



Northern  
Ireland  
Office

# **Safer Recruitment in Northern Ireland:**

**a Consultation Paper**

**February 2005**

## FOREWORD

This Consultation Paper details our proposals to reform and improve our criminal records disclosure service, in order to meet the needs of the community in Northern Ireland more effectively. These proposals represent an important part of the Government's continuing commitment to creating a safer Northern Ireland and to increasing public confidence.



In commissioning a review of this area last year, the Secretary of State's aim was to identify ways in which the current systems for accessing criminal records in Northern Ireland could be improved and made more compatible with those elsewhere in the United Kingdom.

After considering the recommendations of this review, the Secretary of State decided that Part 5 of the Police Act 1997 would provide the most effective framework for reform. This legislation creates a coherent system for employers to gain access to criminal and police records, one which balances the rights of the individual against the need to safeguard the vulnerable.

Taken in the context of robust employment practice, legitimate access to a person's criminal or police record can be a vital part of the employment decision making process, helping employers to make the right choice. This is particularly important where the employment involves working with children or vulnerable adults; however, the principle applies equally to a range of other sensitive positions for example, medical practitioners.

This 12 week consultation exercise is your opportunity to get involved in the formation of Government policy and to help us develop the right system for Northern Ireland. We're listening; please let us know what you think.

**IAN PEARSON**  
Minister for Policing and Security

## EXECUTIVE SUMMARY

- The present system of employment checking in Northern Ireland is long established. It provides limited access to specific users, it is administered by the police and controlled by the Common Law.
- In order to ensure long term sustainability, there is a need to reform, improve and modernise these systems. This is necessary to increase confidence, widen the scope of the system and to be able to respond to the challenges of the future. The Government has committed to achieve this reform through the Implementation of Part 5 of the Police Act 1997.
- Part 5 provides a statutory framework for the disclosure of an individual's police or criminal record including, in certain circumstances, the provision of relevant non-conviction information on payment of a fee. Its primary function is to safeguard the vulnerable. The legislation also controls who has access to this information and how it must be protected.
- Part 5 will be implemented through the enhancement of the current arrangements. The Government believes this will provide the necessary control and flexibility to provide an effective service adequately addressing local customer needs whilst ensuring value for money.
- This document seeks views on the Government's proposals.

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# 1. INTRODUCTION

## Overview

This document seeks comments on the Government's proposals for the Implementation of Part 5 of the Police Act 1997 in Northern Ireland.

- 1.1 When any organisation is deciding whether or not to appoint an individual it is very important that it is able to make the right choice. The organisation needs to know that the candidate is suitable for the job in question. While clearly this includes whether or not the person is properly qualified and has the right types of experience, it will often also necessarily involve more difficult and sensitive considerations about their character and their history.
- 1.2 To effectively support the decision maker, the job application process must have a number of elements which explore various aspects of the applicant's life. Typically, this will include;
  - consideration of an **application form** and curriculum vitae;
  - a **job interview**;
  - **examination of references** and **qualifications**; and
  - in some cases, an **examination or aptitude test**.

- 1.3 In Northern Ireland, in keeping with practice in other parts of the UK, there is often an additional part to this process. Where a paid or unpaid position is considered to be particularly sensitive, for example where it involves substantial and unsupervised access to children or vulnerable adults, employers (who have the proper safeguards in place) will be given access to the applicant's full criminal record; this will sometimes include certain relevant non-conviction information held on their police record.
- 1.4 In practice, this means that, where the applicant has consented, certain employers are able to consider both the full extent of a person's criminal convictions and any other information on that individual stored on the police system which may have a bearing on their suitability for certain positions. It may also include a check against the list of individuals considered unsuitable to work with children or adults with a learning disability (the **Pre-employment consultancy Service**); or the list of individuals whose employment as teachers has been restricted or prohibited (**List 99**).
- 1.5 The Government recognises that access to the sources of information outlined above is often vital to an employer in order to allow them to make an informed employment decision. Disclosure of criminal and police records provides important protections, both for individual organisations and the community as a whole. Checking applicants in this way protects the vulnerable from harm and helps to prevent crime, by helping to block those with malign intent from being in positions where they are able to abuse positions of trust.

- 1.6 In Great Britain, the disclosure of criminal and police records takes place under **Part 5 of the Police Act 1997** (see Chapter 3). However, while Part 5 extends to Northern Ireland, it has yet to be commenced; therefore there is no legislative backing for any of the disclosures which currently take place. The existing employment checking system in Northern Ireland is governed by the common law and by custom and practice.
- 1.7 Last year, the Secretary of State for Northern Ireland, the Rt. Hon. Paul Murphy MP, commissioned a review into the Northern Ireland arrangements to determine whether they continued to meet the challenges across the voluntary, statutory and commercial sectors of a modern and vibrant community. This work concluded that, in order to ensure that a safe and effective service continued to be delivered in the future, one in which customers could have greater confidence, modernisation and reform were necessary. On 22 June 2004, he announced his intention to commence and implement Part 5.
- 1.8 This work was in addition to a separate review currently being taken forward by the office of the **Northern Ireland Commissioner for Children and Young People** (NICCY); which is critically examining the policies and practices in place to support and direct the checking of staff who work with children. A report of NICCY's findings is due to be published in **March 2005**.
- 1.9 Through this Consultation Document the Government is seeking your views on the proposals set out below for implementing Part 5 in Northern Ireland.

## RESPONDING

1.10 You can respond in writing in any of the following ways:

by **POST**:

ECRIT  
Room B3.6  
Block B  
Castle Buildings  
BELFAST  
BT4 3SG

by **FACSIMILE**:

028 905 28676

by **E-MAIL**:

[ecrit@nio.x.gsi.gov.uk](mailto:ecrit@nio.x.gsi.gov.uk)

1.11 The closing date for responses is **12 May 2005**. An electronic version of this document is available at:

[www.nio.gov.uk/index/about-the-nio/content-newpage-2.htm](http://www.nio.gov.uk/index/about-the-nio/content-newpage-2.htm).

Versions in other formats or languages will be made available upon request.

## 2. THE CURRENT SYSTEM

### Overview

Northern Ireland's present system of employment checking is long established. It provides limited access to specific users, is administered by the police and controlled by the Common Law.

- 2.1 In Northern Ireland arrangements for carrying out pre-employment checks are well-established, having developed over time through agreements between a range of individual organisations and the police. Although there is no specific legislative backing, the disclosure of information is guided and controlled by the common law. The disclosure of records is strictly controlled by the police and individual organisations must make a case to them providing evidence to support their application for access. Disclosures are directly linked to the nature of the position applied for and can include both records of criminal convictions and other information held on police systems. This includes positions which involve work with children or vulnerable adults and also a range of other sensitive positions (see **Table 2** below).

### SUMMARY OF ACCESS

- 2.2 The type of information to which employers have access varies between sectors and is represented in **Table 1** below. Currently there is no legal requirement to carry out checks on prospective employees or volunteers prior to offering them work. This applies

even to those working with groups considered vulnerable, including children.

