

**EXPLANATORY MEMORANDUM TO THE  
POLICE ACT 1997 (CRIMINAL RECORDS) (REGISTRATION) REGULATIONS 2006**

**2006 No. 750**

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 This instrument introduces conditions which organisations registered or applying to be registered with the Criminal Records Bureau (CRB) must in future adhere to. Until now the only criteria organisations needed to fulfil in order to register (or remain registered) with the CRB is that they were likely to ask exempted questions within the meaning of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Organisations registered with CRB are known as ‘Registered Bodies’.

2.2 The regulations formalise and build upon the role and responsibilities of Registered Bodies and in doing so, recognise the central role that they play in the effectiveness in the end-to-end CRB Disclosure process.

2.3 In particular, the regulations introduce a requirement on Registered Bodies to submit at least 100 Disclosure applications within a 12 month period to remain registered with the CRB.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Background**

4.1 In September 2002, the Home Secretary appointed an Independent Review Team to take a fundamental look at the CRB operational model. The Review Team identified the role of Registered Bodies as being a key factor in an efficient and effective Disclosure process. In response to the Review Team findings, the CRB took powers in the Criminal Justice Act 2003 (new sections 120AA and ZA of the Police Act 1997) to enable it to specify, in secondary legislation, additional conditions of registration in respect of organisations registered, or applying to be registered, with the CRB.

4.2 These regulations were subject to a public consultation in December 2003. Although the regulations were not introduced, much of the content of those draft regulations were carried forward and are now contained within this instrument.

4.3 Baroness Scotland made a ministerial statement on 2<sup>nd</sup> February 2005, outlining the intention to consult on fresh proposals to reduce and remodel the Registered Body network.

4.4 Sir Michael Bichard in his final report of the Inquiry made to the Home Secretary also identified the risk to the Disclosure service as a result of unacceptable performance by some Registered Bodies in meeting their responsibilities saying:

*“ .... Registered Bodies should meet their responsibilities and I support steps to ensure that they do so. This includes significantly reducing their number.”*

## **5. Extent**

5.1 This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

The instrument is subject to negative resolution procedure and does not amend primary legislation. No statement is therefore required.

## **7. Policy background**

7.1 The objective of Part 5 of the Police Act 1997, under which the CRB operates, was to widen access to criminal record checks to the private, public and voluntary sectors. The CRB provides an effective means through which employers, voluntary organisations and others can obtain details of an individual's criminal history as part of the recruitment process.

7.2 The key provisions of these regulations on organisations registered with the CRB relate to the imposition of a number of conditions of registration. Failure to comply with any of the specified conditions may result in sanctions. The regulations introduce a requirement on Registered Bodies to submit at least 100 Disclosure applications within a 12 month period to remain registered with the CRB. The volume of 100 applications per annum is proportionate to the fact that 22% of organisations are responsible for submitting 89% of all Disclosure applications. This figure therefore provides for a Registered Body network that allows CRB to provide cost effective support and management of any potential risks.

7.3 The regulations also include –

- A requirement on Registered Bodies to adhere to new 'Quality Standards' such as ensuring all Disclosure application forms are completed accurately in accordance with CRB guidance and verifying the identity of a Disclosure applicant.
- A requirement on Registered Bodies offering an 'Umbrella Body' service to client organisations, to notify CRB of the nature of any charges levied on client organisations for the provision of Umbrella Body services. They will also be required to set out their charges in any documentation published by the Umbrella Body used for advertising its services.
- A requirement on Registered Bodies to pay for all Disclosure and Countersignatory applications using a payment on account facility. The CRB will retain the right to waive this requirement on a case by case basis.
- Limits on the number of Countersignatories allowed per Registered Body, dependent on the number of Disclosure applications submitted.

7.4 Between July and October 2005 the CRB carried out a consultation on a draft of the enclosed regulations. From the 13,557 Registered Bodies registered with the CRB at the time of the consultation, 998 responses were received. Responses were received from a variety of sectors. The majority of the proposals within the regulations were strongly supported. The main resistance came from 62% of the respondents on the introduction of a Disclosure application threshold in order to remain registered.

