

# **Standards Committee 7<sup>th</sup> October 2013**

## **Protection of Freedom Act**

### **1. Purpose of the report**

To provide Standards Committee with clarification of the changes contained within the Protection of Freedom Act introduced in September 2012, in respect of eligibility for Disclosure and Barring checks (formally CRB checks).

### **2. Recommendation**

That the report be noted.

### **3. Background**

#### **Criminal Records Bureau**

**3.1** The CRB enabled organisations in the public, private and voluntary sectors to make safer recruitment decisions by identifying candidates who may be unsuitable for certain work, especially those involved with children or vulnerable adults. The CRB was established under Part V of the Police Act 1997 and was launched in March 2002.

**3.2** Organisations who used the CRB service could ask successful job applicants to apply for one of two types of check. The type of check required depended upon the nature of the position but in the main direct contact with children and vulnerable adults was classified under enhanced checks, standard checks were mainly for posts such as Auditors, both required a fee but were free of charge to volunteers. The current fees are Enhanced £44 And Standard £26

**3.4** The Rehabilitation of Offenders Act 1974 (ROA), (Exceptions) Order 1975 acted as the gateway for access to the CRB checking service and listed those occupations, professions & positions considered to be exempt from the ROA provisions designed to protect individuals from unnecessary disclosure of their spent conviction history.

**3.5** To qualify for the higher level of CRB check (enhanced), the position must also meet one of the criteria set out in The Police Act 1997 (Criminal Records) Regulations. These positions are known as “prescribed positions” and reflect the statutory requirements e.g. Persons who work in Regulated Activity with Children or Vulnerable Adults work in a prescribed position.

### **4. Protection of Freedom Act 2012**

**4.1** The current coalition government made a commitment in 2010 to review the CRB service. The review was undertaken by Sunita Mason and completed in late 2011 and the amendments included in the Protection of Freedom Act which received final approval in 2012.

#### **4.2** The summary of the amendments which are to be phased in included:

- The merger of the Criminal Records Bureau (CRB) and Independent Safeguarding Authority which will provide a more 'streamlined' checking service. This merge formed a new organisation known as the Disclosure and Barring Service which was launched on the 1<sup>st</sup> December 2012.
- The new barring regime should cover only those who may have regular or close contact with vulnerable groups.
- Barring should continue to apply to both paid and unpaid roles.
- From the 17<sup>th</sup> June 2013 DBS disclosures will continue to be available to employers and voluntary bodies however job applicants will also be able to see the results of their criminal record check before their prospective employer so mistakes can be corrected.
- "Portability of criminal records checks between jobs to cut down on needless bureaucracy".
- The new system retains two offences; it will continue to be an offence for a barred person to work with vulnerable groups in regulated activity roles. It will also be an offence for an employer or voluntary organisation to knowingly employ a barred person in a regulated activity role.
- The Disclosure and Barring Service introduced an online system from the 17<sup>th</sup> June 2013 to allow employers to check if updated information is held on an applicant
- The DBS procedure was changed on the 17<sup>th</sup> June 2013 so that the criminal records certificate is only issued directly to the individual applicant and employers will need to request sight of this certificate.
- The Government introduced a filter to remove old and minor conviction information from criminal records checks.

### **5. Consultation**

Consultation by the Government took place with organisations such as Age UK, The Children's Society etc. Consultation on the new proposals also took place via the West Midlands Local Government Association in terms of their West Midlands Group for DBS. The Chair of this group also had access to the national group.

#### **6.1 Impacts of the Changes in Legislation**

**6.2** The major impact surrounding the changes in legislation centred around completing DBS checks for staff or volunteers working with vulnerable adults as they removed the need for a check unless they were providing personal care, power of attorney, social work, transportation and managing their personal money.

**6.3** The legislation surrounding children in the main remained unchanged except for the fact that it had to be frequent unsupervised activities such as teach, train, instruct, providing guidance on wellbeing and transportation which was carried out in a specified place. The specified place is determined by the DBS and includes schools, children's home and childcare premises

### **7. Legal**

There are no further legal implications to consider, however HR has worked closely with legal in terms of challenges from the DBS and in terms of the legislation, Councillors has been one of these areas.

## **8. Risk Management**

The risk to the Council in terms of applying for DBS checks which are not covered by the Act is that it could lose its registration. This risk extends to the individual counter signatories, in that they could be personally prosecuted.

The Council's Safer Recruitment Panel which consists of the Head of Children's and Adults Safeguarding, Legal and representatives from Human Resources provides advice and guidance on the implications of the new legislation and management of the associated risks.

## **9. People**

There are no people implications arising directly from this report, however as a consequence employee's post entitlement to a DBS check has been affected.

## **10. Implementation**

All directorates are being required to complete an individual risk assessment for all posts when they reach their best practice renewal date (three years from the date of their last DBS check to monitor their eligibility for a DBS check.

## **Author**

Lisa Hemus  
Lead Signatory for Disclosure and Barring Service  
HR Manager - HR Direct Services

Date 25<sup>th</sup> September 2013