



HOME OFFICE

# **DISCLOSURE OF CRIMINAL RECORDS FOR EMPLOYMENT VETTING PURPOSES**

**A Consultation Paper by the Home Office**

September 1993

LONDON : HMSO

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Presented to Parliament by the  
Secretary of State for the Home Department  
by Command of Her Majesty

September 1993

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# Disclosure of Criminal Records for Employment Vetting Purposes

## Summary

- The paper reviews the history and the basis for the present policy of disclosing information from criminal records for employment and related vetting purposes.
- It discusses the conflict between public expectations that all reasonable steps will be taken to protect vulnerable members of society and the rights of individuals to live down previous convictions. It raises questions about the disclosure of non-conviction information including acquittals.
- It describes existing arrangements and the growing pressures on them. These include the burdens imposed on the police and pressures for vetting to be extended into new fields.
- It draws attention to the limitations of criminal record checks as a reliable method of selecting staff, and some of the dangers of misuse of the present arrangements. It recognises that checks nonetheless have a deterrent value, and that there is an increasing expectation that they will be part of the selection process in a widening area of occupations.
- It discusses the implications for vetting arrangements of the planned computerisation of the national criminal record.
- It discusses the problems of securing checks on individuals from other countries, and possible ways of mitigating these.
- It considers the implications for the operation of the Rehabilitation of Offenders Act of changes to the vetting system.
- It suggests reformed arrangements for vetting based on the following proposals:
  - legislation* to set the framework and criteria for vetting;
  - an *independent self-financing agency*, which might be privatised, to administer vetting arrangements, principally through access to the new computerised Criminal Justice Record Service (“Phoenix”);
  - charges* to be levied for checks;
  - disclosure to the individual* in the first place, rather than direct to the prospective employer;
  - more stringent conditions for the disclosure of *non-conviction information*;
  - that exceptions under the *Rehabilitation of Offenders Act* be brought into line with vetting criteria.
- It invites comments on these proposals, which should be sent by **31 December 1993** to:

**Box No. 30  
F2 Division  
Home Office  
50 Queen Anne’s Gate  
London SW1H 9AT**

## Questions Posed by the Consultation Paper

- Question 1:** Is it accepted that access to official collections of criminal records, including records solely of convictions, should in principle be restricted?
- Question 2:** Should any non-conviction information continue to be disclosed for the protection of children? Should it be disclosed in any other contexts?
- Question 3:** Should non-conviction information include certain categories of acquittals or cases not proceeded with, as well as other factual “intelligence”?
- Question 4:** Should minor convictions and cautions continue to be disclosed?
- Question 5:** What should be the broad criteria for authorising criminal record checks and what level of check would be appropriate in each circumstance?
- Question 6:** Should users be charged the full cost of vetting checks, and if so how should checks in the voluntary sector be financed?
- Question 7:** Should individual application become the basis of a new system of vetting?
- Question 8:**
- (a) Who should handle vetting enquiries?
  - (b) Is there a role for a vetting agency and, if so, what should its functions be?
  - (c) Should the vetting function be privatised?
- Question 9:** Would the exclusion of local record information from any and all categories of employment vetting significantly reduce the value of checks?
- Question 10:** Is legislation desirable:
- (a) to set out those areas in which criminal record checks would be appropriate?
  - (b) to define what criminal record information might be released in various contexts?
- Question 11:** Is the current range of exceptions to the Rehabilitation of Offenders Act so wide as to undermine the Act’s effectiveness? Should the exceptions be the same as those areas of employment etc, which would also be subject to criminal record checks? Or should they be narrower and include only the most sensitive employment categories?
- Question 12:** Should a national vetting body, if one were to be established, be prepared to acquire information on the practice in some other countries with regard to criminal record checks, and investigate the possibility of reciprocal arrangements with some of those countries?



## Introduction

1. Disclosing information held on individuals by the police raises questions about the balance which society wishes to strike between the rights of its individual members and the wider public interest. Existing arrangements for disclosure from the criminal record for employment vetting purposes are inconsistent and have been criticised on civil liberties grounds. They are also under a variety of pressures. They place a substantial and growing burden on the police yet there are continual demands for new areas of employment to be subject to vetting. In 1990 the House of Commons Home Affairs Committee commented adversely on the present arrangements and the Government has acknowledged the need for a review.
2. This paper therefore considers the current arrangements in England and Wales, outlines the pressures on the system and explores the options for new arrangements. Questions are posed on certain points, and comments invited.
3. The paper does not deal with vetting arrangements in Scotland and Northern Ireland, nor does it cover vetting for national security purposes.

## Criminal Records: What they are and how they are Held

4. Criminal records are created by the police with the primary objective of detecting crime, and assisting the criminal justice process. They may contain information about individuals with regard both to convictions and what may loosely be termed "intelligence". They were not designed for vetting purposes, which is likely to remain a subsidiary function.
5. Existing criminal records are fragmented and only partially computerised. They may be held in a variety of ways:
  - (i) **National criminal records** contain details of anyone convicted of a "reportable" (ie generally an imprisonable) offence, and of anyone currently charged with such an offence. There are over five million of such records and they are held on microfiche at the **National Identification Bureau (NIB)** at New Scotland Yard. In addition the **Police National Computer (PNC)** contains a Names Index of the microfiche record, plus details of all reportable convictions committed by individuals who first "came to notice" (ie had a criminal record file opened on them) since 1 January 1981. Anyone who first "came to notice" before 1981 would however continue to have all records on them held on microfiche, including post-1981 information. A vetting check of the national record would normally involve a PNC check for the name and, if a "trace" were revealed, a request to NIB for details held on microfiche, which would help to establish identity, as well as giving some non-conviction information.
  - (ii) **Local records** are held by most (but not all) of the 43 police forces in England and Wales. They may contain details of "minor" (non-reportable) convictions, as well as cautions, bind-overs and other relevant information of an intelligence nature including, in some instances, information on acquittals. Local records vary widely in form, content, and the manner in which they are held and accessed. Some forces hold them at headquarters on computer, while others still hold them at area or divisional stations on card indexes.

6. In general, checks which involve a search of local records are more time-consuming and labour-intensive than those which require a check only of national records. This is especially true if checks on one individual have to be made in more than one force area, for example because the person has lived in different parts of the country.

## Present Policy on Disclosure from the Criminal Record

**History and principles** 7. Arrangements for discretionary disclosure have been developed in a series of Home Office circulars which are summarised at ANNEX A. A working party of chief officers of police under the chairmanship of the Home Office, stated in 1954:

“It has been a fundamental rule that police information should not be used except for the purposes for which it was acquired, and therefore that it should not be disclosed to persons in authority, however responsible, other than those concerned with police functions, unless the consideration of public interest is sufficiently weighty to justify departure from this general rule.”

Later the same report concluded:

“A person who has served his sentence or otherwise paid the penalty for a crime should not, by official action, be placed in a position where he finds it impossible to rehabilitate himself and build a new and honest life.”

These principles have continued to underpin policy.

8. A review of the policy on disclosure from police records was carried out in 1973 by a working party of the Home Office and the Association of Chief Police Officers (ACPO). It drew up three criteria for defining when the public interest required disclosure against the normal presumption of confidentiality. These were:

- (i) national security;
- (ii) the protection of vulnerable members of society;
- (iii) the need to ensure probity in the administration of the law.

9. The principle of confidentiality together with these three exceptions from it remain the formal statement of policy. In practice, however, the picture is more complicated. In recent years there has been a growing use of criminal record checks in support of statutory provisions which require a public employer or licensing authority to establish whether people are “**fit and proper persons**” to hold certain kinds of licences or fulfil certain tasks. (The police have always resisted the notion that the existence of a statutory “fit and proper” person requirement should automatically entail the disclosure of criminal records, and look at each case on its merits.)

10. In addition there are a few local and national schemes, which have no statutory basis, in which the police provide criminal record checks for certain categories of private employment. Recent examples are schemes which exist in some areas for vetting nightclub doormen, and the scheme, which has national coverage, to vet employees of firms which install burglar alarms. The criterion which underlies many of these schemes is **crime prevention**, rather than one of the three criteria identified in 1973.

**ACPO Standing  
sub-Committee on  
Disclosure**

11. In order to provide consistency in the application of policy on the disclosure of criminal records, a Standing sub-Committee of ACPO meets at regular intervals to review policy and to consider requests for new proposals for vetting made by outside bodies or individual police forces. These arrangements do not preclude individual forces establishing particular local schemes where they see the need, although such local schemes are rare. In all instances the decisions - both on policy and on individual disclosure - are ones for chief officers, and Ministers have no powers to intervene.

**Who is subject to  
vetting?**

12. In 1973, outside the field of national security, there were only six national categories of person subject to vetting in addition to various statutory provisions allowing checks to be made on applicants for licences administered locally. There are now over 20 national categories. Those relating to employment are listed at ANNEX B. Their origins are mixed. Some are based on statute and others reflect policy agreed between Government Departments and ACPO. By far the largest single category is those working with children (see below).

