



CRIMINAL RECORDS BUREAU

**REGULATIONS UNDER PART 5 OF THE
POLICE ACT 1997**

PARTIAL REGULATORY IMPACT ASSESSMENT

December 2003

Partial Regulatory Impact Assessment

Nature of proposal

The introduction of quality standards for Registered Bodies counter-signing applications for criminal record Disclosures under Part 5 of the Police Act 1997. The quality standards would cover, in particular, the accurate completion of Disclosure application forms and the verification of applicants' identity. The standards are to be introduced through the attachment of conditions to a registration.

Purpose and intended effect of the measure

2. The Criminal Records Bureau (CRB) was established in response to demands for a more comprehensive and effective means by which employers, voluntary organisations and others could obtain information on the criminal record (if any) of applicants for employment to help them assess the applicants' suitability for work with children, vulnerable adults and/or certain other positions of trust.

3. The CRB "went live" in March 2002 with the launch of its higher level Disclosure service. Two levels of criminal record check are currently available - Standard and Enhanced Disclosure. Both provide information on an individual's current and spent¹ convictions; in relevant cases, they also indicate whether the subject of the Disclosure is prohibited from working with children. Enhanced Disclosures also contain any relevant additional information which may be held on the individual in police records. Applications for Standard and Enhanced Disclosures must be countersigned by a Registered Body (RB). The present purpose of the counter-signature is to certify that the application for a Disclosure is required for the purpose of asking an exempted question under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. This enables spent convictions to be disclosed and taken into account when an applicant's suitability for employment involving work with children, vulnerable adults or certain other positions of trust is considered

4. An RB is an office holder, individual or organisation listed in a register maintained by the CRB for the purposes of Part 5 of the 1997 Act.

5. In September 2002, the Home Secretary appointed an Independent Review Team (IRT) to examine the CRB, its processes and performance and to make recommendations for changes designed to ensure that it operates more effectively and efficiently in future when making criminal record checks. Amongst the recommendations put forward by the IRT was that the critical role of Registered Bodies in the CRB process needs to be formally recognised and upgraded. In particular, Registered Bodies should be made unambiguously responsible for validating the identity of those for whom they seek Disclosures and for ensuring the quality and completeness of applications submitted to the CRB. The Government accepted this recommendation and has brought forward amendments to Part

¹ Spent convictions: a rehabilitation period is attached to a sentence passed by a court. The length of the period can vary from 6 months to 10 years depending on the age of the offender on conviction and the length and nature of the sentence passed. During the "rehabilitation period" an individual must disclose his/her convictions when asked to do so by his/her (potential) employer. Provided he/she is not reconvicted during the rehabilitation period, his/her conviction will, at the end of the rehabilitation period, be regarded as spent. As such it will not, save in exceptional circumstances, be required thereafter to be disclosed. This scheme does not apply to any offence where the sentence passed was for more than 30 months custody.

5 of the 1997 Act² to enable conditions to be attached to a registration with a view to strengthening the role of RBs in the Disclosure process.

6. The proposed conditions are set out in the attached draft Police Act 1997 (Registration) Regulations 2004. The regulations would apply throughout England and Wales and are expected to come into force 3 months after they are made (that is, in early summer 2004). In particular, the regulations would:

