

Police Bill [HL] [Bill 88 of 1996/97]: Access to Criminal Records

Research Paper 97/23

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The *Police Bill* [HL][Bill 88 of 1996-97] has completed its passage through the House of Lords and is due to be considered on Second Reading in the House of Commons on Wednesday, February 12th 1997.

This paper considers Part V of the Bill, which is intended to implement proposals for access to criminal records for employment and related purposes set out in the White Paper *On the Record* [CM 3308]. Parts I and II of the Bill, which make statutory provision for the UK-wide National Criminal Intelligence Service (NCIS) and the National Crime Squad for England and Wales (NCS), and for the creation of service authorities to maintain these two services, are considered in **Library Research Paper 97/21**. Part III of the *Police Bill*, which extends throughout the UK and seeks to make statutory provision for the use of intrusive surveillance techniques by the police and HM Customs and Excise by permitting entry on or interference with property or wireless telegraphy in certain circumstances, is considered in **Library Research Paper 97/22**.

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SUMMARY

- At present, police forces conduct free of charge and at the request of prospective employers or licensing authorities, criminal record checks on a limited range of occupations, particularly those involving work with children.
- There have been frequent calls for the checks to be extended to more occupations (for example, private security firms) but this both raises issues of civil liberties and has significant manpower and cost implications.
- Following consultation on a Green Paper, *Disclosure of Criminal Records for Employment Vetting Purposes*, in 1993 and publication of a White Paper, *On the Record*, in 1996, the Government has decided to establish a Criminal Records Agency as a next steps agency to handle the vast majority of pre-employment and licensing checks. The Agency will be self-financing and charge fees for the checks.
- Part V of the *Police Bill* legislates for three types of checks which the Agency will be able to conduct: **criminal conviction certificates** which will show only criminal convictions unspent under the *Rehabilitation of Offenders Act 1974* and be available only to the individuals concerned; **criminal record certificates** which will include both spent and unspent convictions and cautions and be available on the joint application of both prospective employer/licensor and individual; and **enhanced criminal record checks** which will show all the information contained in a criminal record certificate plus information from local police records, including relevant non-conviction information, and be available on the joint application of prospective employer/licensor and individual.
- Employers and licensing bodies able to apply for criminal record certificates or enhanced certificates will have to register with the Criminal Records Agency and abide by a Code of Practice. These certificates will only be available for occupations which are exceptions to the *Rehabilitation of Offenders Act* and the enhanced certificates will only be available for those working with vulnerable groups, particularly children and young people under 18, and those applying for gambling licences.
- The Bill was introduced in the Lords where a number of important amendments were made. The Government were defeated when Lord Weatherill's amendment waiving the fee for voluntary workers was accepted and the Government itself agreed to extend the categories covered by enhanced checks to include those working with vulnerable adults. The Government also promised to try to bring forward its own amendments to outlaw the practice of enforced subject access under which employers require applicants for jobs to seek copies of their own criminal records under the *Data Protection Act 1984*.

I Introduction

The disclosure of information on individuals held by the police raises issues of civil liberties and public interest. A difficult balance has to be struck between giving individuals who have been convicted, or perhaps only suspected, of crimes a chance to re-establish themselves in society and protecting vulnerable members of society from possible abuse. It has been estimated that approximately one-fifth of the working population has a criminal record.¹ The present rules on disclosure for employment vetting purposes have been much criticised as inconsistent and inadequate. The police are burdened with over a million criminal record checks a year, of which some 600,000 are on those who will work closely with children, while regular demands are made for the list of occupations for which such checks may be made to be extended. Following critical reports from the Home Affairs Select Committee in 1990² and an Efficiency Scrutiny in 1991,³ the Home Office published a Consultation Paper on revising the system in 1993.⁴ This was followed by a White Paper in 1996 and provisions in the Police Bill 1996/97.

