PROTECTION OF FREEDOMS BILL

Fact Sheet – Part 5: Safeguarding of Vulnerable Groups, Criminal Records Etc.

Chapter 1: Safeguarding of Vulnerable Groups

The Coalition's Programme for Government included a commitment to "*review the criminal records and vetting and barring regime and scale it back to common sense levels*". The review was conducted by the Home Office, Department for Education and Department of Health; the review report and recommendations were published alongside the Bill on 11 February 2011.

Chapter 1 of Part 5 amends the Safeguarding Vulnerable Groups Act 2006 ("the 2006 Act") which provides the framework for the vetting and barring scheme operated by the Independent Safeguarding Authority ("ISA").

The amendments, in particular, repeal the provisions of the 2006 Act which provide for the monitoring by the Secretary of State of persons engaging in 'regulated activity'. The purpose of these amendments collectively is to remodel the scheme so that, whilst a national barring function is retained, registration and monitoring requirements are abolished, the scope of 'regulated activity' is narrowed and the concept of 'controlled activity' is abolished.

Restrictions on scope of regulation

This Chapter changes the definition of 'regulated activity' relating to both children and adults, as set out in the 2006 Act. The overall effect is to reduce the scope of regulated activity. Broadly, this will mean that the scheme will, in future, cover work (whether paid or unpaid) involving regular or close contact with children; work providing health care, personal care or providing assistance with money for adults; or work which involves making welfare decisions on behalf of those adults who lack capacity. Where an activity is no longer regulated, employers and voluntary organisations in these sectors will normally continue to have access to enhanced criminal record certificates so that they can make informed recruitment decisions.

Abolition of other areas of regulation

This Chapter also abolishes the concept of 'controlled activity' which related to persons working (paid or unpaid) in ancillary posts or who had access to sensitive information relating to children or adults. Under the scheme as originally designed, an employer or voluntary organisation would have been required to check whether a person who is engaged in controlled activity was barred from engaging in regulated activity so that they could assess whether that person was suitable to be employed in the controlled activity and, if so, whether any safeguards should be put in place. The Bill removes the requirement for compulsory monitoring arrangements of all persons who were to be registered under the vetting and barring scheme. This requirement, had it been commenced, would have provided a mechanism whereby any new convictions, cautions, or referrals (from employers) that would be relevant to a registered person would have been passed to the ISA for review. In future, where a criminal record certificate in respect of a person who is working, or

intends to work, in regulated activity identifies conviction or cautions which leads to the automatic inclusion of that person in a barred list, the Secretary of State has a duty to provide this and any additional conviction or caution information which may be prescribed to the ISA (under Schedule 3 to the 2006 Act) so that it can consider whether to include that person on the children's barred list or adults' barred list, or both.

Other changes to the scheme

As a consequence of the abolition of monitoring, the Bill replaces the arrangements whereby employers and others were notified when a person was barred with a requirement on a regulated activity provider or personnel supplier (that is, an employer or sub-contracting agency, including those using volunteers) to check whether an individual is barred before engaging them in a regulated activity. The Bill sets out ways in which that requirement can be fulfilled, including a new mechanism for barred list checks and a new voluntary mechanism, which allows the ISA to inform employers or personnel suppliers directly when someone becomes barred. Other changes in the Bill include restricting the barring regime to those who have been, are or might in the future be involved in regulated activity; allowing representations against certain types of automatic bars to be made prior to the decision rather than subsequently; allowing the ISA greater flexibility as to when it can review somebody's inclusion in a barred list; and various changes to the information-sharing provisions in the 2006 Act.

Chapter 2: Criminal Records

Part 5 of the Police Act 1997 ("the 1997 Act") makes provision for the Home Secretary 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 Criminal Records Bureau ("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.

Chapter 2 of Part 5 makes amendments to Part 5 of the 1997 Act, which provides for the operation and processes of the CRB. The amendments, in part, give effect to recommendations made by the Government's Independent Advisor for Criminality Information Management, Mrs Sunita Mason, arising from the first phase of her review of the criminal records regime. Collectively, the amendments will serve to improve the CRB's operation and address issues concerning the extent and proportionality of some aspects of criminal records disclosures.