**Child protection  
arrangements**

13. In 1983 a four year old child was abducted from the street outside her home, sexually assaulted and murdered. During the subsequent investigations it became clear that the murderer had been able to obtain voluntary work as a baby-sitter, despite a long criminal record of serious offences against children. An interdepartmental working party was established which recommended that local authorities and health authorities should be able to obtain from the police information about prospective employees who would have substantial opportunity for access to children. Despite the origins of its work, the working party made no recommendations about the voluntary sector because of the numbers involved and the practical difficulties, but it proposed that further work should be done on how the arrangements could be extended to voluntary groups.

14. The recommendations were implemented in 1986. Since that time vetting checks have been made on most public sector applicants for work involving substantial access to children, and on volunteers directly engaged by public sector bodies. They include, among others, categories as diverse as teachers, school librarians, caretakers, staff in children's homes and paediatric nurses. Vetting was later partially extended to those caring for children in the voluntary sector and will shortly apply to staff in registered voluntary and private residential homes. However with these exceptions much of the voluntary sector, and the remainder of the private sector (except for adoption and fostering, for which vetting has been provided for many years) do not have direct access to checks.

**What is disclosed?**

15. Home Office circulars since 1973 have described police vetting reports as "reports on character" and suggest that the matters disclosed should include:

- (i) past convictions;
- (ii) cases pending;
- (iii) other factual background material, such as, for example, might be admissible in a court.

16. In amplification, Home Office Circular 45 of 1986 (which was issued in response to concerns about child abuse - see above) suggested that where the person subject to vetting would have substantial access to children the factual background information should include "**details . . . of any recorded cautions<sup>1</sup>, or bind-over orders and, where readily accessible,**

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<sup>1</sup>A caution may be given by the police, instead of mounting a prosecution, when there is evidence of the offender's guilt, sufficient to give a reasonable prospect of conviction, and the offender admits the offence unequivocally.

**cases recorded as detected where no proceedings were taken.”** This was further elaborated in Circular 102 of 1988 to include **“acquittals or decisions not to prosecute where the circumstances of the case give cause for concern.”**

17. Some actual examples of the kind of general non-conviction information which has, rightly or wrongly, been disclosed in the past are:

- (i) that the subject was known by the police to be a member of a paedophile ring;
- (ii) that the subject owned a house frequented by known drug suppliers;
- (iii) that the subject had been accused of child abuse, but the charge was dropped because it was believed the evidence would not stand up in court in view of the young age of the children concerned;
- (iv) an onward referral to social services where the subject had been on the “at risk” register as a child (on the grounds that abused children have a higher chance of becoming abusers themselves in adulthood).

**How is the check conducted?**

18. The prospective employer is expected to take appropriate steps to establish an applicant’s identity. Requests for checks are made through local police forces who will consult both their own records and the national record through New Scotland Yard. In the case of child-related employment checks only, the police are also expected to seek information from any other police forces in whose area the person may have lived at any time during the past five years. If there is a positive trace the precise procedure varies from force to force and depending on the category of vetting. For child-related employment checks the procedure is fairly standardised. A form is completed listing any previous convictions or cautions recorded locally or centrally and this is sent to the employer. In addition, any further information of the kind discussed in paragraph 16 may be passed on. All information is provided subject to a qualification that “without fingerprint identification police cannot say definitely that the convictions relate to the individual”. Some forces offer a fingerprint check in cases of doubt or dispute. The police have assumed this whole task at some considerable cost to themselves, but at no charge to those requesting the checks.

**To whom is the information given?**

19. The police are concerned to ensure that the confidentiality of the criminal record information is preserved by recipients under the vetting arrangements, and this has been one constraint on making criminal record checks more widely available.

20. The Home Office circulars set out to whom information should be given. This includes nominated officers in the local social services, education, probation and health services, and contact points in various other national and local organisations. When checks are conducted on people in the voluntary sector the information is channelled through the Voluntary Organisations Consultative Service (VOCS) and is passed on to those responsible for recruitment in the individual voluntary agencies. Similarly information on teachers in private and opted out schools is channelled through the Department for Education and is passed on to the schools themselves.

21. The circulars advise that where there are discrepancies between information provided by the applicant and that in the police record the prospective employer should discuss the matter with the applicant. However, non-conviction information is often communicated by telephone and the subject does not therefore have an opportunity to see the precise terms of the information. There can be no guarantee that in all cases the applicant will be given the opportunity to challenge what is said about him.

**On-going reporting of convictions and cautions**

22. Arrangements also exist, and are set out in Home Office Circular No 45/86, for the police to report to employers or other responsible bodies when convictions are received by child-care workers and some other categories such as civil servants, doctors, dentists, barristers and magistrates. Some of these categories are not subject to criminal record checks on appointment, and some of the categories liable to criminal record checks on appointment are not liable to have new convictions reported. A further anomaly is in the reporting of new cautions, for which some categories are liable and others not. There is a case for putting the reporting of new convictions and cautions onto a more logical footing.

## **Resource Implications of Existing Vetting Arrangements for the Police**

**Numbers of vetting checks annually**

23. The estimated numbers of vetting checks made in the year to 31 March 1993 are:

**Child protection**—around 665,000 (not including additional checks with other police forces where an individual had lived in more than one area for the previous five years). This is an increase of around 23% on the previous year.

**Taxi and mini-cab drivers**—around 97,200 of which 18,200 were for the Metropolitan Police.

**Others** (excluding national security)—are believed to number around 150,000.

With the exception of London taxi drivers, the checks on other taxi and mini-cab drivers were new for this year, and taken with the increase in child protection checks show additional checks for 1992/3 numbering over 200,000, or about 30% more than in the previous year.

**Costs**

24. The police have had to absorb the costs of vetting because the lack of a statutory power to charge has prevented them from raising charges to recoup the cost to them of providing this service to other agencies. It is a substantial and growing burden. It is not possible to obtain accurate figures of the total cost to the police of all the checks performed nationally. Estimates of marginal costs to the police are between £2 and £4 per check but full costs will probably be much greater. It is to be expected that costs per record check will vary between police forces depending on the state of their own record system if they have one, and whether they use police or civilian staff to process the checks.

25. The Metropolitan Police have however carried out a costing exercise on the checks in 1992, and found that

- the average cost of a **national record check** was **£11.83** (this does not however include an element for the use of PNC equipment);
- the average cost of a **full records check** (involving local as well as national records) was **£14.67** but this did not include costs incurred by other forces to whom the request might be passed if the person has lived outside the Metropolitan Police area. If these are added in, the new full cost is in the region of **£17.20**.

26. These checks are carried out largely by civilian staff. If the costs are taken as representative of forces nationally, then it seems that the real costs of the present vetting arrangements referred to above are around **£14m** per year to the police alone. Further costs are incurred by the local authorities and other organisations who request checks. A study<sup>1</sup> in 1992 estimated that the average full cost of handling a check in the voluntary sector was **£15.50**.

<sup>1</sup>*Criminal Records Checks within the Voluntary Sector—An Evaluation of the Pilot Schemes*: Dr Judith Unell, The Volunteer Centre UK, 1992.

## **Pressures on the present system**

27. The rapid growth in numbers of child protection checks following the 1986 circular has meant that back-logs of up to several months' worth of vetting checks have now grown up in a number of police forces despite the police having taken on extra staff for this purpose. The volume of checks is such that the police have felt unable in present circumstances to accept a proposal that there should be a "fast track" system for speedy processing of checks on some categories of staff.

## **Pressures for Change to Existing Vetting Arrangements**

28. There are a variety of factors exerting pressure for extension of existing disclosure arrangements. They can be summarised as follows:

- (i) **pressure to equalise the treatment of child care workers in all sectors.** The inequity in the application of checks in the child care sector has been referred to above (paragraphs 13 and 14) and is described in greater detail in ANNEX C. It is logically indefensible save on resource grounds;
- (ii) **pressure to extend criminal record checks to those caring for other vulnerable groups,** such as the elderly and adult mentally handicapped;
- (iii) **pressure to extend checks for "fit and proper persons" in a variety of licensing and other contexts.** There are many provisions requiring a licensing or employing authority to apply a "fit and proper person" test, but they do not automatically entail a criminal record check unless this is specified in statute (ANNEX D lists the groups on which checks have been sought but refused in recent years);
- (iv) there are also areas where vetting is advocated essentially as a **crime prevention measure,** eg on employees of private security firms.

## **How Useful are Criminal Record Checks?**

29. The high level of demand for criminal record information is not necessarily a reliable indicator of its value as a predictor of future criminal behaviour. Vetting is at present free to users who have not therefore needed to consider the cost-effectiveness of the process. Many organisations, especially in the child protection field, carry out checks as much to demonstrate that they have taken all reasonable steps to protect those in their care as to add useful information to what they already know about their applicants.

30. The likely **benefits** of criminal record checks are clear. They are likely to deter many of those with a relevant record from even applying for certain posts. The checks also help identify those applicants who because of their criminal background are likely to be unsuitable or pose a risk. They also provide some reassurance to the public.