7.5 The reduction in the Registered Body network to a manageable size will enable the CRB to focus its efforts on ensuring that Registered Bodies are compliant and operating at an acceptable level of quality. However, it was recognised by the CRB that some flexibility will be required when implementing the regulations. For example, consideration will be given to organisations located in large geographical areas and/or specialised sectors. CRB also intend to adopt a phased approach to the de-registration of low volume users and will conduct regular reviews to apply any lessons learnt throughout the de-registration process.

7.6 The final Regulatory Impact Assessment (RIA) is attached as an annex to this Explanatory Memorandum and the detailed results from the consultation can be found on the CRB website – [www.crb.gov.uk](http://www.crb.gov.uk).

## **8. Impact**

8.1 A Regulatory Impact Assessment, produced in consultation with the Home Office Better Regulation, Cabinet Office, Small Business Services and Office of Fair Trading is attached to this memorandum.

## **9. Contact**

Julie Pemberton at the Criminal Records Bureau Tel: 0151 676 1421 or e-mail: [Julie.pemberton@crb.gsi.gov.uk](mailto:Julie.pemberton@crb.gsi.gov.uk) can answer any queries regarding the instrument.

**Criminal Records Bureau**

**Regulations under Part V of the  
Police Act 1997**

**Final Regulatory Impact Assessment**

**March 2006**

*An Executive Agency  
of the Home Office*

## Final Regulatory Impact Assessment

### Title of Proposal

1. The introduction of quality standards for Registered Bodies:
  - countersigning applications for CRB Standard and Enhanced Disclosures, for verifying the identity of applicants and
  - the eligibility of the post before countersigning such applications under Part V of the Police Act 1997 and related matters.

Such standards are to be introduced through the imposition of further conditions of registration.

### Purpose and intended effect

2. The Criminal Records Bureau (CRB) has been operational since March 2002. It was set up to meet demands for a more comprehensive and effective means through which employers, voluntary organisations and others could obtain details of an individual's criminal history as part of the recruitment process. This information will help employers assess an applicants' suitability to work with children, vulnerable adults and/or in certain other positions of trust.

3 There are two levels of criminal record checks available at the moment, Standard and Enhanced Disclosures. Both provide information on an individual's unspent and spent convictions. If the post that is being applied for requires it, a check of the lists held by other Government departments identifying a person as unsuitable to work with children and vulnerable adults is also undertaken. In addition to this, for an Enhanced Disclosure check, any local information held by a police force, deemed to be relevant to the position in question will be disclosed. Applications for Standard and Enhanced Disclosure must be countersigned by a Registered Body (RB). The purpose of a countersignature is to certify that the application for a Disclosure is required for the purpose of asking an exempted question under the terms of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. The RB is also asked to confirm, by countersignature, that the requisite documentation and information has been supplied by the applicant and checked in accordance with CRB guidance. Inclusion in the Exceptions Order enables spent convictions to be disclosed, in addition to unspent, and taken into account when assessing an applicant's suitability for employment involving working with children, vulnerable adults or other positions of trust.

4. Section 120 of the Police Act 1997 provides that an RB is an office holder, individual or organisation listed in a register maintained by the CRB for the purposes of Part V of the Act. The section provides that a person applying for registration must be :-

- a) a body corporate or unincorporate,
- b) a person appointed to an office by virtue of any enactment, or
- c) an individual who employs others in the course of a business.

5. The proposed conditions are set out in the draft Police Act 1997 (Registration) Regulations 2005. The regulations apply to England and Wales.

In particular the regulations would:

- a) Require the Registered Body to pay on account the fees for:
  - the second and each subsequent countersignatory and
  - the fees for Disclosure applications.

The above fees are payable at within 15 days of the invoice date. This is no different to the way invoices are requested at the moment, but this provision will attach payment of fees within the defined timescales as a condition of registration. Whilst the onus is on the applicant to pay the Disclosure fee (although RBs can bare the cost if they choose) it is the Registered Bodies responsibility to submit the fees to the CRB on a monthly basis. Currently only 19% which represents 2622 RBs, send payment with the Disclosure application, which is either by cheque or credit card. CRB will retain the right to grant exemptions from this general rule.

