

# INDEPENDENT REVIEW OF THE CRIMINAL RECORDS REGIME –

## GOVERNMENT RESPONSE



## GOVERNMENT RESPONSE DOCUMENT

### Background

On 22 October 2010, the Home Secretary commissioned an independent review of the Criminal Records Regime (CRR), to be led by the Independent Advisor for Criminality Information, Mrs Sunita Mason. Under the terms of reference for this review, she was asked to examine whether the CRR currently strikes the right balance between respecting civil liberties and protecting the public and what actions were needed to rebalance the system. The review was undertaken in two phases. The first of these looked at how employers access criminality information to help them make informed decisions about an individual's suitability, especially in relation to working with children and vulnerable adults. The second phase looked at wider issues concerning the criminal records landscape, such as definition, management, access (both by individuals and law enforcement agencies) and international criminal record information exchange.

The thrust of this review was to contribute to the delivery of two central objectives for the Government – rebalancing civil liberties where necessary and maintaining effective, efficient and sustainable public protection arrangements.

Mrs Mason's report on phase 1 was published on 11 February, alongside the Government's Protection of Freedoms Bill, which incorporated a number of the report's recommendations. Her phase 2 report is being published today (06 December 2011) and offers a further ten recommendations for improvements across the wider criminal records regime. The Government has carefully considered all the recommendations arising from both phases of the review against its objectives on safeguarding, as well as wider issues such as reducing burdens on business and supporting economic growth, and has decided that the large majority should be accepted, either unconditionally or in principle. Details of how the Government intends to take forward each recommendation are set out in Annex A to this document.

### CRR phase 1 and 2 recommendations

The first phase of the review generated ten recommendations for improvements to the Criminal Records Bureau's operation and processes, building on the Government's associated changes to scale back the Vetting and Barring Scheme (VBS) arrangements initiated by the previous administration. The Government is already taking forward the majority of Mrs Mason's first phase recommendations, setting out the required legislation in the Protection of Freedoms Bill, which was introduced into Parliament on 11 February 2011.

These proposals include:

- i) Allowing applicants for a criminal records certificate the opportunity to see, and if appropriate dispute, information about them which is included on the certificate prior to passing it to their prospective employer.
- ii) Introducing a new, on-line status checking capability that will in effect mean individuals can re-use (or "port") their certificates with different employers across the same workforce and so will no longer need to apply for a new certificate every time they want to take up a new role if no new relevant information has come to light.

- iii) Introducing a threshold of 16 years as the minimum age for applying for a CRB certificate, on the basis that individuals below this age should not be acting in a supervisory role with children or vulnerable adults.
- iv) Introducing changes to the legislation governing the disclosure service to strengthen the criteria used by the police when making a relevancy judgement about the release of personal information concerning an individual, in effect making such disclosures more proportionate by creating a higher threshold test which must be met before information can be disclosed.
- v) Introducing new powers for the Home Secretary to issue guidance concerning these relevancy judgements which Chief Police Officers 'must have regard to'.
- vi) Introducing new arrangements for the CRB's Independent Monitor to oversee the management and review of formal disputes.

The phase 1 review also recommended that individual eligibility for checks is scaled back to focus tightly on those working unsupervised or in regular close contact with children or vulnerable adults, and those in a much smaller number of specifically prescribed roles. The Government does not accept this recommendation. The Protection of Freedoms Bill is already being used to very substantially reduce the scope of "regulated activity" from which people can be barred. Against that background, the Government thinks it is important to retain the capacity to apply for criminal records checks in relation to a broader set of sensitive roles.

A further recommendation was that the Government should introduce a filter to remove, where appropriate, old and minor conviction information from criminal records checks. The Government will continue to consider this proposal, part of which means trying to identify an appropriate and workable filtering mechanism. It is important that old and minor disposals should not unreasonably compromise employment prospects, but equally important that potentially relevant information should be available to those employing people in sensitive positions.

The Government accepts in principle the recommendation that there should be a clear timescale for the police to make decisions on whether there is relevant information that should be disclosed on an enhanced criminal record certificate. However, it does not accept that the certificate should be issued at the end of a defined period where information is still being considered by the police, as that could pose significant risks to public protection.