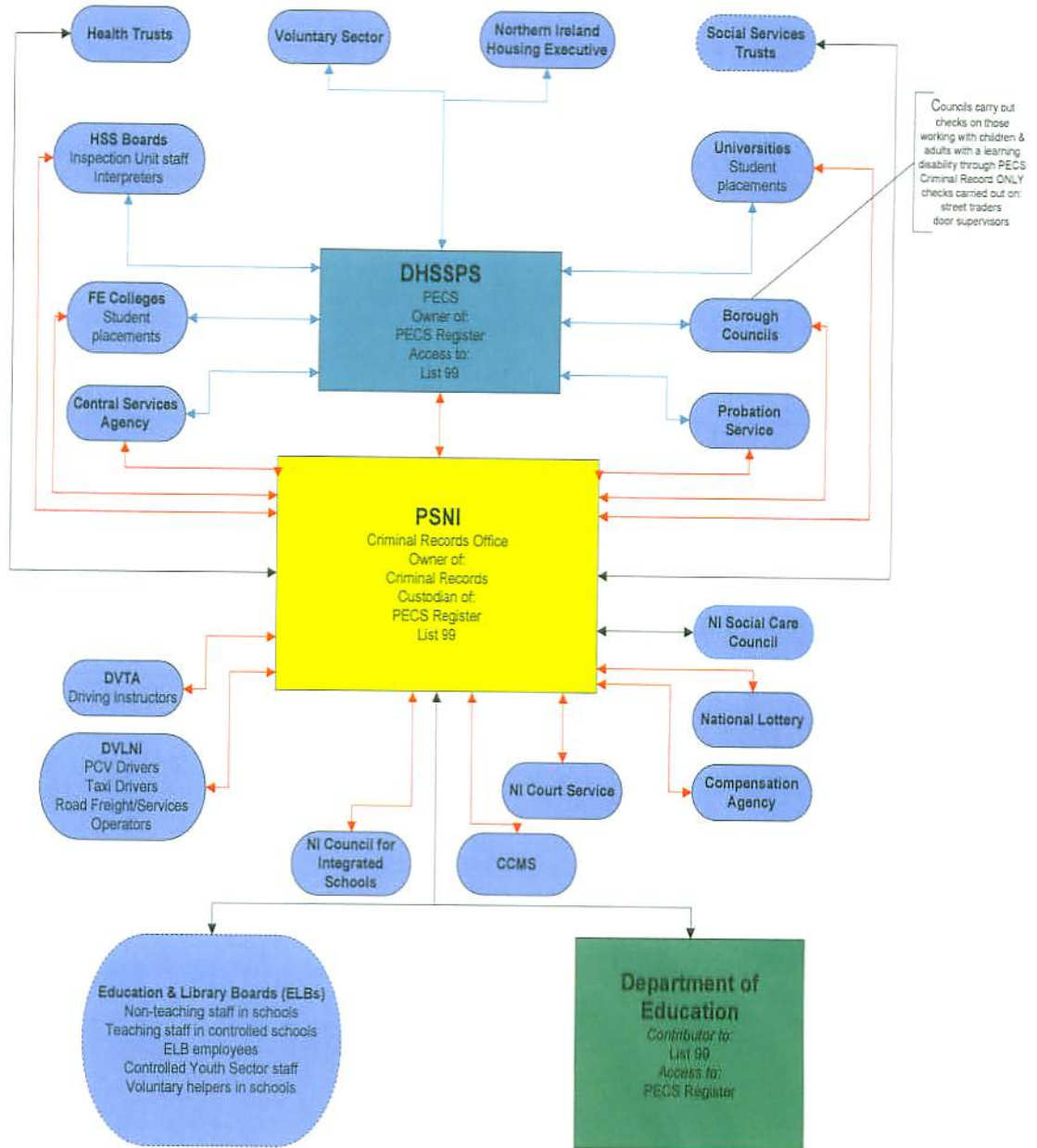
**Table 1**

<b>Type of Information</b>	<b>Source</b>
Criminal Records, including convictions (both spent and unspent) and cautions.	<b>Police Service of Northern Ireland.</b>
Relevant Intelligence Information	<b>Police Service of Northern Ireland.</b>
The list of individuals considered unsuitable to work with children or adults with a learning disability (the <b>Pre-employment consultancy Service</b> Register)	<b>Department of Health, Social Services &amp; Public Safety.</b>
The list of individuals whose employment as teachers has been restricted or prohibited ( <b>List 99</b> )	<b>Department of Education.</b>

## THE CRIMINAL RECORDS OFFICE

2.3 The checks which take place presently are carried out by a specialist unit in the PSNI, the **Criminal Records Office** (CRO). CRO provides access to employers, with whom PSNI have agreements, to relevant information about those to whom they plan to offer work. As shown in **Figure 1** below, the current system consists of a complex web of arrangements between individual organisations and PSNI.

Figure 1



**Employment Checking in Northern Ireland**

2.4 This translates to a significant volume of work. CRO staff carried out **128,892** checks in 2004, broken down as shown in **Table 2** below. No fee is charged for any of these checks by PSNI, save for those under the subject access heading.

**Table 2**

<b>Organisation</b>	<b>No. of Checks</b>
Compensation Agency	20215
Education*	28233
Voluntary organisations in child care*	17364
Child care nurses and nursing homes*	10102
Students*	4012
Social Services*	14155
Probation (positions with children focus)*	692
PCV taxi drivers	11868
Subject access	4075
Other police forces	6718
Firearms licence applications	5359
Training Schools*	30
PNC	3638
Probation (positions with adult focus)	268
Door supervisors	422
Victim support	145
Court Service	175
Social Care Council*	436
Others	985

\* **75,024** checks are for positions involving work with children.

- 2.5 In 2003 some **122,834** checks were carried out, therefore last year saw over **6,000** additional checks to the previous year.
- 2.6 In the main, requests for checks are submitted to CRO on standard paper forms from organisations registered with PSNI. As shown in **Figure 1**, users of the Department of Health, Social Services and Public Safety's (DHSS&PS) **Pre-employment Consultancy Service** (PECS – see below) also have access to CRO. The forms seek key identifying particulars, including:
- date of birth;
  - addresses in the previous five years;
  - national insurance number; and
  - any previous convictions.

These details are then used to search on the **Integrated Criminal Intelligence System** (ICIS), PSNI's IT system.

## **THE CHECKING PROCESS**

2.7 As Northern Ireland has a single police service, ICIS allows CRO to provide a genuine one stop shop for the bulk of applications, on a basis that has not been possible in Great Britain where reference has to be made to local police forces for local intelligence information. The system holds a wide range of information on individuals including court convictions, pending prosecutions and also non-conviction information (inputted in

accordance with **National Intelligence Model** (NIM) principles) such as failed and withdrawn prosecutions, allegations of criminal behaviour not subject to prosecution and “soft” intelligence about associates or reported suspicious behaviour.

- 2.8 The non-conviction material comes in the form of free text pen pictures of the subject individuals. ICIS also contains flags indicating whether individuals are on the **PECS** register and **List 99** respectively.
- 2.9 When processing checks for CRO, staff can access most of the relevant Northern Ireland databases through one process. ICIS will yield up possible matches and the checking unit staff determines whether the subject of the application is identical with any of them.
- 2.10 The checking unit also has access to the **Police National Computer (PNC)**, which is an IT system containing criminal records for the whole of England and Wales. If there is an English or Scottish address on an application, a PNC check will be carried out. The incompatibility of the format for storing information on ICIS (free text) with the way in which information is stored on PNC means that the check requires a separate process and is therefore often time-consuming. Similarly, if a local police check is required in England and Wales or Scotland, this too is the subject of a separate manual operation.
- 2.11 If a **Republic of Ireland (RoI)** connection is revealed in the 5 year address field, CRO will fax the details to the Gardai for checks to be carried out on their PULSE system. There are some 30 ROI checks carried out each month, a procedure not

replicated in the other UK jurisdictions where CRB and Disclosure Scotland do not conduct checks on records outside the UK.

- 2.12 Once the check has been carried on ICIS (and if necessary PNC or the ROI) and any decisions have been taken on identity checking, if there is no record of the individual the unit is in position to return the form annotated “no trace”. If a record of conviction is revealed, this is printed out and attached to the form (subject to a caveat about spent convictions noted in paragraph **2.13** below). In the event that non-conviction information is identified, the details might appear on ICIS or, if the information is particularly sensitive, it might appear in the form of a flag, with access being restricted. If the operator decides that information revealed in this way is potentially relevant to the proposed appointment or cannot access the information it is referred to a senior officer for decision. Any release of non-conviction information has to be sanctioned by the **Assistant Chief Constable** (Criminal Justice).
- 2.13 All of the checks annotated with an asterisk in **Table 2** above are related to positions involving access to children; these are excepted occupations for purposes of the **Rehabilitation of Offenders (Northern Ireland) Order 1978** (see **Chapter 5** below) and the checks include spent and unspent convictions as well as non-conviction material.
- 2.14 A key issue to note is that in Northern Ireland applications for a number of positions are processed by CRO which do not fall within the scope of the 1978 Order. For example, taxi driving is not excepted and the checks carried out for purposes of licensing PCV drivers result in disclosure only of unspent convictions. This

poses a difficulty in that ICIS is not programmed to automatically distinguish between spent and unspent convictions. In this particular case, the result is that for the **10,000** plus taxi driver applications each year, CRO staff has manually to determine which convictions are spent and record any unspent convictions in longhand for the information of the licensing authority.

2.15 To put all of this into context, it might be useful to provide an indication of how often convictions and relevant intelligence are uncovered. For example, taking child access cases as a whole, around **15%** produce records of convictions; and there are estimated to be around **20 to 30** each year where non-conviction information is disclosed. In only about **10** cases per annum is there a dispute about identity or about the details of a criminal record; while on the surface this is encouraging, care should be taken in drawing conclusions, given that people are less likely to complain where details of convictions are missed from a disclosure.

## **THE PRESSING NEED TEST**

2.16 The decision making process presently covering the disclosure (or otherwise) of criminal record or police information is governed by the **Pressing Need Test**. Decisions are made on a case by case basis, depending on the nature of the role applied for and there is a general presumption against disclosure. However, information is likely to be disclosed where there is sufficient evidence to show that such a course of action is necessary to safeguard children and prevent crime, following a pressing need assessment.

2.17 The pressing need test is carried out on the basis established in the case of **R v Chief Constable North Wales Police ex parte Thorpe**. The key principles are:

- The presumption of non-disclosure can only be displaced where it is **necessary or desirable in the public interest to disclose relevant and appropriate material about individuals**. This may be specifically for the purposes of protecting children or, more generally, for the prevention and detection of crime. Such disclosures should be limited to that necessary to achieve the purpose.
- Each case must be judged on its own particular facts, giving careful and professional consideration to risk assessment as to the threat or danger that the subject will commit an offence and the vulnerability of those at risk. **In order to ensure proportionality this assessment should be weighed against the impact disclosure will have on the subject.**
- The principle relating to disclosure needs to be applied **even more stringently when dealing with information about an individual who has not been convicted.**

2.18 Pressing Need is a balancing exercise, taking into account the need to protect the vulnerable and to prevent crime against the rights of the individual. Where soft intelligence is involved, it will require consideration of the following factors:

- **The police belief as to the truth of any allegation.** If police are convinced an allegation is untrue, then no disclosure should be made. If after having conducted relevant enquiries

police believe the allegations to be true, this increases the need for disclosure.