II Current Rules

The Consultation Paper published in September 1993 sets out the current rules. These were originally drawn up by a working party of the Home Office and the Association of Chief Police Officers (ACPO) in 1973 and are reviewed at regular intervals by a standing sub-committee of ACPO. The 1973 working group adopted three criteria for defining when the public interest requires disclosure against the normal presumption of confidentiality. These are:

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

"National security" effectively gives Government Departments the right to ask to see criminal records before employing anyone. The other categories identified under the other two criteria for whom criminal records can be disclosed for vetting purposes are listed in Annex B:

Employment-related and licensing categories

¹ Apex Trust evidence to the Employment Select Committee enquiry on *Recruitment Practices*, 23 May 1990, HC 176 -II, 1990/91, p 19

² Home Affairs Committee Report on Criminal Records, HC 285, 1989/90

³ Home Office, "*The National Collection of Criminal Records, Report of an Efficiency Scrutiny*", 1991

⁴ Home Office, "*Disclosure of Criminal Records for Employment Vetting Purposes*", September 1993, Cm 2319

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

The present procedure is that police forces conduct, free of charge and at the request of prospective employers, criminal record checks on the groups listed above. In addition, the Department of Health operates, on an advisory basis, a consultancy service whereby local authorities and private and voluntary organisations can check the suitability of those they propose to employ in a childcare post. The check includes a note of convictions against those who, at the time of conviction, were in child casework. The Department for Education and Employment maintains a list of people barred from employment by a local authority in schools or colleges. This would include people convicted of a sexual offence against a child, but there are many other reasons why people may be barred.

The Consultation Paper also listed, in Annex D, categories on which access to criminal records has been refused in recent years:

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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.

The Consultation Paper suggested 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.

III Rehabilitation of Offenders Act 1974

The purpose of the *Rehabilitation of Offenders Act 1974* is to allow ex-offenders the chance to wipe the slate clean and start afresh. Under the Act, certain people who have been convicted of criminal offences are entitled to have their convictions treated as "spent" after the appropriate rehabilitation period. These rehabilitation periods are set out in section 5 of the Act and are usefully summarised in *Tolley's Employment Handbook* (Ninth edition):

17.6 REHABILITATION PERIODS

The period of rehabilitation is related to the length of the sentence which was passed on the offender. The main rehabilitation periods are set out below.

Sentence	Rehabilitation period
Imprisonment, custody, detention for life, or detention at Her Majesty's pleasure.	Not applicable
Imprisonment, youth custody, detention in a young offender institution or corrective training for a term exceeding 30 months.	Not applicable
Imprisonment, youth custody, detention in a young offender institution or corrective training for between 6 and 30 months.	10 years*
Imprisonment, youth custody or detention in a young offender institution for 6 months or less.	7 years*
Fine , or in the case of adults, probation.	5 years*
Detention under the <i>Children and Young Persons Act 1933</i> , s 53 for between 6 and 30 months.	5 years
Detention under above Act for 6 months or less.	3 years
Probation (in the case of minors)	2½ years from conviction, or (if later) when the probation order ceases to have effect
Conditional discharge, probation, care or supervision order.	1 year or the duration of the order, if longer
Disqualification from driving.	Period of disqualification
Absolute discharge.	6 months

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*Rehabilitation period subject to reduction by half for persons under 17

Section 4(3)(b) of the Act provides that a spent conviction is not a lawful ground for excluding a candidate from a job:

"a conviction which has become spent or any circumstances ancillary thereto, or any failure to disclose a spent conviction or any such circumstances, shall not be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him in any way in any occupation or employment."

However, the force of the Act is somewhat reduced by the fact that many jobs and professions are excluded from its provisions. Most of these exceptions are listed in Schedule 1 of the *Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 SI No 1023*, as amended. The list is similar but not identical to the ACPO list of occupations for which criminal records may be disclosed. Most people working with children are both exceptions to the provisions of the Act and subject to checking, but a number of professions (such as solicitors and doctors) are exceptions to the Act but not subject to checking, while other groups (such as taxi and minicab drivers) are subject to checking but are not exceptions to the Act. The exceptions were listed in Annex E to the Consultation Paper which is reproduced as Appendix I to this Paper.