- b) **Require Umbrella Bodies (UBs) to provide to the CRB, details of charges for their services connected with the Disclosure service and any changes to such charges. These charges may be published by the CRB, allowing any organisation wishing to use the services of an UB to be able to compare the charges and services offered by UBs in order to make an informed choice of where to take their business. The Umbrella Body will also be obliged to publish such charges in their own publications. CRB takes the view that ensuring the transparency of charges and by allowing market forces to prevail, will address concerns about excessive charges levied by some Umbrella Bodies.**
- c) **Place a duty on Registered Bodies to exercise all due diligence when completing a Disclosure application form and in particular, ensure all mandatory data fields are completed correctly. Mandatory data fields will be specified as per CRB direction. Where non-mandatory data fields are completed the Registered Body will take all due care that the information provided is complete and accurate.**
- d) **Place a duty on Registered Bodies to ensure that the position applied for is an exempt position as provided for in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.**
- e) **Require the Registered Body to take reasonable steps to ensure that applications for free of charge Disclosures fall within the definition of a volunteer as described in the Police Act 1997 (Criminal Records) (Registration) Regulations 2002 (S.I. 2002/233). By way of illustration, in a 12 month period 520,000 applications were purporting to be for voluntary posts. Of these we estimate that 20,000 were requested incorrectly with the CRB bearing the cost.**
- f) **Require the Registered Body or their authorised agent to verify the identity of the applicant by complying with conditions that will be set administratively by the CRB. There will be a responsibility on the Registered Body to ensure both the suitability of any authorised agent and that the agent in question has received appropriate training in checking the identity of applicants.**
- g) **Require the Registered Body to comply with the Criminal Records Bureau's Code of Practice on the use of Disclosure information issued under section 122 of the Police Act 1997. Registered Bodies are already required to comply with the Code but there is currently no direct sanction of de-registration against RBs for breaching the Code.**
- h) **Require the Registered Body to comply with any reasonable request for information that will enable the CRB to make a decision on the suitability or continued suitability of registered persons. This is likely to extend to documents referring to the financial probity of an organisation.**
- i) **Require the Registered Body to inform the CRB of any changes to details held on the register. This includes changes to personal and organisational details and also to inform the CRB if a countersignatory is no longer a countersignatory. This will enable the CRB to maintain an up to date register of all Registered Body details.**
- j) **Place a requirement on the Registered Body to ensure that any electronic systems used to countersign applications comply with such specifications that may be set by the CRB. The CRB are investigating the use of electronic applications. Accordingly, the systems used by Registered Bodies would need to be compatible with the CRB systems. This will provide for future development of the service.**
- k) **Place a requirement on the Registered Body to submit 100 Disclosure applications within a continuous 12 month period assessed at any point within an 18 month period. This will allow for an organisations peak activity times. The CRB will also consider a RBs geographical location, specialised sector and any other reason an RB may find it difficult to access the Disclosure service if deregistered. The volume of 100 applications per annum is a natural threshold established by the analysis of the application trends and patterns observed by the CRB and is proportionate to the fact that 22% of organisations are responsible for 89% of all Disclosure applications. This**

figure therefore provides for an RB network that allows CRB to provide cost effective support and management of any potential risks.

- l) Require any Registered Body that has been suspended or removed from the register to pay for all applications knowingly submitted to the CRB after the commencement of a period of suspension or removal from the register.
- m) Require a Registered Body to allow CRB officers access to premises to conduct an assurance check to monitor an organisation's compliance with the Criminal Records Bureau Code of Practice and other relevant legislation. Access would not be required if the premises are solely for residential use. The visit shall be conducted at a reasonable hour, and the officer conducting the visit shall, either during or before the visit, state the purpose of the visit and provide evidence of identity.
- n) Place a limit on the number of countersignatories a Registered Body may have. For most Registered Bodies (i.e. those countersigning fewer than 1,000 applications per year) the limit would be 20, but the regulations would set a higher limit for larger Registered Bodies, in recognition of the higher volumes of applications they process. Placing a limit on the number of countersignatories would ensure that there are a core number of accountable managers within a Registered Body with the necessary knowledge and experience of the Disclosure service. Of the RBs registered there are only 118 that are currently operating outside of the proposed limits. It should be noted that it will not be compulsory to maintain the required limit of countersignatories and an organisation functioning with fewer countersignatories should continue to do so.
- o) Enable the CRB to suspend or remove from the register any RB that does not comply with any of the above conditions of registration.

