

Criminal Records Bureau (CRB) checks for those providers who register with Ofsted

This factsheet sets out Ofsted's position on using existing Criminal Records Bureau (CRB) checks for providers who register with Ofsted, including whether providers should employ someone before they have obtained a CRB check.

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Royal Exchange Buildings
St. Ann's Square
Manchester
M2 7LA

T: 0300 123 1231
Textphone: 0161 618 8524
E: enquiries@ofsted.gov.uk
W: www.ofsted.gov.uk

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Introduction

This factsheet sets out our position on the Criminal Records Bureau (CRB) checks process for those providers who register with Ofsted. It includes details about:

- when we will accept existing CRB checks for applicants for registration and those associated with them (for example, people who live in a house where childcare takes place) to check suitability or fitness
- whether we will let people start work before they have a CRB check
- CRB checks for agency workers and those moving jobs
- our policy on CRB checks on children who reach 16 years of age and are living or working on domestic premises where childcare takes place – this applies to childminders and childcare on domestic premises registered on the Early Years Register and/or on the Childcare Register
- whether a student on placement on domestic premises has to have a new CRB check and, if so, whether this requirement depends on the length of placement.

This policy only covers what we will accept as evidence of a CRB check to make a suitability/fitness decision. The normal processes for checking that a CRB check is 'clear' are the same.

Ofsted and the Department for Education have agreed that we do not need to routinely repeat CRB checks on people who are already registered or agreed as suitable/fit to work with children. We also do not need to carry out a CRB check on those people who are registered with us and have never had one, for example, because they were employed before the CRB scheme began. We have the right to recheck a person if we have concerns, but we do not need to recheck someone every three years.

Retention of CRB checks

Providers should destroy original CRB disclosures within six months, which is the timeframe set out in the CRB code of practice.¹ Providers should not retain the CRB disclosure itself but need to be able to show us they have kept a record of it. Inspectors will review the provider's records to check that the required checks have been completed.

Accepting existing CRB checks

The CRB no longer supports portable CRB checks² and says that any organisation that accepts an existing CRB check does so at its own risk. The CRB wants to

¹ For more information visit:

<http://www.direct.gov.uk/en/AdvancedSearch/Searchresults/index.htm?fullText=crb>

² Portable CRB checks are when an existing CRB check is used, for a new member of staff, rather than requesting a new CRB check.

minimise the risk to children. The CRB says that organisations must verify any existing check to see if there was any information held by local police forces provided with the check, and make sure that the proper identity checks were done by the organisation that got the CRB check.

We only accept existing CRB checks for those where we decide on their suitability/fitness if the check was obtained by Ofsted and is less than three years old. This helps us make sure that the check was done by an organisation that properly checked the person's identity, and checked that the person was suitable/fit for a role in childcare and children's social care. Ofsted's decision on portability only applies to those individuals and organisations for whom Ofsted makes the suitability decision; it does not apply to other people working in settings, where the employer has decided whether or not to allow portability (see separate section below on other staff members).

Our decision on portability only applies to:

- childminders and other childcare providers on the Early Years Register
- childminders and other childcare providers on the Childcare Register, both voluntary and compulsory parts
- people in a childminder's household and other people living or working on childminding premises or where childcare on domestic premises takes place
- the manager of registered childcare settings
- children's social care providers and the responsible individual
- the manager of registered children's social care settings

Starting work before a CRB check is obtained – childcare and non-residential children's social care³

Ofsted will not register a person until we have obtained CRB checks on the person applying for registration and any other person who requires a CRB check because of their association, for example a member of the childminder's household, or a member of the committee running a playgroup.

However, for other staff, where Ofsted does not decide on suitability, it may be possible in some circumstances for staff to start work before their CRB check is complete. We use some strict rules with this policy, as follows.

- In exceptional circumstances staff may start work before a CRB check is complete.

³ This means settings that are non-residential. These rules do not apply to staff who are not resident but where the children are resident in the setting.

