



Home Office

Protection of Freedoms Bill: Disclosure & Barring / Criminal Records

**Bulletin No 2
November 2011**

Welcome to the second update from the Home Office Bill team on the Protection of Freedoms Bill. This edition provides a further brief update for those interested in the remodelling of the Vetting & Barring Scheme (VBS) and changes to the Criminal Records regime. If you would like to receive this Bulletin in a different format, please contact us at: ProtectionOfFreedomsBill@homeoffice.gsi.gov.uk

Latest Parliamentary Timetable

The Bill completed its Commons Report stage and Third Reading on 10 and 11 October. Part 5 of the Bill, which implements the Government's reforms to the VBS in England, Wales and Northern Ireland and the criminal records regime in England and Wales, and establishes the new Disclosure and Barring Service (DBS), was debated on 11 October.

The Bill has now completed its passage through the House of Commons and was introduced in the House of Lords on 12 October. The passage through the House of Lords will be similar to that through the House of Commons – there will be a Second Reading, Committee stage, Report stage and Third Reading. Lords Second Reading is scheduled for Tuesday 8 November, but the dates for the remaining stages have yet to be announced. We will provide a further update as soon as possible. Subject to Parliamentary approval, the Bill is expected to receive Royal Assent by May 2012.

As set out in the first bulletin, the Bill provisions relating to the VBS and criminal records regime include:

- abolishing registration and continuous monitoring;
- scrapping controlled activity;
- reducing the scope of regulated activity (that is activity, which people on a barred list cannot do) and
- changes to the criminal records checking process in England and Wales, including the introduction of a new system for the continuous updating and portability of criminal records.

Latest Government Amendments

The Report stage and Third Reading took place on 10 and 11 October, during which the House of Commons agreed to further Government amendments, as below -

- Clause 77 – this will place a duty on the Secretary of State to issue guidance on 'supervision' to help employers and others to determine whether supervised people are engaging (or not) in regulated activity with children. This is also provided for Northern Ireland in Schedule 7;
- Clause 88 – This clarifies an existing provision in relation to the transfer of employment contracts for the Independent Safeguarding Authority and Criminal Records Bureau to the new DBS;
- Schedule 8 – Paragraph (16) provides that the DBS can use information it receives for any of its purposes; that is disclosure information for barring purposes and barring information for disclosure purposes;
- Clause 99 – ensures that where an individual was cautioned or convicted under section 4 of the Vagrancy Act 1824 for loitering with intent to commit buggery or gross indecency, then they will be able to apply to have that matter disregarded; and
- Other technical measures relating to the DBS.

Following Introduction in the House of Lords, the Bill and Explanatory Notes have now been reprinted and are available at:

<http://services.parliament.uk/bills/2010-11/protectionoffreedoms/documents.html>

Joint Committee on Human Rights

The Parliamentary Joint Committee on Human Rights published a report on the Bill on 7 October (available at:

<http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/195/19502.htm>).

On the reforms of the VBS, the Committee said: "We welcome the Government's aim of making the Vetting and Barring Scheme more targeted and proportionate, by taking a more explicitly risk-based approach". In respect to the criminal records provisions the Committee concluded: "We welcome these changes to the system of criminal record disclosure which seem to us likely to achieve a more proportionate approach to the disclosure of sensitive personal information".

The Government has also responded to a report by the Child Protection All Party Parliamentary Group on the proposed changes.

<http://www.publications.parliament.uk/pa/ld200809/ldjudgmt/jd090520/appg.pdf>

What happens now?

All the provisions in the Bill will not be finalised until it receives Royal Assent. The final edition of our bulletin in spring 2012 will summarise the House of Lords considerations and how we plan to implement the changes to the vetting and barring and criminal records systems. A further bulletin may be produced before then to review the Lords Committee stage.

Other issues discussed at Commons Report stage:

Also discussed at Report stage were amendments put forward by the Opposition. These included provisions to make barred list information available on all enhanced criminal record certificates; to remove the provision restricting the barring system to those who have been, are or might in the future be involved in regulated activity; to make changes to the proposals in the Bill about people who undertake regulated activity with children; and to provide for Registered Bodies (RBs) to be notified once a criminal record certificate had been issued. None of the Opposition amendments were accepted by the Commons. Ministers have however, agreed to consider two issues: whether to notify RBs when a criminal record certificate is issued and whether to notify RBs on whether the certificate is clear.

Question and Answers - The Government's position on these issues is set out below:

If the CRB is no longer to send a copy of the certificate to the RB, would it not make good sense to keep the RB informed of progress by telling them when the certificate is issued?

The Government is considering whether legal provision should be made for RBs to obtain information about the progress of applications. This could include whether a certificate has been issued and whether it is clear of any information.

Why not continue to send a copy of the certificate to the RB where the applicant gives their consent?

Consent is not the issue. It is wrong that where information exists, particularly non-conviction information released by a police force, the applicant does not have a chance to review and challenge that information before it is sent to the RB.

By removing the provision restricting the barring system to those who have been, are or might in the future be involved in regulated activity, aren't you risking putting vulnerable groups at greater risk?

No. Those who pose a clear risk to children or vulnerable adults will still be barred from working with them. There is always a balance to be struck between the vetting and barring arrangements and ensuring appropriate respect for Individuals' rehabilitation needs, and to ensure that their previous convictions are treated proportionately in their pursuit of work, either paid or voluntary. We are clear that these measures should help to get that balance right. Individuals with serious criminal records will continue to be automatically barred and where employers (through their disciplinary process) identify harm or a risk of harm they will continue to have a legal duty to refer to the ISA. It will also remain an offence for a barred person to work or seek to work with the group or groups from which they have been barred.

Want to Find Out More?

You can find an account of what happened during parliamentary debates, at [Bill stages — Protection of Freedoms Bill 2010-11 — UK Parliament](#); and detailed factsheets on each area of the Bill, by visiting <http://services.parliament.uk/bills/2010-11/protectionoffreedoms.html>

The team responsible for the Protection of Freedoms Bill can be contacted at:

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