## **Objectives**

6. These regulations will seek to formalise Registered Body responsibilities, and provide an enforcement mechanism for non-compliance.

7. A CRB Disclosure is an integral part of a robust recruitment process for employing people to work in positions of trust. In providing wider access to accurate criminal record information for employment vetting purposes, the CRB is under a duty to deliver the service in the most effective and efficient way possible. It is recognised that the effectiveness of the end to end process is not solely the responsibility of the CRB but that the Registered Bodies have a central role to play.

8. RBs are the channel through which applications for Standard and Enhanced Disclosures are submitted to the CRB. As such they have a responsibility to ensure that application forms are accurately completed. At present, 11% of erroneous or incomplete applications forms are identified upon receipt. A common error, for example, is a failure to supply 5 years continuous addresses. A further 12% of errors are identified during the process. A common example is where a middle name is missing off the application form but has been provided on identification documents. To correct such errors and resubmit applications adds to the costs of RBs and the CRB and causes unnecessary delay to the issue of the Disclosure.

## **Background**

9. The Government White Paper, 'The Government's Proposals for Access to Criminal Records for Employment and Related Purposes in England and Wales', issued in 1996, first raised the idea of a Disclosure submission threshold of 200 applications per year. At the time it was thought that low volume users would use the services of an Umbrella Body, however this has not been the case and many of these organisations have registered directly with the CRB. The CRB are recommending that the threshold should be set at 100 applications in a 12 month period to enable an organisation to remain registered.

10. The Independent Review Team (IRT) consultation, set up by the Home secretary in late 2002 recognised the risk to the Disclosure Service posed by an ineffective and remote Registered Body

network particularly with regard to checking the identity of applicants. Furthermore the IRT expressed concerns about the uncontrolled growth in the number of organisations acting as or applying to act as Registered Bodies. This was further supported by Sir Michael Bichard. In his final report of the Inquiry made to the Home Secretary, Sir Michael noted in relation to recommendation 21 that he was:

“... concerned about the unacceptable level of performance by some Registered Bodies in meeting their responsibilities as described in your report. This represents a considerable risk to the Disclosure Service. Registered Bodies should meet their responsibilities and I support steps to ensure that they do so. This includes significantly reducing their number”.

11. The Home Office has already announced in February 2005, that it is considering introducing measures to reduce the number of organisations that are currently registered with the CRB. This will be through the setting of an annual threshold for the submission of Disclosure applications by Registered Bodies. Currently, 89% of applications are submitted by 22% of Registered Bodies. Furthermore, 21 % (2980) RBs that have been registered over 12 months have made 0 to 10 applications. Overall, 69 % (9637), RBs that have been registered over 12 months, have applied for less than 100 applications. A reduced RB network, working in partnership with the CRB and comprising of high volume users, will allow the CRB to focus its resources more effectively to improve compliance and support the evolving role of the Registered Body. The CRB will ensure that suitable alternative arrangements are available to RBs that are deregistered for not meeting the threshold.

12. The CRB have previously consulted on draft regulations in December 2003. Although the regulations were not introduced, much of the content of those draft regulations have been carried forward and are now impacted in this RIA. The 2003 draft regulations included a provision to charge an annual fee to all RBs. The intention was that this fee would fund an assurance function to monitor the RBs compliance with the CRB Code of Practice and relevant legislation and also provide any necessary support for RBs to enable them to meet expected standards. The consultation resulted in an overwhelming objection to the introduction to this fee and the Minister at the time Hazel Blears, requested that the CRB identified what the actual threat to the Disclosure process was and whether assuring RBs was necessary.

13. In 2004 the CRB undertook an exercise to evaluate Registered Bodies compliance with the Code of Practice. The CRB visited a representative sample of 205 Registered Bodies over a period of 3 months. Crucially, 34% of them were assessed as posing a real risk to the integrity of the Disclosure service including deficiencies in their identity checking procedures and the handling and storage of sensitive information. This level of performance, if left unchecked, poses a serious risk to the protection of children and vulnerable adults.

