

CABINET: 1 AUGUST 2001

CRIMINAL RECORDS BUREAU – DISCLOSURES

1. INTRODUCTION

- 1.1 The purpose of this report is to introduce the new Criminal Records Bureau (CRB) which will replace the present Police check process that the Council currently undertakes for employees who are exempted under the Rehabilitation of Offenders Act 1974.

2. BACKGROUND

- 2.1 In the past police checks have been carried out by Police Forces throughout the Country and the Council has been covered by the Hampshire Constabulary at their Headquarters in Winchester.
- # 2.2 The Council has a current policy, contained in Management Advice Note 2.4, which is attached as appendix 1 for your information.
- 2.3 The CRB particularly felt the present system did not meet the needs of organisations but also the following concerns were raised
 - 2.3.1 There were a limited number of organisations who could use the present system.
 - 2.3.2 The number of checks were increasing and this was leading to administrative burden on the Police Service.
 - 2.3.3 That the information required was held in several different places.

3. DISCLOSURES

- 3.1 Part V of the Police Act 1997 includes measures that enable all organisations in England and Wales, to obtain criminal conviction certificates and criminal record information about prospective employees and volunteers from a centralised source, where necessary as a result of the nature of the work. The Rehabilitation of Offenders Act 1974 protects an individual from having to disclose all criminal convictions if after a period of time they are “spent”. From autumn 2001, criminal record checks (known as Disclosures) will be carried out by a new executive agency of the Home Office called the Criminal Records Bureau (CRB).
- 3.2 Eventually, three different kinds of Disclosure will be made available.
 - 3.2.1 **Basic Disclosure** – which will contain details of convictions, held on the Police National Computer that are “unspent” under the Rehabilitation of Offenders Act. The Basic Disclosure will not be issued to organisations directly. This type of disclosure can only be requested by individuals to

check their own criminal record, and individuals will be charged directly for this. This will be available to individuals from 2002.

- 3.2.2 **Standard Disclosure** – which applies to posts exempted under the Rehabilitation of Offenders Act and relates particularly to certain sensitive areas of employment involving positions of trust, such as jobs involving regular contact with children and vulnerable adults. The standard Disclosure contains details of both spent and unspent convictions, as well as cautions, reprimands and final warnings held on the Police National Computer.
- 3.2.3 **Enhanced Disclosure** – which applies to posts involving greater contact with children and vulnerable adults, for example jobs involving the caring, supervising, training or being in sole charge of children and vulnerable adults. The Enhanced Disclosure contains the same information as the Standard Disclosure along with information from local police records if that is thought to be relevant to the position being applied for.
- 3.2.4 **Standard and Enhanced Disclosures-** will be introduced in Autumn 2001. Applications for Standard and Enhanced Disclosures can be made only by organisations that have registered with the CRB. Applications must be made with the express agreement of the individual concerned and signed by both the applicant and the registered body.

4. REGISTERING FOR DISCLOSURE

- 4.1 Application for Standard and Enhanced Disclosures will need to be endorsed by a person or body registered in advance with the CRB. Organisations which require details of convictions because of the nature of the post are required to register.
- 4.2 Registered persons and bodies will need to sign up to the Code of Practice which is being drawn up by the CRB. This is designed to ensure that all the Disclosure information provided about prospective candidates is handled confidentially and fairly within the organisation.
- 4.3 All Disclosures must be kept securely and should be disposed of when decisions based on them have been made. Registered bodies must have written policies on the recruitment of ex-offenders.

5. IMPACT ON COUNCIL PROCEDURES

To comply with the new procedures the Council will need to:-

- 5.1 Register with the CRB, this will involve identifying a Lead Signatory, the CRB guidance recommends a manager with Personnel responsibility. It is recommended that this is the Personnel Manager.
- 5.2 Once registered the Council can then countersign applications for standard or enhanced disclosure. Counter-signatories are:
- ◆ Sue Boden (Recruitment Administrator)
 - ◆ Sharon Plumridge (Head of Support Services)
 - ◆ Marie Dunkinson -for Lymington Town Hall (Administration Section Manager)
 - ◆ Manjit Sandhu (Senior Personnel Adviser)

Additional Countersignatories can be added at a later date if required.