The second phase of the review offers a further ten recommendations which address broader criminal records issues. The Government accepts the need for clearer definitions around what constitutes a criminal record and for a thorough review of which offences are included in national records. It agrees that the pragmatic and affordable solution is for the Police National Computer (PNC) to remain as the repository for criminal records for now. Looking further forward and following establishment of the long term arrangements for the management and delivery of the PNC services after the NPIA has been closed, we will consider the need for alternative options for sharing and managing criminal records. Access arrangements must be consistent and robust and strike the right balance between protecting sensitive data and safeguarding the public.

The Government also accepts the need for a more integrated approach to the administration of criminal records and this can be explored as part of the planned changes to the organisational landscape. And further work will be commissioned to review and update the strategy for improving the international exchange of criminal records.

### Resource implications

This review supports a remodelling of the CRR so that it will impose far lower costs on the public at large, but become more effective in protecting them against crime. Planned and potential

improvements to the CRB regime which flow from phase 1 of the review will be funded largely from a charging regime which will continue to develop as that organisation combines with the Independent Safeguarding Authority (ISA) to form the Disclosure and Barring Service (DBS). Some of the broader recommendations in phase 2, such as enhancing procedures around access to criminal records, have minimal cost implications. Others have immediate hard costs. For example, funding has recently been identified to improve the criminal records links to Northern Ireland. However, several of the recommendations are about setting an agenda for further exploratory work which will need to be completed before resource implications can be clarified.

Overall, in accepting the bulk of the review's recommendations, the Government is now setting out its broad agenda of work. Nonetheless, there needs to be detailed and rigorous scoping activity, in consultation with all the necessary stakeholders, to agree affordable and achievable implementation plans and timescales, which will meet our safeguarding and growth objectives.

### Next Steps

Key aspects of the response will continue to be taken forward via the Protection of Freedoms Bill. Looking across the broader set of recommendations, implementation will be overseen from within the Home Office as this agenda of work unfolds, in liaison with the other departments and agencies involved. Closely linked to that, Mrs Mason will take forward further work on the international exchange of criminal records.

**Home Office**  
**06 December 2011**

## Detailed Response to Recommendations (Phase 1 & Phase 2)

	<b>Recommendation</b>	<b>Status</b>	<b>Position</b>	<b>Commentary</b>
	<b>Phase 1</b>			
<b>1</b>	<p>I recommend that children under 16 should not be eligible for criminal records checks.</p> <p>I further recommend that individual eligibility is scaled back to focus tightly on those working unsupervised or in regular close contact with children or vulnerable adults, and those in a much smaller number of specifically prescribed roles (<b>recommendation 1</b>).</p>	<p><b>Accept</b></p> <p><b>Reject</b></p>	<p>Proposals brought forward under the Protection of Freedoms Bill.</p>	<p>The Government does not believe under 16s should be in supervisory roles involving children or vulnerable adults.</p> <p>The Government thinks it is important to retain eligibility for criminal records checks across a relatively broad range of sensitive roles.</p>
<b>2</b>	I recommend that criminal records checks should be portable between positions within the same employment sector ( <b>recommendation 2</b> ).	<b>Accept</b>	The Protection of Freedoms Bill will support this position.	Recognise the importance of enabling individuals to re-use criminal records checks for jobs within the same workforce – either working with children or with vulnerable adults, or both – and so reducing the overall burden of arrangements. This change will also be of great benefit to the voluntary sector. This will significantly reduce burdens on business and make it easier for employers to take on staff.
<b>3</b>	I recommend that the Criminal Records Bureau (CRB) introduces an online system to allow employers to check if updated information is held on an applicant ( <b>recommendation 3</b> ).	<b>Accept</b>	Proposals brought forward under the Protection of Freedoms Bill.	A new 'up-dating' mechanism is under development, which will allow for the validation of criminal records certificate information by employers. This product will be available to all applicants for a small, annual subscription. This will significantly reduce burdens on business and make it easier for employers to take on staff.
<b>4</b>	I recommend that a new CRB procedure is developed so that the criminal records certificate is issued directly to the individual applicant who will be responsible for its disclosure to potential employers and/or voluntary bodies ( <b>recommendation 4</b> ).	<b>Accept</b>	Proposals brought forward under the Protection of Freedoms Bill.	Arrangements in the Bill will allow the applicant to see all approved police information included on the certificate and, if appropriate, to dispute or request a review of this prior to showing this to an employer. As well as addressing a key principle, this development should ensure applicants (and employers) can manage the new process without delays. In response to representations from interested organisations, the Government intends to amend the Bill to ensure employers/ voluntary bodies can stay in touch with the progress of applications, even though they will not receive a copy of the certificate at the point of issue.
<b>5</b>	I recommend that at the earliest opportunity Government introduces a	<b>Consider</b>	The Government will	It is important that old and minor disposals