14. This exercise identified that there was a requirement for RBs to be assured, but with the rejection of the introduction of an annual fee to cover the costs of this, alternative options were investigated. The preferred option was a reduction of the RB network by introducing a threshold on the number of applications submitted in a twelve month period to remain registered and subsequently taken forward as a provision in the new registration regulations.

15. Deregistered RBs would still be able to access the Disclosure service through an Umbrella Body (UB). UBs are Registered Bodies who countersign applications on behalf of organisations who are not registered with the CRB. An organisation can register as a UB even if it is not likely to ask the exempted question itself, but wishes to countersign applications on behalf of others that are entitled to do so.

16. There are two types of UBs, unrestricted and restricted. Unrestricted UBs will process Disclosures for any organisation that is entitled to ask exempted questions. Restricted UBs will only process Disclosures for certain sectors or affiliated organisations that are entitled to ask exempted questions.



## **Rationale**

17. In October 2005, there were 13,800 Registered Bodies including amongst others, organisations from the care services sector, sports and leisure, NHS Trusts and other health related organisations, local authorities and voluntary and charitable organisations. In 2005/6 the CRB expect to issue 2.8 million Disclosures. On the basis that 23% of applications have been returned to the RBs to correct errors or omissions in the last twelve months, 644,000 applications would be returned if error rates remain the same. If no action is taken, the error rate will continue to be high adding to the costs incurred by both the CRB and the RBs, not least as a result to the time taken to issue the Disclosure.

18. In 2004 the CRB commissioned MORI to complete a customer satisfaction survey. The survey indicated that 20,000 job offers have been withdrawn as a result of information provided by the CRB. This shows that the CRB is having a direct beneficial impact protecting the vulnerable from unsuitable people. If the Disclosure applications are accepted by the CRB without the RB undertaking rigorous identity checks, there could be scope for a person with a criminal record, to circumvent the system to obtain a 'clean' Disclosure by passing themselves off as another person.

19. If the RB network continues to increase, it will have a proportional impact on the size of the assurance regime required to monitor compliance with the CRB Code of Practice and other relevant legislation. In addition, there are administrative burdens associated with running a large RB network. If the RB network is not reduced, it is assumed that the cost of funding the assurance function and administering the RB register would be reflected in the fee for Disclosure applications.

## **Consultation**

20. The CRB have continually kept the RBs informed of proposed changes that could affect them.

Notification of the intention to reduce the RB network were:

- entered on the CRB website on 2<sup>nd</sup> February 2004.
- presented in a mail shot to all lead countersignatories on 2<sup>nd</sup> February 2005.
- published in the March edition of Disclosure News
- further published in June's edition of Disclosure News.

In addition the CRB have consulted with key stakeholders, consultative groups including amongst others the voluntary sectors, independent schools and sports and leisure.

21. The CRB have previously consulted on draft regulations in December 2003. Although the regulations were not introduced, the majority of regulations in this RIA have been carried forward from the 2003 RIA. The consultation showed that all but one of the proposed regulations were viewed favourably, the exception being a proposal to introduce an RB annual fee. There were 971 responses to the 2003 consultations. Of the regulations carried forward to this RIA, the results showed that 84% supported the introduction of quality measures for RBs. These included identity checking, accurate completion of application forms, payment of Disclosure fees on account, publishing fees charged by UBs, compliance with the Code of Practice and inspection rights of CRB staff.

The consultations also showed:

- 75% of respondents agreed with the introduction of a limit on the number of countersignatories allowed per RB and
- 76% of respondents opposed the introduction of an annual fee.

The current draft regulations do not make provision for an annual fee, although the policy remains under review.

22. In October 2005 the CRB completed a consultation on the proposed draft registration regulations. The results of this consultation were placed on the CRB website in January 2006. The consultation identified that the introduction of quality standards for RBs was overwhelmingly supported. The proposal to introduce a threshold on the number of Disclosure applications submitted in a twelve month period to remain registered was supported by 34% of respondents with 62% of respondents objecting to the proposal. The primary reasoning to the objection of this proposal being the cost implications and potential delays associated to using a UB should an organisation be deregistered.