- **The interest of the third parties in obtaining information.** The legitimacy of the third part in seeking such information is also considered.
- Particular consideration is also given to the **degree of risk posed to children if the disclosure is not made.**

2.19 Where a decision is made to disclose, PSNI provide the minimum amount of information which will allow the third party to protect the vulnerable and prevent crime.

### **THE PRE-EMPLOYMENT CONSULTANCY SERVICE (PECS)**

2.20 The **PECS** unit acts as an umbrella body for the child care sector and for those working with adults who have learning disabilities; forwarding applications for checks to CRO as well as maintaining a list of people deemed unsuitable to work with children. Through PECS, health and social services providers, employing individuals in posts which have **substantial, unsupervised access to children or adults with a learning disability** have access to all sources of information outlined in **Table 1** above.

2.21 PECS also provides those operating in the voluntary, community and private child care and learning disability fields with a means of accessing the sources of information relevant to them. Information is available to those organisations which have registered to use PECS and all information, including criminal

record information, is requested from and returned through PECS. Other registered PECS users include:

- Universities;
- FE Colleges;
- Central Services Agency;
- Probation Service;
- Borough Councils; and
- Northern Ireland Housing Executive.

2.22 Since January 2003 the approach has changed, with PECS acting on behalf of voluntary organisations while trusts, though maintaining their PECS registration, increasingly deal directly with CRO. The PECS team, interfacing with the police, deal with around **15-20,000** applications a year. This number is steadily increasing, with higher demand for checks in a number of areas and particularly from the voluntary and sporting sectors.

2.23 DHSSPS are responsible for implementation of the **Protection of Children and Vulnerable Adults (Northern Ireland) Order (2003)**<sup>1</sup> (POCVA) which puts on a statutory footing

the list of those unsuitable to work with children and places an obligation on statutory childcare organisations to inform the Department of people who ought to be placed on the list. The Order makes similar provision in relation to vulnerable adults. It should be noted that POCVA will, when commenced, make it a requirement for child care organisations and employers in the adult care sector to carry out checks against statutory lists

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<sup>1</sup> **Information Notes 1 and 2 on The Protection of Children & Vulnerable Adults(NI) Order (2003)** can be obtained from the Child Care Policy Directorate, Department of Health, Social Services & Public Safety, Room D1.4, Castle Buildings, Stormont, Belfast, BT4 3SQ.

created by the Order before making appointments to relevant positions. The Order also introduces a system of accreditation, targeted at 'employers' in the non-regulated voluntary, community and private sectors. Organisations which become accredited under the Order will also be required to carry out checks against the statutory lists.

## EDUCATION

- 2.24 Checks on those working in schools are carried out through the Department of Education (DE) and the five Education and Library Boards. DE carries out checks on teachers when they become eligible to teach. All education employing authorities are responsible for checking teaching and non teaching staff in schools. Checks are required regardless of employment status (i.e. permanent, temporary or voluntary). Schools are responsible for the recruitment and selection of staff.
- 2.25 The checking unit in DE processes checks on teachers and interfaces with PSNI on behalf of the 54 voluntary grammar schools with 2800 staff, 10 Irish medium schools and 30 grant maintained integrated schools. Education and Library Boards and the Council for Catholic Maintained Schools deal direct with PSNI in respect of schools operating under their auspices, although they receive guidance from DE.
- 2.26 Checks on substitute teachers are carried out through the Belfast Education & Library Board where they are registered on the Northern Ireland **Substitute Teacher Register** (NISTR). The NISTR is a new on-line booking system for substitute teaching cover which is available to all education employing

authorities/schools across the province. The service is funded by the Department of Education and was launched in March 2004.

### 3. THE NEED FOR REFORM

#### Overview

In order to ensure long term sustainability, there is a need to reform and modernise Northern Ireland's systems for the disclosure of criminal records. This is necessary to improve confidence, increase the scope of the system and to be able to respond to the challenges of the future.

- 3.1 As is clear from the previous chapter, Northern Ireland already has well established and relatively extensive arrangements for employment checking in place. Therefore, an important question to answer is whether change is in fact necessary. Put simply, the judgement to be made is: **will the benefits delivered by the new system justify the impact of reform on existing customers and the cost of putting it in place?**
- 3.2 Although the existing system is capable of handling Northern Ireland's immediate needs, the Government is concerned that it should also be able to meet the medium to long term needs of the community as well as matching pace with reforms in the rest of the UK. This Chapter outlines the important issues on which the Secretary of State based his decision to reform employment checking in Northern Ireland. Any consideration of the proposals for reform must be made with reference to the issues which those proposals seek to address.

## UNCERTAINTY IN THE SYSTEM

- 3.3 Perhaps the most important deficiency in the present system is the lack of a **legislative basis** for the disclosure of criminal or police records. There is evidence of unease and uncertainty across the user sectors about proceeding on an extra-statutory basis. In some cases this has led to a lack of confidence amongst customers. As noted in the introduction, it is important for organisations to be able to make the right decisions. A vital part of this is having confidence in both the information provided and the ability to make decisions on the basis of that information.
- 3.4 The absence of legislation in this area has left a number of employers feeling unsure of their grounds in using information disclosed through the CRO as part of the wider employment decision process. This is clearly not ideal. When a potential employer is making a decision, they need to know that they are on firm ground.
- 3.5 In addition, the development of the system over time has led to a lack of clarity as to the respective responsibilities of the police and employers. Without an explicit description in legislation about what will be provided by the police, together with supporting guidance, concern has arisen over the tendency of some employers to derive a **false sense of security** from the checking process. The Government's firm view is that disclosure of criminal or police records should be seen as one of a number of tools for making effective employment decisions. While it is clearly vital for certain employers to have access to this type of information, it should never be the sole deciding factor of an

employment decision except in cases where the offence triggers a legislative bar.

## **INCREASING DEMAND**

- 3.6 The **demand for checks** is growing rapidly as new systems for regulating professions are introduced and employers and voluntary sector organisations increasingly appreciate the importance of checking their staff. There has also been a rapid expansion of service for children in the Voluntary and Community sector as a result of increased Government funding for such initiatives. As noted in **Chapter 2**, 2004 has seen over **6,000** more checks than 2003.
- 3.7 CRO is regularly approached by organisations seeking checks on prospective employees. However, without a legislative basis for providing access, police must make decisions on a case by case basis, through reference to the common law. This has led to uncertainty as to who is entitled to access and, in some cases, organisations who would be entitled to access may not be aware of this. **Part 5 of the Police Act 1997** (see Chapter 4) governs access in Great Britain. This legislation also applies to Northern Ireland, though it has not been commenced. Part 5 sets out very clearly which positions warrant disclosures, the type of disclosure and, crucially, who can seek them.
- 3.8 It is the Government's intention that every organisation in Northern Ireland which has a legitimate need to have access to relevant criminal and police records, for the purposes of protecting the vulnerable and preventing crime, should be able to. However, taking this further, the Government also believes that it

should be made clear to those organisations, through legislation, that they have a right to seek this information.

## THE UK CONTEXT

3.9 As noted above, Part 5 provides the framework for both England Wales and Scotland to disclose criminal and police records. Although links presently exist between the jurisdictions and checking occurs between them, the fundamental difference in the basis for each system causes difficulties. This is particularly acute for organisations which operate on a UK wide basis. For example, employers are often not confident that checks carried out for a headquarters personnel department in England can be legally used by a local manager making an employment decision in Northern Ireland. This is a significant problem. By way of illustration, in the year ending June 2003 some **11,000** people migrated to Northern Ireland from the rest of the UK.

3.10 In addition, although the aims of each system are clearly the same, the difference in basis creates a risk that disparities will arise between them. In the UK, Part 5 has been developed and amended in a number of areas. As Northern Ireland does not operate a system based on Part 5 a number of the amendments do not apply here, though Part 5 itself does. In particular, a key risk is that inconsistencies in the type and scope of information disclosed will occur between Northern Ireland and the rest of Great Britain. Although this is an issue for any system relying on human intervention, **the Government believes that the use of a single piece of legislation to govern this will minimise the risk of inconsistency and ensure, as far as is possible, greater consistency across the UK.**

## THE BICHARD REPORT

3.11 The report of Sir Michael Bichard's inquiry into the murder of Holly Wells and Jessica Chapman was published on 22 June 2004. This report was highly critical both of the police for failing to share relevant information; and of the Government for failing to establish a national computer system to co-ordinate such intelligence. The report examined the circumstances leading up to the murders and made some 31 recommendations which will fundamentally reform the way in which information is handled by the police, and the method of employment checking where the vulnerable are involved.