	filter to remove, where appropriate, old and minor conviction information (which includes caution, warning and reprimand information) from criminal records checks ( <b>recommendation 5</b> )		continue to consider this proposal, part of which means trying to identify an appropriate and workable filtering mechanism.	should not unreasonably compromise employment prospects, but equally important that potentially relevant information should be available to those employing people in sensitive positions.
<b>6</b>	<p>I recommend the introduction of a package of measures to improve the disclosure of police information to employers. This should be done by making the following changes to Part V of the Police Act 1997, by:</p> <p>Amending the test used by Chief Officers to make disclosure decisions under s.113B(4) from 'might be relevant' to 'reasonably believes to be relevant' (<b>recommendation 6a</b>);</p> <p>Developing statutory guidance for police to use when deciding what information should be disclosed (<b>recommendation 6b</b>);</p> <p>recommend the development and use of a common template to ensure that a consistent level of information is disclosed to the individual with clearly set out reasons for that decision (<b>recommendation 6c</b>);</p> <p>Applying a timescale of 60 days for the police to make decisions on whether there is relevant information that should be disclosed on an enhanced disclosure (<b>recommendation 6d</b>);</p> <p>Abolishing current 'additional information' provisions under s.113B(5) so that the police use alternative methods to disclose this information outside the criminal records disclosure process (<b>recommendation 6e</b>); and,</p> <p>Making effective use of the development of the Police National Database to centralise criminal records check decision making through the amendment of legislation to allow any Chief Officer to make the relevancy decision in enhanced disclosures, regardless of where the data originated (<b>recommendation 6f</b>).</p>	<p><b>Accept</b></p> <p><b>Accept</b></p> <p><b>Accept</b></p> <p><b>Accept in principle</b></p> <p><b>Accept</b></p> <p><b>Accept in principle</b></p>	<p>Consultation with Police Service on-going</p> <p>Proposals brought forward under Protection of Freedoms Bill.</p> <p>Proposals brought forward under Protection of Freedoms Bill.</p> <p>Links to guidance referred to above.</p> <p>On-going consultations between HO, CRB and ACPO</p> <p>Proposals brought forward under the Protection of Freedoms Bill.</p> <p>Enabling provisions contained in the Protection of Freedoms Bill.</p>	<p>This change will make the relevancy test criteria used by senior police officers tighter, helping to ensure that information disclosed is more clearly relevant.</p> <p>Guidance is being developed by the Home Office and CRB, in partnership with stakeholders.</p> <p>As above (but no statutory provision)</p> <p>Further consultation with the police will be needed to ensure public protection requirements are central. There will be no requirement to issue an enhanced criminal record certificate at the end of a defined period where information is still being considered by the police.</p> <p>Further consultation with the police service is necessary to understand exactly how their common law powers can be used most effectively in this regard.</p> <p>Further consultation with the police service and CRB is necessary to scope how the new powers can be best deployed.</p>
<b>7</b>	I recommend that the CRB 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 ( <b>recommendation 7</b> ).	<b>Accept</b>	Proposals brought forward under the Protection of Freedoms Bill.	New powers will require requests by an applicant for a review of local police force information contained on a criminal records certificate to be considered and overseen by the Independent Monitor, who will then ask a