- 5.3 Review the current Management Advice Note 2.4 by Autumn 2001.
- 5.4 Review the current Application form in line with CRB guidance; this may also include amendments with reference to the Data Protection Act.
- 5.5 Review the Recruitment Pack in line with CRB guidance, this may also include amendments with reference to the Data Protection Act.
- 5.6 Review the Contract Templates in line with CRB guidance, this may also include amendments with reference to the Data Protection Act.
- 5.7 Ensure the Council's policies abide by the following legislation
 - 5.7.1 Protection of Children Act 1999 and the Criminal Justice and Court Services Act 2000.
 - 5.7.2 Data Protection Act 1998
 - 5.7.3 Human Rights Act 1998
 - 5.7.4 Anti Discrimination Laws – such as Race Relations (Amendment) Act 2000
- 5.8 The Services most affected by this change will be Leisure Services, which undertake approximately 550 police checks a year. The other services that may be affected are Legal Services and the Finance Directorate, but the Council is awaiting more guidance on the list of jobs that Disclosure checks will apply to.
- 5.9 Coaches and Volunteers also now have to be checked in line with the Child Protection Code of Practice March 2000, these will be at no cost. Whether these are checked by the Council or voluntary organisations is still under review.
- 5.10 The CRB guidance also states that it would be good practice to re-check all employees every two years. At present the Council undertakes re-checks every 3 years.
- 5.11 The cost to the Council of the new process will be as follows:
 - ◆ £300 Registration fee (one off)
 - ◆ £5 for each of the Countersignatories (one off)
 - ◆ £12 for each Disclosure, whether it is Basic, Standard or Enhanced (on-going).

6. FINANCIAL IMPLICATIONS

- 6.1 The Registration fee for CRB of £300 and the countersignatory fees of £20 will be funded corporately and will be met from within existing budgets.
- 6.2 The likely cost of Disclosures in any one-year based on the previous police checks is £6,600 per annum, with an additional £3,600 per annum after 1 April 2003 for re-checks. It is proposed that this is funded from service budgets. It is proposed that a supplementary estimate of £3,300 is approved for 2001/02 and that bids of £6,600 for 2002/03 and £10,200 from 2003/4 onwards are included in the expenditure plans.

7. ENVIRONMENTAL IMPLICATIONS

7.1 There are no specific environmental implications arising from this report.

8. CRIME AND DISORDER IMPLICATIONS

8.1 The process continues to minimise the risk of serious crime against vulnerable people, by ensuring that the Council obtains information from the CRB before individuals are employed.

9. EMPLOYEE SIDE COMMENTS

9.1 The Employee Side support this report.

10. INDUSTRIAL RELATIONS COMMITTEE COMMENTS

10.1 The Committee discussed the introduction of the new Criminal Records Bureau (CRB) and the implications for checks of prospective employees for posts dealing with children, vulnerable adults or were otherwise exempt under the Rehabilitation of Offenders Act 1974. This also included regular rechecks of such employees within post. The financial implications of the proposals had been reassessed to a cost of £6,600 in any one year, with an additional £3,600 per annum after 1 April 2003 for rechecks. On this basis a supplementary estimate of £3,300 was required for 2001/2; £6,600 for 2002/3 and £10,200 From 2003/4 onwards.

10.2 The Committee supported the recommendations to Cabinet, subject to the amendment of the supplementary estimate required, as set out above.

11. CONCLUSIONS

11.1 The new process introduced by the Criminal Records Bureau will ensure that the Council is treating ex-offenders within a defined structure, but it will continue to ensure that employees who have contact with vulnerable people have been subject to the appropriate checks.

11.2 The new process will require the review of internal procedures.

11.3 There will be a cost to the Council of the new process.

12. RECOMMENDATIONS

12.1 To ensure all policies relating to the recruitment of employees who are exempt under the Rehabilitation of Offenders Act are reviewed by Personnel Services working with Personnel Systems Group and Employee Side.