- These rare situations may only happen when the CRB check has been applied for – if an application has not been made, the person may not start work.
- Any unchecked person must never be left unsupervised with children, and all children must always be within sight and hearing of a checked person.
- The employer (where there is one) must show Ofsted that there are robust recruitment and employment practices in place, including details of a CRB check on staff members.

It must be noted that we only allow this in exceptional situations, when to wait for the CRB check might disrupt the care of children.

Starting work before a CRB check is in place – boarding and residential special schools

When inspecting boarding and residential special schools, there are two separate sets of guidance and regulations that apply:

- the Department for Education's guidance on Safeguarding children and safer recruitment in education⁴
- the Standards Regulations for Independent Schools – and the relevant national minimum standards.⁵

These two pieces of guidance say different things about people starting work before a CRB check. The Department for Education's guidance says a person may start work in an independent school before a CRB check is in place, as long as they are supervised and a check against the list of those barred from working with children and vulnerable adults held by the Independent Safeguarding Authority has been made.⁶ The national minimum standards for boarding and residential special schools say that a person cannot start work at the school until they have a CRB check in place even if other checks have been completed.

The higher standard in the national minimum standards for boarding and residential special schools applies to all staff apart from those whose duties are only teaching. For those who have duties beyond teaching, a CRB check must always be in place before the person starts work. For those who only teach, the Department for Education's guidance may apply. When deciding whether or not a staff member is only involved in teaching, inspectors will take into account:

- how much a teacher's job involves other duties
- how much a person is involved in the boarding provision

⁴ www.education.gov.uk/publications/standard/publicationDetail/Page1/DCSF-00261-2008

⁵ www.opsi.gov.uk/si/si2003/20031910.htm

⁶ www.opsi.gov.uk/acts/acts2002/ukpga_20020032_en_12#pt8-pb6-l1g142

- whether a person lives in or is on the school premises beyond the normal school day, for example supervising pupils or running an activity.

When a member of staff has no extra duties in boarding provision or after school activities and does not live on site, then they would be seen as teaching only. In these cases, the Department for Education's guidance should apply.

However, where a teacher or other member of staff also works in the boarding provision and/or lives on site, then they are not only teaching and the higher requirements of the national minimum standards must be met.

Use of CRB checks by other organisations

The national minimum standards for children's social care say that an appropriate CRB check must be in place before a person starts work, but they do not explain what an 'appropriate CRB check' is. As regulators, Ofsted must take account of the guidance about using existing CRB checks to decide if an appropriate CRB check is in place.

Ofsted does not allow portability of CRB checks but it cannot prevent other organisations, such as a company running a children's home or nursery, from allowing portability. The CRB guidance states that any organisation, which uses an existing CRB check rather than requesting a new check does so entirely at its own risk.

Our role checking employers who use existing CRB checks

When an organisation, such as children's home or nursery, accepts existing CRB checks, inspectors will not automatically lower the judgement given at inspection. However, inspectors must ensure that the employer complies with the CRB guidance on portability.

The CRB gives guidance to organisations that accept existing CRB checks:

- CRB checks do not last for an agreed period of time.
- Information in a CRB check is only correct at its date of issue.
- Using an existing check does not amount to a fresh check.
- A person's criminal record, or other information, may have changed since the last CRB check.
- People may be required by law to do a fresh check of the list of those barred from working with children and vulnerable adults held by the

Independent Safeguarding Authority so the CRB check may not be portable.⁷

- Organisations should always see an original CRB check, not a photocopy, as the CRB check contains security features to prevent tampering or forgery.