				nominated Chief Officer to review. If, after this review, the Independent Monitor still considers information contained not to be relevant or that it ought not to have been included on the certificate, she can instruct the CRB to amend the certificate. CRB will develop guidance for the public (and police) on how the new arrangements will work.
8	I recommend that where employers knowingly make unlawful criminal records check applications the penalties and sanctions are rigorously enforced ( <b>recommendation 8</b> ).	<b>Accept</b>	CRB guidance to registered bodies (employers) has been updated. The Government will also ensure that information and guidance is easily accessible to business to help them understand and comply with the legal requirements.	CRB are leading work to underpin compliance in line with the CRB Conditions of Registration.
9	I recommend that basic level criminal records checks (covering unspent convictions) are introduced by the CRB in England and Wales ( <b>recommendation 9</b> ).	<b>Accept in principle</b>	Ministers accept in principle the need for a basic disclosure product for those living in England and Wales but do not plan to introduce such a product through the CRB at the present time given the imminent changes required to set up the DBS.	Ministers are minded to introduce basic certificates in step with the establishment of the DBS, but further work is needed on the implications of doing so. In the meantime they are discussing the provision of a full service for all those working in England and Wales through Disclosure Scotland whilst the long-term position is considered.
10	I recommend that comprehensive and easily understood guidance is developed for individuals and employers to fully explain the criminal records and employment checking regime ( <b>recommendation 10</b> ).	<b>Accept</b>	On-going further consultation with OGDs and stakeholder organisations.	A programme of work is underway to consolidate, improve and develop guidance including through guidance tools to be developed through the Employment Law Review. The challenge will be to produce guidance which covers the necessary ground whilst being as short, focused and user-friendly as possible.
	<b>Phase 2</b>			
11	I recommend that an individual's 'criminal record' should be defined as all their convictions, cautions, reprimands or warnings which are recorded in central police records ( <b>recommendation 1</b> ).	<b>Accept in principle</b>	Agree to promulgate this as a working definition.	A further consultation exercise will be undertaken to establish whether such a definition is sufficiently robust and flexible to be enshrined in law.
12	I recommend that the Government conduct an immediate review of which offences are recorded in national police records ( <b>recommendation 2</b> ).	<b>Accept</b>	Home Office will launch work as soon as practicable.	
13	I recommend that the Police National Computer should continue to be	<b>Accept</b>	No change to current	PNC will remain the central repository.

	the central repository for criminal records for the foreseeable future ( <b>recommendation 3</b> ).		arrangements.	Looking further forward and following establishment of the long term arrangements for the management and delivery of the PNC services after the NPIA has been closed, we will consider the need for alternative options for sharing and managing criminal records.
14	Linked to recommendation 3, I recommend that the Government should begin work immediately on developing and analysing alternative options for sharing and managing criminal records in the longer term ( <b>recommendation 4</b> ).	<b>Accept in principle</b>	With the NPIA being closed, the arrangements for management and delivery of the Hendon Data Centre Services are under review. In the longer term, further consideration may be needed around alternative options for sharing and managing criminal records..	There are no plans to commence any review work at present but the position can be reconsidered once the police-led ICT Company is fully established and operational.
15	I recommend that Ministers and their Northern Ireland counterparts should reach agreement urgently on how to fund delivery of the PSNI –PNC criminal records and fingerprint connection ( <b>recommendation 5</b> ).	<b>Accept</b>	HO has identified funding to deliver a PSNI/ PNC link project over a two year timeframe. The project will be delivered by NPIA/ PSNI as the joint lead partners.	Initial work to scope project milestones and develop a delivery plan is underway.
16	I recommend that the Government and the police service should move towards a more integrated approach to the administration of criminal records. I further recommend that the scope to expand the role of the DBS over time to provide the customer-facing aspects of a range of disclosure services should be explored ( <b>recommendation 6</b> ).	<b>Accept in principle</b>	There is undoubtedly scope to improve the way criminal records are managed across organisations.	This can be explored in the light of the planned changes to the organisational landscape, including the winding down of the National Policing Improvement Agency, the establishment of a new police-led ICT Company and the creation of the DBS. The potential for the DBS to interface with customers across a wider range of disclosure services warrants further examination.
17	I recommend that:  (i) Access to criminal records via the Police National Computer should only be granted where it is necessary for public protection or criminal justice purposes. (ii) All such access should be agreed by the Police Information Access Panel (PIAP), based on appropriate business cases and supply agreements. (iii) All existing supply arrangements should be reviewed within the next 12 months to check they conform to the standards set by PIAP ( <b>recommendation 7</b> ).	<b>Accept</b>	Police service will lead on this work.	The Home Office is consulting with the ACPO lead for PNC and Disclosure to agree how this recommendation should be taken forward.