3.12 The key recommendations include:

- the creation of a **national intelligence computer system**;
- the publication of a **code of practice** on the handling of intelligence; and
- the creation of a '**children's passport**' - a permit for working with children subject to continual review.

3.13 Although written in the context of England and Wales, the report clearly has relevance for Northern Ireland. **The Government believes that the benefits flowing from these reforms should be delivered to the whole of the UK.** As noted above, current arrangements in Northern Ireland developed separately to those in England and Wales and Scotland. For the systems proposed by Bichard to be truly effective and given the scale of intra UK migration, they must operate on a national level. Inevitably, this

means that Northern Ireland's systems must reform and move forward, taking full advantage of new technologies and developments. The Government has accepted that the implementation of the recommendations of the Bichard Report is necessary to provide the vulnerable with stronger protections through more extensive checking and more effective systems.

- 3.14 The recommendation that **all people who work with children and vulnerable adults should be checked to enhanced level** (see chapter 4), not just those with substantial access, is more immediately relevant for Northern Ireland. Positions previously excluded by existing restrictions will come within the scope of the enhanced checking regime. This will increase demand as a greater number of roles will be checked to the highest available standard. However this recommendation in particular is explicitly linked to the framework established by Part 5 and would therefore not directly apply to Northern Ireland without the commencement of Part 5.

### **DELAY, COMPLEXITY AND BUREAUCRACY**

- 3.15 At present, the time between a submitted application and the return of a completed check often varies considerably. Clearly, a reasonably quick turnaround is important for employment decisions as it often affects service provision. The time taken for a complete check to be delivered is problematic where there is a tight deadline in which to fill a vacancy.

- 3.16 In some cases this delay is caused by the incorrect completion of the application forms. However, **bureaucracy** also emerged as a critical factor; in some cases two forms must be completed. The

experience of using these forms often proves **confusing** for users. Often complex job descriptions are required and the checking process generated extra paperwork for employing organisations.

- 3.17 In consultation it was clear that many users feel the current system is **cumbersome and fragmented** as there are three different organisations involved. There is often **repetition and duplication** in creating **additional and unnecessary burdens** on the employers and on the system as a whole.

## **THE BENEFITS OF PART 5**

- 3.18 Shifting to a disclosure system rooted in Part 5 will bring a number of important benefits for customers in Northern Ireland. Chiefly, **a statutory system will bring greater certainty**, providing a solid legal framework for future disclosures and increased support for key decision makers. **Part 5 offers end-to-end improvements to the existing system**, from detailing which applicants have the right to apply for which types of information to specifying the grounds under which the police can release relevant data. It will produce a simpler system for users. Another important advance in this area is the fact that **the subject of application is also provided with a copy of the disclosure**, this is clearly vital in terms of challenging incorrect records.
- 3.19 Further, confidence in the service provided will be improved, both through the presence of legislative backing and through access to a larger scope of information. As a result, employers and indeed the wider community will have **greater peace of mind**.

- 3.20 In the longer term, moving to a Part 5 system will allow **harmonisation of systems across the UK**. In the first instance, it will bring arrangements in Northern Ireland into line with those in the rest of the UK. However, it is a reality that people move throughout the UK seeking work, it is therefore vital that any disclosure system is properly equipped to deal with this challenge. Clearly, the vulnerable in Northern Ireland should be offered exactly the same safeguards and protections as are provided for Great Britain.
- 3.21 Crucially, Part 5 will provide Northern Ireland with a firmer foundation through which to develop checking links with the Republic of Ireland. As with the UK, this is vital given the significant numbers of people crossing the border to take up employment.
- 3.22 **Therefore, taken together with all of the other issues discussed above, the Government has decided to commence Part 5 in Northern Ireland.**

## 4. PART 5 OF THE POLICE ACT 1997

### Overview

Part 5 of the Police Act 1997 provides a statutory framework for the disclosure of an individual's police or criminal record in certain circumstances on payment of a fee. Its primary function is to safeguard the vulnerable. The legislation also controls who has access to this information and how it must be protected once released.

### INTRODUCTION

- 4.1 The White Paper **On the Record** (Cm3308), published in 1996, contained the basis of what was to become Part 5 of the Police Act 1997. The core objective of the then government's policy was **"to balance the need for pre-employment criminal record checks in certain occupations with the safeguards necessary to protect the people on whom checks are made"**.
- 4.2 The paper also emphasised strongly that **criminal record checks were not the sole means of checking the suitability of prospective recruits**. Employers needed to take up references and have proper systems in place for the management and supervision of staff. It is also important to be aware that Part 5 is an **enabling piece of legislation**. It is not mandatory; it does not of itself require anyone to undergo a check before taking up employment or voluntary activity. Where any checking is mandatory, it is the result of legislation regulating specific occupations or professional regulatory bodies making checks a condition of employment or registration.

## THE EFFECT OF PART 5

- 4.3 Essentially, Part 5 creates a **statutory framework for the disclosure of criminal and police records**, including non-conviction information in certain circumstances upon payment of a fee. It places a duty on the Secretary of State to disclose the information in the form of a certificate and requires the Chief Constable of the relevant police force to provide the Secretary of State with the information.
- 4.4 In its present form, the provisions of Part 5 are extremely convoluted, having been subjected over time to a series of territorial amendments. However, the effect of the legislation itself is fairly straightforward. There are three levels of disclosure; **Table 2** below provides an overview of how these will work in Northern Ireland. The level of disclosure is directly related to the sensitivity of the post in question. Under the Act, applications for disclosures at the higher two levels can only be made by bodies 'registered' within the meaning of Part 5.
- 4.5 The **basic** criminal conviction certificate contains details of any convictions that have not been spent within the definition of the **Rehabilitation of Offenders Order** (see Chapter 5) and can be issued to any applicant.
- 4.6 The **standard** criminal record certificate shows details of spent and unspent convictions as well as cautions, reprimands and warnings recorded on PNC. In addition, the **Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003** will shortly provide that, for job applicants who will be working with children or vulnerable adults, this category of disclosure will

also include a check against lists maintained by DHSS&PS and DE of people considered unsuitable for such work.

- 4.7 The certificate may be issued in any case where the prospective employment is a position included within the scope of the **Rehabilitation of Offenders (Exceptions) (Northern Ireland) Order 1979** (see Chapter 5).
- 4.8 The **enhanced** criminal record certificate contains all of the information in the standard version in addition to relevant information held in local police records. This can include information about attempted prosecutions that were unsuccessful or patterns of behaviour that might be indicative of criminal activity. Part 5 provides that enhanced disclosures can be sought in particular circumstances such as judicial appointments and people applying for certain licences and certificates under gaming and lotteries legislation. Their prime use, however, is in relation to persons who are regularly involved in caring for, training, supervising or being in sole charge of people under 18 or vulnerable adults.
- 4.9 While anyone may seek a basic disclosure; applications for standard and enhanced disclosures must be counter-signed by a representative of a **registered body**. Part 5 provides for the establishment of registered bodies which are employers or others who are entitled to ask exempted questions under the Rehabilitation of Offenders Order by virtue of the nature of the work or voluntary activity being undertaken.
- 4.10 The legislation also allows for the establishment of **umbrella bodies** which can act on behalf of other organisations entitled to

ask exempted questions. In Great Britain this has been used to facilitate small or voluntary organisations which might not have the capacity to operate within the disclosure system without assistance. The legislation requires the Secretary of State to issue a **Code of Practice** detailing how information disclosed to registered bodies may be used and ensuring that it is properly safeguarded.

4.11 The Secretary of State is required to send a basic disclosure to the subject of the check. **Standard and enhanced disclosures are issued to the subject and to the registered body.** This is a vital protection for the subject of the disclosure as it provides an opportunity to challenge the records being disclosed. In the event that a subject of disclosure considers it to be inaccurate he can apply to the Secretary of State for a new certificate, a provision that in effect requires an **appeal mechanism** to be established.

4.12 There is one exception to this approach in that the Act enables the police to disclose to the Secretary of State and, through him, to the registered body only, sensitive “soft” information which, in the interests of the **prevention or detection of crime**, cannot be passed to the subject of the check.

4.13 Part 5 enables **fees to be charged for disclosures**, the levels of such fees are specified in regulation. It also enables the Secretary of State to require applicants to provide evidence of identity this may include taking fingerprints.

4.14 A key feature of the legislation, for the protection of applicants, the community and employers, is that it creates a number of **criminal offences** that apply in the event of abuse of

the system. In particular, it is an offence to make an application for disclosure in the following circumstances:

- using **false identity** details;
- to **forge** a disclosure;
- to allow a certificate to be **used fraudulently by someone else**.

Further, it is an offence for a member of a registered body to misuse information provided in a disclosure.

