

# FAREHAM

## BOROUGH COUNCIL

### Report to Scrutiny Board

Date: **4 July 2013**

Report of: **Director of Community**

Subject: **THE DISCLOSURE AND BARRING SYSTEM**

#### **SUMMARY**

This report outlines the changes to the disclosure of criminal records and barring arrangements for those working with children or vulnerable adults following the introduction of the Protection of Freedoms Act in September 2012.

Guidance is included concerning the types of activity which can lead to the requirement for a formal criminal record check of a person concerned with delivering Council services or undertaking activity in connection with Council business.

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#### **RECOMMENDATION**

That the Scrutiny Board notes the arrangements that are in place for vetting and checking of a person concerned with delivering Council services or undertaking activity in connection with Council business.

## INTRODUCTION

1. This report seeks to update members in respect of changes to the disclosure of criminal records and barring arrangements for those working with children or vulnerable adults following the introduction of the Protection of Freedoms Act in September 2012.
2. Guidance is included concerning the types of activity which can lead to the requirement for a formal criminal record check of a person concerned with delivering Council services or undertaking activity in connection with Council business.

## BACKGROUND

3. Back in 2010 the coalition government *'committed to reviewing and reforming the vetting and barring scheme and the criminal records regime, scaling them back to more proportionate levels'*. The Government was committed to protecting vulnerable groups and wanted to see a focused and effective safeguarding system, where harm or risk of harm was identified, acted upon effectively and ultimately prevented.
4. They wanted a better sharing of responsibility for safeguarding between the state and organisations. This included ensuring all employees or volunteers were appropriately recruited, trained and managed, which should be considered just as important as a criminal records check from the state.
5. As a result, provisions were included in the Protection of Freedoms Act 2012 to ensure that there is continued protection for vulnerable groups but that the system operates in such a way as to *'reduce the burden on employers and better respects the civil liberties of the individual'*.
6. The Protection of Freedoms Act received Royal Assent in May 2012. As a result of the passage of the Act, a number of changes to the Disclosure of Criminal Records and Barring system came into effect from 10 September 2012.

## NEW DEFINITION OF 'REGULATED ACTIVITY'

7. The Safeguarding Vulnerable Groups Act 2006 considered 'regulated activity' to be work and activities which a person who has been barred by the Independent Safeguarding Authority (ISA) must not do.
8. Under the Protection of Freedoms Act and with effect from 10 September 2012 the definition of 'regulated activity' was changed to focus on *'work which involves **close and unsupervised** contact with vulnerable groups including children'*. The full definition can be found in Appendix 1.
9. Organisations will not be able to check barred list status for work that is not 'regulated activity'. However depending on the duties of the person it may still be possible to carry out a criminal record check at another level without the barred list check. Further information on the levels of checks which can be undertaken by the Council can be found in Appendix 2.
10. Organisations must be clear about the new definition of 'regulated activity'. Knowingly allowing a barred person to work in a 'regulated activity' is an offence. If an organisation dismisses or removes someone from 'regulated activity' (or would have done so had they not already left) because they harmed or posed a risk of harm to

vulnerable groups including children, there is a legal requirement to report that person to the ISA.

## **CHANGES AFTER SEPTEMBER 2012**

11. In December 2012 the work of the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) were merged into a single, non-departmental Public Body called the Disclosure and Barring Service (DBS), providing wider access to criminal record information.
12. The DBS also makes independent barring decisions concerning people who have harmed previously or where there was a risk of harm to a child or vulnerable adult within the workplace or volunteer setting. This assists organisations to make safer recruitment decisions.
13. Later in 2013, it will be possible for an individual to subscribe to a new Update Service allowing them (for the payment of a small fee) to apply for a criminal record check once and reuse this check again if needed with subsequent employers or volunteer groups. The aim is to facilitate portability and avoid unnecessary repeat applications.