18	I recommend that the systems for individuals to access, challenge and correct their own criminal records should be maintained and better publicised ( <b>recommendation 8</b> ).	<b>Accept</b>	Police service will lead on this work.	The Home Office is liaising with ACPO about delivery against this recommendation.
19	I recommend that the comprehensive and easily understood guidance which I advocated in my phase 1 report should extend to broader aspects of the criminal records system, such as definition, retention and access ( <b>recommendation 9</b> ).	<b>Accept</b>	Further consultation with OGDs and stakeholder organisations is necessary to take forward the programme of work to consolidate and revise guidance materials.	Rationalising and improving existing guidance will be a significant task. However, costs will be absorbed across the various departments and agencies involved. The challenge will be to produce guidance which covers the necessary ground whilst being as short, focused and user-friendly as possible.
20	<p>I recommend that Ministers commission further work to review and update the cross-Government strategy for improving the international exchange of criminal records. This should include consideration of the following elements:</p> <p>ensuring the transfer of fingerprint records with criminal records as often as possible (particularly with EU Countries) (<b>recommendation 10i</b>), and;</p> <p>ensuring greater levels of notification of criminal offences committed by British citizens outside the EU (<b>recommendation 10ii</b>), and;</p> <p>looking at whether more can be done to prevent the entry of foreign nationals who have committed serious offences abroad and who present a serious risk to public protection (<b>recommendation 10iii</b>), and;</p> <p>seeking agreements to allow the CRB to obtain criminal records from a person's country of nationality where the applicant and employer request this as part of the CRB disclosure process and where adequate safeguards can be put in place (<b>recommendation 10iv</b>) and;</p> <p>developing a coherent and consistent cross-government policy setting out the circumstances in which foreign governments should be told about the convictions of their nationals and ensuring that all UK agencies adhere to it (<b>recommendation 10v</b>), and;</p> <p>allowing British residents to obtain a standard CRB certificate when applying for a post abroad that would be excepted from the ROA if it was in the UK, and for a check of the barred list to be made where it would have amounted to regulated activity (<b>recommendation 10vi</b>),</p>	<p><b>Accept</b></p> <p><b>Accept in principle</b></p> <p><b>Accept in principle</b></p> <p><b>Accept in principle</b></p> <p><b>Accept in principle</b></p> <p><b>Accept in principle</b></p> <p><b>Consider</b></p>	<p>A programme of work will be developed and taken forward in conjunction with the Independent Advisor.</p> <p>The ACPO Criminal Records Office (ACRO) are already doing much work in the EU to this end and we are starting to see the benefits.</p> <p>Reaching agreements with other countries can be challenging, but the benefits to public protection make this a worthwhile goal.</p> <p>Some pilot work is already underway with UKBA.</p> <p>We are already working towards a pilot of such an arrangement with Australia.</p> <p>This is a sensible aspiration, but it is a difficult area of policy which is covered by a range of international treaties and agreements.</p> <p>This needs more</p>	<p>A key element of the work will be establishing the costs of the recommended measures, defining the benefits and considering how they can be afforded.</p>

	<p>and; ensuring that existing and developing initiatives in this area are adequately resourced (<b>recommendation 10vii</b>).</p>	<p><b>Accept in principle</b></p>	<p>consideration, particularly to ensure our citizens are not put at an unfair disadvantage.  Any new initiatives need to be fully costed and appropriate funding mechanisms identified.</p>	
--	--	-----------------------------------	--	--



**Home Office**

ISBN: 978-1-84987-618-6  
Published by the Home Office  
© Crown Copyright 2011