**Table 2**

Level	Information Included	Who can Apply?
<b>Basic</b>	An individual's unspent Criminal Record.	Anyone can apply for sight of their basic criminal record.
<b>Standard</b>	An individual's unspent and spent criminal record; and details of whether they are included on the POCVA list or list 99.	A registered body will be able to apply in relation to any post contained within the Rehabilitation of Offenders (Exceptions) (Northern Ireland) Order 1979
<b>Enhanced</b>	An individual's unspent and spent criminal record; and details of whether they are included on the POCVA list or list 99. Also, any other police intelligence which may be relevant in the circumstances.	A registered body will be able to apply in relation to any post involving regularly caring, training, supervision or sole charge of children or vulnerable adults; or applications gambling licences.

## THE SERIOUS ORGANISED CRIME AND POLICE BILL (SOCAP)

4.15 It should be noted that there are a number of amendments to Part 5 planned for the **SOCAP Bill**, introduced in the Queen's Speech to Parliament on 23 November 2004. The new provisions have been drafted following a review of CRB and the publication of the Bichard report. The amendments seek to improve the effectiveness of the disclosure process by:

- (i) allowing **UK wide** access to lists of people unsuitable to work with children or vulnerable adults;
- (ii) allowing access to **soft intelligence** from an increased range of police forces and other relevant organisations; and
- (iii) allowing the Home Secretary to **set fees** payable to the police for dealing with disclosure requests administratively.

4.16 It is clearly vital that, whatever form the new system for Northern Ireland takes, that it **should have access to as wide a scope of information as possible for the purposes of disclosure**. Further, as discussed above, we believe there is a strong argument for the harmonisation of checking arrangements across the UK and therefore we have decided that the new disclosure arrangements should be provided with the same operational flexibility as CRB. For this reason, it is the NIO's intention to extend these amendments to Part 5 to Northern Ireland.

4.17 As noted above, the present state of Part 5 is less than ideal. Therefore, in partnership with the Home Office we are taking this opportunity to **clarify and consolidate** a number of complex territorial amendments which have been made to Part 5 over time in order to simplify the current provisions.

## 5. THE SCOPE OF DISCLOSURE

### Overview

The level of disclosure issued under Part 5 is determined by exceptions legislation. Through parallel work reforming Rehabilitation of Offenders legislation, the exceptions regime in Northern Ireland will be critically examined to ensure that it remains relevant and effective.

### BACKGROUND

5.1 The provisions of Part 5 are designed to create a balance between the rights of the individual and rights of the community as a whole. It is clearly in society's interest for ex-offenders to be reintegrated into society. To this end, the **Rehabilitation of Offenders (Northern Ireland) Order (1978)** provides that convictions for certain offences become **spent** after a certain period of time (rehabilitation period) has elapsed. Under the Order, ex-offenders need not declare any spent convictions. Rehabilitation periods are linked to the sentences given for offences committed and are summarised as follows:

- for a sentence of **six months** the rehabilitation period is seven years;
- for sentences of between **six months and two and a half years** the rehabilitation period is ten years; and
- sentences of **more than two and a half years** never become spent.

- 5.2 This is a hugely important area of law, and is currently the subject of a separate review in Northern Ireland. A **consultation on proposals for change** has been conducted and the responses are presently being analysed. It is hoped to issue a formal response to this consultation document in Spring 2005. The consultation document entitled **Breaking the Circle** can be found on the NIO's website at [www.nio.gov.uk](http://www.nio.gov.uk).
- 5.3 It is equally essential that effective safeguards are put in place to protect vulnerable members of the public and employers. While it must be emphasised that the aim of Part 5 is not to keep those with a criminal or police record out of employment; it is clearly important, particularly in relation to employment in specific posts or entry to nominated professions, that an individual's criminal record should always be disclosed. In Northern Ireland, these 'exceptions' to the rehabilitation scheme are set out in **Rehabilitation of Offenders (Exceptions) Order (1979)**.
- 5.2 Schedules 1, 2 & 3<sup>2</sup> of the **Exceptions Order** set out professions, offices, employments, occupations, proceedings and licences/certificates/permits to which the concept of 'spent' convictions is not applied. For example, a criminal record certificate issued under Part 5 in relation to an individual seeking to work with children or vulnerable adults or as a medical practitioner, would include the individual's **complete criminal record**, including those considered spent under the 1978 Order. This is because Schedule 1 of the Exceptions Order cites a medical practitioner as an 'excepted' profession and work with children or vulnerable adults as excepted employment.

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<sup>2</sup> The contents of these schedules are available online at [www.nio.gov.uk/index/about-the-nio/content-newpage-2.htm](http://www.nio.gov.uk/index/about-the-nio/content-newpage-2.htm)

## OPERATING WITH PART 5 OF THE POLICE ACT 1997

- 5.3 Essentially, the Exceptions Order provides the basis of the **Standard** checking regime. **Basic** checks deal only with unspent convictions and therefore it does not apply, further, the scope of the **Enhanced** regime is specified on the face of the Bill.
- 5.4 The Exceptions Order has been heavily amended over the period following its commencement. Each time, new exceptions have either been added or existing exceptions consolidated. The scope of the exceptions regime in Northern Ireland is presently being considered as part of the wider programme of reform in this area. Clearly, there is a critical need to ensure that the exceptions regime remains relevant and effective in order to ensure that it continues to meet Northern Ireland's needs.
- 5.5 It must be noted that the disclosure of criminal convictions will not necessarily preclude an individual from certain types of employment or from nominated professions. However, it is considered necessary to make all relevant information available, to all employers, professional bodies and those issuing certain licences, certificates or permits in Northern Ireland, where they have a legitimate need within the terms of Part 5, in order to help them make informed decisions. Therefore, it should be noted the exceptions regime may be revised as the work reforming Rehabilitation of Offenders legislation is taken forward.
- 5.6 For example, it will be essential that the legislation is updated to take account of other developments, and in particular the

introduction of legislation to improve protection arrangements for children and vulnerable adults<sup>3</sup>.

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<sup>3</sup> The Protection of Children & Vulnerable Adults (Northern Ireland) Order (2003).

## 6. OPTIONS FOR IMPLEMENTATION

### Overview

Of the options for reform in Northern Ireland, the enhancement of the current arrangements will provide the necessary control and flexibility to provide an effective service addressing local customer needs whilst ensuring value for money.

- 6.1 In considering how Part 5 might be given effect in Northern Ireland it became clear that there were essentially three models for doing so. **Chapter 7** deals with the Government's substantive proposals. However, before considering these, it is important to understand the relative strengths and weakness of each option.

### MODELS FOR IMPLEMENTATION

- 6.2 Although, the key elements of any checking system are fixed in legislation, it is clearly important that the most effective model for delivering the new service is in place. In examining how the legislation might be applied to Northern Ireland, the following distinct options emerged:

- I. **Greenfield**; an entirely new checking body, distinct for Northern Ireland and similar in nature to the Criminal Records Bureau (CRB) or Disclosure Scotland (DS).
- II. **Outsourcing**; employment checking and associated services are delivered for Northern Ireland through existing systems developed by either CRB or DS.

- III. **Existing systems**; Part 5 is operated using existing technologies and structures already in operation in Northern Ireland.

## KEY ISSUES FOR NORTHERN IRELAND

6.3 In analysing the effectiveness of each of these options the following critical considerations were taken into account:

- the ability to provide an **Effective Service**
- **Robustness**;
- the ability to be **Self Financing**;
- **Value for Money**;
- the Level of **Local Control**;
- the Impact on **Users**;
- implications for **Existing systems**;
- related work in Other **Government Departments**;
- harmonisation within the **UK**;
- implementation of the recommendations of the **Bichard** report; and
- linking with the **Republic of Ireland**.

6.4 In addition, following a **consultation event** on 30 November (report available at [www.nio.gov.uk/index/about-the-nio/content-newpage-2.htm](http://www.nio.gov.uk/index/about-the-nio/content-newpage-2.htm)) it is clear that there are a number of core customer needs the systems will also need to fulfil:

- no new system should be put in place without adequate **preparation of the market**;
- the new system should have a **single point of access**;

- the system should provide **all levels of checks**;
- searches should include checks against **relevant UK records**;
- **training and guidance** should be provided to support the employment decision making process; and
- **fees** should be set at a reasonable level, with checks for voluntary bodies provided free of charge.

While there was some discussion around the issue of **portable checks** at the event, Part 5 does not provide a satisfactory legislative framework for this to be taken forward. However, this is something which we will consider as part of any future developments, particularly those flowing from the Bichard review.

## **ANALYSIS**

- 6.5 In order to ensure a systematic and transparent examination of the options we have used the **SWOT** model of analysis. This tool allows the **strengths, weaknesses, opportunities** and **threats** or **risks** associated with each option to be given due weight. It is also an accessible way in which to set out the factors considered.
- 6.6 The tables below contain a SWOT analysis for each of the options, with some further detailed discussion below. We have separated **Option II** into two further possibilities, that of using CRB or DS as our service provider. As these are two commercial entities, with different systems and process we felt it was necessary to examine both separately.