12.2 To agree the Lead Signatory and Countersignatories for the Council.

12.3 That a supplementary estimate of £3,300 is approved in 2001/02 for Leisure Services and that bids of £6,600 for 2002/03 and £10,200 from 2003/04 onwards are included in the expenditure plans.

For further information contact:

Manjit Sandhu
Senior Personnel Adviser
023 8028 5485
manjit.sandhu@nfdc.gov.uk

Sharon Plumridge
Head of Support Services
023 8028 5454
Sharon.plumridge@nfdc.gov.uk

Sue Boden
Recruitment Administrator
023 8028 5458
sue.boden@nfdc.gov.uk

Background Papers

None

CRIMINAL CONVICTIONS

Number 2.4
Page 6 of 6
Date Issued Jan 2001

1. POLICY

- 1.1 The Council is committed to equality of opportunity in recruitment, selection, training, career development and promotion.

(Equal Opportunity Policy extract).

2. INDIVIDUALS AFFECTED

- 2.1 Any applicant applying for a vacancy with New Forest District Council.

- 2.2 All employees of New Forest District Council.

3. DEFINITION

- 3.1 There are legislative provisions, intended to facilitate the rehabilitation of offenders, which make it unnecessary for applicants to disclose their criminal convictions after a legally defined period of time has elapsed, and unlawful for others to do so. There are, however, certain employments and occupations that are exempt from these provisions for the protection of vulnerable groups.

4. GOOD PRACTICE STANDARDS

Good practice guidance is given below under the following headings:

- 4.1 Applying rehabilitation legislation
4.2 Applying exemptions
4.3 Applying police check procedures

A procedural checklist for managers is contained at Appendix A

4.1 Applying rehabilitation legislation

- 4.1.1 **The Rehabilitation of Offenders Act 1974 (ROA)** makes it unnecessary for job applicants to disclose their criminal convictions after a defined period of time has elapsed. The convictions are regarded, in law, as “spent”.
- 4.1.2 Once they are spent, it is unlawful for a referee or any other person to disclose those convictions.

CRIMINAL CONVICTIONS

Number 2.4
Page 7 of 7
Date Issued Jan 2001

4.1.3 Appendix B lists types of convictions and the defined periods that must elapse before they become spent.

4.1.4 If the recruiting manager becomes aware of an individual's spent conviction, and the post does not require disclosure (i.e. it is not exempt employment, see 4.2), then the conviction must be ignored and the individual must not be discriminated against.

4.2 Applying exemptions

4.2.1 **The Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975, (ROAEO)**, establishes that there are certain occupations and employments to which the ROA does not apply (they are exempt). Those applying for exempt occupations and employments must disclose all convictions, whether they are spent or not. This is to safeguard vulnerable groups.

4.2.2 To further safeguard vulnerable groups, there are legal provisions for employers to require applicants for exempt employments to agree to a police check to be made to confirm whether or not they have had convictions.

4.2.3 As such employments are subject to police checks, the withholding of permission by the applicant precludes their appointment.

4.2.4 Exempted occupations are:

- (i) Barrister and solicitor
- (ii) Chartered accountant; certified accountant

4.2.5 Exempt employments are:

- (i) Any employment in connection with the provision of Social Services which enables the holder to have access to the following classes of person in the course of his/her normal duties:
 - * persons over the age of 65
 - * persons suffering from serious illness or mental disorder of any description

CRIMINAL CONVICTIONS

Number 2.4
Page 8 of 8
Date Issued Jan 2001

(ii) Any employment concerned with the provision of the following services to persons under the age of 18 years:

- * accommodation
- * care
- * leisure and recreational facilities

where the employment enables the holder to have access to such persons in the course of his/her normal duties. This also applies to other employments in premises where such services are provided.

4.2.6 Access to Children is further defined in Home Office Circular 58/1989. The following questions will help managers to determine whether the access is such as to make the employment exempt from non-disclosure:

- (i) Does the post provide an opportunity to gain the confidence of children aged up to 18 years?
- (ii) Is there one-to-one contact?
- (iii) Is there the opportunity to spend considerable amounts of time with children without supervision?
- (iv) Is there contact with children living away from home?
- (v) Is there regular contact with children in a work/social context?