31. Criminal record checks, however, also have a number of **disadvantages:**

- (i) **they tell only a small part of the story.** Because of the process of attrition within the criminal justice system, the criminal record represents only a tiny fraction of the offences which have been committed. Many of the most disturbing cases recently have involved people with no previous convictions;

- (ii) **they are poorly targeted.** A research evaluation of criminal record checks within the voluntary sector<sup>1</sup> pointed out that whereas 98% of sex offenders were male, 68% of those checked in the projects researched were female. 7.4% of the checks made proved positive, but in the overwhelming majority of cases the organisation concerned decided to take the individual on anyway;
- (iii) **the results may be arbitrary.** Different employers may take different views about the significance to be attached to particular offences;
- (iv) **they can lead to complacency** and a misguided assumption by employers and managers that their staff are “safe”. This can result in a failure to implement other recruitment and management safeguards such as following up references with care, or providing supervision for new staff;
- (v) **they prejudice those who have not been checked.** Some authorities have refused to allow unchecked volunteers near children for whom they have responsibility;
- (vi) **they may be worthless unless proper steps are taken independently to verify identity.** Given that fingerprints are not used to establish identity, checks can be, and have been, subverted by a determined subject who has concealed his real identity. Similarly, there have been many cases of mistaken identity where convictions have been attributed to innocent people;
- (vii) **they may deter people from applying for posts for which they would be quite suitable.** They may be so embarrassed at the prospect of revealing irrelevant convictions that they seek employment in other fields;
- (viii) **they raise civil liberties concerns** especially where disclosure is made of non-conviction information.

## **1990 House of Commons Home Affairs Committee Report on Criminal Records**

32. In 1990 the Home Affairs Committee conducted a short enquiry<sup>2</sup> into the maintenance and use of criminal records, in which it looked at the question of vetting. It concluded:

“ The current arrangements do not provide a satisfactory mechanism for making records available. The Data Protection Registrar rightly notes that they put Chief Police Officers ‘in a difficult position’, being subject to pressure in deciding ‘what are effectively matters of broader public interest’. The fact that 51 police forces might permit access in a haphazard and unaccountable manner has worrying implications for the liberty of the individual. We believe that if the public were more aware of these arrangements, there would be an outcry. There is no element of accountability in the present arrangements and no guarantee of national consistency ” (paragraph 21).

“ The present system places an unnecessary burden upon police forces. It requires them to decide exactly to whom records are given and what information to give. We propose that they should be relieved of this burden. Parliament should decide by passing new legislation, to whom, outside the police and criminal justice system, records should be available and under what circumstances. The new agency should

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<sup>1</sup>Unell, 1992.

<sup>2</sup>Home Affairs Committee Third Report, session 1989–90 HMSO, 3 April 1990.

provide the records rather than the police forces. This would ensure that only accurate information about recordable offences would be included. Minor offences, cautions and intelligence information would be excluded. We therefore recommend that, prior to the computerisation of the National Collection of Criminal Records, legislation is introduced to establish an agency independent of the police to maintain that collection. The legislation should include the following provisions:

- (a) the new agency alone should be responsible for providing criminal records for vetting purposes;
- (b) only records relating to recordable offences in the National Collection should be made available for vetting purposes;
- (c) the principles should be laid down to govern to whom criminal records should be made available and under what circumstances;
- (d) a board should be established, including the Data Protection Registrar, to advise on access to records and other matters relevant to the work of the criminal records agency;
- (e) statutory time limits should be set for the provision of information to the agency by police forces and court clerks;
- (f) the new agency should be responsible for the national collection of arrestees' fingerprints and a national collection of DNA "profiles" (paragraph 41).

33. The Committee proposed that the new agency should be funded by fees levied on users of vetting information.

## **The 1991 Efficiency Scrutiny of Criminal Records**

34. In 1991 an Efficiency Scrutiny<sup>1</sup> of the criminal record system was carried out. The Scrutiny took much the same view as the Home Affairs Committee on the question of an independent agency, but took a more robust view of the necessity for vetting. Among its recommendations were the following:

- (i) access to vetting should be centralised and handled through an independent agency, financed by fees from applicants, and based around the proposed computerised national criminal records system (NCRS);
- (ii) Child protection arrangements should continue but the definition of "substantial opportunity for access to children" should be more closely circumscribed in order to minimise the range of such posts subject to vetting;
- (iii) The categories of those liable for vetting should be rationalised and expanded, so that in addition to existing categories, vetting should be permitted where:
  - organisations operating in the voluntary and private sectors perform essentially the same functions in relation to vulnerable persons as those operating within the statutory sector which have access to checking;

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<sup>1</sup>*The National Collection of Criminal Records: Report of an Efficiency Scrutiny*: Home Office, 1991.



- posts involve the care of other vulnerable groups, such as the elderly and the mentally and physically disabled, where circumstances subject them to risks against which they cannot adequately protect themselves;
  - there is a licensing or “fit and proper person” requirement acknowledged by Parliament;
- (iv) non-conviction information should continue to be made available under the child protection arrangements;
- (v) exceptions under the Rehabilitation of Offenders Act should be brought into line with the categories of sensitive posts for vetting purposes;
- (vi) the Crown Prosecution Service should add to the record certain categories of acquittals or cases not proceeded with in the area of child abuse, where it was judged that there was some likely element of guilt on the part of the individual;
- (vii) legislation should be considered to prescribe the scope of vetting; and
- (viii) until these arrangements were in existence, there should be no further expansion of vetting because of the burden which was placed on the police.

35. In anticipation of the full computerisation of police criminal records under the NCRS (now known as “Phoenix”) there has been an embargo since December 1991 on adding further categories of people liable to vetting. It has not however been possible to maintain an absolute ban on further additions and certain groups have continued to be accepted as “exceptional”. Examples are checks on taxi and mini-cab drivers following the Road Traffic Act 1991, and the checks which the police have agreed to undertake on staff in voluntary and private residential children’s homes in the light of recommendations in the Warner Report.<sup>1</sup>

## **Prospects for the Future Scope of the Computerised Criminal Justice Record Service (“Phoenix”) for Vetting**

36. The first stage of Phoenix will go live early in 1994. This will allow forces to create, update and read criminal records on line to the Police National Computer. As the database builds up over time it will become increasingly comprehensive. However, the information it will be able to provide for the first few years will be significantly less than that available under the existing vetting arrangements. In particular:

- (i) Phoenix may not contain details of all the reportable convictions currently held by NIB. All new reportable convictions will of course be entered and there will be an extensive programme of back record conversion of existing convictions. But until further work has been done on the technology of back record conversion and the resources required, it is not possible to say whether all records of reportable offences will be entered on Phoenix or only a percentage of them;
- (ii) details of minor, non-reportable, convictions, currently held on local criminal records are unlikely to be held on Phoenix for some years, and there will probably be no back record conversion of these;
- (iii) the non-conviction “intelligence” information currently held mainly on local records will not on current plans form part of Phoenix.

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<sup>1</sup>The Report of the Committee of Inquiry into the Selection, Development and Management of Staff in Children’s Homes: HMSO, 1992.

37. It is not certain that Phoenix will provide a comprehensive "one stop" system of vetting even from national records in the immediate future, since if some records of reportable offences are not entered on the system reference to the microfiche will continue to be necessary to establish identity and to obtain other relevant information. Where local record information was required, that would have to be accessed separately. Whether or not non-conviction information should continue to be used for vetting is discussed in paragraphs 49-55 below.

## **The Data Protection Act 1984 and the Possible Implications of the Draft EC Data Protection Directive**

38. The Data Protection Act gives individuals the right to know what is held about them on computer. This is called "subject access". There is evidence that some employers and licensing authorities are requiring applicants to exercise their right of subject access to criminal records and to disclose their record, before deciding whether to give them a job or a licence. This is known as "enforced subject access".

39. At present this process is of limited value to employers because of the incomplete nature of the information currently available on computer. However once Phoenix is fully operational and some measure of back record conversion has taken place, and when additional "fields" such as minor convictions and cautions have been added, the value of subject access enquiries to Phoenix in the employment context will steadily increase.

40. Enforced subject access, if widely practised, would make it harder for former offenders to obtain work, especially as **all** former convictions are revealed in response to a subject access enquiry, including those which are "spent" under the Rehabilitation of Offenders Act.

41. Present government policy is to discourage the practice of enforced subject access enquiry to criminal records, because it is abuse of a right conferred by Parliament on individuals for other purposes. Although legislation to outlaw enforced subject access has been considered, it is thought that it would be difficult to enforce.

42. The European Community has for some time been considering a **Draft Data Protection Directive**<sup>1</sup>. Its rationale is to secure an equivalent level of data protection in all Member states in order to guarantee free movement of personal data across the internal frontiers of the Single Market. It allows individuals a general right of subject access to data held about them. At the time of writing, it is unclear whether the Directive would apply to the use of police records. If it did apply, then as currently drafted it would:

- (i) apply to data held manually as well as on computer (though with limited safeguards to protect sensitive intelligence information in the interests of crime prevention etc);
- (ii) require that data concerning criminal convictions be held only by judicial and law-enforcement authorities and by the subjects or their representatives, unless exemptions are specified by legislation;
- (iii) allow an individual to refuse a request amounting to enforced subject access.

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<sup>1</sup>(SYN 287) COM (92) Final

43. The draft Directive is still being negotiated by EC member states. At this stage, it is not possible to say when it is likely to come into force.

## Certificates of Good Conduct - Practice in Other EC Countries

44. In most other countries of the European Community it is already common practice to use criminal records as a basis for obtaining “certificates of good conduct” (see ANNEX F, which is based on information supplied in the 1991 Efficiency Scrutiny Report), although the details of this practice vary considerably.

