

## **Report of the Assistant Chief Officer: Director of Prevention**

### **Inclusion of Fire and Rescue Authority employees in the Rehabilitation of Offenders Act (Exceptions) Order 1975**

#### **Purpose of report**

1. To inform Members of the inclusion of Fire and Rescue Authority employees in the Rehabilitation of Offenders Act (ROA) (Exceptions) Order 1975.
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#### **Recommendation**

***It is recommended that the details of the amendment to the Rehabilitation of Offenders Act (Exceptions) Order 1975 be noted, in particular that:***

- i) all Fire and Rescue Authority employees are now eligible for Standard Disclosure and Barring Service (DBS) checks;***
- ii) the Service will commence a process of DBS checking for all existing members of staff; and***
- iii) whilst there is no legal requirement to re-check on a regular basis, the Service will conduct re-checks every five years.***

#### **Introduction and Background**

2. The National Fire Chiefs Council (NFCC) Prevention Committee led a proposal, with the support of the Home Office, for the inclusion of Fire and Rescue Authority (FRA) employees in the Rehabilitation of Offenders Act (Exemptions) Order 1975. On the 6 July 2023, FRAs in England and Wales were listed in Schedule 1 of the Act. Therefore, all FRA employees are now eligible for Standard Disclosure and Barring Service (DBS) checks. This means a person's spent and/or unspent convictions and cautions may be taken into account when assessing a person's suitability to work, subject to filtering rules.
3. A recent HMICFRS Spotlight Report on Values and Culture in the Fire and Rescue Service, published on 30 March 2023, included a range of recommendations referencing vetting checks. One of the recommendations was that, Fire and Rescue Services ensure that appropriate DBS checks are carried out for all existing, new staff, and volunteers, according to their roles.
4. In preparation for this, the NFCC have recently published National Operational Guidance on DBS eligibility checks for FRA roles, Positive Disclosure Risk Assessment templates and information on Managing Allegations.

## **Service Position**

5. The Service currently completes Basic level DBS checks for all new appointments in the role of a Firefighter and other specified posts as part of pre-employment checks. This is also a requirement for employees who move internally to a specified role following a recruitment or promotion process who have not previously had a Basic DBS check. Roles that are eligible for higher levels of checks are completed accordingly.
6. The Service also requires employees to inform line management, at the earliest opportunity, if they are under investigation for a criminal offence, are arrested or are served with a caution or other penalty by a criminal court or police officer (for instance, a restraining order) for their conduct/alleged conduct.
7. However, in line with the new legislation, the Service will now commence a process of DBS checking for all existing members of staff. The Service may receive previously unknown disclosure information for an employee following a DBS Check which may potentially impact on their suitability to fulfil their contracted role. In this scenario the NFCC Guidance on Positive Disclosures will be followed.
8. Whilst there is no legal requirement to recheck on a regular basis, the Service has made the decision to re-run checks every five years.
9. The Service's Criminal Record Checks policy will also be reviewed to ensure it aligns with the NFCC Guidance on Positive Disclosures, with each individual case being managed on a risk assessed basis, using the NFCC Positive Disclosure Risk Assessment. This will support the Service in making a proportionate and reasonable decision about whether to employ or continue to employ an individual or volunteer, and or how to mitigate any risks e.g. through adjustments to the role or redeployment where appropriate.

## **Delivery of DBS Checking Programme**

10. It is expected the DBS Checking programme will formally commence in Quarter 3 of 2023 and is expected to be fully in progress by 1 January 2024. An implementation plan is being developed for actions and timescales to be monitored. This will allow time for the appropriate policies, processes and guidance to be reviewed (and consulted on where appropriate), and in place prior to commencement of the checking programme.

## **Data Protection**

11. The information provided in a DBS Check is likely to be highly sensitive and engage Data Protection legislation. A comprehensive Data Protection Impact Assessment will be completed on the DBS Checking process during its development and prior to commencement to ensure full compliance with the legislation and the requirements of the Information Commissioner's Office.

## Conclusion/Summary

12. The Service is highly trusted within our communities and relies on this to carry out our services effectively. A higher level of DBS Check will enable the Service to take better informed decisions and mitigate risks in order to protect colleagues and the public, and to support high standards of integrity in line with our Core Code of Ethics.

## Corporate Considerations

<p><b>Resource Implications</b> (identify any financial, legal, property or human resources issues)</p>	<ul style="list-style-type: none"> <li>• HR resource implications.</li> <li>• Revenue required for the additional checks.</li> </ul>
<p><b>Strategic Policy Links &amp; Core Code of Ethics</b> (identify how proposals link with current priorities &amp; policy framework and align to the Core Code of Ethics)</p>	<ul style="list-style-type: none"> <li>• CRMP and core organisational strategies</li> <li>• People Strategy</li> <li>• Core Code of Ethics and Code of Conduct policy</li> <li>• Updates to policies will be required.</li> </ul>
<p><b>Risk Management / Health &amp; Safety</b> (identify any risks, the proposed control measures and risk evaluation scores).</p>	<ul style="list-style-type: none"> <li>• Potentially infringes individual's right to respect for private life given the checks could lead to disclosure of personal sensitive information. This may be considered to be outweighed however by the public interest in giving assurance to vulnerable people and to our communities that Service employees and volunteers have undergone a level of scrutiny and vetting as to their suitability to discharge specific aspects of public service rather than in relation to their private lives.</li> <li>• DBS Checks are a snapshot in time and may give a false sense of assurance and confidence as to the risks posed by any particular person on an ongoing basis.</li> </ul>
<p><b>Consultation</b> (identify any public or other consultation that has been carried out on this matter)</p>	<ul style="list-style-type: none"> <li>• Consultation on implementation process is recommended with Representative Bodies, following approval from SLB.</li> </ul>
<p><b>Equalities</b> (has an Equalities Impact Assessment been completed? If not, why not?)</p>	<ul style="list-style-type: none"> <li>• A PIA has been completed and no adverse impacts identified at this stage.</li> </ul>
<p><b>Data Protection Impact Assessment</b> (where personal data is processed a DPIA must be completed to ensure compliant handling)</p>	<ul style="list-style-type: none"> <li>• An initial DPIA screening has been completed which indicates a full DPIA is required. This will be completed on the checking process during its development and prior to commencement.</li> </ul>