- (a) Place a duty on Registered Bodies to exercise all due diligence to ensure that all mandatory data fields (see annex attached) on a Disclosure application form are accurately completed. Where any non-mandatory data fields are completed, the Registered Body would be under a similar duty to ensure that the information provided is accurate.
- (b) Require a Registered Body, or their authorised agent, to inspect a specified combination of documents (for example, passport, driving licence, birth certificate, bank statement and utility bills) to provide supporting evidence of the applicant's identity.
- (c) Provide for Disclosure fees to be payable on account. Liability to pay the application fee would remain firmly with the applicant, but it would be the responsibility of Registered Bodies to submit fees to the CRB, normally on a monthly basis. 74% of Registered Bodies already pay Disclosure fees on account in recognition of the administrative savings that this method brings. To facilitate the move to payment on account in all cases, regulations will provide for Disclosure applications and the required fee to be routed to the CRB via an RB. This will do no more than formally enshrine in regulations what is already the standard practice.
- (d) Require Registered Bodies to comply with the Code of Practice, issued under section 122 of the Police Act, on the use of Disclosure information. RBs are already, in effect, required to comply with the Code but there is currently no direct sanction against them for breaching the Code.
- (e) Require Registered Bodies to notify the CRB of any charges they levy for their services and to give due prominence to such charges. By ensuring transparency and allowing market forces to operate effectively, this provision would address concerns about excessive charges levied by some Umbrella Registered Bodies.
- (f) Limit the number of counter-signatories a Registered Body may have. For most Registered Bodies (ie. those countersigning fewer than 1,000 per year) the limit would be 20, but the regulations would set a higher limit for larger Registered Bodies in recognition of the higher volumes of applications they process. Placing a limit on the number of counter-signatories would ensure that there are a core number of accountable managers within a Registered Body with the necessary knowledge and experience of the Disclosure process. Without such a limit there is a danger that such experience would be dissipated throughout the organisation leading to lower standards.
- (g) Require Registered Bodies to afford CRB staff all reasonable access during normal working hours to their offices and records (in respect of their functions under Part 5 of the 1997 Act) for the purpose of auditing their compliance with the conditions attached

² The amendments are contained in the Criminal Justice Act 2003.

to registration.

7. To support Registered Bodies in the discharge of their functions the CRB are putting in place a Registered Body assurance team. The emphasis will be on providing training and support to Registered Bodies to facilitate their compliance with the conditions attached to registration. Where, however, an RB is unable to achieve the required standards and, as a result, breaches a condition attached to registration, the CRB would have the power to suspend or revoke their registration. Where an RB's registration was suspended or revoked, the organisation concerned could continue to access the Disclosure service through an Umbrella Body.

8. At present RBs pay a one-off £300 fee to cover the CRB's administrative expenses arising from the initial registration. RBs are also charged a £5 fee for registering each new counter-signatory. No fee is presently charged to reflect the ongoing costs to the CRB of providing the necessary training and support for RBs. Furthermore, the £5 charge for registering a new counter-signatory does not cover the cost of undertaking the equivalent of an Enhanced criminal record check on the nominee to satisfy the CRB that he or she is a fit and proper person to counter-sign Disclosure applications. To remedy these two shortcomings, it is proposed to introduce an annual fee of £300 payable by all RBs (payment of the fee will be made a further condition of registration) and to set the fee for registering new counter-signatories at the same rate as the fee for an Enhanced Disclosure. In order to ensure the continued probity of counter-signatories, they will be subject to re-vetting every 3 years, with RBs being charged accordingly. The revenue from the annual fee would meet the staffing and other costs of the Registered Body assurance team referred to in paragraph 7 above; the fee has been calculated on the basis that 80% of RBs would maintain their registration following the introduction of the fee.

9. It is also proposed to amend the Police Act 1997 (Criminal Records) Regulations 2002 (the draft amendment regulations are attached) to increase the Disclosure fees from 1 April 2004. Ministers have made it clear that the CRB is expected to be self-financing from 2005/06. For 2004/05, the Home Office, Department of Health and Department for Education and Skills will continue to subsidise the Disclosure service, but as the CRB moves towards full cost recovery it is necessary to increase the Disclosure fees to £33 (currently £29) for an Enhanced Disclosure and to £28 (currently £24) for a Standard Disclosure. Checks for volunteers would continue to be free, saving the voluntary sector an estimated £12 million in 2004/05.