45. It is most common for this to be done on the initiative of the individual concerned, who will apply to whatever authority holds the criminal records for a statement indicating either that they have no criminal record, or what their record consists of. The certificates are of varying value, depending on the completeness of the criminal records on which they are based, and the thoroughness with which the individual’s identity was verified in the first place. In several countries, however, the identity is established by the individual’s fingerprints or their identity card.

## Policy Issues

46. The existing arrangements for police checks are so obviously muddled and under so much pressure that perhaps the one obviously unsatisfactory course is **to maintain them unchanged**. The next section of the paper discusses a number of general issues of policy and invites comments on them.

### **An open record of convictions?**

47. Against a background of, on the one hand, increasing pressure for access to criminal records, and on the other an increasingly meaningful right of subject access, is there any sense at all in restricting access to information about convictions? Since a criminal conviction is a matter of public record when a person is found guilty, why not make records of convictions open to anyone willing to pay a fee to consult them?

48. The argument for a closed record is essentially to do with rehabilitation. Those who have a criminal record need to be given a chance to reform and to live it down. An open conviction record would make this more difficult, and in particular would reduce ex-offenders’ chances of getting work. 35% of men and 8% of women will have a criminal record of some sort by the age of thirty-five<sup>1</sup>, and common sense suggests that an ex-offender with suitable work is less likely to re-offend than one who is unemployed. We all, therefore, have an interest in not placing unnecessary burdens in the way of ex-offenders finding work.

**QUESTION 1:** *Is it accepted that access to official collections of criminal records, including records solely of convictions, should in principle be restricted?*

### **Acquittals and other non-conviction “intelligence”**

49. Paragraphs 15 to 17 discussed the arrangements for disclosing “intelligence” information. As the numbers of those affected has steadily increased, this practice merits close scrutiny.

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<sup>1</sup>Digest of information on the Criminal Justice System in England and Wales: Home Office, 1993.

50. **In favour** of disclosing such information it is argued that it can alert prospective employers to individuals about whom there is an indication of risk, particularly where they would be responsible for children. In the area of child abuse, in particular, it is notoriously difficult to secure convictions even where there is a good deal of circumstantial evidence. Both the Efficiency Scrutiny and the Warner Report recommended that the practice should continue, although the 1990 Home Affairs Committee Report recommended against it.

51. **On the other hand**, there are civil liberties issues to consider. Is it right that an individual should be denied a job - or a chance to volunteer - on the basis of information which has not been tested in a court; or which has been tested and found wanting?

52. In Scotland, where records of criminal convictions are fully computerised, it is not the practice to pass on non-conviction information for child protection purposes.

53. The 1991 Efficiency Scrutiny Report partially addressed concerns about the present arrangements by recommending that it should be open to the Crown Prosecution Service (CPS), following an acquittal or decision to discontinue proceedings for any charge involving serious violence or sexual assault on a person less than 16 years old, to recommend that the information about the case should be retained on the record.

54. The CPS opposed this recommendation for two main reasons:

- (i) it could "taint" a person's reputation where there had been no conviction;
- (ii) it would be inappropriate for an independent prosecution service to be seen to be involved "in any way in the selection and retention of sensitive information for vetting purposes".

The CPS argued further that if a policy decision were taken to record and in certain circumstances disclose such information, it would be more appropriate for the police to do so, as a matter of criminal intelligence, than the CPS. It is understood the police would be willing to continue doing so, and this paper therefore proceeds on the assumption that if the practice continues, it will be the responsibility of the police rather than the CPS.

55. The Warner Report recognised the problems surrounding the supply of non-conviction information, but recommended nonetheless that, "because of the overriding public interest argument where the safety of children is concerned, further consideration be given to the matter."

**QUESTION 2:** *Should any non-conviction information continue to be disclosed for the protection of children? Should it be disclosed in any other contexts?*

**QUESTION 3:** *Should non-conviction information include certain categories of acquittals or cases not proceeded with, as well as other factual "intelligence"?*

**Minor convictions and cautions held locally**

56. It might be argued that if a conviction is not considered significant enough to record centrally, it is not significant enough to be held against a person in applying for a job or a licence. The countervailing argument is that minor convictions may show attitudes or behaviour which suggest that a person would be a risk in certain occupations. For example convictions for kerb crawling, prostitution, and possession of indecent photographs, would not be recorded centrally. All might be held to reflect on a person's suitability to work with children and, perhaps, for other occupations.

57. The arguments about cautions are different. A caution may be given for relatively serious offences - for example theft - and only when the person makes an unequivocal admission of guilt and there is adequate independent evidence to sustain a prosecution. Cautions may be cited in court. It is Government policy to increase the use of cautions, and cautions for certain offences will be recorded on Phoenix. On the other hand cautioning is an administrative procedure. There is no "due process" and no objective testing of the facts. A person may accept a caution without considering the full implications, and in circumstances where he might not have been convicted if the case had gone before a court.

**QUESTION 4: *Should minor convictions and cautions continue to be disclosed?***

**Categories of employment liable to vetting**

58. Few would dispute that, despite its limitations, vetting has a proper role to play in certain fields of employment, but equally there would be little support for vetting checks to be universally available to employers. Between these extremes there is no clear consensus as to where the balance should be struck.

59. ANNEX D sets out a list of areas of employment on which disclosure has been refused in recent years. One approach would be simply to consider including those groups which seem more "deserving". However, experience suggests that it is better, and more defensible, to continue to set out broad objective criteria for disclosure, within which decisions will have to be made on a case by case basis.

60. The **general principles** set out in 1954 (paragraph 7) continue to have validity, but might be paraphrased for modern circumstances as follows:

- (i) information gathered by the police should normally be used only for policing purposes;
- (ii) criminal record information should normally remain confidential and not be disclosed except to subjects within the terms of data protection principles;
- (iii) due consideration should be paid to the rehabilitation of offenders;
- (iv) the three principles above should be departed from only where justified by the general public interest.

61. The key question, therefore, is how to define **the circumstances in which the public interest is considered to outweigh the general principles of confidentiality**. If the case for widening the scope of vetting is accepted, it is proposed that the three recognised existing criteria should continue to apply, supplemented by certain new ones. The three existing criteria are as follows:

**National security**

- government security vetting etc;

**Probity in the administration of the law**

- vetting of police officers, appointments to the judiciary and magistracy etc;

**Protection of the vulnerable**

- the existing arrangements should be extended to apply to child care in the voluntary and private sectors, and to those caring for vulnerable adults (elderly or disabled etc); in all these cases the posts for checking should be those where the individuals being checked would have **substantial unsupervised access on a regular or sustained basis to vulnerable individuals**.

In addition, **the following new criteria might be added:**

### **“Fit and proper persons”**

- licensing and other “fit and proper person” requirements **acknowledged by Parliament**, including those where police checks are not specified in the legislation, eg registered school inspectors, charity trustees, etc.

### **Protection of national treasures**

- posts in premises administered by the Museum and Galleries Commission and by the Historic Royal Palaces Agency.

### **Investigation of crime**

- disclosure to non-police governmental prosecuting authorities (Inland Revenue, Customs and Excise etc) to assist the investigation of crime.

### **Crime prevention**

- this would need to be circumscribed so as not to open the floodgates to a very wide range of checking demands. The main criterion should be that there was a clear **public** interest at stake and evidence of a **serious risk to members of the public**.

62. If it were eventually decided, and possibly enshrined in legislation, that disclosure of criminal records should take place within criteria of this sort, the detailed interpretation of them would probably have to be left to a body equivalent to the present ACPO sub-committee or - if a vetting agency is established - to the advisory board of that agency.

**Levels of check** 63. For the majority of these groups, it should be sufficient to provide information about nationally held convictions. For posts involving work with the most vulnerable, local record information, possibly including non-conviction information, could also be revealed, if it was concluded that this should still be provided (see paragraphs 56 and 57).

**QUESTION 5:** *What should be the broad criteria for authorising criminal record checks, and what level of check would be appropriate in each circumstance?*

**Charging for vetting checks** 64. As indicated earlier, the police are not, under present arrangements, permitted to charge for vetting checks, although they may, and do, charge for subject access enquiries under the Data Protection Act.

65. The fact that vetting checks are free at the point of use precludes users from making any judgement about their cost-effectiveness and about whether the money spent on vetting might be spent to better effect in other ways. It also encourages misuse. There is evidence that some employers have requested checks on all applicants at the short-list stage, rather than the one selected candidate.

66. Additionally, because the police must meet the costs of vetting out of general resources, they are bound to weigh the cost against other resource priorities. That has meant that they have had difficulty in increasing the staffing of criminal records offices sufficiently to keep pace with growing demands (see paragraph 27 above). This in turn causes problems both to employers and prospective employees, and is a further incentive for the kind of misuse described above. A properly structured system of charging could overcome these difficulties and would allow for greater flexibility in response to requests for checks, for example by introducing a ‘priority’ checking arrangement which would ensure an extra fast service in return for a higher than normal fee.

67. There is a question as to whether it would be right to pass on the full, rather than the marginal, costs to all users of the vetting service. If a full charge were to be made for vetting it would need to be of the order of **£12 for a national check and £17 for a full check involving both national and local records**. If an agency were established (see below) it would have to make a full charge since it would need to be fully self-financing out of fee income.