23. Following the consultation, approval was obtained from the Minister for CRB to progress with the regulations in the current format. The volume of 100 applications is a natural threshold established by the analysis of the application trends and patterns observed by the CRB and is proportionate to the fact that 22% of organisations are responsible for 89% of all Disclosure applications. This figure therefore provides for a RB network that allows CRB to provide cost effective support and management of any potential risks. Responses to the consultation were received from a variety of sectors, with the main responses received being from the voluntary, education and care sector.

24. Of the 13557 RBs registered with the CRB at the time of the consultation, 998 responses were received. CRB consulted further with those RBs that submit the majority of applications to CRB who did not respond to the consultation and these organisations were content with the new proposals.

## **Options**

25. Three options have been identified:

Option 1 – Take no action and continue to rely on CRB guidance and the existing Code of Practice.

Option 2 – Introduce rigorous quality standards, via regulations, for RBs in respect of the completion of Disclosure application forms and placing the responsibility of authenticating the identity of applicants with the RB. Guidance will be provided by CRB.

Option 3 – As option 2 but combined with significantly reducing the RB network by placing a threshold on the number of applications and also restricting the number of countersignatories allowed per Registered Body.

## **Costs and benefits**

### **Option 1**

26. There is an approximate 23% return of erroneous or incomplete forms. This means that out of the 3.1m applications received in the past 12 months, approximately 713,000 have been returned to the RB. This is an unacceptably high return rate and contributes to unnecessary costs and delays in the end to end process. Continuing to rely on guidance alone will not adequately address the problem of poorly completed application forms. This option would place no extra burden on the RB but would not improve the end to end Disclosure service. Moreover, experience with existing guidance suggests that the absence of enforcement mechanisms result in low levels of compliance. The same even holds true for the current statutory CRB Code of Practice. It is difficult, with the RB network at the current size, for the CRB to identify and manage any non-compliance by organisations without having an assurance regime to identify and mitigate the risk.

### **Option 2**

27. As part of good recruitment practice, employers should already be taking appropriate measures to assure themselves of the identity of a potential employee or volunteer. In many parts of the care sector there is already a statutory requirement on employers to obtain proof of a person's identity. As a result there would be minimal additional costs on those employers in the care sector

already following good practice. Other employers may have to devote more administrative resources to this task in future. Where an RB uses an agent to undertake identity checks on their behalf, the RB would, after initially training the agent, be required to periodically audit the way in which agents undertake this task. Identity verification will be the responsibility of the RB. This option would enable the RBs to take ownership for the front end of the Disclosure process. Furthermore, there is a data protection obligation on all employers to safeguard personal information passed to and held by them. This is particularly important in the case of Disclosure information that may be regarded as highly sensitive. To monitor compliance with the newly introduced standards and the CRB Code of Practice will mean an increase in the assurance regime. The risk as identified in option 1 would also be applicable to this option.

### Option 3

28. As option 2 with the addition of placing an annual Disclosure submission threshold of 100 applications in order for an RB to remain registered. This will impact on a large percentage of the RB network. Applying a 100 threshold to the present RB network, would mean that approximately 10,000 RBs would fail to meet it. Those RBs that will be deregistered because of low volume applications will still be able to access the service by using an Umbrella Body. Currently Umbrella Bodies charge an average of £15 for their services. UBs set their own charges to reflect the services that they are able to provide. The transparency of charges will benefit the RBs when deciding on which UB to use to submit their Disclosure applications. The reduction in the RB network to a manageable size will enable the CRB to focus their efforts on ensuring that the remaining RBs are compliant and operating at an acceptable level of quality and to provide the support needed to enable them to continue to meet expected standards. This can bring efficiencies by reducing the handling of applications to rectify errors and omissions. When considering the deregistration of a RB, the CRB will consider a RBs geographical location, specialised sector and any other reason a RB would find it difficult to access the Disclosure service if deregistered. Consideration will be given to allow such RBs to remain registered. Furthermore, there will be a phased approach to de-register low volume RBs. The estimated 260,000 applications to be picked up by UBs from the deregistered RBs, will have a £3.9m cost to the RB network as a whole for using the services of a UB. This cost will be proportionate across the different sectors. There is a potential risk that deregistered RBs, rather than use the services of an Umbrella Body, will not undertake Disclosure checks on individuals where there is no mandatory requirement to undertake one.

