

PROTECTION OF FREEDOMS ACT 2012

EXPLANATORY NOTES

BACKGROUND

Part 5: Safeguarding vulnerable groups, criminal records etc.

Chapters 1 to 3: Safeguarding of vulnerable groups and criminal records

48. The Programme for Government (section 14: families and children) said “*we will review the criminal records and vetting and barring regime and scale it back to common sense levels*”.
49. The vetting and barring scheme was established in response to a recommendation made by Sir Michael (now Lord) Bichard in his June 2004 report following an inquiry into the information management and child protection procedures of Humberside Police and Cambridgeshire Constabulary¹; the Bichard Inquiry was established in response to the conviction of Ian Huntley, a school caretaker, for the murders of Holly Wells and Jessica Chapman. The Inquiry Report recommended, amongst other things, that a registration scheme should be established for those wishing to work with children or vulnerable adults.
50. The Safeguarding Vulnerable Groups Act 2006 (“SVGA”) and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“SVGO”) provided for such a scheme maintained by the Independent Safeguarding Authority (“ISA”)². Originally some 11 million people working with children or vulnerable adults would have been required to be monitored under the Scheme. In response to concerns about the scope of the Scheme, the then Government commissioned its Chief Adviser on the Safety of Children, Sir Roger Singleton, to conduct a review of the Scheme. Sir Roger Singleton’s report³ and the Government’s response were published on 14 December 2009 (Hansard, House of Commons, column 50WS to 53WS).
51. The revised vetting and barring scheme, as recommended by Sir Roger Singleton, would have involved some 9.3 million individuals. On 15 June 2010 the Home Secretary announced that voluntary applications to be monitored under the Scheme, which was due to begin on 26 July 2010, would be suspended pending a further review and remodelling of the Scheme (Hansard, House of Commons, column 46WS to 47WS). The Home Secretary announced the terms of reference of the remodelling review on 2 October 2010 (Hansard, House of Commons, column 77WS to 78WS), as follows:

“In order to meet the coalition's commitment to scale back the vetting and barring regime to common-sense levels, the review will:

¹ <http://www.bichardinquiry.org.uk/10663/report.pdf>

² The ISA was originally known as the Independent Barring Board; the change of name was made by section 81 of the Policing and Crime Act 2009.

³ ‘Drawing the Line’ – A Report on the Government’s Vetting and Barring Scheme, available at: <https://www.education.gov.uk/publications/eOrderingDownload/DCSF-01122-2009.pdf>

Consider the fundamental principles and objectives behind the vetting and barring regime, including;

Evaluating the scope of the scheme's coverage;

The most appropriate function, role and structures of any relevant safeguarding bodies and appropriate governance arrangements;

Recommending what, if any, scheme is needed now; taking into account how to raise awareness and understanding of risk and responsibility for safeguarding in society more generally.

52. The report of the remodelling review was published on 11 February 2011⁴. Amongst other things, the report recommended that the requirement on those working with children and vulnerable adults to be monitored under the Scheme should be dropped and that the functions of the ISA and the Criminal Records Bureau (“CRB”) should be brought together into a single new organisation. Chapters 1 and 3 of Part 5 give effect to the report’s recommendations.
53. Part 5 of the Police Act 1997 (“the 1997 Act”) makes provision for the Secretary of State to issue certificates to applicants containing details of their criminal records and other relevant information. In England and Wales this function is exercised on behalf of the Secretary of State by the CRB, an executive agency of the Home Office. These certificates are generally used to enable employers and prospective employers or voluntary organisations to assess a person’s suitability for employment or voluntary work, particularly where this would give the person access to children or vulnerable adults. The CRB has operated since March 2002.
54. Part 5 of the 1997 Act provides for three types of certificate:
- A criminal conviction certificate (known as a ‘basic certificate’) which includes details of any convictions not “spent” under the terms of the Rehabilitation of Offenders Act 1974. Basic certificates are not yet available from the CRB;
 - A criminal record certificate (known as a ‘standard certificate’) which includes details of all convictions and cautions held on police records (principally, the Police National Computer (“PNC”)), whether those convictions and cautions are spent or unspent; and
 - An enhanced criminal record certificate (known as an ‘enhanced certificate’) which includes the same information as would appear on a standard certificate together with any other relevant, non-conviction information contained in police records held locally and, in appropriate cases, barred list information held by the ISA.
55. Mrs Sunita Mason was appointed by the previous Administration in September 2009 as the Government’s Independent Adviser for Criminality Information Management and was commissioned to undertake a review of the arrangements for retaining and disclosing records held on the PNC. Mrs Mason’s report⁵ was published on 18 March 2010 alongside the Government response set out in a Written Ministerial Statement (Hansard, House of Commons, column 73WS).
56. On 22 October 2010, the Home Secretary announced a further review, again by Mrs Mason, of the criminal records regime (Hansard, House of Commons, columns 77WS to 78WS). The review was to be undertaken in two phases. The questions to be addressed by Mrs Mason in the first phase were:
- Could the balance between civil liberties and public protection be improved by scaling back the employment vetting systems which involve the CRB?

⁴ <http://www.homeoffice.gov.uk/publications/legislation/protection-freedoms-bill/>

⁵ ‘A Balanced Approach: Safeguarding the public through the fair and proportionate use of accurate criminal record information’ available at <http://library.npia.police.uk/docs/homeoffice/balanced-approach-criminal-record-information.pdf>

- Where Ministers decide such systems are necessary, could they be made more proportionate and less burdensome?
 - Should police intelligence form part of CRB disclosures?
57. Mrs Mason's report on phase one of the review was published on 11 February 2011⁶. Amongst the recommendations made in the report were:
- children under 16 should not be eligible for criminal record checks (recommendation 1);
 - criminal records checks should be portable between positions within the same employment sector (recommendation 2);
 - the CRB to introduce an online system to allow employers to check if updated information is held about an applicant (recommendation 3);
 - a new CRB procedure to be developed so that the criminal record certificate is issued directly to the individual applicant who will be responsible for its disclosure to potential employers and/or voluntary bodies (recommendation 4);
 - the introduction of a package of measures to improve the disclosure of police information to employers (recommendation 6). This included -
 - the test used by chief officers to make disclosure decisions under section 113B(4) of the 1997 Act to be amended from 'might be relevant' to 'reasonably believes to be relevant' (recommendation 6a);
 - the development of a statutory code of practice for the police to use when deciding what information should be disclosed (recommendation 6b);
 - the current 'additional information' provisions under section 113B(5) of the 1997 Act to be abolished so that the police use alternative methods to disclose this information outside of the criminal record disclosure process (recommendation 6e);
 - to make effective use of the Police National Database so that decision making by chief officers about the relevancy of information in relation to enhanced criminal record certificates can be centralised, regardless of from which police force the information originated (recommendation 6f).
 - the CRB to develop an open and transparent representations process for individuals to challenge inaccurate or inappropriate disclosures and that the disclosure of police information is overseen by an independent expert (recommendation 7).
58. [Chapter 2](#) of Part 5 gives effect to these recommendations.

⁶ <http://www.homeoffice.gov.uk/publications/legislation/protection-freedoms-bill/>