

Committee/Date:	Council 17 July 2014
Report Title:	Disclosure and Barring Service (DBS) Checks for Councillors
Directorate:	Governance
Contact Details:	Holly Adams, Head of Democratic Services Tel. 020 8496 4204 E-mail: <a href="mailto:holly.adams@walthamforest.gov.uk">holly.adams@walthamforest.gov.uk</a>
Wards affected:	None specifically
Public Access	Open

## 1. SUMMARY

- 1.1. To update the Council's policy on Disclosure and Barring Service (DBS) checks for councillors.

## 2. RECOMMENDATION

- 2.1. Council is recommended to resolve that the 1 March 2012 Council adoption of the Criminal Records Bureau (CRB) Checks for Councillors Policy and Protocol be revoked in accordance with updated legislation under which councillors have been removed from what is now called the Disclosure & Barring Service (DBS) regime.

## 3. BACKGROUND

- 3.1. The legal framework for criminal records checks seeks to balance two competing but legitimate interests: the rehabilitation of offenders and the safeguarding of children and vulnerable adults. The law is also very complex and controversial, as the decision where to strike the balance between safeguarding and individual privacy and freedoms is a matter of political and public debate. The following is therefore a brief summary.
- 3.2. The Rehabilitation of Offenders Act 1974 introduced the concept of "spent convictions", which offenders did not have to declare in certain circumstances including applying for jobs and entering certain professions and posts. However, it has always been the case that certain offices and jobs are excluded, including work with children and vulnerable adults. The Police Act 1997 and the current Safeguarding Vulnerable Groups Act 2006 provide for a system of checks against police records for a wide range of jobs with these groups but also allow criminal records checks to be carried out on Councillors undertaking roles that involve "regulated activities".
- 3.3. The 2006 Act set out the regime under which Council made its 1 March 2012 decision, following consultation with the Audit & Governance Committee, Overview & Scrutiny Management Committee and the

Cabinet, to introduce a CRB Checks for Councillors Policy and Protocol requiring councillors to undertake a CRB check if undertaking any roles involving “regulated activities”. The Scheme acknowledged that the “requirement” could only be voluntary as the law did not allow a local authority to insist on a member undertaking a check.

- 3.4. For the purposes of the policy and the Council’s decision-making processes, “regulated activity” was defined in the policy as:
  - 3.4.1. Executive membership;
  - 3.4.2. Junior Cabinet member;
  - 3.4.3. Membership of any overview and scrutiny committee (or panel) undertaking these functions in relation to education and social services (and including any oversight via a management committee). This would also extend to substitute members;
  - 3.4.4. Fostering and adoption functions and related panels; and
  - 3.4.5. Membership and / or participation in any working group or panel relating to education and social services functions, including but not limited to the current corporate parenting and children in care board, Schools Forum, Children's Trust Board and SACRE. This would also extend to substitute members.
- 3.5. It was noted at the time of the policy’s adoption that the above list was non-exhaustive, that many of the provisions of the 2006 Act had not been brought into force by March 2012, and that the Council would need to reconsider the policy following publication of the Protection of Freedoms Act 2011 which was expected to take councillors out of the 2006 Act regime entirely.

#### **4. PROPOSAL**

- 4.1. Under the Protection of Freedoms Act 2011, the specific provisions under which a councillor could be asked to undertake a CRB (now DBS) check have been repealed, a stated aim of the Act when it was taken through Parliament.
- 4.2. Therefore, councillors are only required to undertake a DBS check if their role is classified as a regulated activity under the general definition, which is narrower than in previous legislation and this is highly unlikely. Work is defined as regulated only if it satisfies either of the following requirements:
  - 4.2.1. The activity occurs once a week or more; or
  - 4.2.2. The person carrying out the activity on more than three days in any period of 30 days, or at any time between 2am and 6am in respect of provision of teaching, training or instruction, care or supervision, or advice or guidance, and the activity gives the person the opportunity to have face-to-face contact with children.
- 4.3. These are essentially operational activities with unsupervised access to children. It is therefore unlikely that any councillor will be deemed as carrying out a regulated activity for the purposes of the legislation, and

therefore the previous CRB Checks for Councillors Policy and Protocol is redundant and should be revoked.

- 4.4. It is not possible to require someone not covered by the Protection of Freedoms Act 2011 to undergo a DBS check. This is because of the sensitivity of the information being accessed (police records) and that under data protection law and the law on confidentiality, we need to have a legal right to access the data. We considered whether members could explicitly consent to a purely “voluntary check” but this would require the DBS to agree to undertake the check. The DBS have confirmed to us that they will not carry out such checks.
- 4.5. An alternative consideration would be for members to make subject access requests for their own personal data and disclose this to the Council. However, it is considered that the Council would be at risk of breaching s.55 of the Data Protection Act 1998 which makes it a criminal offence to procure the disclosure of personal data under the guise of a policy requiring members to undertake this type of subject access request.
- 4.6. There is no official expiry date for criminal record checks issued by the DBS (or CRB) as the information was accurate at the time the certificate was issued. A standard “life” of a certificate is 3 years. However, the Council was legally required to destroy its copies after 6 months having considered their contents and therefore all certificates relating to councillors on the previous scheme were destroyed in accordance with this obligation. Councillors may have retained their copy of the CRB check; however, under the previous policy, fewer than half of councillors voluntarily submitted to a check.

## **5. CONSULTATION**

- 5.1. The Audit and Governance Committee was consulted on these proposals at its 26 June 2014 meeting and unanimously recommended these to Council for agreement.
- 5.2. The DBS was consulted by telephone on 16 June 2014 and confirmed that the elected councillors were not required to undertake DBS checks unless the responsibilities of their council work fell within the criteria as set out at paragraphs 4.2.1 and 4.2.2.

## **6. IMPLICATIONS**

### **6.1. Finance, Value for Money and Risk**

- 6.1.1. Under the previous policy councillors were expected to undergo an enhanced DBS check, which currently costs £44. These costs had been met from within the Children & Young People Services budget.

### **6.2. Legal**

- 6.2.1. The legal framework for DRB checks is contained within the body of the report. The proposals comply with the legislation.

### **6.3. Equalities and Diversity**

- 6.3.1. None.

**6.4. Sustainability (including climate change, health, crime and disorder**

6.4.1. None.

**6.5. Council Infrastructure (e.g. human resources, accommodation or IT issues**

6.5.1. None.

**Background Information**

None.