The CRB has more detailed guidance about the risk assessment framework that organisations should use if they do accept existing CRB checks. The CRB's guidance on assessing risk says that employers should ask themselves the following questions before accepting an existing CRB check:

- Is the level of the CRB check the same as the level you need?
- How old is the CRB check?
- Is the previous CRB check for a similar job to the one which you need a CRB check for now?
- Have all checks that you need been carried out?
- Have you checked the person's identity to make sure that the person showing the CRB check is the person the check was done for? For instance, have you seen different identity documents with their name, address, date and place of birth?
- Is the person still living at the same address as the one on the CRB check?
- If it is an enhanced check, have you checked from the previous countersignatory if any extra information was given in a separate letter?
- Have you got the consent of the person to talk to the other organisation?

Where an employer has used an existing CRB check, inspectors will look at how the organisation has used the CRB guidance on assessing the risk. Inspectors will look at the evidence given by the employer about their steps towards complying with the CRB guidance. In particular, inspectors will check that the employer has:

- applied for a new enhanced CRB check, even if they are letting the person start work using an existing check
- noticed any unexplained gaps in a person's employment and if this is the case, that they have not let the person start work until they have their own CRB check. (Employers should not use an existing CRB check if there has been a break of more than three months in service.)
- checked the details on the existing CRB check using forms of identity for the person concerned, for example, they have cross-referenced address and date of birth details from other identity documents
- seen the original CRB certificate, not a photocopy

⁷ www.opsi.gov.uk/ACTS/acts1999/ukpga_19990014_en_1 and www.opsi.gov.uk/acts/acts2000/ukpga_20000014_en_1.

This list replaced the three former barred lists – Protection of Children Act (POCA), Protection of Vulnerable Adults (POVA) and List 99.

- tried to contact the person who requested the original check, to confirm if any other information was released through a separate letter. (If other information was released, the employer must not let the person start work until they have a new CRB check.)
- only accepted an existing CRB check if it is at the right level, for example they have not accepted a standard check if an enhanced check is needed
- not accepted an existing CRB check that is too old. (A CRB check does not last for an agreed length of time but it is best to expect that an existing check is no older than 12 months.)
- made sure that the person does not have unsupervised access to children, until the new CRB check can confirm the person's suitability.

If the inspector does not think that the employer has taken these steps, then they will reflect this in the inspection judgement(s). If the inspector believes that the employer has taken the steps to support the existing CRB check guidance, then this will not affect the inspection judgement(s).

Repeating CRB checks

CRB checks do not run out but they provide information about a person's criminal records history at one point in time and must be used with other methods to check suitability. Our regular inspection programme, as well as our investigations into concerns, provides the best means of checking that someone continues to be suitable to work with children. We have agreed with the Department for Education that we will not routinely repeat CRB checks to confirm suitability. We do, however, reserve the right to repeat any check – including CRB – if we get information that suggests a person may no longer be suitable.

For those we do not check – such as staff in nurseries and children's homes, other than the manager – inspectors will take these points into account when inspecting and reporting on settings. As a CRB check does not run out and makes up only part of the picture about suitability, inspectors will not routinely set a recommendation or action that a provider repeats CRB checks on staff. Inspectors will also not downgrade an inspection judgement just because a provider has not routinely repeated CRB checks. A provider may think it is good practice to repeat CRB checks, in line with timescales in the national minimum standards, but this is not required by law and we cannot insist this is done. However, inspectors can recommend that CRB checks are renewed if the national minimum standards say this should be done and where an agency or service is not doing this. Inspectors will take account of the national minimum standards and the provider's recruitment and employment practices, including how they deal with any concerns, in judging the suitability of staff.

CRB checks for those moving jobs

We use the same principles in childcare and children's social care for people moving jobs. These principles are:

- A new CRB check is not required when a person moves jobs in the same organisation unless:
 - the new job gives greater access to children or has more responsibility; such as a child care worker moving within the company to become a senior child care worker
 - there has been a break of more than three months between leaving the old post and taking up the new post
 - there are concerns about the person, which may affect his or her suitability/fitness.
- If any of the above points apply, then the person will need a new CRB check and may not start work until it has been received, as in the sections above on starting work before a CRB check.
- The person will need a new CRB check, as in the other points set out in this guidance, if they are moving to a new organisation.