## Option I: Greenfield

### Strengths

- Allows for **total local control**;
- would be a **bespoke system** designed specifically for Northern Ireland;
- would fully complement and meet **local requirements**;
- the focus would be on **one customer base**;
- would allow **costs** and pricing policy to be decided locally;
- would have **customer confidence**; and
- would more effectively link to **local systems**.

### Weaknesses

- Would be **expensive to implement**;
- **cost per check** would be high;
- would require development of entirely **new systems and process** and the training of new staff;
- would need to secure access to **relevant databases**;
- **technically complex** to achieve;
- the creation of new IT systems is inherently **expensive and risky**;
- the checking body will be **locked into new systems** once they are in place;
- **long implementation period**; and
- would have a **significant impact** on Government bodies in the current financial climate

### Opportunities

- creates a Northern Ireland platform to develop **national and international links**.

### Threats

- high risk of early **system failures**;
- **high cost to customer** leading to little take up of system and **reduction of safeguards**;
- loss of **customer confidence**;
- obsolescence of expensive systems following **Bichard reforms**.

## Option II (a): Outsourcing to CRB

### Strengths

- wide spectrum of **experience**;
- **established structures** and processes for extracting and providing disclosure information;
- **established customer network** and arrangements to give advice and guidance to on key disclosure issues;
- arrangements in place for giving **feedback and awareness** training to individual customers and organisations;
- **secure arrangements** for applications and printing/despatch of disclosure certificates;
- a key driver of **Bichard reforms** for England and Wales;
- has **spare capacity** and is willing to take on disclosure for Northern Ireland; and
- has established facilities for obtaining and exchanging conviction and, in some cases, other information, with police forces within the EU, EEA, Canada, Australia and the Philippines

### Weaknesses

- does not provide **basic checks**;
- **no local control** over cost of individual checks;
- would require direct subsidy for the cost of checks on the **voluntary sector**;
- systems have not been developed for **Northern Ireland's needs** ;
- **local concerns** about the use of a non-local system;
- **limited access** routes for NI customers;
- **resource intensive** by way of staff and systems;
- **dependency on third party** (Capita) for systems; and
- would continue to require dedicated **PSNI resources** in addition to those paid to delivery partner.

### Opportunities

- matching pace with the **Bichard reforms**;
  - step towards **UK system**
  - provides an opportunity to create a **UK-wide search facility**; and
  - provides an opportunity to develop and build on **international links**.
- 
- **prioritisation** could result in NI disclosures being put to one side;

## Threats

- cost of checks
- over-reliance on **third party system** (Capita);
- no control or input into **pricing policy**;
- **complexity of arrangements**; and
- uncertainty about the outcome of certain key **Richard reforms**.

## Option II (b): Outsourcing to DS

### Strengths

- **established structures** and processes for extracting and providing disclosure information;
- **established customer network** and arrangements to give advice and guidance to on key disclosure issues;
- arrangements in place for giving **feedback and awareness** training to individual customers and organisations;
- **secure arrangements** for applications and printing/despatch of disclosure certificates;
- has **spare capacity** and is willing to take on disclosure for Northern Ireland; and
- existing and proven **reliable systems**; and
- provides **basic checks**.

### Weaknesses

- no **local control** over cost of checks;
- would require **direct subsidy** for Northern Ireland voluntary sector;
- **resource intensive**;
- dependency on **third party** (BT);
- it is not clear there is **spare capacity**;
- **local concerns** about the use of a non-local system;
- **limited access** routes for NI customers; and
- would continue to require dedicated **PSNI resources** in addition to those paid to delivery partner.

### Opportunities

- Would provide a platform for **UK-wide** searches; and
- is a step towards a centralised **UK system**.

### Threats

- **Prioritisation** of Scottish applications;
- no control over **costs or pricing policy**
- large voluntary sector could lead to **high costs** per check;
- uncertain outcomes from **Richard Reforms**; and
- potential **legislative complexities**.

## Option III: Enhancing Current Systems

### Strengths

- Allows for **total local control**;
- **least expensive** of options;
- the expressed **customer preference**;
- allows for retention of **local expertise and knowledge**;
- does not rely on **third party** for basic systems;
- flexible enough to cope with **Richard Reforms**, without large expenditure;
- continued involvement of the **police**;
- relatively **quick to establish**; and
- existing **links with Rol**.

### Weaknesses

- lacks **sophistication**;
- relies on **adapting existing IT systems**; and
- may require a certain amount of **outsourcing**.

### Opportunities

- joint working with **Rol and UK** on NI terms;
- able to realise **efficiency savings** by using existing systems; and
- able to capitalise on **system flexibility** for Richard changes.

### Threats

- systems not designed for **specific tasks**;
- potentially **different system** to the rest of the UK;
- may be **complex to operate** in practice and require training; and
- may be affected by any **subsequent reforms** of existing systems.

## COSTS

6.7 Based on assumption of **150,000** checks a year, we have calculated the following likely establishment and running costs. On a full-cost recovery basis over a 5 year period (taking into account the cost of free checks for the voluntary sector see paragraph 6.11), we estimate that the **cost per check** resulting from each will be around the levels indicated in the table below. For a more detailed breakdown of costs, please see **Appendix A**.

**Table 3**

	<b>Greenfield</b>	<b>Outsourcing</b>	<b>Enhancing</b>
<b>Total Set up Costs</b>	£1,531,718	£234,977	£415,549
<b>Total Operating Costs</b>	£3,133,608	£2,262,445	£1,727,376
<b>Total Costs</b>	£4,665,327	£2,497,422	£2,142,925
<b>Cost Per Check</b>	<b>£42</b>	<b>£30</b>	<b>£23</b>

### OPTION I: GREENFIELD

6.8 A key strength of **Option I** is that it provides total control over policy and pricing, which is hugely attractive in terms of satisfying local customers and setting the right fees in the context of Northern Ireland. However, as outlined above, it is clear that this will be the most expensive of the options leading therefore to the highest cost per check. There is some question as to whether this

is justified given the relatively small number of checks expected for Northern Ireland. As, in general, the system is not mandatory, this high cost may actually deter employers from using the service. Clearly a balance must be struck between funding an effective service and setting fees at an accessible level. Clearly, a greater number of employers checking by way of Part 5 increases the level of safeguard provided.

6.9 With this option, it will be possible to develop a **bespoke workflow system** to operate Part 5. Targeted to the specific needs of local consumers. Again, as its core focus will be on one customer base, the system will be better able to deliver quality services that are tailored to and reflect customer needs. Increasing confidence in the system and encouraging continued usage. Clearly, each of the options has implications for **existing systems** and processes, the flexibility provided by this option would allow for existing relationships and dependencies to be taken into account.

6.10 In terms of implementation, this option is likely to have longest lead-in period as there is no existing infrastructure to develop. In addition to the creation of administrative systems and processes, require the **development and creation of new software** to support workflow systems. These systems will also require extensive testing before being brought online. By way of illustration, the Compensation Agency's workflow system required three years of development. The creation of new systems is also inherently risky. Both CRB and DS implemented Part 5 through the creation of a new agency, each experienced high profile and significant difficulties leading to serious problems for customers

and damaging loss of confidence in the systems. This is something which we clearly wish to avoid.

- 6.11 A further key risk with this option is the **higher cost of checks**. In addition to the greater capital required for start-up; as noted above, Northern Ireland has a particularly large voluntary sector and although it is difficult to forecast usage precisely, it seems likely that something around 50%<sup>4</sup> of all applications will come from the voluntary sector. These will have to be paid for by **cross subsidy** from paying users to reduce the financial burden on the public purse. While clearly this has costs implications for all of the options, it further increases the already high costs associated with this option.
- 6.12 In addition to the critical need to set fees at a realistic and affordable level, high costs might actually **discourage customers** from using the service as Part 5 is enabling legislation only, it does not create any obligations to use the service. The effect of this would be to reduce the safeguards provided by the system as fewer people would be checked.

## **OPTION II: OUTSOURCING**

- 6.13 The two strands of this second option are essentially **buying the service** from either of the existing providers; namely, the Criminal Records Bureau (CRB), which is based in Liverpool; and, Disclosure Scotland (DS), which is based in Glasgow.

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<sup>4</sup> Although there are no definitive figures in this area, a number of assumptions and projections have been made to estimate this figure. Presently 50% of all throughput for the PECS system comes from the voluntary sector. In England and Wales some 30% of all disclosures are for the voluntary sector. Given the greater proportion of voluntary bodies in Northern Ireland, combined with a likely higher rate of take-up of the new scheme (given free checks and administrative support), we estimate that something in the region of 50% of usage of the new system will be from the voluntary sector.