Objective

10. The Disclosure service is part of a package of measures put in place by the Government to strengthen the protection of children and vulnerable adults from those who wish to harm them. In providing wider access to accurate criminal record information for employment vetting purposes, the CRB has a duty to deliver the service in the most effective and efficient way possible. The IRT recognised that the efficiency and effectiveness of the end-to-end process is not solely the responsibility of the CRB. Registered Bodies also have a central role to play.

11. RBs are the channel through which applications for Standard and Enhanced Disclosures are submitted to the CRB. As such, they have a responsibility to ensure that applications forms are accurately completed. At present, some 11% of applications are rejected immediately upon receipt by the CRB because required information is missing (for

example, a full 5 year address history) or other errors have been made on the form. A further 16% of applications have to be returned to the relevant RB at subsequent stages of the process as a result of other errors or inconsistencies having been identified (for example, the stated middle name or date of birth of the applicant is different from that shown on his or her passport). The need to correct such errors and resubmit applications add to the costs of RBs and the CRB alike and inevitably delays the issue of a Disclosure.

12. RBs are also best placed to confirm the identity of the applicant. In many cases the RB is also the employer and, as such, will have a vested interest in combating identity fraud by a would-be offender seeking to circumvent the controls in order to gain access to children or vulnerable adults. Rigorous identity verification is essential to combat such identity theft. Under CRB guidance, RBs, or their agent, are already required to help evidence an applicant's identity and current address by examining a combination of approved documents such as a passport, driving licence and utility bills. However, the extent to which RBs undertake and record their identity checks is variable. One in ten of the applications immediately rejected by the CRB on receipt have to be returned to the RB concerned because insufficient evidence of identity has been recorded on the form. Lack of rigour could undermine the effectiveness of the Disclosure service and put vulnerable people at risk. The regulations will, therefore, implement the IRT's recommendation that RBs should be unambiguously responsible for identity validation and make binding the existing CRB guidance. The specific requirement will be to check an applicant's identity against a specified combination of approved documents. There will be no express requirement to carry out face to face identity checks (to match a person's appearance against the photograph in a passport or other official document) but where such checks are feasible RBs will be encouraged to undertake them. It would continue to be open to RBs to employ trusted intermediaries to undertake identity checks on their behalf (for example, a Local Education Authority may delegate the function to headteachers or school bursars), but they would need to ensure that such agents properly carried out the task.

Risk assessment

13. As at the end of August 2003 there were some 10,000 RBs. Included within this total are some 2,100 organisations in the care services sector (eg. care homes, domiciliary care agencies); 1,300 independent schools; 1,000 NHS Trusts and other health-related organisations; 650 local authorities (a number are registered more than once); and 1,800 other voluntary or charitable organisations. In 2003/04 the CRB is expected to issue 2.3 million Disclosures. On the basis that 27% of applications have to be returned to RBs to correct errors or omissions, that means that some 620,000 applications will be returned to RBs. If no action was taken, the error rate would continue at this unacceptably high level needlessly adding to the costs incurred by both RBs and the CRB and the time taken to issue Disclosures.

14. A survey conducted by the CRB indicated that 1 in 5 RBs had, on at least one occasion, decided not to employ an individual on the basis of information contained in a Disclosure. This finding shows that the CRB is having a direct beneficial impact protecting the vulnerable from potential abuse. If Disclosure applications were accepted by the CRB without rigorous identity checks having been undertaken, there would be scope for a person with a criminal record, or who is otherwise known to the police, to circumvent the system by obtaining a 'clean' Disclosure by passing himself off as another person who he knows has no such record. What would otherwise be preventable abuse may be unwittingly allowed to occur for want of adequate pre-employment identity checks by the prospective employer.

Options

15. Three options have been identified:

Option 1 – Take no action and continue to rely on CRB guidance alone.

Option 2 – Introduce rigorous quality standards for RBs in respect of the completion of Disclosure application forms and authenticating the identity of applicants. Such quality standards to be enforced through conditions attached to registration.

