



Safest People, Safest Places

Combined Fire Authority

15 September 2023

Changes to the Rehabilitation of Offenders Act (Exemptions) Order 1975 and Disclosure and Barring Service (DBS) eligibility

Report of Director of People and Organisational Development

Purpose of report

1. The purpose of this report is to provide the Combined Fire Authority (CFA) an update on the changes to the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act (Exemptions) Order 1975 which enables Fire and Rescue Services employees to be checked through the DBS at a standard or enhanced level.

Background

2. The National Fire Chiefs Council (NFCC) Prevention Committee led a proposal for the inclusion of the fire and rescue service authority employees in the Rehabilitation of Offenders Act (Exemptions) Order 1975.
3. Recently His Majesty's Inspectorate of Constabularies and Fire & Rescue Services (HMICFRS) made recommendations to the government in its recent report into the culture of the fire and rescue service nationally, highlighting the need to have a nationally consistent approach to background checks. This ensures that fire and rescue services can carry out background checks on staff like other emergency services currently do and can better identify concerns with applicants for jobs, such as any police warnings and reprimands and whether applicants are considered unsuitable for working with children or vulnerable adults.
4. On the 6 July 2023, the Ministry of Justice laid before Parliament a statutory instrument to make this amendment following a business case from the NFCC following support from the Home Office. The change enables Standard Disclosure and Barring Service (DBS) checks to be conducted on all fire and rescue authority (FRA) employees. This new eligibility to carry out standard DBS checks enhances the Services current processes of basic checks with a check of the relevant adults or children barred list for those employees who undertake certain activities.
5. Whilst the Government intention is clear that fire and rescue services will now be able to do standard DBS checks the recommendation from the HMICFRS in its report was that existing arrangements for fire and rescue services were an oversight that required amendment. It was advised and agreed that government should take forward the remaining recommendations from the Inspectorate's report to include amending relevant regulations

so that fire and rescue services are able to undertake enhanced checks like other emergency services, with the Inspectorate stating that the Home Office should work with the fire and rescue sector to arrive at an appropriate legislatively enabled solution that makes detailed provisions for fire and rescue services.

Legal Position

6. The amendment to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Appendix A) was heard and received full parliamentary approval at the House of Commons at the Seventh Delegated Legislation Committee on 17th May 2023, followed by debate and approval in the House of Lords on 13th June 2023. This legislation came into effect on the 6th of July.
7. Article 2 of the new legislation amends schedule 1 to the 1975 Order by adding new paragraphs to Part 2 (offices, employment, and work) to cover “Fire and rescue authority employees”. These amendments mean that a person’s spent convictions and cautions may be considered when assessing a person’s suitability to engage in such work. Therefore, all fire and rescue authority employees will be eligible for Standard DBS checks as described in Appendix B to this report.
8. The legislation does not permit wider use of the enhanced level checks referenced in Appendix B to this report. NFCC has provided guidance which outlines which roles would be eligible for enhanced level checks which primarily include those working in community safety teams and anyone who is managing someone working in regulated activity. These roles will need to be identified and defined in line with the legislation.
9. Additionally, the information provided in any DBS check is highly sensitive and subject to General Data Protection legislation. Therefore, how this information is used, processed and stored needs to be considered.

NFCC Guidance Documents

10. The NFCC have published a range of guidance to support FRs in their application of DBS checking and any decision making because of a disclosure. Undertaking DBS checks helps us to make safer recruitment decisions. The guidance provides a framework for all fire and rescue services to understand what eligibility checks should be considered and how these should be treated.
11. These include:
 - DBS eligibility Guidance
 - Managing Allegations Guidance
 - Positive Disclosure Risk Assessment Guidance

HMICFRS Spotlight Report Actions

12. The HMICFRS Report published on 30 March 2023 included a range of recommendations referencing vetting checks, including:
 - Recommendation 6 that FRAs incorporate employees in the RO (Exceptions) Order 1975 so that they are eligible for the appropriate DBS checks by January 2024.
 - Recommendation 8 detailed that the Fire Standards Board in liaison with the NFCC should review the existing standards and underpinning guidance of background

checks and clarify the minimum requirements for all staff roles, particularly those which have access to vulnerable members of the public.

- Recommendation 9 identified the need for all FRAs to immediately review their current background checks arrangements to ensure that suitable and sufficient checks are in place to safeguard their staff and communities they serve, with all appropriate checks submitted for all existing, new staff and volunteers according to their roles as identified by the Fire Standard Board.