**Possible effects of charging**

68. A charging regime might well stem or reverse the steady annual growth in the numbers of child protection checks sought by users under the present administrative arrangements; although if new areas of employment became subject to vetting under arrangements introduced as a result of this consultation exercise, an overall growth in numbers could be expected.

69. So far as local authorities are concerned, if it is assumed for the present that they would maintain their present volume of child protection checks of around 650,000 annually, then if the amount charged by the police was £17.20 per full record check and this cost had to be met by the employer, the annual cost for local authorities would be around £11,180,000. However, it might be open to employers to require individuals to pay the cost of their own checks (see paragraphs 71-77 below). It is assumed that for the other types of check performed through local authorities for licensing purposes, eg on taxi and mini-cab drivers, the costs of the check could be passed on to the prospective licensee.

70. The voluntary sector has argued that it would not be able to bear the full costs of vetting checks and consideration would have to be given to how checks in the voluntary sector would be financed. Among the options might be

- (i) not to extend vetting further to the voluntary sector;
- (ii) to pass the costs on to volunteers themselves;
- (iii) to finance the checks out of a subvention on all other users;
- (iv) or for the voluntary sector to seek to raise additional charitable funding for this purpose.

**QUESTION 6:** *Should users be charged the full cost of vetting checks, and if so how should checks in the voluntary sector be financed?*

## **Possible New Arrangements for the Conduct of Vetting Checks**

**Individual applications for vetting checks**

71. Under present arrangements, employers normally apply for criminal record checks on behalf of job applicants and receive the police reply. This system raises issues relating to the preservation of confidentiality of the information disclosed, and for this and other reasons, the police would be reluctant to see similar arrangements extended to private organisations. However, a vetting system based on application by the individual concerned could provide the basis of a relatively simple and transparent route for future vetting arrangements for statutory, voluntary and private sectors. Applicants for jobs subject to vetting could be required by a prospective employer to obtain from the police a note of any criminal record relating to them. If they had no record the note would indicate this. People who did not want to pass the information to a prospective employer would be under no obligation to do so but might effectively rule themselves out of contention for particular forms of employment.

72. If the technical systems permitted, it might be possible to ensure that the information disclosed for employment purposes excluded any minor or "spent" convictions. However for child care and other sensitive posts it might be necessary to ensure that "spent" convictions could still be disclosed.

73. Arrangements along these lines would need to be differentiated clearly from enforced subject access in areas of employment which were not recognised as subject to vetting. To this end, it would be desirable that categories subject to vetting were laid down in legislation, and that applicants were required to produce proof (possibly in the form of a letter from an employer) that they had been offered a post which was subject to a vetting requirement.

74. The **advantages** of individual application are:

- (i) it is attractive on civil liberties grounds. Under present arrangements an individual would normally not see the record which the police attributed to him. Individual application would enable individuals to challenge and correct any wrong information immediately, before it reached an employer; this would make it unnecessary for the police to secure indemnities from employers as they do at present;
- (ii) it would conform with practice in most other EC countries;
- (iii) it would provide a simpler means of levying a fee and circumventing other bureaucratic procedures;
- (iv) it would overcome some of the problems associated with the need to preserve the confidentiality of criminal records when they leave police hands.

75. The **disadvantages** are:

- (i) it blurs the borderline between individual application and enforced subject access;
- (ii) it could increase the ease of evasion and fraud by those who had a record which they wished to hide, unless compensatory steps such as fingerprinting were taken.

76. A possible variant on this approach would be for the employer to forward the application for a vetting check, but for the response to be sent direct to the applicant. This would overcome some of the disadvantages of individual application, but could add to the bureaucratic complexity of the arrangements.

77. Whichever system were adopted, it would be important to encourage employers to use criminal record information responsibly, in particular by observing the confidentiality of any information revealed, and by not debarring individuals arbitrarily from employment because of irrelevant previous convictions. **Codes of practice** could be drawn up, perhaps by groups of employers in the various sectors having access to checks, and the vetting body might be empowered to refuse checks on prospective employees of organisations found to be misusing the information disclosed or in breach of their own codes of practice.

**QUESTION 7:** *Should individual application become the basis of a new system of vetting?*

**Who should handle vetting matters?**

78. At present the police "own" the information held on the Police National Computer and in the National Identification Bureau. Disclosure from it is at their discretion. Chief officers of police have an obligation to prevent crime and to protect the community and must always have discretion to disclose information where they judge it to be in the public interest to do so. But there



is no obvious need for them to be routinely involved in vetting decisions, so long as the criteria for disclosure are clear and subject to independent oversight. As Phoenix assumes ever greater importance, the case for removing the vetting function largely or wholly from police forces becomes stronger, and is a development which the police would welcome, provided adequate safeguards were built in to ensure the confidentiality of the record information.

79. Both the Home Affairs Committee and the Efficiency Scrutiny recommended that an independent agency should be established to assume responsibility for disclosing information for vetting purposes.

80. The terms of reference of such a body might be to:

- (i) interpret the criteria for vetting (which might be laid down by Parliament);
- (ii) ensure consistent application of the criteria;
- (iii) be self-financing from the payments received by those requiring checks;
- (iv) access the Police National Computer convictions facility in order to conduct checks;
- (v) process requests to forces for information held manually or on local computerised records;
- (vi) monitor the use of criminal record checks for vetting purposes and report annually on them;
- (vii) observe security and privacy guidelines and data protection principles;
- (viii) debar from access to checking those employers found to be misusing the system in any way.

81. There might have to be arrangements for the vetting body to reimburse police forces for any calls made on their time and resources.

82. The vetting body should be advised by a Board on such matters as the application of the criteria in individual cases or categories, any proposals for changes in the criteria, and the level of fees.

**A public sector vetting agency or a privately run vetting organisation?**

83. Debate in this area has tended to centre on the possibility of a vetting agency within the public sector. However, the possible privatisation of this function also merits consideration. It is not clear that there is any reason in principle why private enterprise should not provide this service more efficiently than the public sector can.

84. There would of course need to be very strict monitoring and controls on any private sector operation in this area, in view of the access to police records which it would entail.

85. Careful consideration would also be necessary of the possible conflicts between perceived public interest issues on the one hand, which may themselves be conflicting and require a careful balance (for example, the tension between protection of individual civil liberties and protection of the vulnerable), and likely private sector interests in expanding a service for which there is a demand and maximising profit, on the other.

**QUESTION 8:**

*(a) Who should handle vetting enquiries?*

*(b) Is there a role for a vetting agency and if so, what should its functions be?*

*(c) Should the vetting function be privatised?*

**The  
comprehensiveness of  
future disclosure  
arrangements**

86. When Phoenix is operational disclosure could take place at two levels:
- (i) national records held by Phoenix supplemented as necessary, or until the completion of back record conversion, by any relevant information held on microfiche by NIB;
  - (ii) as (i) plus information from local records, ie including minor convictions and non-conviction information.

87. The most attractive approach administratively and from the point of view of cost would be to limit the scope to (i) from the outset. This would enable all requests to be handled centrally and by an independent agency, even though recourse to NIB might still be necessary for microfiche information. Local record information of all kinds would however not be made available, and this might be considered inadequate for child protection purposes.

**QUESTION 9:** *Would the exclusion of local record information from any and all categories of employment vetting significantly reduce the value of checks?*

## **Legislation**

88. Some of the changes proposed would require legislation and others might be better enshrined in legislation than left to be resolved in administrative measures.

89. **As a minimum legislation would be necessary**

- to enable the police (or vetting body) to charge for conducting vetting checks.

90. **Legislation might also be desirable:**

- (i) to establish a vetting body;
- (ii) to define the criteria for vetting;
- (iii) to establish those areas of employment on which criminal record information might be sought;
- (iv) to define the type of information that should properly be disclosed in the various contexts.

91. Legislation on these points would have the advantage of setting out clearly what was required and allowed. Some of the detail could be contained in secondary legislation in order to allow changes to be made quickly, when required.

92. Legislation might also be necessary if it were decided that certain exceptions to the Rehabilitation of Offenders Act which are currently set out in statute should no longer apply (see paragraphs 100-102).

**QUESTION 10:** *Is legislation desirable:*

- (a) *to set out those areas in which criminal record checks would be appropriate?*
- (b) *to define what criminal record information might be released in various contexts?*

# Revision of the List of Exceptions to the Rehabilitation of Offenders Act

**Principles** 93. The Rehabilitation of Offenders Act 1974 (ROA) aims to help ex-offenders live down their past. After varying periods of time, depending on the sentence imposed and whether they have re-offended, offenders become rehabilitated and the conviction(s) become “spent”. However, convictions attracting a sentence of more than 2½ years imprisonment never become spent. The Act provides that a spent conviction need not normally be disclosed when a person is asked about his previous record, and a rehabilitated person cannot be prejudiced if the spent conviction later comes to light.

94. The Act has force in England, Wales and Scotland. It applies only to **convictions**. It does not cover cautions, bind-overs, acquittals or discharges etc. The Act does not provide for the erasure of police records, which need to be complete for criminal investigation and other purposes.