- 6.14 There are a number of attractions to this option. Both organisations, after a difficult start, now have a great deal of **experience** in this field. Further, each now operates proven and **reliable systems** based on established structures and processes for extracting and providing disclosure information. They have also developed secure and effective arrangements for printing and issuing security marked disclosure certificates. In addition, both would provide secure **access to criminal records across the UK**.
- 6.15 These strengths notwithstanding, a clear drawback to this option is the **lack of control** over pricing policy. As noted above, the cost of checks is hugely important to the success or otherwise of any service that is provided under Part 5. Another, equally important consideration, is the fact that NI would also have no control over the **prioritisation of work** within either organisation in the event of, for example, a system breakdown. There is clearly the potential that this could have an adverse impact on customers in Northern Ireland.
- 6.16 Again the issue of Northern Ireland's large **voluntary sector** will have an impact on the cost of each check under this option. Cross-subsidy of the voluntary sector will need to take place and this cost, in addition to the basic charge for a check, will need to be passed on to the remainder of the Northern Ireland customer base. Given the scale of the local voluntary sector, this will clearly have a significant impact on the costs of checks in Northern Ireland.

6.17 A further particular issue is the fact that CRB offers a limited service insofar as it does not conduct **basic checks**; a key customer requirement outlined at the consultation event on 30 November was the provision of all three levels of check. Therefore CRB would not deliver across the full spectrum of customer need. In addition, it is clear that DS would not have the necessary capacity to deliver checks for Northern Ireland without significant restructuring. This would require an exact estimate of the number of checks Northern Ireland is likely to require; as the experiences of both CRB and DS have demonstrated, this is something which carries a great deal of risk and is difficult, if not impossible to get right.

### **OPTION III: ENHANCING EXISTING SYSTEMS**

6.18 As with Option 1, this allows for **total local control**. Each aspect of the scheme would be determined according to local need and interests. In terms of costs, it is clearly the **least expensive** of options, the lower implementation and running costs should translate into lower charges per check. A further attraction is that, as is clear in the report of our consultation event, this is the expressed **customer preference** in Northern Ireland.

6.19 Turning to the effectiveness of the systems themselves enhancing the current arrangements will allow for retention of **local expertise and knowledge** built up over time through the administration of the current system. Also, the system will not need to rely on a **third party** for the setting up of the infrastructure and systems.

- 6.20 As is clear above, the programme of reform flowing from the Bichard Inquiry will make a number of significant changes to way in which employment checking works in sectors involving children and vulnerable adults. This option provides the local flexibility required to cope with **Bichard Reforms**, without large expenditure required to alter systems.
- 6.21 The continued close involvement of the **PSNI** is a further strength to this option. The foundation for the entire system will be essentially police records. The involvement of police staff in the system will be of benefit, both in terms of their greater understanding of the type of records involved and effective crime prevention. More than any other organisation in Northern Ireland or elsewhere, PSNI have the requisite degree of knowledge and understanding of police record keeping and offence/conviction reporting.
- 6.22 The fact that existing technology will be used means that the system should be relatively **quick to establish**, as compared to the other options. In particular, it would be a great deal quicker than Option 1, which is the only other option providing local control. Another benefit is that the **links with the Republic of Ireland** which exist under the current system can be developed and enhanced under this option.
- 6.23 Arguably, this option lacks **sophistication** as it relies on adapting existing IT systems which were not designed for the **specific tasks**. While existing systems can fulfil core tasks, there would not be the same harmony of purpose that comes from using a specifically designed system. In addition, this solution may require a certain amount of **outsourcing**, for example, the

printing of secure disclosure certificates. Clearly, there are risks attached to reliance on a third party for the delivery of services.

- 6.24 As a result of the above, this system may be **complex to operate** and require significant training for operators. In addition, the resulting system might be substantially different to those operating in the rest of the UK. As it will be based on existing technology, the system would be vulnerable to any **subsequent reforms** to this technology which did not provide equivalent functionality.

## CONCLUSION

- 6.25 Taking all of the above into account, together with the key requirements set out at the beginning of this chapter, it is the Government's view that **Option III** would provide the most effective solution for Northern Ireland. Enhancing current arrangements will provide a **locally controlled system** with the flexibility to tailor the service to the needs of Northern Ireland, while also representing the best **value for money**; both in terms of the burden on the public purse and paying customers.

## 7. THE GOVERNMENT'S PROPOSALS

### Overview

Using existing systems, it is proposed that the Government will provide the full range of disclosures available under Part 5 of the Police Act 1997 on secure certificates. It is further proposed that access to the higher levels of check will be controlled through regulated registered bodies and special arrangements will be made to support the voluntary sector. The Government also proposes to charge for this service, save for where the check is sought for an unpaid volunteer.

- 7.1 This Chapter deals with the Government's detailed proposals for the implementation of Part 5. For ease of reference, the process has been separated into three elements, **application**, **checking** and **disclosure**. A **diagram** of the end-to-end process is provided below. We are seeking your views on both the workability of our proposals and extent to which they satisfy, or otherwise, customer needs. Clearly these proposals are subject to change, either due to comments received during the course of this consultation process or other issues arising.

### APPLICATION

- 7.2 It is our intention to make the application process in each case as straightforward as possible. However, due to the highly sensitive nature of the material being disclosed, it is clearly important that proper safeguards are in place to ensure that only those entitled to receive disclosures do so. The disclosure process will be

strictly controlled to ensure that certificates are only received by those for whom they are intended.

### *Applying and Paying for Checks*

7.3 The **application process** will be set out in regulations made under the 1997 Act. The pricing structure will be made clear to customers as part of this process. Application forms will require completion of a number of fields in order to ensure an effective and complete search can be made against the right person. This will cover the following:

- full **name and address**;
- any **previous names** used;
- **address history** covering at least five years;
- details of **counter signatory** (for standard and enhanced checks only);
- any **previous convictions**;
- a **signature and declaration** of the correctness of information provided; and
- **payment**.

7.4 In addition it will be vitally important to ensure that the identity of the individual being checked has been verified. To achieve this we propose to use one or more of the following documents:

- Passports
- Drivers licence
- Birth and Marriage Certificates
- Utility Bills
- National Insurance Number

**We welcome your views on both the application form and the documents used as proof of identity. In particular, we invite comments on the proposal that at least one of the documents put forward as proof of identity should include a photograph.**

- 7.4 As technology improves, we will seek to develop the identity checking capabilities of the disclosure body. In future this may include direct links to other Government Bodies holding relevant information and the use of fingerprints. However, it should be noted that where a **Registered Body** (RB) is involved, it should be responsible for the determination of identity.
- 7.5 We propose to offer a number of **payment options**, including cash, cheque, electronic transfer and credit or debit cards. The likely cost per check is set out in **Table 3** above. At this stage, we propose to charge a **flat rate** for every level of check, as we wish to make clear that the level of check received is linked to a person's legitimate entitlement to access rather than the quality of the check.

#### *Basic, Standard and Enhanced Disclosures*

- 7.6 Anyone in Northern Ireland will be able to apply for a **basic check**, providing they are able to satisfy the checking body as to their identity and they have paid the required fee.
- 7.7 Applications for **Standard** and **Enhanced** checks on an individual must be signed by that person and countersigned by an RB. We propose that RBs will be required to: countersign the application form; confirm that the application is one permitted by the terms of Part 5 and the Exceptions Order; and verify the identity of the

applicant. We propose to **seek evidence** of identity in the form of the documents set out above. Under 1997 Act any application not supported by such evidence can be refused.

### *Registered Bodies*

7.8 In compliance with Part 5, we propose that the following should be eligible to become registered bodies:

- those likely to ask **exempted questions**; and
- those who intend to countersign Disclosure applications on behalf of others likely to ask exempted questions (i.e. an **Umbrella Body**).

As part of the application process, registered bodies will be required to provide certain details to be maintained as part of the register, this will include:

- the particulars of the **business, organisation or individual**;
- details of the **lead counter-signatory**; and
- details of any **additional signatories**.

7.9 We also intend to charge a registration fee both to cover the costs of administering the registration scheme and to ensure that only those genuinely likely to use the service are registered. In line with that charged by Disclosure Scotland, we propose a one-off registration fee of **£150**.

7.10 RBs have a critical role in the disclosure process at standard and enhanced level, and within the new system they will have a number of significant responsibilities:

- identifying the **appropriate level** of Disclosure required for the position;
- **countersigning** applications for Standard and Enhanced Disclosures;
- **receiving** Standard and Enhanced Disclosures;
- **controlling** access to the information on the Disclosure;
- ensuring the **security** of that information;
- **storing and destroying** the information;
- ensuring that the necessary **identification checks** of the applicant have been made; and
- ensuring Disclosures are **received, handled and interpreted** in compliance with the Code of Practice and any guidance issued by the checking body.

This **Code of Practice** will be produced under Part 5 and will set out clearly how RBs must meet their obligations. Failure to comply with this code of practice could result in the refusal to grant an application and, potentially, in deregistration.

7.11 It is proposed that, as in England and Wales, each RB is required to designate a **Lead Counter-signatory** (LCS) as part of the registration process of the organisation. The organisation would then be entitled to specify additional **Counter-signatories** (CS), at additional cost, to assist in applying for, and receiving, Disclosures. Once the organisation is registered, the LCS and other nominated CSs will be responsible for the Disclosure application process. It is proposed that both of these roles will require a check at enhanced level before they can countersign applications.