IV The White Paper

The White Paper following the consultations was finally published on 19 June 1996.⁵ It reiterated the reasons why reform was needed:

- Checks were manpower-intensive and diverted the police from other vital tasks. Extension of checking to other groups (eg the security industry) was only possible if a separate, self-financing agency were established to carry out the work.
- The fact that the categories subject to checking are not the same as the categories which are exceptions to the *Rehabilitation of Offenders Act* is "hard to defend in principle and often causes misunderstanding and confusion in practice."
- The present system has led to an abuse of subject access rights available to individuals under the *Data Protection Act 1984* [DPA]:

"Under the Act individuals can apply for a copy of information held about them on police computerised records. Prospective employers and others (such as overseas Governments who require information about criminal convictions

⁵ Cm 3308, "*On the record. The Government's proposals for access to criminal records for employment and related purposes in England and Wales*". The Scottish Office published a separate consultative document, "*On the Record in Scotland. Proposals for Improved Access to Criminal Records*" in June 1996, Library Location: Dep/3 3523

from prospective immigrants) who have an interest in establishing whether individuals have a criminal record often require them to make an application for information under the DPA. This practice, known as "enforced subject access", is unsatisfactory because it elicits both spent and unspent convictions, which clearly undermines the Rehabilitation of Offenders Act."

The White Paper proposed that:

- a Criminal Records Agency should be established to undertake criminal record checks. The Agency would liaise with local police forces if necessary but most of the information would be available directly from computerised national criminal records. (In Scotland, the Scottish Criminal Record Office - SCRO - already provides a centralised checking service.)
- employers or licensing bodies requiring pre-employment access to "full" and "enhanced" checks (see below) would be required to register with the new agency and to sign up to a Code of Practice regulating the use of criminal record information so as to safeguard the confidentiality of personal information which may be revealed.
- three types of criminal record check would be available in response to a written application from the individual who is the subject of the check:
 - *Criminal Conviction Certificates* [CCCs] - national criminal records would be checked and a list of all criminal convictions "unspent" under the *Rehabilitation of Offenders Act 1974* issued. All employers would be able to ask prospective employees to obtain such a certificate.
 - *Full checks of national police records* - this check would include both spent and unspent convictions and cautions. It would only be available to prospective employees, trainees or volunteers in occupations which are also exceptions to the *Rehabilitation of Offenders Act 1974*. In other words, it would apply to occupations such as doctors, lawyers, accountants, police and prison officers and those caring for children, the elderly and the disabled. The individual who is the subject of the check would apply but the application would be countersigned by the prospective employer who would be sent a copy of the information released.
 - *Enhanced checks of national and local police records* - these checks would only be available in two limited areas: (i) prospective employees, trainees and volunteers having regular, unsupervised contact with children and young people under 18; and (ii) gaming, betting and lottery licensing. They would give details of minor convictions and cautions and non-conviction information as well as the information made available by a "full" check. As with full checks, individual applications would be countersigned by prospective employers or licensees.

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- a fee would be charged to applicants for record checks: that for CCCs and "full" checks would be the same, while the "enhanced" check would attract a higher charge.
- the list of exceptions to the *Rehabilitation of Offenders Act 1974* and the list of occupations for which a "full" check could be made would be aligned. This would require some amendment to the current list of exceptions. The proposed list of occupations is contained in Annex A of the White Paper and is reproduced as Appendix II to this Paper.

Some of the proposals require legislation although this is not necessary to set up the Criminal Records Agency as a next steps agency. The White Paper states that it is hoped that the Criminal Records Agency could begin its work around the middle of 1998.

There has been particular concern about the protection of children against paedophiles, especially after the Dunblane massacre on 13 March 1996. In June 1996, the Government published a Consultation Document on "*Sentencing and Supervision of Sex Offenders*".⁶ Amongst other things, this proposed that sex offenders should be required to notify the police of their address and any subsequent change of address, so as to provide the police with a register of the current whereabouts of convicted sex offenders; and that sex offenders should be prohibited from seeking employment involving access to children. The *Sex Offenders Bill 1996/97* introduced on 18 December 1996 will compel offenders to register their names and addresses, but it does not deal with employment. A separate Consultation Paper, *Sex Offenders: A Ban on Working with Children*, was issued jointly by the Home Office and the Scottish Office on 27 January 1997, the day the *Sex Offenders Bill* received its Second Reading in the Commons. This proposes that it should be a criminal offence for anyone convicted of a qualifying offence to seek or accept work involving unsupervised contact with children. Responses are requested by 18 April 1997.