### Summary of costs and benefits

29. This RIA sets out 3 options as follows:

	Options	Costs	Benefits	Disadvantages
1	Take no action and continue to rely on CRB guidance and the existing Code of Practice.	There will be no additional costs.	This option will place no extra burden on the RB.	The Disclosure process will not be improved.
2	Introduce rigorous quality standards for RBs in respect of the completion of Disclosure application forms and placing the responsibility of authenticating the identity of applicants with the RB. Guidance will	Some RBs could incur additional administrative costs in order to comply with identity verification requirements.	RBs will take charge of the front end process of the Disclosure process. Reduction in RB and CRB costs as a result of a reduction in the number of inaccurately completed applications forms. Improved service through robust identity verification process.	Duty to check identity documents may have administrative implications. Proportionate increase in the assurance regime to meet the increasing number of RBs joining the register.

	be provided by CRB.			
3	As option 2 but combined with significantly reducing the RB network by placing a threshold on the number of applications and a restriction on the number of countersignatories allowed per Registered Body	Low volume users would access the Disclosure service through an Umbrella Body who charge an average of £15. The estimated cost of the 260,000 applications to be picked up by UBs from the deregistered RBs as a whole will be £3.9m. This cost will be proportionate across the different sectors.	Potentially a more expert and experienced RB network as only those organisations which process a significant volume of applications would be registered. The size of the CRBs assurance team could be reduced accordingly, producing cost savings as compared with the team necessary to support the current RB network. In some cases the cost of using an Umbrella Body will be lower than maintaining the administrative costs of running and maintaining a small volume Registered Body. Further efficiency savings would result from a potentially, more rapid introduction across all RBs of the use of an electronic applications channel, if introduced.	In addition to potential additional costs for smaller employers, a significant reduction in the RB network may lead to difficulties in accessing the Disclosure service and an increase in service times as a result of having to submit applications through an Umbrella Body.

### Small firms impact test

30. A large proportion of Registered Bodies are small businesses or charities. Responses to the consultation in December 2003 indicate that there is strong support across all sectors for quality standards for identity checking and that in the majority of cases a requirement to verify an applicant's identity would have no implications. The recent consultation suggests this position has not changed. These findings and the potential administrative savings arising from a reduction in the number of incorrectly completed application forms, indicate that option 2 would have no adverse impact on the majority of small businesses.

31. Option 3 would impact on small businesses as they would be unlikely to meet the minimum threshold for the number of applications countersigned in any 12 month period. These businesses would use the services of an Umbrella Body to access the Disclosure service and this will incur the costs associated with this. However, in some cases the cost of using an Umbrella Body will be lower than the administrative costs of running and maintaining a small volume Registered Body and the responsibilities associated with this. Although the initial registration fee will not be refunded to the existing RBs that would be deregistered, in the future organisations will not be considered for registration unless they can guarantee that the applications threshold would be met. Those organisations unable to meet this requirement will be advised to use the services of an Umbrella Body.

### Competition assessment

32. The majority of registered bodies are not commercially affected as they use the Disclosure service as part of their internal recruitment processes. The introduction of quality standards should not have an effect on competition. Umbrella Bodies will be affected as market forces take effect, as there will be competition to acquire the services of the RBs that have been deregistered. Of the RBs currently registered, 10% of these are Umbrella Bodies. Of these, 50% are unrestricted umbrella bodies meaning they will provide a service to any eligible organisation that requires access to the Disclosure service. There is expected to be competition between UBs for the business of the estimated 260,000 applications that will need to be accommodated following the deregistration of low volume RBs.

#### **Race and Equality impact assessment**

33. If a RB is to be deregistered for not reaching the required threshold of applications to remain registered, the CRB will consider the RBs geographical location, specialised sector and any other reason an organisation would find it difficult to access the Disclosure service. For example, if an organisation only submits applications in Welsh and a UB was not available to provide this service the CRB would consider not to deregister this organisation. The consultation conducted in October 2005, did not identify any race or equality issues.

#### **Environmental impact assessment**

34. No impact on the environment has been identified.

#### **Health impact assessment**

35. No impact on health has been identified.

#### **Rural Impact assessment**

36. The impact on the rural community has been taken into consideration. If an RB was potentially to be deregistered for not reaching the application threshold, and would have difficulty accessing the Disclosure service because of its geographical location, the CRB would consider not deregistering these organisations.

