

ANNEX A

Material sent to Department of Health

CRIMINAL RECORD CHECKS FOR CHILD PROTECTION PURPOSES

Current Arrangements for checks

Since 1986, under administrative guidelines agreed between the Home Office and the Association of Chief Police Officers (ACPO), criminal record checks have been available on people applying for work in a variety of positions which will give them substantial unsupervised access, on a sustained or regular basis, to

- children under the age of sixteen, or
- children under the age of eighteen who have special needs, or
- children under the age of eighteen who are looked after by the local authority (for residential care staff only).

These arrangements are, however, confined largely to employees and volunteers working for statutory bodies - primarily local authorities, health authorities or NHS Trusts, probation services, schools and further educational establishments. A list of the main groups for which checks are available is included in the latest joint circular on the subject issued by HO, DFEE, DH and Welsh Office in October 1993. Certain national voluntary childcare organisations also have access to checks through their membership of the Voluntary Organisations Consultancy Service (VOCS), a body funded by the Department of Health, but membership of VOCS is now full and, without further funding, it does not have the capacity to take on any more checks.

In checking applicants for posts covered by the current arrangements, the police will check both national and local police records. The national records include details of persons convicted of reportable offences (ie broadly speaking, offences for which a term of imprisonment may be given), persons who are to be prosecuted for such offences and, since November 1995, cautions for reportable offences. Depending on the policy of the police force concerned, local police records may contain details of convictions for certain minor offences, bind-overs (including those where there has been no conviction), and other relevant factual information which the police would be prepared, if necessary to present as evidence before a court or tribunal. This may include details of acquittals or discontinued cases and also what is known generally as "non-conviction" information which the police may disclose if they consider it in the public interest to do so, eg. where a prosecution has not been brought because a child is too young to testify. The guidance given to the police stipulates that information from local records, other than details of convictions and non-conviction bind-overs, should only be disclosed on the authority of a police officer of the rank of Assistant Chief Constable or above.

New arrangements for checks to be published in the White Paper
"On the Record"

The Home Office has proposed a White Paper setting out new arrangements for criminal record checks. The principal change to the current arrangements for child protection checks is that checks will no longer be restricted mainly to those working with children in the statutory sector but will be extended to cover any person applying for work which will give them substantial, regular, unsupervised access to children, whether they work in the statutory, voluntary or private sector. The White Paper will propose that an "enhanced" check of national and local criminal records should be available on any employee or volunteer whose work will give them substantial access to children. This will disclose details of all convictions for reportable offences (whether or not they are "spent"), and details of any cautions recorded on the national records, as well as a check of local police records which will make available information on convictions and cautions for non-reportable offences as well as any relevant "non-conviction" information.

Further measures on sex offenders

The White Paper "Protecting the Public" announced that the Government is also considering suggestions that convicted sex offenders should be required by law to notify the police of any changes of address and prohibited from seeking employment which involves access to children. Both these measures would strengthen the present arrangements for dealing with child abuse. Subject to collective approval, a consultation paper setting out these proposals is likely in the near future.

ANNEX

1. SAFEGUARDS FOR CHILDREN IN PUBLIC CARE

Regulation and Guidance

1.1 The Children Act 1989 (implemented 1991) and associated body of Regulations and Guidance provides a legal framework for the care and protection of children who are in need and who may be at risk of significant harm. Under the Act, local authorities have a duty to ensure that the welfare of children being looked after away from home is properly safeguarded as regards their health, education, contact with their families and general quality of life.

1.2 Working Together under the Children Act 1989, the main guidance on inter-agency child protection work, was issued in 1991 to coincide with the implementation of the Children Act. It was issued to local authorities as guidance under Section 7 of the Local Government Act 1970 which means that it must be complied with unless local circumstances indicate exceptional reasons which justify a variation.

Children's Homes

1.3 The Children's Homes Regulations for the first time required private children's homes to be registered and inspected; all types of children's homes to be subject to the same or similar provision; all homes to provide a statement of objectives; and requirements about control and discipline were strengthened (corporal punishment prohibited). However, these regulations do not cover "small" private children's homes (ie those catering for less than four children), this issue is being considered as part of the Burgner review (see 1.8).

Fostering

1.4 The Foster Placement (Children) Regulations 1991 provide that children cannot be placed with foster parents unless the foster parents have been approved by the local authority or a voluntary organisation. Approval cannot be given unless checks have been completed on two personal referees and specified information obtained (Schedule 1 of the Regulations) relating to the person and other members of his household and family. This includes information relating to previous criminal convictions. Approving authorities must be satisfied that the person is suitable to act as a foster parent and that his household is suitable for any child who may be placed with them. Approving authorities will undertake checks with police authorities and the Department of Health Consultancy Index.

