required for the duration that an individual's enhanced disclosure certificate is outstanding:

Where the new worker is being supplied by the agency **acting otherwise than as an employment agency**, the registered provider or registered manager must:

- appoint a member of staff ("the staff member"), who is appropriately qualified and experienced, to supervise the new worker;
- ensure that the appointed staff member, or another appropriately qualified and experienced member of staff, is on duty at the same time

as the new worker and contacts the new worker during each working shift;

- contact the service user, or any representative of the service user, at weekly intervals in order to supervise the service user's satisfaction with the care provided by the new worker, and any complaints that may arise;
- inform the service user, or any representative of the service user, of the position in relation to the outstanding information, including when the outstanding information has been obtained; and
- terminate the supply of the new worker to the service user where the registered person considers that the outstanding information, when obtained, is not satisfactory.

Where the agency is **acting as an employment agency** and has supplied a domiciliary care worker or nurse, the registered provider or registered manager must:

- inform the service user that there is outstanding information in relation to the criminal record certificate; and
- inform the service user when that outstanding information is obtained.

Nursing Agencies

6. Where the agency is **acting as an employment business**, the registered **provider or registered manager** must:

- take steps to inform the service user, or the service user's representative, that a full criminal record certificate has not yet been obtained in respect of the nurse;
- inform the service user, or the service user's representative, when the outstanding information has been obtained; and

- terminate the supply of the nurse to the service user where the registered person considers that the outstanding information, when obtained, is not satisfactory.

7. Where an agency is **acting as an employment agency** and has supplied a nurse, the registered person must:

- inform the service user, or the service user's representative, that there is outstanding information in relation to the criminal record certificate;
and
- inform the service user, or the service user's representative, when that information is obtained.

Annex 2

EXISTING STATUTORY REQUIREMENTS TO OBTAIN 'POLICE INFORMATION'

Area of Health and Social Care	Statutory Rule
Fostering	The Foster Placement (Children) Regulations (NI) 1996 The Disqualification for Caring for Children Regulations (NI) 1996
Childminding Children's Daycare	The Disqualification for Caring for Children Regulations (NI) 1996 The Child Minding and Day Care (Applications for Registration) Regulations (NI) 1996
Children's Homes	The Children's Homes Regulations (NI) 2005
Residential Family Centres	The Residential Family Centres Regulations (NI) 2007
Residential Care Homes	The Residential Care Homes Regulations (NI) 2005
Nursing Homes	The Nursing Homes Regulations (NI) 2005
Adult Day Care	The Day Care Setting Regulations (NI) 2007
Adult Placements	The Adult Placement Agencies Regulations (NI) 2007

Domiciliary Care Agencies	The Domiciliary Care Agencies Regulations (NI) 2007
Nursing Agencies	The Nursing Agencies Regulations (NI) 2005
Independent Health Care	The Independent Health Care Regulations (NI) 2005
RQIA Registration	The Regulation and Improvement Authority (Registration) Regulations (NI) 2005
<u>Relaxation of Requirements under The Establishments and Agencies (Fitness of Workers) Regulations (Northern Ireland) 2008</u>	<u>No Relaxation of Requirements under The Establishments and Agencies (Fitness of Workers) Regulations (Northern Ireland) 2008</u>
Children's Homes	Fostering
Residential Care Homes	Childminding
Nursing Homes	Children's Daycare
Adult Day Care	Residential Family Centres
Domiciliary Care Agencies	Adult Placements
Nursing Agencies	Independent Health Care
	RQIA Registration

Annex 3

SUMMARY OF HOW EMPLOYERS/DECISION-MAKER CAN RESPOND TO THE LETTER FROM ACCESSNI, CONFIRMING THAT AN APPLICANT HAS BEEN CHECKED AGAINST THE POCVA DISQUALIFICATION LISTS

	Statutory/Policy Requirements	Employer Response
1	POCVA Requirement Only	Where there are no requirements other than those created by POCVA to check against the disqualification lists, an employer <u>may</u> : employ the individual subject to all of the conditions set out at section 3 being satisfied, prior to employment and pending receipt of the full enhanced disclosure certificate.
2	POCVA + Additional Statutory Requirements amended under The Establishments and Agencies (Fitness of Workers) Regulations (Northern Ireland) 2008	Where there are statutory requirements to obtain enhanced disclosures, police checks, criminal record information, in addition to POCVA requirements and those additional requirements have been relaxed , an employer <u>may</u> : employ the individual subject to all of the conditions set out at section 3 being satisfied, prior to employment and pending receipt of the full enhanced disclosure certificate. In addition, the employer is required in law to have the necessary

		<p>supervisory arrangements in place as set out in Annex 1. If an employer cannot meet the statutory supervisory requirements then he should not employ, until he has received the full enhanced disclosure certificate.</p>
3	<p>POCVA + Additional Statutory Requirements (not amended)</p>	<p>Where there are statutory requirements to obtain enhanced disclosures, police checks, criminal record information, in addition to POCVA requirements and those additional requirements have <u>not</u> been relaxed, an employer <u>will not</u> employ the individual until he receives the full enhanced disclosure.</p>
4	<p>POCVA and/or Policy Requirements</p>	<p>Where departmental policy requires an enhanced disclosure, police check or criminal record information, an employer may: employ the individual subject to all of the conditions set out at Section 3 being satisfied, prior to employment and pending receipt of the full enhanced disclosure certificate. This does not extend to adoption. Adoption Agencies must wait for a full enhanced disclosure when considering suitability to adopt.</p>