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The Notifiable Occupations Scheme: Revised Guidance For Police Forces



From: Crime Reduction and Community Safety Group (CRCSG) - Policing Policy,
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THIS CIRCULAR IS ADDRESSED TO:

Chief Officers of Police in England, Wales and Northern Ireland

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Broad Subject: Police Service

Sub Category: Criminal records

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Dear Chief Officer,

This Circular updates and replaces advice previously contained in Home Office Circular 45/1986 about the disclosure of conviction and other information in relation to people in professions or occupations which carry additional trust or responsibility (often referred to as "notifiable occupations").

2. The Circular is consistent with the **Code of Practice on the Management of Police Information** published by the Home Secretary in July 2005 under the Police Act 1996. This statutory code is part of the Government's response to the recommendations of the Bichard Inquiry into the circumstances surrounding the conviction of Ian Huntley for the Soham murders in late 2003. The Code, along with relevant guidance due to be published on 31 March 2006, is designed to provide a common national framework for the management of police information, highlighting the importance of common standards in high risk areas of activity. The Circular has been agreed with ACPO.

3. Home Office Circular 47/2003 provided revised advice on arrangements for police checks to be carried out in light of the establishment of the Criminal Records Bureau, and cancelled relevant sections of HOC 45/1986. The remaining parts of HOC 45/1986 not cancelled by HOC 47/2003 are hereby cancelled.

The general framework

4. The Notifiable Occupations Scheme relates to professions or occupations which carry special trust or responsibility, in which the public interest in the disclosure of conviction and other information by the police generally outweighs the normal duty of confidentiality owed to the individual.

5. While there is no statutory requirement for the police to share conviction or other information about individuals with third parties, other than in the context of Criminal Records Bureau (CRB) Disclosures under Part 5 of the Police Act 1997, there is a common law power for the police to share information for the purpose of the prevention and detection of crime (each case being considered in its own individual circumstances).

6. The general position is that the police should maintain the confidentiality of personal information, but legal opinion supports the view that in cases invoking **substantial public interest considerations** a presumption to disclose conviction and other information to relevant parties, unless there are exceptional reasons not to do so, is considered lawful. Areas in which it is considered there are likely to be substantial public interest considerations include:

- protection of the vulnerable, including children;
- national security; and
- probity in the administration of justice.

Sharing of Information

7. Sharing of information within these areas falls within the policing purposes set out at section 2.2.2 of the Code of Practice on the Management of Police Information, (especially purpose c - preventing the commission of offences). Nearly all the occupations involved in the scheme

are subject to pre-employment checks at the CRB Standard or Enhanced Disclosure level or via another checking regime. The scheme is referred to in section 6.3.2 of the guidance on the Code of Practice.

8. Forces are requested to notify the appropriate Government department, professional regulatory/disciplinary body and/or the employer of conviction and other information when it comes to notice that an individual is working in one of the professions or occupations listed in Category 1 or Category 2 of Annex A:-

Category 1: Applies to professions or occupations bearing special trust and responsibility where substantial public interest considerations arise specifically in relation to:

- protection of the vulnerable, including children;
- national security; and
- probity in the administration of justice.

Where an occupation falls into one of these three categories, there is a presumption to notify in relation to all recordable convictions, cautions, reprimands and final warnings; unless there are exceptional reasons which make it inappropriate to do so.

Category 2: Applies to less sensitive professions or occupations where probity and integrity may nevertheless be an important factor in preventing crime. For example, this applies to those with particular financial responsibilities. In these cases, a test of relevance should be applied before the decision to share conviction or other information is made. The test of relevance should be under the same legal framework as that described in Home Office Circular 5/2005 in relation to disclosure under section 115 of the Police Act 1997.

Volunteers

9. Volunteers working in areas of employment or activity that fall under these two categories should be treated in the same way as paid employees.

Convictions for recordable offences

10. For occupations in Category 1, all convictions for recordable offences should be notified, unless there are exceptional reasons not to do so. Exceptional circumstances cannot by their nature be defined, but an example might include a relatively minor offence which clearly has no bearing on the person's employment. But there are also occupations, for example magistrates - who sit in judgement over others - where any conviction may reflect on their fitness to carry out their duties.

11. For occupations in Category 2, the relevance test consistent with the legal framework set out in HOC 5/2005 applies to recordable offences.