Option 3 – As option 2, but combined with a significant reduction in the size of the RB network so that only those RBs processing sufficient volume of Disclosure applications remain registered.

Costs

Option 1

16. While the proportion of incorrect Disclosure applications has fallen from one in two to one in four since the launch of the Disclosure service, the number of applications that still need to be returned to RBs remains unacceptably high, contributing to unnecessary costs and delays in the end to end process. Continued reliance on guidance alone would not adequately address the problem of poorly completed application forms and the lack of rigour in the way a minority of RBs check and document the identity of the applicant. Now that Parliament has legislated in the Criminal Justice Act to enable conditions to be attached to registration, there is a legitimate expectation that the Government would introduce regulations to this end.

Option 2

17. As part of good employment practice, employers should already be taking appropriate measures to satisfy themselves of the identity of a prospective employee or volunteer. In many parts of the care sector there is already a statutory requirement on employers to obtain proof of a person's identity (see, for example, Schedule 2 to the Care Homes Regulations 2001 or Schedule 3 to the Domiciliary Care Agencies Regulations 2002). As a result there should be minimal additional costs on those employers already following good practice. Other employers would have to devote more administrative resources to this task in future. Where an RB uses an agent to undertake the identity checking on their behalf, the RB will need periodically to audit the way in which such agents undertake this task.

18. The introduction of an annual fee would cost each RB £300. If all 10,000 RBs continued to be registered the total cost/revenue would be £3 million. It is expected, however, that a number of RBs will seek to deregister on a voluntary basis following the introduction of the annual fee (980 RBs have been registered for more than 6 months but have never applied for a Disclosure). If one fifth of RBs voluntarily de-registered the total cost/revenue would be £2.4 million. A number of organisations, in particular local authorities, have more than one registration with the CRB. Such organisations could reduce the additional costs arising from the introduction of the annual fee by reducing their registrations to one. Other, smaller businesses or voluntary organisations could similarly elect to come together to access the Disclosure service through an umbrella body, rather than maintain their own registration; in doing so they would only have to pay one annual

fee.

Option 3

19. The additional cost to the CRB of managing a network of 10,000 RBs rather than 1,000 would need to be balanced against the added expense for smaller RBs which would, in the event of their deregistration, be compelled to operate through an Umbrella RB. Many such Umbrella Bodies charge for their services; typically such charges are of the order of £8 to £18. But, at the lower end of this scale, an RB would have to submit more than 37 applications a year before the gross cost of Umbrella Body charges exceeded the £300 annual fee that would be payable if the RB remained registered with the CRB. At the upper end of the scale the break-even point would be 16 applications a year. In addition to any extra costs for employers of operating through an Umbrella Body, there is also a risk that a substantial reduction in the size of the RB network would lead to problems for some employers and voluntary organisations accessing the Disclosure service. RBs have also expressed concern that accessing the Disclosure service through an Umbrella Body would delay the process.

Other costs

20. In addition to the costs and benefits of introducing quality standards for RBs, the increase in Disclosure fees from 1 April 2004 may entail additional costs for businesses and the voluntary sector. Under the legislation, responsibility for paying Disclosure fees rests with the individual applicant, but some employers may choose to pay the fee on behalf of employees. On the basis of an estimated demand for 2.3 million Disclosures in 2004/05, the total additional cost to CRB customers would be £8 million³. No detailed breakdown is available of the proportion of Disclosure applications which come from each of the public, private and voluntary sectors. The evidence that is available suggests that the majority of applications come from the public sector, consequently the majority of the additional costs would fall to that sector. As a result, the maximum cost to the business/voluntary sector is therefore £4 million, but is likely to be less than this. The increase in fees would enable the CRB to achieve its objective of becoming fully self-funding from 2005/06. Checks for volunteers would continue to be free.

