

STATES OF JERSEY



POLICE ACT 1997: EXTENSION OF PART V TO JERSEY BY ORDER IN COUNCIL

**Lodged au Greffe on 29th July 2009
by the Chief Minister**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to signify, pursuant to Article 31(1)(b) of the States of Jersey Law 2005, whether they agree that a request be made to the Privy Council for the making of an Order in Council that would extend to Jersey, with appropriate modifications and adaptations, the provisions of Part V of the Police Act 1997 as summarised in the report of the Chief Minister dated 29th July 2009.

CHIEF MINISTER

REPORT

Executive Summary

1. The purpose of this Proposition is to request the States to consider whether to agree to the extension to Jersey of the provisions of Part V of the Police Act 1997 listed at paragraph 17 below, with modifications suitable to the application of those provisions to Jersey.
2. Extension of Part V of the Police Act would enable Jersey to apply to the Criminal Records Bureau (CRB) for disclosure information for specific individuals (referred to in the Act as a “criminal record certificate”); this would only be available for roles, professions or employment that fall within both the Rehabilitation of Offenders (Exceptions) Order 1975 and the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002.
3. The matter is urgent because new arrangements for vetting and barring (the process by which decisions are made regarding the suitability of individuals to work with children or vulnerable adults) are due to be introduced in the U.K. from 12th October 2009. The introduction of those new arrangements will affect Jersey’s ability to access crucial information for the purposes of safeguarding our local children and vulnerable adults. Extending Part V of the Police Act 1997 to Jersey will allow for continued access to that information after 12th October 2009.

Historical background

4. The U.K. Vetting and Barring Scheme

In response to the Soham Inquiry and the subsequent Bichard Report, the U.K. Government is establishing a new Vetting and Barring Scheme. Recommendation 19 of the Bichard Report, states –

“New arrangements should be introduced requiring those who wish to work with children, or vulnerable adults, to be registered. The register would confirm that there is no known reason why an individual should not work with these clients.”

5. In March 2005 it was proposed to implement Recommendation 19 through the development of a central scheme whereby unsuitable people would be barred from working with children and/or vulnerable adults, with the objectives of –
 - Minimising risk of harm posed to children/vulnerable adults.
 - Including those in paid and unpaid work.
 - Centralising the vetting process.
6. The supporting legislation for the scheme is the Safeguarding Vulnerable Groups Act 2006 (SVGA), which addresses the systemic failures identified by the 2004 Bichard Inquiry arising from the Soham murders. The new arrangements for vetting and barring are due to be introduced in the U.K. in ‘managed phases’ over a 5 year period from 12th October 2009.

7. In summary, the SVGA stipulates that –
- The ISA will make *all decisions* on those that should be barred from working with children and/or vulnerable adults.
 - The ISA will deal with activities classified as ‘regulated’ or ‘controlled’, whether paid or voluntary. These can be defined as –
 - Regulated – having direct contact with children and vulnerable adults.
 - Controlled – support roles involving irregular and indirect contact with children and vulnerable adults.
 - Two separate, but aligned, ISA barred lists will exist (for children and for vulnerable adults) replacing the current List 99 (barring information, held under Section 142 of the Education Act 2002), disqualification, Protection of Children Act list (POCA), and Protection of Vulnerable Adults list (POVA).
 - Limited rights of appeal – some offences will result in automatic barring with no right to representation; others will allow representation, although barred until proven not to pose a risk.
 - Criminal offences to underpin the scheme will be created, relating to both employers and employees, and punishable by fine.
 - Referrals may be received from a variety of sources, including employers, regulatory bodies and the public. There is a duty to refer in certain circumstances.
8. The ISA will be working in partnership with the CRB, an executive agency of the U.K. Home Office, to deliver the new service.
9. The intention of the new ISA is that it will receive information from a range of sources, enabling it to make decisions as to whether an individual poses a risk to children and/or vulnerable adults, based on the whole picture. Under the SVGA, employers and service providers *must* refer information to the ISA when they have dismissed an individual, or an individual resigns because they harmed, or may harm a child or vulnerable adult. Information *must* also be referred to the ISA where –
- An individual who is working closely with vulnerable groups has harmed, or may harm, a child or vulnerable adult.
 - An individual who might in the future work closely with vulnerable groups has harmed, or may harm, a child or vulnerable adult.
 - The employer or service provider deems that the ISA may consider it appropriate to bar the individual.

Relevant information *must* be referred as soon as it becomes available. The aim is that the scheme will reduce the time between an individual becoming a known risk and that individual being barred.