Convictions for minor offences

12. Minor (ie. non-recordable) offences, such as traffic offences that do not involve a prison sentence or disqualification of licence, are not recorded on the Police National Computer and need not generally be notified. If such cases come to light, the relevance test consistent with HOC 5/2005 should in all cases be applied to occupations in both Category 1 and Category 2.

13 As examples, in the cases of bus drivers, members of the armed forces and others with special responsibility for the safety of others, notification should be considered if the offence could have a material bearing on the individual's work. As a specific example, where a teacher is known to drive children in school transport even a minor motoring offence may affect their fitness for this particular work. If a minor conviction is also associated with other local intelligence, as in the paragraph on 'other relevant information' below, further consideration should be given as to whether disclosure is necessary.

Cautions, reprimands and final warnings

14. For occupations in Category 1, information should be notified about cautions, reprimands and final warnings for recordable offences unless there are exceptional reasons not to do so.

15. For occupations in Category 2, the relevance test consistent with the legal framework of HOC 5/2005 will apply to all non-conviction disposals for recordable offences.

16. As with convictions for minor offences, the relevance test should be applied prior to notification of cautions, reprimands and final warnings for non-recordable offences for all occupations in Category 1 and Category 2.

Fixed penalty notices

17. The issue of a fixed penalty notice does not lead to a criminal record and should not generally be notified. In addition, due regard should be paid to the availability of fingerprint evidence confirming identity in such cases. Fingerprints and DNA will normally be taken for recordable offences but may not be available, particularly where the offence has been dealt with out of custody. Regard should also be paid to the fact that FPNs are not routinely included on CRB Disclosures.

18. The acquisition of such disposals, however, particularly those for recordable offences listed on PNC, could affect the assessment of the honesty and character of an individual already working in a particularly sensitive occupation. Should such a case come to notice and be considered for notification, in all occupations listed in Categories 1 and 2 the relevance test should be applied, based on the legal principles set out in HOC 5/2005.

Other relevant information from local police records

19. Decisions on the sharing of locally recorded and held police information need to be reached with special care. The test of relevance based on the legal framework described in HOC 5/2005 applies in all cases. The quality of such information varies considerably, and proper evaluation should be carried out in accordance with this guidance.

20. There will clearly be cases where notification is appropriate - for example, where someone

employed to work with children or vulnerable adults is suspected of, and has been arrested for, or charged with, an offence of violence or a sexual offence. Even in cases still under investigation, if the individual is considered to pose a risk to the vulnerable it would be inappropriate to delay notifying the regulatory body or employer until the person has been dealt with through the criminal justice system.

Determining the nature of employment

21. In some situations, the nature of an individual's employment will not always be clear. In cases where the nature of the offence demonstrates a clear risk to children or vulnerable adults, for example, a sexual or other assault against a child, reasonable steps should be taken to ascertain any employment or other activity which the individual may be involved in (and which could provide a particular risk to vulnerable persons).

Notification to the employer in urgent cases

22. In especially urgent cases, for example involving possible harm to a child or vulnerable person, forces may consider direct notification to the employer (where known) as well as to the regulatory/disciplinary body concerned.

Further details on Categories 1 and 2

23. Further details about the list of professions and occupations in the scheme can be found in Annex A.

Arrangements within forces

24. The chief officer will wish to decide who should make decisions on whether information should be disclosed or not. The issue is likely to be most straightforward as regards convictions of those listed in Annex A. Decisions as to disclosure of soft information are likely to require closer attention.

25. The chief officer will wish to take these considerations into account in deciding upon local arrangements and may feel that the more sensitive kinds of case require a decision at ACPO level. In addition, in order to avoid possible misunderstanding, it is good practice for the chief officer to make the arrangements clear to all officers who may need to know.

Further information

26. Any queries arising from this Circular should be directed in the first instance to the Criminal Records Section, Safeguarding Vulnerable Persons Team, Police Leadership and Powers Unit, Home Office, Fourth Floor, Peel Building, 2 Marsham Street, London, SW1P

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Yours sincerely,

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POLICE LEADERSHIP AND POWERS UNIT

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[Appendix A - Category 2 occupations.doc](#) [Appendix A - Category 1 occupations.doc](#)