Benefits

Option 1

21. Option 1 would place no additional burdens on RBs, but equally would produce no benefits in terms of improving the efficiency and effectiveness of the end to end Disclosure service.

Option 2

22. The requirement on RBs to exercise all due diligence to ensure that all mandatory data fields on a Disclosure application form are accurately completed should result in a saving for both RBs and CRB and lead to improved turnaround times for the issue of Disclosures.

³ The additional revenue from the fee increase is calculated on the basis of the following assumptions: 2.3 million Disclosures issued; 85% of applications from fee paying customer; 87% of applications are for Enhanced Disclosures and 13% for Standard Disclosures.

A reduction in the error rate from the current 27% to 15% is achievable in the short term. Savings for individual RBs will vary according to the number of Disclosure applications counter-signed and the accuracy with which these are currently completed. On the basis of charges levied by Umbrella Bodies the typical administrative cost for an RB of processing an application will be of the order of £8 for some 20 to 30 minutes work. On the assumption that it would cost an RB half as much again (i.e. £4 for some 10 to 15 minutes work) to process a returned application form, reducing the return rate from 27% to 15% would save RBs some £1.1 million in 2003/04 (on the basis of 2.3 million applications).

23. The rigorous application of the CRB's requirements for identity checks would provide a greater measure of reassurance, both to the employer and the users of the services they provide, that the identity of applicants for Disclosures was being properly checked, thereby minimising the chances of a known offenders with a relevant criminal record gaining access to children or vulnerable adults.

Option 3

24. In addition to the benefits identified under option 2, this option could help to further professionalise RBs. Many RBs may process insufficient numbers of Disclosure applications needed to meet the CRB's quality assurance standards. Furthermore, managing a large network of small RBs inevitably adds to the overall cost of the Disclosure service. Larger RBs may also be better placed in due course to adopt, as standard, an electronic application channel. These considerations led the IRT to recommend that the number of Registered Bodies should be optimised to establish sensible economies of scale and improve proficiency. In response, the Government has taken a discretionary power to cancel the registration of those RBs which do not counter-sign a prescribed minimum number of Disclosure applications per year. Three out of four respondents to the consultation on the reform of the Disclosure process opposed the introduction of such a minimum threshold.

Impact on small businesses

25. Many of the 10,000 RBs will be small businesses or charities, for example, care homes and independent schools. The responses to the February consultation on the reform of the Disclosure process suggests that there is strong support across all sectors for quality standards for identity checking and that in the great majority of cases a requirement to validate an applicant's identity would have no implications. These findings, and the potential administrative savings arising from a reduction in the number of incorrectly completed application forms, indicate that option 2 would have no significant adverse impact on the great majority of small businesses. All RBs would, however, be liable to pay the £300 annual fee.

26. Option 3 would impact disproportionately on small business, as, by definition, they would be unlikely to meet any minimum threshold for the number of Disclosures counter-signed in any year.

Competition assessment

27. We do not believe that introducing quality standards for RBs will have a detrimental effect on competition. Some 85% of RBs – which cover the public, private and voluntary sectors – are also the employer (or licensing authority) so the question of competition does not arise. The remaining 15% of RBs act as Umbrella Bodies. Two-thirds of these are 'open' Umbrella Bodies (some 1,000) that is they are prepared to countersign applications

on behalf of any other employer or voluntary organisation either locally or more widely. It is open to employers or voluntary organisation that are not themselves Registered Bodies to use the services of any open Umbrella Body operating in their area. The proposal to require Umbrella Bodies to publicise their changes should foster greater competition between them. To the extent that the proposals give rise to additional costs for Umbrella Bodies, these would not be sufficient to have implications for competition. Moreover, the costs would be applicable to a wide variety of sectors and accordingly would not be expected to have a disproportionate effect within any particular sector.

Consultation

28. Following the publication of the Government’s response to the IRT recommendations, the Home Office issued (in February 2003) the consultation document: ‘Criminal Records Bureau – Reform of the Disclosure Process’. 570 responses were received. An analysis of the results of the consultation was published on 5 June 2003.