**Exceptions to the Act** 95. During the passage of the Bill, Parliament recognised that in some situations information about spent convictions ought to remain available. The Act accordingly empowers the Government to make Orders setting aside or modifying the protection afforded by the Act in certain circumstances. These powers have been used to create a number of exceptions: a few have also been created directly by other Acts. The exceptions have been made in the interests of:

- (i) national security;
- (ii) the protection of particularly vulnerable members of society such as old, young, sick and handicapped people;
- (iii) maintaining confidence in the administration of the law and in certain licensing systems; and
- (iv) ensuring probity in the areas of banking and financial services.

96. These criteria are very similar to those used to justify access to the police record for vetting purposes (see paragraph 8). A full list of excepted categories is at ANNEX E. It can be seen that it ranges considerably wider than the list of posts to which criminal record disclosure arrangements currently apply.

**Pressure for change** 97. The Rehabilitation of Offenders legislation aims to strike a balance between giving reformed offenders the chance to reintegrate themselves into society and the need to protect society from those who might offend again. Since the Act’s inception there has been pressure, on the one hand, to increase the number of exceptions and, on the other, to reduce the Rehabilitation periods and the scope of the exceptions. Many have seen it as a weakness that there are so many exceptions to the Act, and believe this tends to undermine its effectiveness. A number of requests for fresh exceptions have been agreed in principle but not yet given effect, while others remain under consideration (see ANNEX E). It was decided however that no new Exceptions Orders would be made until the results of this consultation exercise had been evaluated. It is now for consideration whether the balance referred to above has swung, or seems likely to swing, too far one way or the other.

**Value of Exceptions** 98. The continuing pressure for fresh exceptions is not necessarily a reliable indicator as to how useful exceptions are in practice (cf paragraph 30 about the value of vetting checks). There is little evidence to indicate whether having to declare spent convictions in certain circumstances has, of itself, done much to reduce the risk of re-offending. The fact that there is an exception under the Act confers no right of access to the police record to check the truth of

any statement made. Thus those asking questions about spent convictions must frequently take other steps to satisfy themselves about the answers given and the suitability of the person questioned for the job, profession or licence etc, for which he or she is applying (cf paragraph 31).

99. The fact that the range of posts subject to exceptions is so much wider than those subject to vetting suggests that exceptions may, in the past, have been seen as a substitute for vetting and vice versa. It is clear that there is confusion in many people's minds between the two. There must be doubt as to the value of having an exception without a parallel right of access to the police record to facilitate verification. This lends support to the view that the list of exceptions and list of posts subject to vetting should be more closely harmonised. One effect of that of course might be the extension of exceptions to certain "fit and proper person" categories which were, or would become, subject to vetting checks.

**Implications for the Rehabilitation of Offenders Act of changes to vetting arrangements**

100. An open conviction record (as suggested in paragraphs 47 and 48) would make it very difficult for offenders to live down their past. It would render the Rehabilitation of Offenders Act ineffective unless spent convictions were excluded from any information given from the police record. But that record would not then be truly "open".

101. A closed or regulated conviction record on the other hand, with access based on unenforced individual application (as suggested in paragraph 71), would avoid these difficulties. Spent convictions might, if systems allowed, either be included or excluded from the response according to need and purpose (paragraph 72). In that case there would seem little justification for having exceptions for posts or categories other than those identified by this consultation exercise as being appropriate for criminal record checks.

102. It is therefore suggested that the list of exceptions to the Rehabilitation of Offenders Act be amended in the light of this consultation exercise, and that it be updated in future to reflect any changes in the categories subject to vetting.

**Question 11:** *Is the current range of exceptions to the Rehabilitation of Offenders Act so wide as to undermine the Act's effectiveness? Should the exceptions be the same as those areas of employment etc, which would also be subject to criminal record checks? Or should they be narrower and include only the most sensitive employment categories?*

## **Vetting of People from Overseas**

103. If a growing importance is attached to criminal record checks, especially to protect the vulnerable, people from other countries who apply for posts subject to checking may be put at an unfair disadvantage compared to British nationals. This is likely to be an increasing cause for concern with regard to nationals from other EC countries.

104. It would be unreasonable, and probably involve appreciable costs, for the police or a vetting agency to be expected as a matter of routine to make criminal record checks through Interpol on nationals from other countries.

105. As already indicated, a number of other EC countries already issue "certificates of good conduct" to their nationals on request. It is however difficult for prospective employers in Britain to assess the value and reliability of such documents.

106. One partial solution to the problem might be for the proposed national vetting agency to assume, as one of its tasks, responsibility for acquiring information with which to advise employers about practice on criminal record checks and/or certificates of good conduct in EC and certain other countries from which significant numbers of nationals apply to work in the UK. It could also investigate the possibility of setting up reciprocal arrangements with some countries.

**QUESTION 12:** *Should a national vetting agency, if one were to be established, be prepared to acquire information on the practice in some other countries with regard to criminal record checks, and investigate the possibility of reciprocal arrangements with some of those countries?*

## Conclusion

107. It will never be possible to take all risk out of situations in which people are placed in positions of trust or have responsibility for the young and vulnerable. There is a price to be paid for the mitigation of risk and in the case of vetting it involves the invasion of personal privacy and, however carefully implemented, the likelihood of some people being denied jobs for reasons which are unfair or unjustified. Vetting (and exceptions to the Rehabilitation of Offenders Act) can remove only a small amount of risk and can lead to complacency in personnel practices, which in themselves may add to the risks.

108. This paper therefore seeks to set down the elements of a framework in which some of the anomalies and undesirable features of the present arrangements can be overcome while providing fairer and more effective machinery for conducting those checks which are considered necessary in the public interest. **The principal issues on which views are sought are set out in question form at the beginning of this paper.**

109. Drawing from the paper, new disclosure arrangements might have some or all of the following features:

- (i) legislation
  - to establish an independent vetting body;
  - to enable charging for vetting checks;
  - to define criteria for vetting;
  - to establish areas of employment in which vetting is permissible;
  - to define types of information that might be disclosed, which may vary in different vetting contexts;
- (ii) continuing provision in child care, and certain other specified areas, for checks on **local** police records including non-conviction information. The categories of posts and the matters disclosed should be more closely defined than at present;
- (iii) extension of checks to protect the vulnerable to the voluntary and private sectors where posts fell within the criteria;
- (iv) the addition of certain new criteria for vetting;
- (v) provision for the police and/or vetting agencies to make a realistic charge for making criminal record checks;
- (vi) if and when the technical systems allowed, vetting requests within permitted employment contexts might specify whether “spent” convictions under the Rehabilitation of Offenders Act should be shown, depending on the requirements of the particular area of employment;
- (vii) arrangements to deal with prospective employees from overseas;
- (viii) revision of the Rehabilitation of Offenders Act to tie in more closely with vetting arrangements.

## **Comments**

110. Comments on the proposals and questions set out in this paper are invited and should be sent to:

**Box No. 30  
F2 Division  
Home Office  
50 Queen Anne's Gate  
London SW1H 9AT**

**by 31 December 1993.**

## Annex A

### Home Office Circulars on Disclosure of Criminal Records

#### Number

- 140/73 (c) Announced the **results of a review of the arrangements under which the police reported, as they occurred, convictions and certain other information on certain groups of people.** The supply of police information would continue to be governed by the general principle that no information should be disclosed unless there were weighty considerations of public interest which justified departure from the general rule.
- 44/86\* (c) Explained the **new procedures for checking with local police forces the possible criminal background of those who applied or moved to work with children.** The arrangements applied to local authority paid staff and volunteers engaged in the care of children, and others such as registered childminders and foster parents caring for children boarded out with them.
- 45/86 Consolidated and superseded the existing guidance on the disclosure of **convictions and related information** contained in Home Office Circular 140/1973 and subsequent circulars and correspondence, and gave effect to **new arrangements for checks on those with substantial opportunities for access to children.**
- 8/88+ Explained the **new procedures for checking with local police forces the possible criminal background of NHS staff and volunteers who applied to work with children.** These arrangements were limited to children needing relatively lengthy in-patient care.
- 101/88 Announced that the joint circular HOC 44/86 etc had been revised and was being re-issued along with this circular, which **brought to notice the changes in the joint circular, viz:**
- (i) extension of scope of the circular to Non-Metropolitan District Councils;
  - (ii) clearer guidance to local authorities about the posts which should and should not be subject to the checking arrangements;
  - (iii) guidance about obtaining checks on agency and contract staff;
  - (iv) guidance about advice to be given to prospective applicants about the implementation of these arrangements; and
  - (v) revision of the policy about the need to check certain students.
- 102/88\* **Revised the guidance given in the joint circular, HOC 44/86 etc, the main changes being described in the covering circular HOC 101/88.**
- 58/89 Announced the establishment of **three pilot schemes which would allow voluntary organisations to check with the police the possible criminal background of those who applied or moved to work in posts with substantial access to children.** The circular explained the procedures for obtaining this information from the police. A national scheme would cover, principally, national child care organisations and there would also be local pilot schemes, in the metropolitan borough of Dudley and the county of Lancashire, to cover locally based organisations.

**22/91+** Introduced procedures for checking with the police the possible criminal background of applicants for registration as owners or managers of residential care homes, nursing homes and mental nursing homes, and of applicants for managerial posts in local authority care homes.

Although the arrangements were similar in many respects to those for the protection of children set out in HOC 102/88, it was envisaged that checks would normally be made only against the index of names on the Police National Computer, and that the only convictions to be disclosed would be those held either on the PNC or at the National Identification Bureau (NIB).

