WELSH STATUTORY INSTRUMENTS

# 2007 No. 2220 (W.175)

# EDUCATION, WALES

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

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| *Made - - - -* | *26 July 2007* |
| *Laid before the National Assembly for Wales - -* | *30 July 2007* |
| *Coming into force - -* | *1 September 2007* |

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

### Title, commencement and application

**1.** These Regulations are called the Persons Providing Education at Further Education Institutions in Wales (Conditions) Regulations 2007 and shall come into force on 1st September 2007.

**2.** These Regulations apply in relation to Wales.

### Interpretation

**3.**—(1) In these Regulations—

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

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

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

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

(**1**) 2002 c. 32; conferred upon the National Assembly for Wales in the Education Act 2002 and transferred to the Welsh Ministers by paragraph 30 of Schedule 11 of the Government of Wales Act 2006 (c. 32)
(**2**) 1997 c. 50; sections 113A, 113B and 113C were inserted by the Serious Organised Crime and Police Act 2005 (c. 15), section 163(2).
(**3**) 1973 c. 35.

"new member of staff" ("*aelod newydd o staff*") means a person who receives an offer from the governing body of a further education institution on or after 1 September 2007 to work in a position providing education at the institution under a contract of service or a contract for services with the governing body or otherwise than under a contract and does not include a person supplied by an employment business;

"relevant activity" ("*gweithgaredd perthnasol*") means regularly caring for, training, supervising or being solely in charge of persons aged under 18;

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

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

(a) the person meets all relevant requirements in the Further Education Teachers' Qualifications (Wales) Regulations 2002(**4**) or the Education (Induction Arrangements for School Teachers) (Wales) Regulations 2005(**5**) or in regulations made under section 136(a) of the Education Act 2002 as to the qualifications that they must hold; and

(b) the person meets all relevant conditions with respect to health or physical capacity in regulations made under section 141 of the Education Act 2002.

(3) For the purposes of these Regulations a person applies for an enhanced criminal record certificate if they countersign an application for the certificate as a registered person (within the meaning of section 120 of the Police Act 1997) or if an application is countersigned on that person's behalf, and the application is submitted to the Secretary of State in accordance with Part V of that Act.

(4) In order to carry out an enhanced criminal record check a person must—

(a) apply for and obtain an enhanced criminal record certificate; and

(b) submit a children's suitability statement with the application for the enhanced criminal record certificate.

**Conditions to be complied with**

**4.** These Regulations specify conditions to be complied with in respect of persons providing education at a further education institution(**6**).

**New members of staff**

**5.** It is a condition in respect of a new member of staff that the governing body of a further education institution must—

(a) check the person's identity;

(b) check that the person has a right to work in the United Kingdom;

(c) check that the person meets all relevant staff qualification requirements;

(d) check whether the person is subject to any direction made under section 142 of the Education Act 2002; and

(e) carry out an enhanced criminal record check in respect of the person where the position they are offered will involve a relevant activity.

**6.** Where the governing body of a further education institution considers that, by reason of a new member of staff having lived outside the United Kingdom, carrying out an enhanced criminal record check is not sufficient for the purposes of considering the person's suitability for a position that will involve a relevant activity, it is a condition that the governing body must make such further

(**4**) S.I.2002/1663 (W.158).
(**5**) S.I. 2005/1818.(W.146).
(**6**) "further education institution" has the meaning given in section 140(3) of the Education Act 2002.

checks as it considers appropriate, having regard to any guidance issued by the Welsh Ministers or the Secretary of State.

**7.** Subject to regulation 9, the checks specified in regulations 5(a) to (d) and 6 must be completed before the new member of staff begins work at the further education institution.

**8.** Subject to regulation 9, the check specified in regulation 5(e) must be carried out before the new member of staff begins work at the further education institution or as soon as practicable after they begin work there.

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

(a) has worked in either—

(i) a school in Wales in a position which brought the new member of staff regularly into contact with persons aged under 18; or

(ii) another further education institution in Wales in a position which involved the provision of education and a relevant activity; and

(b) is due to begin work at the further education institution on a date which is not more than three months after the date on which he or she ceased to work in a position of the kind referred to in paragraph (a).