29. Amongst other things, the consultation sought views on the introduction of quality standards for identity checking. Of those that commented on this issue, 90% welcomed the introduction of quality standards for identity checking and the same proportion endorsed the introduction of sanctions for those breaching the proposed standards.

30. The consultation also sought views on whether the CRB should have the power to enforce the Code of Practice on the use of Disclosure information. 92% of respondents were in favour of conferring such a power on the CRB, while 80% agreed that the CRB should be able to revoke the registration of those found to be in breach of Code.

Summary and recommendation

31. This RIA sets out 3 options, as follows:

Option	Costs	Benefits	Disadvantages
Continue to rely on CRB guidance	CRB and RBs would continue to bear nugatory costs associated with correcting errors and omissions in 1 in 4 applications. Lack of rigorous identity checks increases risks to children and vulnerable adults.	No additional burdens on RBs.	Deficiencies with current arrangements would continue, precluding further improvements to efficiency and effectiveness of Disclosure service.



Introduce rigorous quality standards for RBs through regulations.	£300 annual fee payable by all RBs. If 80% of RBs maintain their registration the total cost will be £2.4m. Some RBs may incur additional administrative costs in order to comply with identity validation requirements.	Reduction in RB (up to £1.1m) and CRB costs as a result of reduction in number of inaccurately completed application forms. Improved effectiveness of service through robust identity validation process.	Express duty to check identity documentation may have administrative implications for small minority of RBs.
As option 2 with addition of substantial reduction of RB network through introduction of minimum threshold for number of applications processed each year. (Costs, benefits and disadvantages identified here are additional to those listed under option 2.)	Smaller employers would have to access Disclosure service through an Umbrella Body most of which charge between £8 and £18 to cover their administrative costs. For a small business recruiting 10 employees a year this would cost between £80 and £180, although they would not be liable to the £300 annual fee.	Potentially a more expert and experienced RB network as only those organisations which process a significant volume of applicants would be registered. The size of the CRB's RB assurance team could be reduced accordingly, producing cost savings as compared with the team necessary to support current RB network. Further efficiency savings would result from, potentially, more rapid introduction across all RBs of the use of an electronic application channel (although the channel is likely to have cost implications for some RBs).	In addition to potential additional costs for smaller employers, a significant reduction in size of RB network may lead to difficulties in accessing Disclosure service and an increase in turnaround times as a result of the need to submit applications through a third party.

32. Option 1 would not secure the objectives outlined in paragraphs 10 to 12 above. Both options 2 and 3 would deliver the Government's objectives, however option 3 is likely to have a disproportionate effect on small and medium sized businesses and voluntary organisations, although it has the potential for delivering greater overall efficiencies in the end to end Disclosure process. In the short term, the priority is to ensure that all RBs comply with rigorous performance standards and to deregister any that cannot meet these. It is expected that option 2 will achieve this aim without placing undue burdens on business and the voluntary sector and is therefore the Government's preferred course. The Government will, however, keep the position under review. If the introduction of conditions attached to registration does not have the desired effect in raising standards the Government will revisit the option of setting a minimum threshold for the number of applications counter-signed by an RB each year.

Enforcement

33. The required standards for RBs will be implemented by attaching conditions to a registration. The CRB will monitor compliance with such conditions, providing additional training and support where needed. Where necessary, there are provisions in Part 5 of the Police Act 1997, as amended, which would enable the CRB to suspend or revoke an RB's registration where the registration conditions have been breached.

Contact point

34. Enquiries should be addressed to Paul Willis, Criminal Records and Security Industry Unit, Ground Floor, 85 Buckingham Gate, London, SW1E 6PD (telephone 020 7411 5533; fax 020 7411 5596; email Paul.Willis@homeoffice.gsi.gov.uk).