The Cullen Report on the Dunblane Massacre drew attention to the absence of a vetting system for people running boys clubs:

"The evidence in the Inquiry showed the relative ease with which Thomas Hamilton over many years was able to open a succession of clubs in a number of local authority areas despite persistent complaints and concerns about his behaviour. There was no system in general use for the vetting of persons who operated such clubs or for the monitoring of their conduct."⁷

⁶ Cm 3304

⁷ *The Public Inquiry into the Shootings at Dunblane Primary School on 13 March 1996*, October 1996, Cm 3386, para 11.2

V The Police Bill

The *Police Bill [HL]* [HL Bill 10 1996/97] was published on 1 November 1996. Part V implements the proposals in the White Paper. The Bill received its Second Reading in the House of Lords on 11 November 1996; Part V was debated in Committee on 2 December 1996, on Report on 20 and 21 January 1997 and on Third Reading on 28 January 1997.⁸ It was introduced in the Commons as Bill 88 of 1996/97. Amendments in the Lords mean that the Clause numbering has changed. In the following summary, the Commons numbering is in brackets, as are amendments made in the Lords.

Clause 100 (103) provides for a **criminal conviction certificate** to be issued to any individual who applies in the prescribed form and pays the prescribed fee. It will give details of any convictions of that individual which are recorded in central police records and which are not spent under the *Rehabilitation of Offenders Act*. The fee is expected to be £5 or £6.⁹ (The fee is to be waived in the case of voluntary workers).

Clause 101 (104) provides for a **criminal record certificate** to be issued on the joint application of an individual and a registered body seeking the check. It will only be available for occupations which are exceptions to the *Rehabilitation of Offenders Act*. It will give details from central police records of spent and unspent convictions and about cautions. [This was called a "full" check in the White Paper.] The fee is expected to be £5 or £6.¹⁰ (The fee is to be waived in the case of voluntary workers.)

Clause 102 (105) provides for an **enhanced criminal record certificate** to be issued on the joint application of an individual and a registered body seeking the check. It will only be available for people working on a regular, unsupervised basis with children and young people under 18 or those applying for certain licences connected with betting, gaming and lotteries. It will include all the information contained in a criminal record certificate plus information from local police records. Where relevant, non-conviction information might be supplied. Where the interests of the prevention or detection of crime require, information might be supplied to the registered body but not the individual. The fee is expected to be £8 to £10.¹¹ (The fee is to be waived in the case of voluntary workers.)

Clause 103 (106) provides for an enhanced criminal record certificate to be issued in respect of applications for a judicial appointment.

⁸ HL Deb 11 November 1996, cc 789-839; HL Deb 2 December 1996, cc 469-528, 544-574; HL Deb 20 January 1997, cc 510-542; HL Deb 21 January 1997, cc 668-675; HL Deb 28 January 1997, cc 1112-1116

⁹ Baroness Blatch, Minister of State, Home Office, Second Reading Debate, HL Deb 11 November 1996, c 794

¹⁰ *ibid*

¹¹ *ibid*

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Clause 104 (107) provides for the issue of a new certificate where the applicant persuades the Secretary of State that the information on the original is inaccurate.

Clause 105 (108) allows for evidence of identity, including fingerprint evidence, to be required before a certificate is issued to an individual.

Clause 106 (109) defines sources of information and fingerprints available to the Secretary of State, provides for payment for that information and ensures that the Secretary of State shall not be liable in any legal proceedings for any inaccuracy in such information.