## **HOW THESE CHANGES AFFECT THE COUNCIL**

14. A review has already been undertaken of Council employee posts to ensure that criminal record checks are undertaken appropriately.
15. Personnel Services already administer DBS checks when requested for certain elected members whose duties bring them into contact with children or vulnerable adults and meet the criteria for a criminal records check. This has included elected members who volunteer for the SNAP disco, volunteer with Youth Groups or who may supervise the Mayor's Cadet at Civic Events.
16. Completing these checks offers further assurances to residents in the Borough of the Council's commitment to safeguarding vulnerable members of society.
17. It is not possible to carry out DBS checks for all employee posts or for all elected members as many roles do not meet the strict criteria imposed via the DBS. The Council would be criticised for failing to correctly apply the criteria and may be at risk of losing its Countersignatory status with the DBS. This may lead to delays in recruiting suitable employees to deliver services and delay reviews of the continued suitability of existing employees.

## **CONCLUSION**

18. The changes made to the disclosure of criminal records and barring arrangements for those working with children or vulnerable adults ensure that appropriate measures are taken to protect vulnerable members of society.
19. It is necessary that the Council continues to ensure it applies these measures correctly to all people concerned with delivering Council services or undertaking activity in connection with Council business.

**Enquiries:**

For further information on this report please contact Martyn George, Director of Community (Ext 4400).

## What is 'Regulated Activity'?

Although the Council can continue to access criminal record information on individuals at the highest level, this can only be done where the work they do justifies it and meets the new definition of 'Regulated Activity' (post Sept 2012)

Regulated Activity relating to children covers:

- 1) Unsupervised activities - teaching, training, caring for or supervising children, or providing advice/guidance on well being – **only regulated activity if it is carried out regularly.**
- 2) Work for a limited range of establishments (schools, nursery, and children's centres) with the opportunity for contact with children. (this does not include supervised volunteers) - **only regulated activity if it is carried out regularly.**
- 3) Relevant personal care for example, washing, dressing, health care supervised by a professional
- 4) Registered childminding and foster caring
- 5) Day to day management or supervision of individuals carrying out regulated activity to children.

**n.b.** Regularly will be defined as *frequently (once a week or more often), on 4 or more days in a 30-day period or overnight (between 2am and 6am).*

Regulated Activity relating to adults covers the following activities or anyone supervising posts in these categories.

- 1) Those providing health care - doesn't include work place first aiders, life coaching
- 2) Those providing personal care
- 3) Those providing Social Care
- 4) Those providing assistance with general household matters i.e. handling cash, paying bills, shopping
- 5) Those assisting a person with the personal management of their affairs.
- 6) Those who transport an adult because of their age, illness or disability from their place of residence to a place where they are receiving health or social care i.e., hospital porters, patient transport service drivers.

In relation to adults, they are no longer labelled as 'vulnerable'. Rather the definition identifies the activities which, if any adult requires them, lead to that adult being considered 'vulnerable' at that time. There is also no longer a requirement for an activity to be carried out a certain number of times.

## Levels of DBS Check

There are 4 types of criminal record check which can be carried out by the Authority:

- **Basic** - This only shows unspent convictions and cautions which the Council already asks **all** employees to declare. The Basic check allows the Council to verify the information provided by an applicant in certain circumstances.
- **Standard** - This can be applied for when a post is exempt from the Rehabilitation of Offenders Act and covers Spent and Unspent convictions, cautions, reprimands and final warnings.
- **Enhanced** - This can be applied for when a post works with children and vulnerable adults and the duties of the post met the **old definition** of '**Regulated Activity**' which was in place prior to the Protection of Freedoms Act 2012. An Enhanced DBS covers Spent and Unspent convictions, cautions, reprimands and final warnings plus any additional information held locally by police forces that is reasonably considered relevant to the post applied for.
- **Enhanced plus**– this includes the same information as an Enhanced check but also includes a check of the appropriate **DBS Barred Lists** in relation to children or vulnerable adults. The Council are only authorised to request such a check where the work meets the **new definition** of '**Regulated Activity**' (see Appendix 1) in place since September 2012.