



**Disclosure checks for individuals who are involved in the care
of a fostered child but who are not approved foster carers**

GUIDANCE FOR FOSTERING PROVIDERS

DCSF

JULY 2007

(Amended November 2007)

Introduction

1. This guidance responds to concerns raised with us by fostering providers and other key stakeholders around Disclosure checks for individuals who may be involved in the care of children in foster care, or who have unsupervised access to those children. We know that there is currently a degree of confusion among providers and foster carers themselves around the circumstances when Disclosure checks should be carried out, particularly when the individual concerned is not a member of the immediate fostering household. As a result, inappropriate use is sometimes being made of the provisions for Disclosure checks and, conversely, there may be circumstances where checks are appropriate but where they are not being requested.

2. This guidance is aimed at fostering providers (local authority and independent providers) who, as regulated providers, are responsible for requesting checks on foster carers and others who may be involved in the care of a child in foster care.

Aims of Guidance

3. The purpose of the guidance is threefold:

- Firstly, it is intended to clarify eligibility for Disclosure checks among those involved in fostering. However, the existence of a legal provision for a check does not necessarily mean that a check will be appropriate in a particular case.
- The second aim of this guidance is, therefore, to outline the Government's expectation of when checks should be requested, in circumstances when it is possible – but not mandatory – to do so. In practice this relates principally to adults outside the fostering household who are not approved foster carers but who may, nonetheless, be involved in the care of the child or who may have unsupervised access to a child in foster care.
- The third aim is to provide practical guidance on how the applications should actually be made, in order to ensure that all applications are consistent.

4. This guidance takes account of, and is consistent with, Local Authority Circular LAC(2004)4, which relates to the delegation of decisions on 'overnight stays' for looked after children.

Current Legislation

5. The requirements for CRB checks for foster carers and other adult members of the fostering household are set out in the Fostering Services Regulations 2002. The Fostering Services Regulations provide that Disclosure checks should be obtained on those working for any fostering agency, and Schedule 3 provides details of the particular requirements. Paragraph 13 of Schedule 3 requires enhanced Disclosure checks to be obtained on prospective foster carers, and standard Disclosure checks on adult members of their households, while the Police Act 1997 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 provide for the CRB to carry out a check on the prospective foster carers themselves and anyone living in the same household.

6. Whilst the fostering legislation does not **require** any other person to be subject to checks, other individuals may be eligible for a Standard Disclosure under the terms of the Criminal Justice and Court Services Act 2000, which allows the CRB to carry out a check when someone is involved in caring for, training, supervising, or being in sole charge of a child in foster care. Anyone who does this on a **regular** basis would be eligible for an Enhanced Disclosure. However, no Disclosure check can be carried out on those who simply come into contact with the foster child.

7. For example, many fostering providers will seek to identify, as part of the approval process for a prospective carer, any individuals who may play a significant role in providing support for those carers. These may be back-up carers, or regular baby-sitters. In view of the regular, unsupervised access such individuals may have to looked after children, it may be appropriate for Disclosure checks to be carried out. However, in order for a check to be requested, the fostering provider would need to be aware of such arrangements and approve them; the individual's involvement would therefore need to be agreed on a relatively formal basis with the fostering provider.

Applications for a CRB Disclosure

8. As set out above, current legislation allows for Disclosures to be requested on individuals outside the fostering household providing that certain criteria are met. In order to ensure that applications for Disclosure checks are carried out quickly and efficiently, the DCSF has agreed with the CRB on the term 'foster carer support' to describe such a role. This means that when the CRB application form is being completed, the term "foster carer support" should be used (in section B of the application form) to describe the position being applied for.

Assumptions about use of Provisions

9. LAC (2004)4, which remains valid, addresses in detail issues relating specifically to overnight stays. The following guidance builds on this and concerns other circumstances when a Disclosure check is possible and **may**

10. Be appropriate, for example when a child attends regular, one to one music lessons after school. However, the guiding principle must be that looked after children should, as far as possible, be granted the same permissions to take part in normal and acceptable age-appropriate peer activities as would reasonably be granted by the parents of their peers and we would expect the foster carer to have made the same enquiries as any other parent would in this situation. This is made clear in LAC (2004)4.