If the answer to one or more of these questions is "yes", then the post should be designated as having access to children and applicants for such employment should be subjected to police checks.

4.3 Applying police check procedures

4.3.1 If a post has been designated as having access to children, or otherwise is exempt under the ROAEO, the applicant should be informed in writing at the time the application form is sent out that the post is exempt from the **Rehabilitation of Offenders Act 1974** and that applicants must disclose all convictions, spent or not, and be subject to police checks.

CRIMINAL CONVICTIONS

Number 2.4
Page 9 of 9
Date Issued Jan 2001

-
- 4.3.2 All shortlisted candidates, at interview, must be told that the candidate selected will be subjected to a police check and that the appointment will be subject to the results of that check.
- 4.3.3 It is the appointment or employment that is exempt and therefore subject to a police check. The request to the police should be made in respect of the **selected candidate** only.
- 4.3.4 The request to the police for a check on criminal records should be made by a **Nominated Employee** using the appropriate form.
- 4.3.5 The request is made to a named person at the Force Identification Bureau of Police Headquarters in Winchester.
- 4.3.6 The Nominated Employee is responsible for the accuracy of the request details and for ensuring the confidentiality and security of information received from the police. He/she can disclose it only to those who need to know to finalise the selection decision.
- 4.3.7 Where the police check reveals convictions that were not disclosed by the candidate, the Nominated Employee will arrange for the discrepancy to be discussed with the candidate.
- 4.3.8 If the candidate disputes the information given by the police, the Nominated Employee will contact the police again to seek assurances as to its accuracy.
- 4.3.9 If the police confirm the accuracy of undisclosed convictions, the manager must evaluate the relevance of the conviction to the job and the impact of the candidate's non-disclosure and decide whether or not to confirm the candidate's appointment. Personnel Services will advise.
- 4.3.10 Anyone who applies for exempt employment who fails to disclose any convictions, spent or otherwise, can have their application rejected or be dismissed.
- 4.3.11 The Nominated Employee has responsibility for the general oversight of police checks in his/her service areas and for ensuring the shredding or continued safe-keeping of information received from the police.
- 4.3.12 Police checks should be carried out every 3 years on employees in exempt positions.

CRIMINAL CONVICTIONS

Number 2.4
Page 10 of 10
Date Issued Jan 2001

5. LEGISLATION

5.1 Rehabilitation of Offenders Act 1974 (ROA) : The purpose of this Act is to rehabilitate offenders who have not been reconvicted of any serious offence for a period of years, and to penalise the unauthorised disclosure of their previous convictions.

5.2 Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (ROAEO) : This Act establishes that there are certain offices, employments and related occupations to which the non-disclosure of spent convictions does not apply i.e. applicants applying for these posts must disclose all convictions, including spent convictions.