Restrictions on passing records to employers

This Chapter removes the provision that requires a copy of a criminal record certificate to be sent to an employer (or registered body) so that the certificate is issued to the applicant only. This will allow an applicant time to dispute and make appropriate representations regarding the information contained in the certificate without this information already having been seen by the employer.

The Bill also repeals the provision in the 1997 Act which allows for the disclosure of information to a potential employer alone where the police judge that same information should not be disclosed to the person applying for the role. This change does not alter the fact that the police can still exercise their common law powers to disclose this non-conviction information at any time to prevent crime and to protect the public, where they believe this to be necessary.

Minimum age for certificate

At present, the CRB is required under the provision in the 1997 Act to issue a criminal record certificate whatever the age of the applicant. The Bill establishes a minimum age of 16 years for an individual who can apply for a criminal record certificate on the grounds that those under that age should not be left unsupervised in a position of authority with other children or vulnerable adults.

Additional safeguards for enhanced criminal record certificates

This Chapter also changes the relevancy test the police apply to the disclosure of intelligence and other non-conviction information which they hold from a "might be relevant" test to a "reasonably believes to be relevant" test.

These provisions also enable decisions about the relevancy of information to be taken centrally or by a smaller number of "lead forces", rather than by each individual force as at present. Provision is also made for the Secretary of State to issue guidance to which the police must have regard in making decisions about the relevancy of information.

Where there is a dispute over whether non-conviction information is relevant or ought to have been disclosed in an enhanced criminal record certificate, this Chapter makes provision for such a dispute to be addressed by the Independent Monitor (as appointed under Part 5 of the 1997 Act), who would be required to seek advice on such disputes and to take into account guidance. On making a final judgement the Monitor can order a fresh certificate to be issued where s/he concludes that the non-conviction information should not have been disclosed.

Portability and continuous updating

Finally, this Chapter also introduces provisions to allow an applicant to consent to a system of continuous updating, regarding their conviction, police intelligence and barred list information. This creates a system whereby an employer could, with the individual's consent, establish if any new information had been recorded since the certificate being relied upon was issued. This new system will mean, in effect, that certificates are portable between employers and voluntary organisations in future, reducing the need for repeated applications for a new certificate.

Chapter 3: The Disclosure and Barring Service

Chapter 3 of Part 5 gives effect to the recommendation of the review of the vetting and barring scheme that the barring functions of the ISA and the responsibilities of the CRB for the disclosure of criminal records should be brought together into a single new organisation. This Chapter establishes the

Disclosure and Barring Service (DBS) and provides for its constitution and governance. The DBS will be an executive Non-Departmental Public Body. The Bill creates three order-making powers to enable the Secretary of State to transfer to the DBS the functions of the ISA and CRB and to dissolve the ISA. A power is also conferred on the Secretary of State to make a scheme transferring to the DBS the staff, property, rights and liabilities of the ISA and CRB.

Chapter 4: Disregarding Certain Convictions for Buggery Etc.

Chapter 4 of Part 5 contains provisions that will allow individuals with a conviction or caution for an offence under section 12 (buggery) or 13 (gross indecency between men) of the Sexual Offenders Act 1956 (or the corresponding earlier offences or military service offices)[i], involving consensual gay sex with another person aged 16 or over, to apply to the Home Office to have details of that conviction or caution disregarded.

Consensual sex between men over the age of consent was decriminalised in 1967. Then the age of consent was 21 years, but it was lowered to 18 years in 1994 and to 16 years in 2000. However, details of any historic convictions for consensual gay sex with over 16s continue to be recorded on police records and appear on a CRB criminal record certificates.

If an application to have a conviction or caution disregarded is granted, the details of that conviction or caution will be removed from the Police National Computer, and any local police or other records, and will no longer be revealed on a CRB certificate. In addition, a person with a disregarded conviction or caution will not have to disclose that conviction or caution to anyone under any circumstances, for example, on a job application or in court proceedings.

There are estimated to be some 50,000 convictions and cautions recorded on the Police National Computer for section 12 and 13 offences; some 16,000 of these are estimated to relate to behaviour that is now decriminalised.

Home Office
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[i] This includes convictions and cautions for conspiracy, attempts, and loitering with intent to commit the substantive offences.