#### **Enforcement, sanctions and monitoring**

37. The required standards for RBs will be implemented by attaching conditions to registration. The CRB will monitor compliance with such conditions, providing training and support where needed. Where necessary, there will be provisions in the Police Act 1997 to enable the CRB to suspend or remove from the register an RB who has breached the conditions of registration.

38. If a Registered Body is suspended or removed from the register it will be open to them to make a fresh application for registration if and when they can demonstrate that they can meet the conditions. Deregistered RBs that are employers with a requirement to carry out Disclosure checks will be able to use a UB to access the service.

#### **Post implementation review**

39. The CRB will monitor the performance of RBs following the commencement of the regulations and will review the application threshold to ensure that it remains proportional. The effectiveness of the assurance regime will also be reviewed following a 2 year period to identify if the RBs still pose the same level of risk.

#### **Summary and Recommendation**

40. Following consultation, option 3 is the preferred option. The main objections to this option were the cost and anticipated delay in using the services of a UB if an organisation were to be deregistered as a result of not reaching the 100 application threshold. It should be noted that a

number of RBs who submit the majority of applications did not respond to the consultation as they felt they were not affected by any of the proposals. Reducing the number of RBs will enable the CRB to monitor compliance with the CRB Code of Practice and other relevant legislation in accordance with the risk already identified.

41. Option 2 was not considered as the preferred option as the introduction of quality standards alone will still not address the issue of the CRB being able to monitor compliance through an assurance regime as the number of RBs still remains unmanageable.

#### **Declaration and publication**

42. "I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs."

Signature .....*Andy Burnham*.....

Date .....*14<sup>th</sup> March 2006*..

#### **Contact point**

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## Annex A

### Implementation Plan

1. The CRB intend to begin implementing the proposed regulations in April 2006 in accordance with the common commencement dates.

### Application threshold

2. The implementation of deregistering Registered Bodies (RBs) who have not submitted the required number of applications in a 12 month period to remain registered will be introduced in stages. The first stage will act as a pilot stage in which future decision will be based. This stage will start by identifying those RBs who have been registered over 12 months and have submitted between 0 and 10 applications. There are currently approximately 3000 RBs that will be involved at this stage.

3. RBs identified at this stage will be informed of the intention to remove them from the register. It is anticipated that this stage will take approximately 3 months.

4. It is the intention of the CRB to review the above exercise before continuing with the removal of further RBs from the register. This will enable the CRB to apply any lessons learnt during this initial implementation period.

5. There will be continuous monitoring of the 100 applications threshold and any organisation that does not reach the required limit will be contacted prior to removal from the register. This will give the RB a chance to put forward their argument for not being removed.

### Limit on the number of Countersignatories allowed per RB

6. The regulation to apply a limit on the number of Countersignatories allowed for each RB will be implemented following the commencement of the regulations in April 2006. There are currently 118 RBs that have above the required limit of Countersignatories registered for their organisation.

7. Initially, the CRB will refuse to register new countersignatories if an RB is above the required limits. The removal of countersignatories already registered that are above the required limits will not commence until the deregistration of RBs that have not met the required application threshold is complete. The date this will commence will not be known until the final number of RBs in know following the deregistration of low volume RBs.

8. A list of Countersignatories currently associated to the RB will be sent to each organisation that has exceeded the proposed limit. The RB will then either state a preference to who should remain registered or provide a reason why is not possible for the RB to function with a reduced number of Countersignatories.

### POA

9. Initially, the regulation requiring all invoices to be paid on account will not be introduced until the final size of the Registered Body network is known following the deregistration of low volume users.

10. When the regulations are commenced in April 2006, all new organisations wishing to become registered with the CRB will be required to pay countersignatory and Disclosure fees on account. The CRB will still retain the right to request payment with application in exceptional circumstances.

## **Sanctions**

**11.** It is the intention of the CRB to introduce sanctions for non compliance of the registration regulations when the regulations are commenced in April 2006. All sanctions will be actioned by the CRB Registration Management team.

**12.** The CRB intend to keep RBs and the CRB consultative groups informed at all stages of the regulations implementation. This will be through regular meetings, Disclosure news, letters to RBs and via the CRB website.