Clause 107 (110) defines which organisations are eligible to be registered under the legislation. They will be employers in the occupations exempted from the *Rehabilitation of Offenders Act*. They will have to pay a fee to register. This is likely to be £15 or £20.¹²

(**Clause 111**) (allows the Scottish Criminal Records Office to act in Scotland on behalf of the Secretary of State for Scotland in exactly the same way as the Criminal Records Agency will act in England and Wales on behalf of the Home Secretary.)

Clause 108 (112) provides for the Secretary of State to publish a code of practice, to be laid before Parliament, which registered bodies will have to follow.

Clause 109 (113) defines offences in relation to falsifying and abusing certificates and the disclosure of information obtained by registered bodies.

Clause 110 (114) provides that anything which has to be prescribed under Part V of the Bill should be prescribed in Regulations subject to annulment by either House of Parliament, (except that Regulations specifying groups of vulnerable adults in respect of whom enhanced criminal record certificates can be issued are subject to the affirmative procedure) .

¹²

ibid

VI The Debate in the Lords

A. Second Reading, 11 November 1996

During her speech on Second Reading, Baroness Blatch, the Home Office Minister, explained that the purpose of the provisions was to "help to protect the public and build a safer Britain by giving employers better access to the criminal records of those wishing to work with children or seek other positions of trust".¹³ She also made it clear that the new Criminal Records Agency would be established as part of the Home Office to issue the certificates in England, Wales and Northern Ireland, while the Scottish Criminal Record Office would undertake the work in Scotland.¹⁴ While most peers supported the idea of checking on those employed to work with vulnerable groups, particularly children, there was much concern about the general availability of criminal conviction certificates, which, it was argued, could make it much harder for ex-offenders to find work and so re-establish themselves in the community. One theme of many speeches was the extra cost the proposals would place on charities and voluntary organisations which would be under pressure to obtain certificates for all their volunteers.

Arguments deployed during the second reading debate can be summarised as follows:

Arguments for:

1. The criminal conviction certificate will contain information only about offences which are unspent under the *Rehabilitation of Offenders Act*. It is hoped that this will bring to an end the practice of enforced subject access in which employers require applicants to make a request under the *Data Protection Act 1984* for access to information on police computers. This elicits details of spent as well as unspent convictions.
2. "A criminal conviction certificate will serve only to confirm that job applicants are being honest about their applications".¹⁵
3. Voluntary organisations and private sector organisations have sought access to criminal records for many years on the same basis as the statutory sector. The only way in which it is possible to expand and widen the availability of criminal record checks is by introducing charges.¹⁶
4. It is right to protect children and other vulnerable groups against exploitation by people who are put in a position of authority over them or who have regular and unsupervised contact with them.

¹³ op cit c 789

¹⁴ op cit c 794

¹⁵ Baroness Blatch, HL Deb 11 November 1996, c 834

¹⁶ *ibid*

5. It should make it easier for employers in "high risk/high temptation" jobs (cash handling, security personnel guarding premises) to feel more confidence in their choice of employee.¹⁷

Arguments against:

1. It will reinforce discrimination against those with a criminal record who may be trying to go straight.¹⁸
2. There will be wide scope for forgery and fraud with false certificates "showing nil convictions circulating like promissory notes"¹⁹
3. There is a possibility of inaccurate information causing damage to both employees and employers.²⁰
4. It will place a financial burden on the unemployed and on voluntary organisations and so act as a disincentive both to job seeking and volunteering.²¹ Unemployed ex-offenders are more likely to re-offend than ex-offenders who find their way into work.²² Volunteers have a higher turnover than paid employees so organisations which use a large number of volunteers will be faced with large expenses in getting checks, which will be demanded of them by trustees, insurance companies, parents etc.. The Scout Association may be faced with a bill for £500,000, the Guide Association with one for £450,000.²³
5. Release of information about cautions or untested information, eg acquittals, could be a breach of civil liberties. People may be debarred from a job on the basis of hearsay or rumour.²⁴
6. Convictions revealed may be completely irrelevant to the job concerned but will still probably prejudice a prospective employer.²⁵
7. Should enhanced checks be available for vulnerable groups other than children?²⁶
8. There may be too much reliance on the certificates. Paedophiles, for example, often do not have previous convictions. It may lull employers into a false sense of security