**Staff who move positions**

**10.** A person not supplied by an employment business who moves from a position which did not involve the provision of education to a position which involves the provision of education at the same further education institution on or after 1 September 2007 is treated as a new member of staff for the purposes of regulations 5 to 9, and references in those regulations to beginning work shall be construed as references to taking up the position providing education.

**Supply staff**

**11.** It is a condition that the governing body of a further education institution must not accept a person offered by an employment business to provide education at the institution (a "relevant person") unless the governing body has received from the employment business written confirmation that the checks specified in regulation 18 have been carried out in respect of the relevant person.

**12.** Where the relevant person's position will involve a relevant activity, the governing body of a further education institution must not accept the relevant person to provide education at the institution unless the conditions in regulation 13 or 14 have been complied with.

**13.** The conditions in this regulation are that the governing body has received from the employment business written confirmation that a children's suitability statement has been submitted and an enhanced criminal record certificate applied for by or on behalf of the employment business but the certificate has not yet been received.

**14.** The conditions in this regulation are that the governing body has received written confirmation from the employment business—

(a) that, subject to regulation 19, an enhanced criminal record check has been carried out (whether by that employment business or another employment business) not more than three months before the date that the relevant person is due to begin work at the institution;

(b) that the employment business has obtained a copy of the enhanced criminal record certificate; and

(c) as to whether the enhanced criminal record certificate gives details of any relevant matter relating to the person which is recorded in central records or gives any information

provided in accordance with section 113B(4) of the Police Act 1997 or as to whether any information has been provided in accordance with section 113B(6) of the Police Act 1997.

**15.** If the governing body receives written confirmation under regulation 14 that the enhanced criminal record certificate gives details of any relevant matter relating to the relevant person which is recorded in central records or gives any information provided in accordance with section 113B(4) of the Police Act 1997 or that information has been provided in accordance with section 113B(6) of the Police Act 1997, it is a condition that the governing body of the further education institution must not accept the relevant person to provide education at the institution unless a copy of the certificate has been received from the employment business.

**16.** It is a condition that the governing body of a further education institution must, at the institution, check the identity of a relevant person before that person may begin work at the institution (irrespective of any such check already carried out by the employment business).

**17.** It is a condition that in the contract or other arrangements that the governing body of a further education institution enters into with an employment business, the employment business must be required to comply with the following requirements in respect of any relevant person—

(a) to notify the governing body in writing that the checks specified in regulation 18 have been carried out;

(b) where the person's position involves a relevant activity, to notify the governing body in writing that—

(i) subject to regulation 19, an enhanced criminal record check has been carried out (whether by that employment business or another employment business) not more than three months before the date that the person is due to begin work at the institution; or

(ii) a children's suitability statement has been submitted and an enhanced criminal record certificate has been applied for by or on behalf of the employment business but the certificate has not yet been received; and

(c) where the enhanced criminal record certificate gives details of any relevant matter relating to the person which is recorded in central records or gives any information provided in accordance with section 113B(4) of the Police Act 1997 or where information has been provided in accordance with section 113B(6) of the Police Act 1997, to notify the governing body and provide a copy of the certificate.

**18.** The checks in respect of a relevant person are—

(a) a check of the person's identity;

(b) a check that the person has a right to work in the United Kingdom;

(c) a check that the person meets all relevant staff qualification requirements;

(d) a check to establish whether the person is subject to any direction made under section 142 of the Education Act 2002; and

(e) subject to regulation 19, where the employment business considers that, by reason of the person having lived outside the United Kingdom, carrying out an enhanced criminal record check is not sufficient for the purposes of considering their suitability for a position that will involve a relevant activity, such further checks as the employment business considers appropriate, having regard to any guidance issued by the Welsh Ministers or the Secretary of State.

**19.**—(1) Where the circumstances in paragraph (2) apply, the check specified in regulation 18(e) is not required and the enhanced criminal record check referred to in regulations 14(a) and 17(b)