11. Consequently, CRB checks on any individuals who are outside of the fostering household should be **very much the exception** and in the majority of cases it will be for the foster carer, in consultation as necessary with the provider, to make a decision about the appropriateness of the activity, in the same way as any other parent. In some instances, an individual may already have been subject to a CRB check if he/she is a properly qualified member of a particular profession.

Principles Governing Decision as to whether a Check is appropriate

12. Decisions as to whether a check is appropriate should always be based on an assessment of risk to the child, including the following factors:

- The extent to which the individual concerned will be alone with the child
- The regularity of the contact
- Any relevant restrictions contained, for exceptional reasons, in the child's care plan or foster placement agreement, or any court orders, which restrict the child from particular activities
- The foster carer's own knowledge of the person concerned
- Any grounds for concern that the child might be at significant risk in the household concerned or from the activities in question
- Any other factors or characteristics which may make the child more vulnerable than any other child in the circumstances in question
- What is known about the individuals concerned including whether they are properly qualified in the activity, and/or the nature of the activity

13. It is important that the legal provisions to carry out checks on individuals who are in contact with fostered children are applied with common sense and that the above factors are given careful consideration before a Disclosure is requested. Fostering providers may want to consider the need for further detailed guidance for their foster carers in order to ensure that their policies are transparent and consistent, and that foster carers understand the circumstances in which they should discuss the need for possible checks with their fostering provider.

14. It is also important that any individuals who may need to be checked are aware of this beforehand and that they are willing to co-operate with such a request. Foster carers should therefore be encouraged to discuss the possibility with the individuals who will be supporting them. This is an issue which fostering providers may want to cover in their own guidance.

Link with Vetting and Barring Scheme

15. The Safeguarding Vulnerable Group Act lays the legislative foundation for a new vetting and barring scheme due to be implemented in phases from autumn 2008. This aims both to improve vetting processes and prevent at the earliest opportunity those who are deemed unsuitable to work with children or vulnerable adults from gaining access to them through their work.

16. The scheme's barred lists, one for those barred from working with children and a separate, but aligned, list for those barred from working with vulnerable adults, will replace the existing List 99, Protection of Children Act (PoCA) list, Protection of Vulnerable Adults (PoVA) list, and Disqualification Orders. The responsibility for taking all discretionary decisions as to who should be included on the new barred lists will lie with a new independent barring board which will be an independent statutory body. Applications to be vetted under the scheme will be handled by the Criminal Records Bureau (CRB).

17. Any organisation that arranges, and has the power to terminate, a foster placement will be required to check the relevant carer's status in the scheme. An offence will be committed if the check is not made or if the child is knowingly placed with an individual on the scheme's children's barred list or with someone who has not been initially vetted by the scheme. In this situation foster carers themselves will need to have been vetted centrally before they can look after a child.

18. Under the arrangements of the new scheme foster carers will have the ability to check, with the individual's consent, the status in the scheme of those also helping to provide support for the child – e.g. babysitters, back-up carers, private tutors etc.

19. The Government has begun an extensive communications campaign to ensure that all those subject to the requirements of the new scheme are aware of their responsibilities by the time of its implementation. We will also be ensuring that people are aware of the new opportunities afforded by the scheme. This will include giving advice on issues such as how checks can be made and how the scheme's new vetting processes will work.

Future Guidance

20. A review of the National Minimum Standards for Fostering is currently underway as part of a wider review of all of the sets of National Minimum Standards in children's services. Issues around child protection, including CRB checks, will be considered in detail as part of that review. This guidance is therefore intended to provide clarification of the current system; further guidance may be issued in due course in the light of possible changes to the NMS. We anticipate that revised NMS will be published in 2009.