¹⁷ Baroness O'Cathain, HL Deb 11 November 1996, c 815

¹⁸ Lord Rodgers of Quarry Bank, HL Deb 11 November 1996, cc 803

¹⁹ *ibid*

²⁰ *ibid*

²¹ *ibid*

²² Lord Dubs, HL Deb 11 November 1996, c 818

²³ *ibid*

²⁴ *ibid*

²⁵ *ibid*

²⁶ Baroness Hilton, c 829

so they no longer take up references and carry out other checks as thoroughly as they should.²⁷

B. Committee Stage Debate, 2 December 1996

During the Committee stage, Lord Weatherill successfully moved an amendment exempting people who apply to be volunteers from the obligation to pay a fee to obtain a certificate. On a division, the Government was defeated by 137 votes to 135.²⁸ Lord Weatherill argued:

"Every year in the United Kingdom over 20 million volunteers provide a service that is beyond price. That contribution should be nurtured and supported. As at present drafted, the Bill could have a potentially devastating effect on organisations that depend on the services of a large number of volunteers."²⁹

Baroness Blatch, Minister of State at the Home Office, argued that one of the reasons the Government had introduced the changes was to meet the widespread demand from voluntary organisations that they should have access to criminal record checks on the same basis as the statutory sector. The expense of such an extension made charges essential. The Government had considered allowing free or subsidised checks for volunteers but rejected it for two main reasons:

- Someone else would have to meet the costs of free checks. It would not be right to require the taxpayer or the voluntary organisation to pick up the bill, so the charge for others would be at least doubled.
- There would be an incentive for people to obtain free checks on the basis of being volunteers but to use them to obtain paid employment.

Other amendments, debated but not accepted, included those to:

- ensure that only information relevant to the consideration of the applicant's suitability for a specified paid position is included in the criminal conviction certificate [cc 492-502]
- remove the provisions on Criminal Conviction Certificates from the Bill altogether [cc 503-516]
- remove the record of a caution from the information contained in a criminal record certificate [cc 516-521]

²⁷ Baroness Hilton, c 830

²⁸ HL Deb 2 December 1996 cc 469-492

²⁹ HL Deb 2 December 1996, c 469

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- extend enhanced criminal record checks to people who would have regular unsupervised contact with vulnerable adults such as the elderly and mentally ill [cc 521-528]. Baroness Blatch announced that the Government intended to bring forward an amendment to extend enhanced criminal record checks to vulnerable adults at Report stage.³⁰
- require publication of guidelines on factors which should appear in enhanced check [cc 544-547]
- provide compensation if inaccurate information on a certificate proves prejudicial [cc 547-555]
- require registered bodies to supply the Secretary of State with details of their policies on the employment of ex-offenders [cc 556-562]
- allow for automatic registration of local authorities [cc 562-564]
- require that no person may provide private security services without being a registered body and that criminal record certificates should be sought for all people employed in the industry [cc 564-567]. Baroness Blatch announced that the Government would shortly be issuing a consultation paper putting forward proposals for the regulation of the contract manned guarding sector based on compulsory criminal record checks of those wishing to work as contract security guards. These may lead to contract security guards being made an exception to the *Rehabilitation of Offenders Act*, in which case companies providing such services would be eligible to register and require criminal record certificates from prospective employees.³¹ (The Consultation Paper was, in fact, issued on 19 December 1996, with responses requested by 21 March 1997.)³²
- make the Code of Practice subject to the affirmative resolution [cc 567-569]

C. Report Stage Debate, 20 and 21 January 1997

At Report stage, the Government brought forward its promised amendment to extend enhanced criminal record checks to people working with vulnerable adults. The Secretary of State will be able to specify groups caring for adults who may be subject to enhanced checks by Regulation. Baroness Blatch assured the House: "It is our intention to specify those who work with vulnerable adults".³³ A number of technical amendments were also made by the Government, including those to:

- permit office holders (such as the Director General of OFLOT) to register for enhanced checks [cc523-524]