1.5 Current regulations allow local authorities to delegate certain of their statutory fostering duties to voluntary (non-profit making) organisations. In April 1995 DH consulted widely on proposed changes to regulations to allow authorities to delegate these duties to profit making agencies. These proposals are being considered as part of the Burgner review (see 1.8).

Schools

1.6 Section 87 of the Children Act 1989 (Inspection of Boarding Schools) places a duty on proprietors or those running independent schools with boarding to safeguard and promote children's welfare. The local authority social services department in whose area the school is situated, is responsible for determining whether the school is adequately meeting this requirement. Recent amendments to Section 87 enable the Secretary of State for Health to appoint an organisation, other than a local authority SSD, and which already inspects independent schools for other purposes, to undertake welfare inspection functions in relation to independent boarding schools. In addition, schools meeting specific criteria need only be formally inspected once every four years (but regular informal contact maintained in the intervening years). Children in grant maintained special and special education establishments are not caught within the Children Act framework.

Inspections

1.7 Local authorities are required to inspect all maintained, controlled and assisted community homes, and registered private children's homes. Frequency of inspection of LAs own homes increased to twice a year (one unannounced). The Social Services Inspectorate is undertaking a 4 year rolling programme of inspections of local authority inspection and registration units.

DH Review

1.8 The Review of the Regulation and Inspection of Social Services (Burgner Review) is looking at the regulation and inspection of all the services, both adult and children, for which local authority social services departments have statutory responsibility. Issues concerning children looked after by local authorities include: the regulation of small unregistered children's homes and the regulation of independent sector fostering agencies.

Inquiries and Outcomes

1.9 The Utting Report (1991) "Children in the Public Care" concentrated on arrangements for the monitoring and control of residential child care, and reviewed the programme of action introduced by the Children Act. Main outcomes:

- i. Residential Child Care Training Initiative: helped local authorities in England achieve the target of having all heads of residential homes for children professionally qualified by 1995.
- ii guidance on permissible forms of control in children's residential care issued in April 1993 offers positive and practical advice to staff and managers on the care and

control of young people in residential accommodation.

1.10 The Warner Report (1992) "Choosing with Care" examined recruitment and selection methods for staff working in children's homes and considered management and other issues relevant to the protection of children and support of staff in children's homes. Main outcomes:

- i. establishment of the Support Force for Children's Residential Care (1993 -95);
- ii. production of a Code of Practice for the Employment of Residential Child Care Workers (June 1995);
- iii. timetable set for local authorities to implement recommendations on recruitment and selection of staff; management issues; and complaints procedures.

2. RECORD CHECKS FOR CHILD PROTECTION PURPOSES

Current Arrangements for criminal record checks

2.1 Since 1986, under administrative guidelines agreed between the Home Office and the Association of Chief Police Officers (ACPO), criminal record checks have been available on people applying for work in a variety of positions which will give them substantial unsupervised access, on a sustained or regular basis, to:

- i. children under the age of sixteen; or
- ii. children under the age of eighteen who have special needs; or
- iii. children under the age of eighteen who are looked after by the local authority (for residential care staff only).

2.2 These arrangements are, however, confined largely to employees and volunteers working for statutory bodies - primarily local authorities, health authorities or NHS Trusts, probation services, schools and further educational establishments. A list of the main groups for which checks are available is included in the latest joint circular on the subject issued by HO, DFEE, DH and Welsh Office in October 1993. Certain national voluntary child care organisations also have access to checks through their membership of the Voluntary Organisations Consultancy Service (VOCS), a body funded by the Department of Health, but membership of VOCS is now full and, without further funding, it does not have the capacity to take on any more checks.

2.3 In checking applicants for posts covered by the current arrangements, the police will check both national and local police records. The national records include details of persons convicted of reportable offences (ie broadly speaking, offences for which a term of imprisonment may be given), persons who are to be prosecuted for such offences and, since November 1995, cautions for reportable offences. Depending on the policy of the police force concerned, local police records may contain details of convictions for certain minor offences, bind-overs (including those where there

has been no conviction), and other relevant factual information which the police would be prepared, if necessary to present as evidence before a court or tribunal. This may include details of acquittals or discontinued cases and also what is known generally as "non-conviction" information which the police may disclose if they consider it in the public interest to do so, eg where a prosecution has not been brought because a child is too young to testify. The guidance given to the police stipulates that information from local records, other than details of convictions and non-conviction bind-overs, should only be disclosed on the authority of a police officer of the range of Assistant Chief Constable or above.