**85/91** Introduced procedures for checking with local police forces the possible criminal background of those who applied for posts as civilian fine enforcement officers in magistrates' courts. It stipulated that in all cases the police check would be made against the index to the national collection of criminal records maintained on the PNC.

**13/92++** Introduced procedures for checking with the police the criminal convictions of applicants for Hackney carriage and private hire vehicle drivers' licences. These arrangements stemmed from Section 47 of the Road Traffic Act 1991. The circular envisaged that checks would normally be made only against the index of names on the PNC and that the only convictions to be disclosed would be those held either on the PNC or at the NIB.

**117/92** This updated the guidance on police checks in the voluntary sector contained in HOC 58/89. The circular summarised the results of an evaluation of the voluntary sector pilot schemes. It reported that the pilot schemes in Dudley and Lancashire had been closed and that the Department of Health had agreed to fund the national pilot scheme, which would continue to be known as the Voluntary Organisations Consultancy Service, for a further period. **The main change from the previous arrangements was that criminal record checks would only be made in respect of the most sensitive posts.**

\* issued jointly with Department of Health, Department for Education and Welsh Office

+ issued jointly with Department of Health and Welsh Office

++ issued jointly with Department of Transport

(c) = cancelled



## **Annex B**

### **Principal Current Categories of Police Vetting Checks for Employment-related and Licensing Purposes (excluding National Security)**

#### *Employment-related and licensing categories*

Those to be appointed to posts involving substantial access to children

Proprietors and managers of residential care and nursing homes

Staff of Special Hospitals Service Authority

Civilian fine enforcement officers directly employed by magistrates' courts

Applicants for Hackney carriage and private hire vehicle drivers' licences

Applicants for sex establishment and entertainment licences

Applicants for certificates under gaming and lotteries and amusements legislation

Applicants for, and holders of, licences as heavy goods vehicles and passenger service vehicles operators

Applicants for licences as dealers in securities

Lay visitors to police stations

Lay visitors to Harmondsworth Detention Centre

Applicants for consumer credit licences (where there are strong grounds for suspecting that a false declaration or a non-declaration has been made)

Principals or employees of burglar alarm companies

Candidates for judicial appointments

Candidates for the magistracy

Post Office casual staff at Christmas time

Employees of private sector companies engaged in management of prisons and/or in the court escort and custody service

Lay observers for the contracted-out courts escort service

## Annex C

### Existing Disclosure Arrangements for Child Protection: History, Description and Analysis

**Background** 1. Until 1986, in the child protection area the police only made criminal record checks on prospective adoptive and foster parents. They were, however, expected to report convictions as they occurred in respect of teachers, persons employed in residential children's homes or probation hostels, and youth leaders.

2. In 1985, prompted by a particular case of child abuse and murder, the Home Office and Department of Health undertook a joint review of disclosure arrangements. The review recommended disclosure arrangements for child protection which are essentially those currently in operation. The review confined its specific recommendations to the statutory sector (where it envisaged about one million people eventually being encompassed), but advocated that the scheme should be extended to the voluntary sector in due course.

**Brief description of present arrangements** 3. The arrangements set up in 1986 by agreement with the Association of Chief Police Officers, and set out in Home Office Circulars, allow for checks to be made of national and local police records on certain new recruits to the public sector such as teachers, social workers and health workers, whose jobs would give them substantial access to children. The original estimate was that this would generate about 100,000 checks annually.

4. The checking arrangements were subsequently extended to staff of independent schools and, on a limited basis, to some national voluntary organisations. They are shortly to be extended to registered voluntary and private residential homes. With the exception of such homes, and of prospective adoptive and foster parents, the private child care sector is not covered at all.

**Analysis of problems with the system** 5. The number of checks in the statutory sector has grown sharply since the scheme was introduced, and they numbered around 665,000 in the year to 31 March 1993.

6. Although the relevant Home Office Circulars indicate that checks should only be carried out on staff with substantial unsupervised access to children on a regular or sustained basis, there is evidence that the system is being misused to obtain checks on individuals whose access is more limited. At a time of heightened awareness of child abuse, organisations are understandably concerned to protect against the possibility of child abuse by their staff, and, despite the limitations of the process, police checks are perceived as a reliable means of doing so, especially as they are free at the point of use.

7. The Home Office Circulars set out guidelines for preserving the confidentiality of police records and for ensuring that individuals are given the opportunity to comment on their alleged record if it casts doubt on their suitability for a post. The extent to which these guidelines are observed is up to the prospective employer, but anecdotal evidence indicates that practice varies very widely.

8. Despite their deficiencies police checks have increasingly acquired the status of a “seal of approval” for child care workers. The fact that they are available to only some national organisations in the voluntary sector, and to hardly any of the private sector, is therefore seen as setting the voluntary and private sectors at an unfair disadvantage, as well as depriving them of a protection to which they believe they are entitled. There is therefore considerable unmet demand for checks in the voluntary and private sectors of child care that could amount to a further half million annually.

9. The present disclosure arrangements to the statutory sector rely on police information being channelled through “nominated officers” in local authorities, who are meant to be senior officers charged with adhering to the criteria and procedures set out in the Home Office Circulars. The police are reluctant to deal with a large number of individuals, both because it would add substantially to their own workload and because they fear it would undermine the confidentiality of the record and reduce the level of expertise in the procedures at the other end. However, recent government changes in education and health care have put this system under strain. The staff of grant maintained schools and NHS Trust Hospitals are no longer employed respectively by the local education authority or the local health authority, but the police cannot deal with them directly because of the numbers that would be involved. Arrangements involving funnelling the checks through intermediary bodies (the Department for Education in the case of the grant maintained schools) have therefore had to be introduced.

10. The nominated officers are supposed to be the gatekeepers of the system and ensure that checks are applied for only on the posts which meet the criteria. However, as indicated above, the tendency to regard police checks as a means of ensuring prospective employees are “safe”, may cause employers to seek checks on a much wider range of posts than is justified. The role of gatekeeper then falls by default to police forces, but they generally dislike being put in the position of having to decide whether a particular post on which a check has been requested meets the criteria in the relevant Home Office Circular. Some will apply the criteria more strictly than others, leading to quite wide divergence in practice between neighbouring forces.

**Two-tier checking  
proposal**

11. In an effort to relieve the pressures imposed by the checks on police resources, in 1992 the Home Office proposed a two-tier system of checks, under which only the more sensitive child-care posts would continue to receive full checks, and the remainder would be checked against national records only. However, most local authority associations opposed the proposals, arguing that they offered a lower level of protection than the present system. The proposals were therefore dropped pending the appearance of this consultation paper.

## **Annex D**

### **Categories on Which Access to Criminal Record Checks has Been Refused in Recent Years**

1. Requests are regularly made for new categories to be added to those liable for vetting. These requests are scrutinised by a committee of the Association of Chief Police Officers responsible for setting national policy on the disclosure of convictions. Among those which they have turned down in recent years are:

- Firefighters
- Human Fertilisation and Embryology Authority (certain staff and prospective patients)
- Court security officers
- Persons caring for vulnerable adults (outside the existing checking arrangements)
- House to house and street collectors
- RSPCA enforcement inspectorate
- Nurses and health visitors (other than those already checked because they have substantial access to children)
- Licensed insolvency practitioners
- Personnel deployed by employment agencies
- School governors
- Trustees of charities
- Members of the private security industry
- Prospective water bailiffs
- Registered inspectors of schools
- Social Services Inspectorate

2. The reasons for rejecting these bids varied. Some fell outside the general criteria. Others would have imposed resource burdens on the police service which it could not have met and which would have jeopardised its service to other recipients of police information.

## **Annex E**

### **Exceptions to the Rehabilitation of Offenders Act 1974**

#### **I. Exceptions made by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975**

##### **A. Offices and Employments**

1. Judicial appointments.
2. Employment in the office of the Director of Public Prosecutions.
3. Employment in the office of Procurator Fiscal or District Court Prosecutor or in the Crown Office.
4. Justices' clerks and justices' clerks' assistants, and their equivalents in Scotland.
5. Constables, police cadets, military, naval and air force police, and certain posts involving police work or assisting the police.
6. Employment in the Prison Service, including appointment to a Board of Visitors or, in Scotland, to a visiting committee.
7. Traffic wardens.
8. Probation officers.
9. Any office or employment concerned with the provision to persons aged under 18 of accommodation, care, leisure and recreational facilities, schooling, social services, supervision or training, being an office or employment of such a kind as to enable the holder to have access in the course of his normal duties to such persons, and any other office or employment the normal duties of which are carried out wholly or partly on the premises where such provision takes place. (As amended by the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 1986.)
10. Employment connected with the provision of social services which involves access to the young, the old\*, the mentally\* or physically handicapped\*, or the chronic sick\* or disabled\*.
11. Employment concerned with the provision of health services, within the National Health Service or otherwise, which involves access to patients\*.
12. Firearms dealer.
13. Any occupation requiring a licence, certificate, or registration from the Gaming Board for Great Britain.
14. Director, controller or manager of an insurance company\*.
15. Any occupation concerned with the management of an abortion clinic or the carrying on of a private hospital or nursing home\*.