³⁰ Baroness Blatch, HL Deb 2 December 1996, c 528

³¹ HL Deb 2 December 1996, c 566

³² Home Office, *Regulation of the Contract Guarding Sector of the Private Security Industry: A Consultation Paper*, December 1996

³³ HL Deb 20 January 1997, c 533

- allow for the destruction of fingerprints used in checking entitlement to certificates when they are no longer required [c 669]
- allow the Scottish Criminal record Office to do work on access to criminal records on behalf of the Secretary of State for Scotland [cc 670-671]
- to make the publication of the Code of Practice mandatory not permissive [cc 671-674]

Other amendments debated, but not accepted, included those to:

- require criminal conviction certificates for candidates in Parliamentary elections [cc 510-514]
- defer the introduction of criminal conviction certificates [cc 514-520]
- require the issue of certificates within seven days [cc520-522]
- prohibit enforced subject access by making it an offence for an employer to require an applicant for a job to supply information on criminal convictions other than a criminal conviction certificate [cc522-523]. The amendment was withdrawn when Baroness Blatch promised to try to incorporate something in the Bill at a later stage:

"The increasing practice of enforced subject access which this amendment seeks to outlaw, is undesirable and is contrary to the spirit of the Data Protection Act 1984. It also undermines the Rehabilitation of Offenders Act. If it did not cease as a result of the introduction of criminal conviction certificates provided for in this Bill it would undermine the measures we introduce to protect information about spent convictions in this Bill.

We very much hope that the new criminal conviction certificates will give employers a legitimate means by which they can obtain confirmation of an applicant's unspent convictions and reduce the practice of enforced subject access. But I share the noble Lord's concerns that this may not eliminate the problem. We will think further about this problem and try to find a way of amending this Bill in order to outlaw this practice.

I am advised that the matter is not straightforward, but I promise that we shall attempt to address it in this Bill."³⁴

³⁴ HL Deb 20 January 1997, c 523

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- remove cautions and spent absolute and conditional discharges and spent bindovers from criminal record certificates, and remove cautions from enhanced criminal record checks [cc 524-531]. Lord Lester feared that cautions might "become a form of quasi conviction whose disclosure to a potential employer may severely prejudice the individual's chance of obtaining employment." [c 526]
- exempt childminders from the need to pay a fee for enhanced criminal record certificates [cc 534-538]. The National Childminding Association and their Scottish and Northern Irish equivalents, representing over 100,000 child minders fear that the introduction of charges will deter registration and place an unacceptable burden on an already poorly paid group. Registered childminders already have to pay a £12.50 initial registration fee and a £10 annual inspection fee. Local authorities at present carry out free criminal record checks on childminders and adults who live with them. Baroness Blatch used the same arguments to resist this amendment as she had used on voluntary workers: the Criminal Record Agency had to be self-financing, waiving the fee for childminders would cost about £720,000 which would mean that others would have to pay more.
- establish a Criminal Records Tribunal to hear complaints about the accuracy or relevance of the certificates [cc 538-542]. Baroness Blatch argued that the existing safeguards in the Bill were adequate and that a tribunal would be "unwieldy, bureaucratic and....would add yet more costs to the Bill" [c 540]
- make the Code of Practice subject to the negative resolution procedure [cc 671-674]

D. Third Reading, 28 January 1997

The only amendment proposed to Part V on Third Reading was another unsuccessful attempt to establish a Criminal Records Tribunal [cc 1112-1117]. In her concluding remarks, Baroness Blatch indicated that the Government had not yet decided how to deal with Lord Weatherill's amendment on voluntary workers and drew attention to two further technical amendments which would need to be made in the Commons:

"The Government fully recognise the good work that is done by volunteers.....But.....the amendments have substantial resource implications - perhaps up to £200 million. No one will know the extent of that cost because it is open-ended as a commitment to anyone who applies. We are still assessing those implications and will be inviting another place to consider how best to proceed. as I indicated during Report stage, it is likely that the Bill will have to be amended in another place to provide for checks by Ministers of the Crown other than the Lord Chancellor and to enable regulatory bodies to pass to one another criminal record information which has been provided to them." [c 1118]

Appendix I Existing Exceptions to the Rehabilitation of Offenders Act 1974³⁵

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*.