New arrangements for checks to be published in the White Paper "On the Record"

2.4 The Home Office has proposed a White Paper setting out new arrangements for criminal record checks. The principal change to the current arrangements for child protection checks is that checks will no longer be restricted mainly to those working with children in the statutory sector but will be extended to cover any person applying for work which will give them substantial, regular, unsupervised access to children, whether they work in the statutory, voluntary or private sector. The White Paper will propose that an "enhanced" check of national and local criminal records should be available on any employee or volunteer whose work will give them substantial access to children. This will disclose details of all convictions for reportable offences (whether or not they are "spent"), and details of any cautions recorded on the national records, as well as a check of local police records which will make available information on convictions and cautions for non-reportable offences as well as any relevant "non-conviction" information. The timing of the White Paper is uncertain as concerns have been raised that its publication might be held to pre-judge some of the issues which Lord Cullen is considering following the Dunblane incident.

Further measures on sex offenders

2.5 The White Paper "Protecting the Public" contains new proposals on the sentencing of sex offenders. It proposes that an automatic life sentence should be imposed on offenders aged 18 and over who are convicted for the second time of a serious violent or sex offence, unless there are genuinely exceptional circumstances. This will provide improved protection from persistent violent or sex offenders.

2.6 In addition, the White Paper recognises the need to improve supervision arrangements for those released from determinate sentences imposed for sex offences. It also announced that the Government is considering suggestions that convicted sex offenders should be required by law to notify the police of any changes of address and be prohibited from seeking employment which involves access to children. The Home Secretary has also recently announced that the Government intends to introduce a scheme to prevent defendants in certain sex offence cases from misusing victim statements and photographs as a form of pornography. All these measures would strengthen the present arrangements for dealing with child abuse and further details will be set out in a consultation document to be published in the near future.

Department of Health "Consultancy Index"

2.8 The DH Consultancy Index is a list of persons who have been reported to the Department as unsuitable for work involving children. Statutory and independent child care service providers are advised to check with the Department before appointing anybody to a post in work with children. The names on the list come from the following sources:

- i. persons convicted of relevant offences reported to DH by the police
- ii. persons whose names are placed on the Department for Education and Employment list of statutorily debarred teachers (List 99: see below) are reported to DH by DFEE.
- iii. persons in respect of whom "softer" information has been reported to DH - usually by employers, in circumstances where there is no criminal conviction but, for example, industrial tribunal findings, admission of unacceptable conduct, independent corroboration of unacceptable conduct.

2.9 The service is a non-statutory one and is aimed primarily at the protection of children in care from care workers who have previously physically or sexually abused children in their care, or have relevant police convictions. Guidance is provided in circulars LAC(93)17 and (94)22 which asks child care service providers to report persons to the service where appropriate. Some difficulties are:

- i. employers can tend to put up inadequate cases and in effect seek to transfer the responsibility of proof to DH;
- ii. problems arise as to where the line should be drawn on the kinds of conduct that justify putting someone on the list and the kinds of organisations from whom both referrals and enquiries should be accepted; there is constant pressure for boundaries to be exceeded;

- iii. there is "overlap" with the police checks and DFEE systems;
- iv. there is no formal right of appeal. Persons referred to the index are increasingly challenging - through solicitors - the DH's actions with regard to the Index; DH has to be able to justify its actions in putting peoples names on the list; damages had to be paid in one case recently.

2.10 These issues (and others) around the Consultancy Index are being examined in a Review of the Consultancy Index which is currently under way. Account will also be taken in the review of the current related Home Office initiatives, and developments in Scotland and Wales. Organisations representing LASSDs and the independent children's personal social services sectors have been asked for comments. A report is planned to go to DH Ministers in June 1996.

Department for Education and Employment: List 99

2.11 The Secretary of State for Education and Employment has statutory powers to bar persons from employment as a teacher or as a worker with children or young persons, ie a worker whose work brings him or her into regular contact with children or young persons. These powers cover employment by local education authorities, schools and establishments of further education. Where a teacher is convicted of certain sexual offences or offences of indecency he or she will be barred automatically. Conviction for other kinds of offences, including those involving violence against young people or serious violence against anyone, or involving drugs or certain offences of dishonesty, as well as certain kinds of misconduct, may lead to barring.

2.12 The Secretary of State can take such action whether or not misconduct is evidenced by conviction for a criminal offence. Admission of guilt or independent corroboration of allegations can help to substantiate misconduct. The DFEE list of barred persons is know as List 99.