6. OTHER SOURCES OF INFORMATION

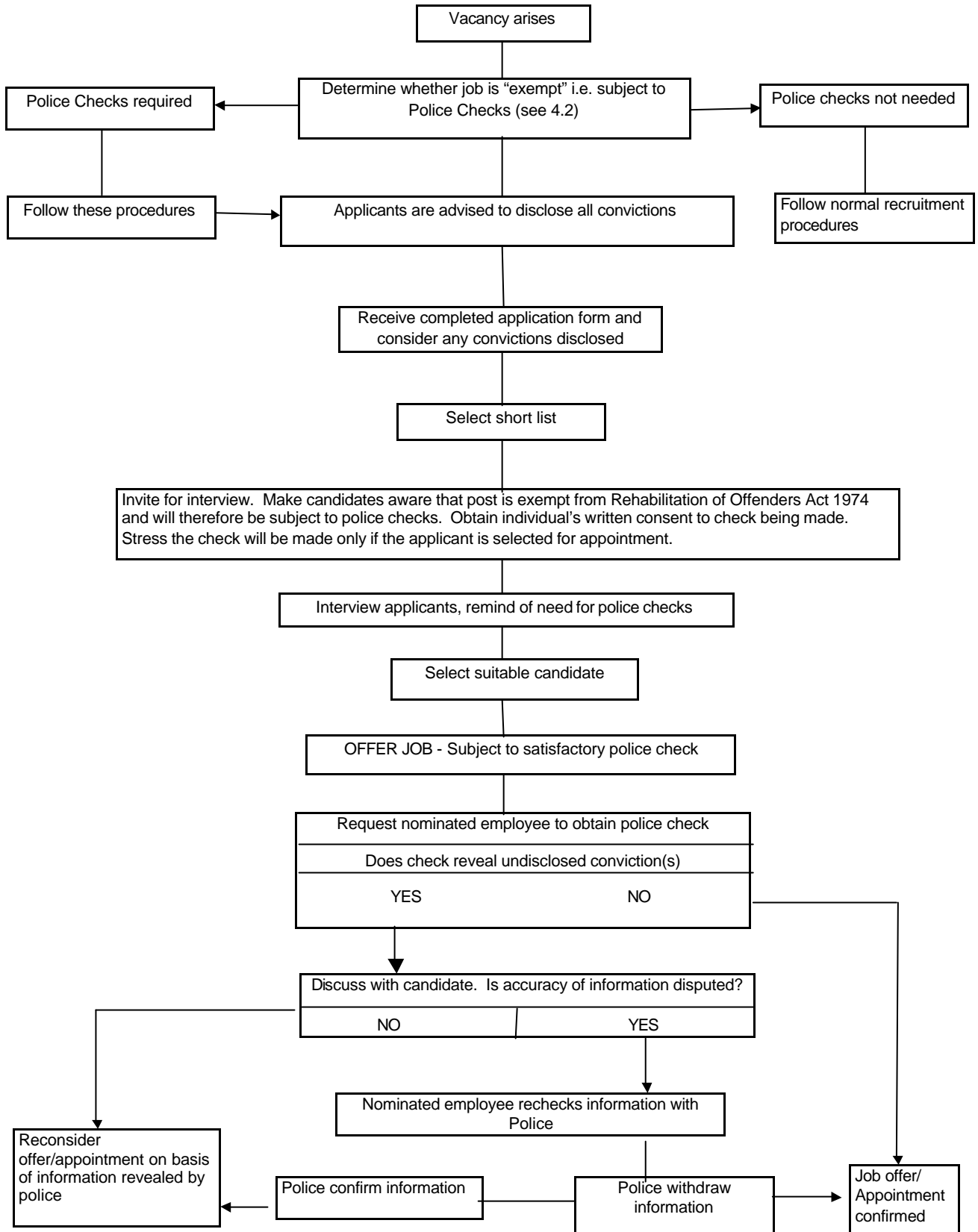
WHERE FOUND

6.1 Internal - Personnel Services
NFDC

6.2 External - Home Office Circular 58/1989
definition of posts that provide
access to children

Personnel Services

MANAGERS' PROCEDURAL FLOWCHART



REHABILITATION OF OFFENDERS - ACT 1974 GUIDANCE NOTES

Under the Rehabilitation of Offenders Act 1974, you do not need to provide details about previous convictions which are "spent".

A conviction becomes spent after a certain length of time which changes depending upon the sentence and your age at the time of conviction. (The periods are halved if the conviction took place when you were aged 17 or less).

Examples are:

Sentence	Period of good conduct needed for conviction to become spent
More than 6 months but not exceeding 30 months Imprisonment	10 years
Not exceeding 6 months Imprisonment	7 years
Borstal Training	7 years
A Fine or Community Service Order	5 years
Probation Order, Conditional Discharge, or Bound Over 1 year	
An Absolute Discharge	6 months

Note: If a person is sentenced to a term exceeding 30 months in prison, his/her conviction can never become 'spent'.

Any information given will be treated as confidential and used only in connection with this application.

An offer of employment may be withdrawn or dismissal may result if previous convictions for 'unspent' criminal offences are not disclosed.

If you have any doubts about whether you have to declare a previous conviction, you should contact your local Probation Office or the Citizens Advice Bureau, or your Solicitor.