³⁵

reproduced from Annex E of the Consultative Document, *Disclosure of Criminal records for Employment Vetting Purposes*, September 1993, Cm 2319

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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*.
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*.
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*.

V. Exception made by the Banking Act 1987

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.

Appendix II Proposed Categories which will be both exceptions to the provisions of the Rehabilitation of Offenders Act 1974 and who will be eligible for full criminal record vetting checks³⁶

Excepted Appointments and Occupations

1. Judicial appointments.
2. Employment in the office of the Director of Public Prosecutions.
3. Constables, police cadets, military, naval and air force police, and certain posts involving police work or assisting the police, including traffic wardens.
4. Employment in the Prison Service; appointment to a Board of Visitors in England and Wales; employees of private sector companies involved in the management of prisons; prisoner escort lay observers, prison custody officers within the meaning of Part IV of the Criminal Justice Act 1991.
5. Probation officers.
6. Any office or employment which involves regular contact with children or young persons under the age of eighteen; or any office or employment concerned with appointing, managing or supervising persons whose duties involve such regular contact.
7. Any office or employment connected with the provision of social services which involves regular contact with the old, the mentally or physically handicapped, or the chronic sick or disabled; or any office or employment concerned with appointing, managing or supervising persons whose duties involve such regular contact.
8. Employment or clinical practice concerned with the provision of health services within the National Health Service or otherwise, which involves contact with patients or clients.
9. Dentists, dental hygienists, dental auxiliaries.
10. Ophthalmic opticians, dispensing opticians.

³⁶

reproduced from Annex A of the White Paper, *On the Record: The Government's Proposals for Access to Criminal Records for Employment and Related Purposes in England and Wales*, Cm 3308, June 1996

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11. Osteopaths.
12. Chiropractors.
13. Veterinary surgeons.
14. Pharmaceutical chemists.
15. Any occupation concerned with the management of an abortion clinic or the carrying on of a nursing home, residential care home or private mental health hospital .
16. Chartered accountants, certified accountants.
17. Barristers (in England & Wales), solicitors.
18. Senior members of the Institute of Legal Executives.
19. Firearms dealers.
20. Any occupation requiring a licence, certificate, or registration from the Gaming Board for Great Britain.
21. Any person managing the business or any part of the business of running the National Lottery, or of promoting lotteries as part of the National Lottery; and any person for whose benefit the business is carried on.
22. Directors, controllers or managers of insurance companies.
23. Directors, controllers or managers of banks and building societies; those organisations currently excepted under the Financial Services Act 1986; certain people working in the Lloyd's market; certain persons listed by the Bank of England under S171 of the Companies Act 1989. (For these groups, only offences of fraud or other dishonesty, or an offence under legislation concerned with the financial sector, are excepted from the provisions of the ROA.)
24. Any occupation for which an explosives certificate is required.
25. Firefighters.
26. Any occupation for which the disclosure of spent convictions is required on the grounds of safeguarding national security.

Excepted certificates and licences

27. Firearm and shotgun certificates.

28. Certificates to keep explosives for private use.
29. Licences to deal in securities.
30. Licences which relate to persons under the minimum school-leaving age going abroad to perform for profit.

Excepted proceedings

31. Any proceedings relating to individuals falling into any of the groups specified above as having excepted status which concern:
 - admission to their profession
 - registration or inspection
 - disciplinary action
 - suitability, or fitness to be appointed to or to retain an employment or office or to be a member of an organisation which falls within the excepted categories
 - the grant, renewal or revocation of certificates, licences or authorisations which fall within the excepted categories.
32. Certain proceedings before a Mental Health Review, tribunal.
33. Proceedings connected with an application for parole to the Parole Board.

Excepted convictions

34. Persons convicted of an offence under the Explosive Substances Act 1883.

Note: There are additional excepted categories which apply in Scotland.

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