CRB checks for agency staff

Employment agencies and businesses must show a childcare organisation that the person put forward for a childcare position has been checked against the relevant list of those barred from working with children and vulnerable adults held by the Independent Safeguarding Authority within the last 12 months. Employment agencies and businesses must provide written confirmation of this to the childcare organisation employing the person.

As regulators, we have the same process to check suitability/fitness. This means that providers or managers of childcare and children's social care settings must show written confirmation from the agency that a CRB check has been carried out within the last 12 months to show that a person is suitable/fit.

CRB checks on children on domestic premises who turn 16

In terms of initiating CRB checks when a child turns 16 years of age within a childminder's household, or in childcare on domestic premises, our position is as follows:

- All people aged 16 and over, living or working in households where childminding or childcare on domestic premises is provided, must be suitable to be in regular contact with children

- We are responsible for carrying out any necessary checks and making the suitability decision, as childminders and others providing childcare on domestic premises are not entitled to obtain an enhanced CRB check for their own household members.

We ask applicants for registration as childminders and childcare on domestic premises to give us information about household members, including the dates of birth of all their children under 16 years of age. We also expect these providers to notify us of any changes to people living in their households. We require this information so that we can make sure that when a person in a household turns 16, we take steps to carry out a CRB check on them. Inspectors will check at each inspection whether there are any children about to turn 16 years of age, or who have turned 16 since the last inspection, and to establish whether any new people have joined the household.

We expect all registered childminders and childcare providers on domestic premises, to tell us about changes to members of their household. However, we do not expect such providers to tell us when a member of their household reaches their 16th birthday. This is why we ask inspectors to check, before the inspection, whether any people recorded on our system as household members have turned 16, or are about to do so.

Where we find that a member of the household has turned 16, we will not penalise the childminder or childcare provider for not telling us, as long as the provider had told us that the individual was a member of their household. However, we may take action against a childminder or provider of childcare on domestic premises if they have failed to notify us of a new household member.

We only regard legal requirements about household members as **not met** if:

- the person we are attempting to check fails to respond to our requests to undergo a CRB check; or
- if the childminder or childcare provider on domestic premises has failed to notify us of a new person joining or leaving the household, including the birth of a new baby.

If, during an inspection, we have reason to believe that a childminder or childcare provider on domestic premises has withheld information from us, or has failed to inform us of a change to their household members, then this is a breach of legal requirements and will prompt an inspection judgement of 'inadequate' for safeguarding. In such cases, we will consider taking formal enforcement action against the provider as failure to notify us is also an offence.

Students on work placements, volunteers and occasional visitors

As set out above, Ofsted takes responsibility for undertaking CRB checks on those who are living or working on domestic premises, including childminding and childcare

on domestic premises. Therefore, Ofsted will need to obtain an enhanced CRB check on students or volunteers working with childminders and other childcare providers on domestic premises who are to have regular, unsupervised contact with children. There are no provisions in the relevant legislation which state that the legal requirement only applies to placements of a certain length.

There is no definition of 'regular contact' in this legislation, so Ofsted will take a common sense approach to deciding what is 'regular'. For example, a student could have regular contact with children during the course of a short placement. Where a student on a work placement is likely to have regular contact with children, Ofsted will undertake a CRB check on that student. Where a student does not have regular contact with children (for example if they are only attending the placement as a 'one-off' arrangement) Ofsted will not require a CRB check. In such cases, the childminder or childcare provider must ensure that the student or volunteer is never left in unsupervised contact with children.

We apply the same principles in deciding whether or not a person is a regular visitor to the household. For example, when deciding whether Ofsted requires a CRB check on a regular visitor, there is a difference between a friend of a childminder's son who occasionally sleeps over, and an overseas student who is living in the house for several months. We will decide whether a CRB check is required on a regular visitor, taking account of how frequently, and for how long, the person is visiting the house.