Implication for Jersey

10. The establishment of the ISA in the U.K. from October 2009 marks a transition point for the Island. From this point, List 99, POCA and POVA information sources will be lost as all existing lists become absorbed into ISA. The key aim behind extension of Part V of the Police Act 1997, therefore, is to ensure continued access to barring information from October 2009.
11. CRB **enhanced** disclosure returns will include the barred status of individuals along with all conviction information (spent and unspent) and non-conviction information. Thus, should the Island be able to establish access to the CRB for disclosure checks, information on barred status would remain available. Enhanced disclosure applications would be required for roles working with children or vulnerable adults.
12. Under Article 113B(2)(b) of the Police Act 1997 an enhanced disclosure is available for the purposes of an “exempted question”, which is defined in section 113A(6) of the Police Act 1997 .
13. A recent amendment to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 means that a question from Jersey is an exempted question where it relates to a person’s suitability for a particular role, office or employment that falls both within Article 3 of the 1975 Order and also the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002. This will include, for example, doctors, teachers, foster carers and police officers.
14. CRB **standard** disclosure returns will include information on both spent and unspent convictions, but no information regarding barred status. Standard disclosures will be available for roles under the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002 which do not involve safeguarding issues, for example Judicial appointments, advocates, solicitors and firearms dealers.
15. Jersey and Guernsey have been working very closely together to address the issues raised in the Islands by the U.K. legislative changes. The States of Guernsey are currently in the process of establishing a sister ‘Guernsey Vetting Bureau’ for processing CRB applications.

Legislative changes

16. A draft Order in Council setting out precisely how Part V of the Police Act 1997 could be extended to Jersey is under discussion between legal advisers in the United Kingdom and Jersey. A draft agreed between legal advisers in both jurisdictions will be available for perusal by States Members in advance of the debate on 8th September 2009. A copy of Part V of the Police Act 1997, as enacted in the U.K., is attached.

17. It is proposed that the following provisions of Part V be extended to Jersey, with modifications as necessary –

- section 112 (criminal conviction certificates)– to come into force when commenced in the U.K.;
- section 113A (criminal record certificates);
- section 113B (enhanced criminal record certificates);
- section 113BA (suitability information relating to children);
- section 113BB (suitability information relating to vulnerable adults);
- section 113BC (suitability information: power to amend);
- section 113C (criminal record certificates: suitability relating to children);
- section 113D (criminal record certificates: suitability relating to adults);
- section 113E (criminal record certificates: specified children’s and adults’ lists: urgent cases);
- section 113F (criminal record certificates supplementary);
- section 114 (criminal record certificates: Crown employment);
- section 116 (enhanced criminal record certificates: judicial appointments and Crown employment);
- section 117 (disputes about accuracy of certificates);
- section 118 (evidence of identity);
- section 119 (sources of information);
- section 119B (independent monitor);
- section 120 (registered persons);
- section 120ZA (regulations about registration);
- section 120A (refusal and cancellation of registration on grounds related to disclosure);
- section 120AA (refusal, cancellation or suspension of registration on other grounds);
- section 120AB (procedure for cancellation or suspension under section 120AA);
- section 122 (code of practice);
- section 122A (delegation of functions of Secretary of State);
- section 123 (offences: falsification, &c);
- section 124 (offences: disclosure);
- section 124A (further offences: disclosure of information obtained in connection with delegated function);
- section 125 (regulations);
- section 126 (interpretation of Part 5);
- section 127 (saving: disclosure of information and records).

States endorsement

18. Before an Order in Council is made extending the provisions of Part V of the Police Act 1997, the views of the States of Jersey must be sought, by virtue of Article 31 of the States of Jersey Law 2005; this requires that, where it is proposed that an Order in Council should be made extending to Jersey the provisions of a U.K. Act of Parliament, the Chief Minister shall lodge the proposal in order that the States may signify their views on it.

19. The States are asked to signify their agreement with the substance of the Proposition; the draft Order in Council will be finalised in consultation with officials in the Law Officers' Department, the Home Affairs Department and legal advisers and other officials in the Home Office and the Ministry of Justice. Once a final draft has been agreed, the draft Order will be approved by the Minister for Home Affairs in the first instance, and then submitted to the Privy Council to be made at its meeting on 15th October 2009.
20. The Order in Council, once made, would be registered in the Royal Court before coming into force in Jersey. Those provisions of Part V of the Police Act 1997 that are not in force in the U.K. upon registration of the Order in Council in the Royal Court will not come into force in Jersey until such time as they come into force in the U.K.

Financial and manpower implications

21. Inasmuch as the Order will extend existing legislation to Jersey, there will be no additional manpower, revenue, capital or further legislative requirements arising. However, the consequence of the CRB access thus achieved necessitates the establishment of the Jersey Vetting Bureau; this would be a body recognised and registered by the CRB as working in line with its directives and would administratively process applications.
22. It has been identified that a cost-effective solution would be for this Bureau to be positioned within the responsibilities of the States of Jersey Police. At present, the States of Jersey Police Force is the Jersey authority within local and national vetting arrangements, and the aim is to utilise this 'ready-made' centre of expertise in, and knowledge of, disclosure procedures?
23. There is an initial budget allocation of £98,000 in 2009, and it is intended that an administrative charge will be introduced to meet the full costs of the service, once established. The staffing requirement is for one new staff member from October 2009 and a second proposed for May 2010, both of which have been included in the States Business Plan.

29th July 2009