\*Access to the criminal record for vetting purposes is unlikely to be available in these cases, *unless* the post involves substantial access to children.

16. Any occupation concerned with carrying on an establishment for which registration is required by Section 37 of the National Assistance Act 1948 or Section 61 of the Social Work (Scotland) Act 1968\*.

17. Any occupation for which a certificate of fitness to keep explosives is required.

18. A person may in certain cases be asked to disclose his spent convictions on the grounds of safeguarding national security.

**B. Excepted Professions**

1. Medical practitioner\*.
2. Barrister\* (in England and Wales), Advocate\* (in Scotland), Solicitor\*.
3. Chartered accountant\*, certified accountant\*.
4. Dentist\*, dental hygienist\*, dental auxiliary\*.
5. Veterinary surgeon\*.
6. Nurse\*, midwife\*.
7. Ophthalmic optician\*, dispensing optician\*.
8. Pharmaceutical chemist\*.
9. Registered teacher (in Scotland).
10. Any profession to which the Professions Supplementary to Medicine Act 1960 applies and which is undertaken following registration under that Act\*.

**C. Excepted Licences, Certificates, Permits and Proceedings**

1. Firearm and shotgun certificates.
2. Licences which relate to persons under 18 going abroad to perform for profit\*.
3. Certificates to keep explosives for private use.
4. Proceedings concerned with the admission to or disciplinary action against any member of the excepted professions (above at B.)\*.
5. Disciplinary proceedings against a constable.
6. Proceedings before the Gaming Board of Great Britain.
7. Certain proceedings before a Mental Health Tribunal, Sheriff or the Mental Welfare Commission for Scotland.
8. Certain proceedings concerned with the registration of firearms dealers, the granting, renewal or revocation of firearms certificates, shotgun certificates and other such permits.
9. Proceedings which are concerned with persons under 18 travelling abroad to perform for profit\*.
10. Certain proceedings concerned with the approval of appointments in insurance companies\*.

\*Access to the criminal record for vetting purposes is unlikely to be available in these cases, *unless* the post involves substantial access to children.

11. Certain proceedings concerned with the suitability of those who teach in establishments of further education or are the proprietors of independent schools.
12. Certain proceedings concerned with the control of those licensed to deal in securities.
13. Certain proceedings concerned with the regulation of places involved with abortion and of nursing homes.
14. Certain proceedings concerned with the fitness of those who keep explosives.
15. Proceedings connected with any appeal against or review of a decision made under the 1975 Exceptions Order, or other consideration arising from the Order.

## **II. Exceptions made by the Banking Act 1979**

1. Director, controller or manager of a bank. (Made by Section 43 of the Banking Act 1974 by analogy with the exception for directors, controllers or managers of insurance companies.)\*
2. Certain proceedings concerned with the approval of appointments in banks.

## **III. Exceptions made by the Rehabilitation of Offenders Act (Exceptions) (Amendment No.2) Order 1986**

1. Director or other officer of a building society\*.
2. Certain proceedings before the Building Societies Commission\*.

## **IV. Exception made by the Financial Services Act 1986**

1. Convictions relating to offences of fraud and dishonesty or an offence under legislation concerned with the financial sector in proceedings concerned with the granting or revocation of authorisation to carry on investment business\*.

\*Access to the criminal record for vetting purposes is unlikely to be available in these cases, *unless* the post involves substantial access to children.

## **V. Exception made by the Banking Act 1987<sup>1</sup>**

1. Convictions relating to offences of fraud and dishonesty or an offence under legislation relating to the financial sector in proceedings concerned with the granting or revocation of authorisation to carry on deposit-taking business\*.

\*Access to the criminal record for vetting purposes is unlikely to be available in these cases, *unless* the post involves substantial access to children.

## **Exceptions which are Currently Being Created in Bills now before Parliament**

1. Osteopaths.
2. Operators of the new National Lottery.

## **Exceptions which Have Been Agreed in Principle but Not Yet Given Effect**

1. Senior members of the Institute of Legal Executives.
2. Lloyds.
3. Firefighters\*.
4. Persons convicted under the Explosive Substances Act 1883.

\*A request for access to police records for vetting purposes has been refused.

## **Exceptions Under Consideration**

1. Licensed conveyancers.
2. Chartered Institute of Management Accountants.
3. Chiropractors.

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<sup>1</sup>Section 95 of the Banking Act 1987 superseded Section 43 of the Banking Act 1979 restricting exceptions in this area to offences of fraud and dishonesty.



## **Annex F**

### **Disclosure of Criminal Records for Employment Vetting Purposes: Practice in other EC Countries**

1. A chart is attached summarising the main points of interest relating to practice in other EC countries on vetting prospective employees. It is taken from the 1991 Scrutiny of Criminal Records, and the information has not been updated to reflect any changes made in any of the countries mentioned since the Scrutiny team obtained their information.
2. It will be seen that in some cases information was not available for the Scrutiny report.
3. The following points emerge as particularly relevant to this consultation exercise:
  - (i) most EC countries have some system of criminal record checks on prospective employees for at least some categories of employment, though in many cases it is optional;
  - (ii) in the majority of EC countries, the arrangements for criminal record checks are based primarily on applications by individuals for information relating to themselves from the criminal record, although the quality and completeness of the information checked may vary;
  - (iii) most countries allow for some form of criminal record checks in the interest of child protection;
  - (iv) some countries (Denmark and France) allow public authorities/bodies to conduct criminal record checks direct on prospective employees in the area of child care, in addition to any certificates of good conduct provided by applicants;
  - (v) in certain countries (Belgium, Greece and the Netherlands) it is common practice for employers in any field to require a certificate of good conduct;
  - (vi) Italy has two types of certificate of good conduct: one, which is fuller, is for presenting to judicial and public authorities, and the other is for individuals to use in other situations.

### Disclosure of Criminal Records for Employment Vetting Purposes: Practice in other EC Countries

Country	How criminal records are held	Nature of records held	How disclosure is effected		Any special arrangements for child protection checks	How an individual's identity is established
			(a) to individuals	(b) direct to employers		
Belgium	National records held manually	All criminal convictions plus foreign convictions and suspended sentences	Individuals apply to their local commune for certificates of good conduct (which include all criminal offences recorded)	Common practice for all employers to ask applicants for certificates of good conduct	See previous column	Name and address (registration with local commune compulsory)
	Local records held manually	All criminal convictions for that area				
Denmark	National, computerised	All violations of criminal code and all violations of other legislation where prison sentence imposed	Individuals can obtain certificate from police recording major and recent offences	See next column	Legislation allows local authorities to obtain details of previous convictions from police records on authority of applicant	National persons register and identity number
France	National, computerised	All criminal convictions plus foreign convictions and deportation orders	Right of subject access for basic information	See next column	For authorised public childcare institutions, any criminal record of head of the establishment is disclosed to authorities. Private employers have no right to examine criminal records of staff	Comparison with "etat civil", fingerprint if in doubt

Country	How criminal records are held	Nature of records held	How disclosure is effected		Any special arrangements for child protection checks	How an individual's identity is established
			(a) to individuals	(b) direct to employers		
Germany	National, computerised	Two separate computerised records, juvenile and central. Include all criminal convictions plus some other information	Subjects can obtain limited extracts from criminal record in form of certificate of good conduct	Procedures for obtaining criminal background information regulated by federal law—ie by obtaining certificates of good conduct or applying for extracts from penal register (no further information)	“Not possible to check background of one particular group of persons and no demand for it”	Fingerprints and identity cards and via official records on computer
Greece	Local, manual	No information	Applications by individuals to public prosecutor for evidence of clean criminal record	All prospective employees in public and private sector are required to submit evidence of clean criminal record	See previous column	Fingerprints and identity cards
Eire	National  Local, partly computerised	Serious offences  Less serious offences	Subject access right to computerised records only	See next column	Checks on prospective foster and adoptive parents only	Fingerprints and/or local knowledge
Italy	Local, but all linked centrally. Computerised	N/A	Two types of certificates of good conduct can be supplied: one for judicial/public authorities and the other (containing less information) to individuals	All public sector posts require “complete” certificates	For prospective adoptive or foster parents, Ministry of Justice examine applicants' certificates	Details checked with local Registry Office
Luxembourg	National, computerised	All police correctional and criminal offences	Subject access to most basic level of information only	Any employer may require potential employees to obtain an extrait du casier judiciaire from authorities, showing sentences of imprisonment	See previous column	Full name and date of birth

Country	How criminal records are held	Nature of records held	How disclosure is effected		Any special arrangements for child protection checks	How an individual's identity is established
			(a) to individuals	(b) direct to employers		
Netherlands	Regional links to national system, computerised  Also local records, some computerised	Serious offences only  Other information (not specified)	Subject access right to all information held	N/A	Employers may require applicants to obtain certificates of good character from Burgermeister	Full name, address and identification number. Fingerprint confirmation
Portugal	National, mostly computerised	N/A	Subject access to both computerised and manual records	Normal practice for job applicants to show "criminal record" to prospective employers	No special legal provisions	Identity cards and fingerprints
Spain	National, plus some regional and local	N/A	Subject access only with permission	No legal requirement but many applicants volunteer certificates of good standing obtained from Ministry of Justice	No special provisions	Identity cards and fingerprints









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