Current Position

13. The Service completes basic checks for all new staff which are not rechecked at any point during employment (unless a concern arises). There are also a small number of roles which have been identified as requiring Enhanced DBS checks for posts that involve substantial access to children (CSO's and Trainers). The arrangements the Service have in place meet the government's Baseline Personnel Security Standards (BPSS). Human Resources currently manage the process for DBS checks for staff. Since the change in legislation on the 6 July, the team have implemented the standard level of DBS checks for all new staff.
14. The current roles have been identified as requiring enhanced level checking and this has been undertaken include the following however, this list may change under the new guidance:
 - Trainer (CM / WMB)
 - Community Safety Officer (Grade 6)
 - CS Team Leader (Grade 8)
 - Young Person Education Coordinator (Grade 7)
 - Station Manager CRM
 - Cadet Leaders
15. Recommendation 9 requires us to review our current background checks arrangements to ensure that suitable and sufficient checks are in place to safeguard our staff and communities we serve, with all appropriate checks submitted for all existing, new staff and volunteers according to their roles as identified by the Fire Standard Board. To satisfy the requirements of this recommendation, we will need to await the guidance of the Fire Standards Board however it is likely that they will advise all staff should be checked at standard level.
16. The Service have been utilising DBS checks at varying levels for the past 15 years. However, DBS guidance is clear that no records should be kept of the disclosure, only the fact that it had been undertaken. Records within the POD team can be evidenced back to 2018 when the Service started using U-check to undertake its checks, however the data is limited. There are no records which would evidence that all staff have been checked at some point during their employment.
17. It is often recommended within safer recruitment guidance that DBS checks are renewed every 3 years. DBS checks do not have an official expiry date, as a result DBS checks are only completely accurate on the day that they are issued by the DBS. A conviction could be recorded any time after completing the DBS check. Ultimately, it is the responsibility of an employer to determine if new DBS checks are required and when they should be renewed. The NFCC guidance does not give a position on this however the Fire Standards Board may determine this in the revised Standard.

18. Not rechecking background checks for specific posts could pose a risk in terms of reputational damage. Our Community Risk Management Plan (CRMP) notes the importance of trust the community require in our Service. We have seen high profile cases in partner emergency services where criminal activity has not been picked up resulting in serving members of the emergency services conducting the most terrible of crimes whilst in service. This evidence highlights the potential risk if we do not act upon this however, from a Service perspective, there have been no significant disclosures to date.
19. If we are required to progress with rechecking all staff, further work would be required to determine how the Service would manage current staff who do not pass the security vetting and legally if there is potential challenge to contractual employment in this instance prior to the retrospective vetting of staff who are currently in employment. Whilst our disciplinary procedure specifies that individuals inform line management of any convictions whilst employed, this does not give a guarantee that the Service is aware of all convictions of its workforce. The Service would utilise the NFCC guidance in developing this process in collaboration with the relevant unions.
20. The current budget for DBS check is £3000 per annum. If we were required to progress all staff through a standard DBS check at a cost of £32.20 per check, this would equate to approximately £17,066. If these were also required to be reviewed every 3 years, this would again incur the above costs. These costs would also be supplemented by the resource required to undertake the check. Whilst mostly done online, the administration of each test would take approximately 30 minutes equating to approximately 275 hours work (7.5 weeks) of the HR administrators planned workload.

Next Steps

21. The guidance from the Fire Standards Board is pivotal to understand what the expectation is nationally around checking and rechecking of employees. Therefore, it would be pertinent to wait for this to be issued before deciding on how to progress forward with this given the significant costs and resource identified.
22. There are several pieces of work however that can be progressed in the meantime to support the Service position with this, which are outlined below:
 - a) Implement a Standard DBS check for all new employees.
 - b) Review our Recruitment and Selection Policy to ensure reference to DBS is included and follows the principles of Safer Recruitment.
 - c) Develop a DBS procedure which outlines the Services approach.
 - d) Identify a list of roles which are eligible for Enhanced checks.
 - e) Identify a way to log and evidence that a check has been undertaken.
 - f) Develop a process which ensures reviews are undertaken where required for those working in identified roles.
 - g) Review the current position against the Safeguarding Fire Standard and engage with ongoing work in this area to keep abreast of any updates.
 - h) Complete the NFCC self-assessment in relation to safeguarding and utilise the outcomes to drive forward any work in this area.

Recommendations

23. Members are requested to:

- (a) **note** the content of the report and await further updates from the FSB.

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Appendix B

Levels of Security Vetting

There are four levels of DBS checks:

Basic - Basic disclosures provide details of unspent criminal convictions and cautions to individual applicants.

Standard - Standard DBS certificates contain details of all convictions and cautions on record (including spent convictions and cautions). Protected convictions and protected cautions are excluded from disclosure.

Enhanced - all enhanced DBS certificates contain details of the individual's spent and unspent convictions, spent and unspent cautions, police reprimands and warnings, any other relevant police information and in some cases, further information stored on statutory lists which contain details of people considered unsuitable to work with children or vulnerable adults.

Enhanced with barred list checks - this is an enhanced check however also includes a check of DBS barred lists. These lists include details of people deemed unsuitable to work with children or some groups of adults. The circumstances to which an enhanced check with list check apply are prescribed in the Police Act 1997 (Criminal Records) Regulations 2009, SI 2009/1882.

Security Check

Individuals who required to have SC vetting are to be employed in posts which require them to have long-term, frequent and uncontrolled access to SECRET assets and/or occasional, supervised access to TOP SECRET assets.

And for individuals who:

- while not in such posts, will be in a position to directly or indirectly bring about the same degree of damage.
- will have sufficient knowledge to obtain a comprehensive picture of a SECRET plan, policy or project.
- are being considered for employment where it would not be possible to make reasonable career progress without security clearance for access to SECRET assets.
- require access to certain levels of classified material originating from another country or international organisations.