## *Voluntary Organisations*

- 7.12 As has been noted throughout this document, Northern Ireland has a large and vibrant voluntary sector which contributes a great deal to the community. As part of the Government's continuing support of the voluntary sector, it is proposed at this stage that checks for unpaid volunteers will be **free of charge**. However, it is also proposed to take this further.
- 7.13 A key issue raised during our consultation event was that many smaller voluntary bodies **lacked sufficient administrative capacity** to cope with the existing system. The potential for the creation of a greater bureaucratic burden was something which caused a great deal of anxiety. In response, the Government proposes to establish a **central registered body** to support disclosure applications from the voluntary sector. This body would deliver all of the services expected of an RB specifically for the voluntary sector. **Your views are invited on this issue, in particular, we would be interested in comments on whether a heavily reduced fee should be charged for this service or whether it should be paid for by an additional levy on paying customers.**

## **CHECKING**

- 7.14 Once a properly completed application has been received and processed, a **computerised search** will be made against the individual on a number of relevant databases. It is proposed that, depending on the level of check applied for, searches will routinely take place against the following:
- **ICIS**, which holds criminal and police records for Northern Ireland;

- **PNC**, which holds convictions for England and Wales and for certain offences from Scotland;
- the list established under **POCVA**, which holds details of individuals considered unsuitable to work with children or vulnerable adults; and
- **LIST 99**, which lists individuals whose employment as teachers has been restricted or prohibited.

It should be noted that the latter two databases will be searched on a **UK wide basis**, following amendments which will be made to Part 5 by the Serious Organised Crime and Police Bill. Where **police records** are required from England, Wales or Scotland, it is proposed that these will be sought directly from the relevant force. It is the Government's intention to develop the search capability of the system by continually seeking access to new and relevant databases. Where an address in the Republic of Ireland is declared, we propose to maintain the present links. **We would welcome any suggestions in this area as to other databases which might be relevant for an employment check under Part 5.**

7.15 Properly filled out forms will be crucial in this area in order to ensure that an **effective match** against individuals can be made across these databases. **The Checking Body will make no editorial decisions.** Once a match has been confirmed, depending on the level of check sought, any conviction or other relevant material found will be passed on for disclosure. Decisions as to the **relevance of police records** will be made by the police themselves; again the checking body will make no changes to this material.

7.16 As a crime prevention measure aimed specifically at enhancing the level of protection provided to children and vulnerable adults, we propose to keep a **separate record** of all those who apply for enhanced checks to work with the vulnerable. This list will be continually checked against updated criminal and police records. The purpose of this is to ensure that where an individual who has been checked to work with the vulnerable is suspected of, or has committed, a relevant offence in Northern Ireland that this is brought to the attention of the police at the **earliest possible juncture**. The benefit of this system is that it does not rely on the individual being honest about their occupation and it allows the police, to take timely action to safeguard the vulnerable. In future, through the Bichard reforms, it is our intention to extend this process of continuous updates to include records from across the UK. **We would welcome comments on this proposal.**

## **DISCLOSURE**

7.17 Any relevant information produced by the checking stage will be transmitted for inclusion in a **secure certificate**. This certificate will be issued to both the registered body and the applicant. **It must be stressed once again that such certificates should not form the sole basis of an employment decision**, rather they should be simply one element of robust recruitment and selections processes. Likewise, this should not be considered a single stage process, rather employers have a responsibility to continually supervise and monitor their employees.

### *Handling Certificates*

7.18 As organisations receiving sensitive information, it is proposed that RBs should develop **written policies** on handling disclosure certificates. These will be in line with a written **Code of Practice**.

7.19 In general, where the RB is also the potential employer, information should then be fed directly into the decision making process. Where a check has been carried out on behalf of another organisation, the RB may further disclose this information. It will be an **offence** for a member of an RB to disclose certificates to anyone unless it is in the course of their legitimate duties; and:

- they are an **employee of the RB**;
- they are a member of the organisation who **requested the check**; or
- they are the person about whom the check was made.

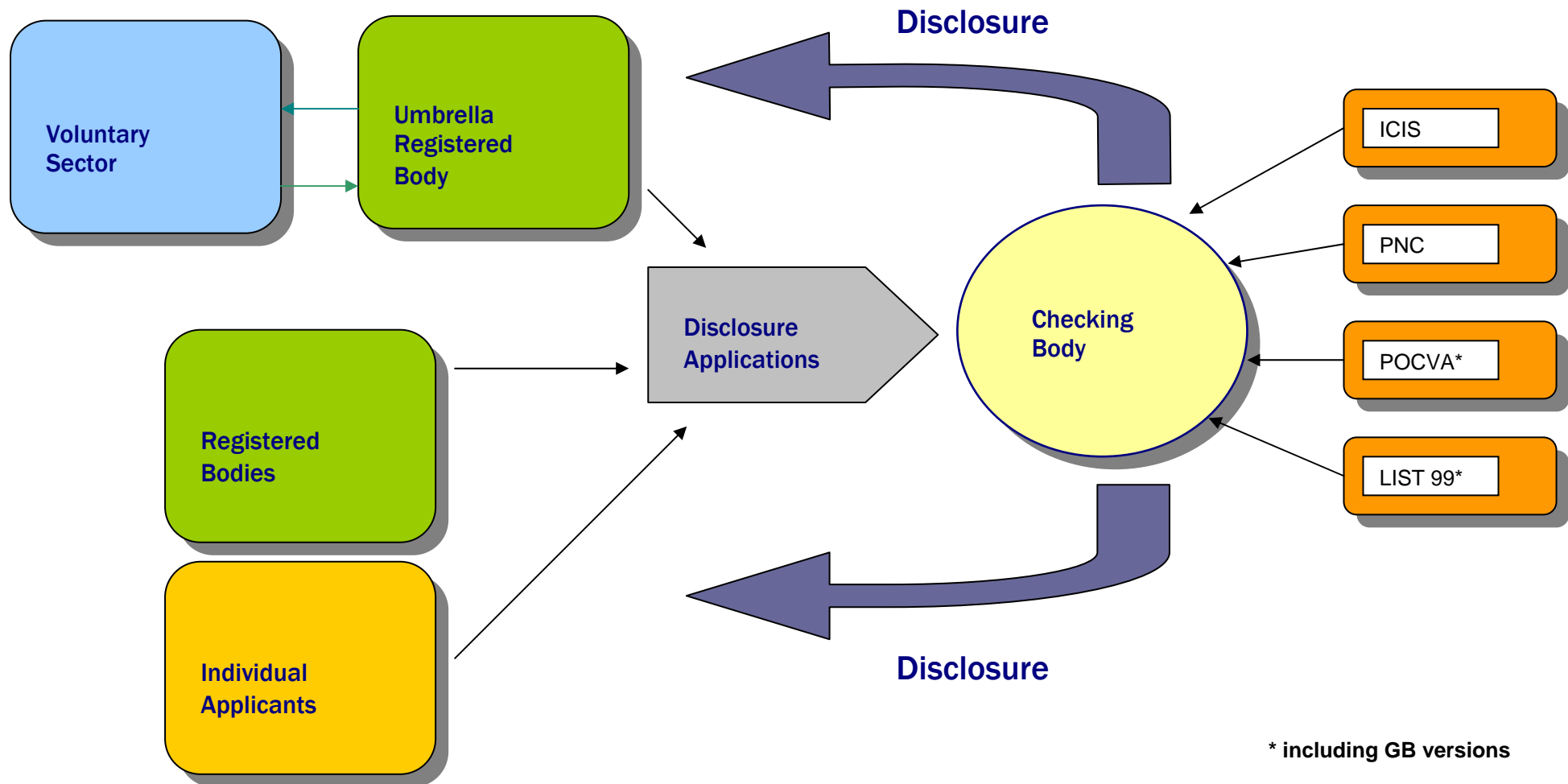
7.20 RBs will need to make effective arrangements for the **secure storage** of certificates while they are being used to make an employment decision or there is some dispute over their validity. Following this, they should ensure the timely **destruction** of certificates which are no longer required.

### *Appeals and Disputes*

7.21 Where there is doubt about the accuracy of a certificate, applicants can **apply in writing** to the checking body for the issue of a new certificate. Where it becomes clear that the information issued previously is inaccurate, a new certificate will be issued.

**7.22 Your views are invited on any aspect of the disclosure process; as well as where we have specifically sought comments.**

# DIAGRAM OF PROPOSED MODEL FOR IMPLEMENTATION OF PART 5 IN NORTHERN IRELAND



## 8. REGULATORY IMPACT ASSESSMENT

### INTRODUCTION

8.1 A **Regulatory Impact Assessment** (RIA) is an analysis of the likely impact of the implementation of a policy change. The implementation of Part 5 is not in itself a regulatory measure, or indeed one that imposes any obligation on any person, but entails the provision of a new service to help employers and voluntary organisations make safer recruitment decisions. However, as the fees associated with the new system may have an economic impact in some areas, particularly the voluntary sector, an impact assessment has been carried out.

8.2 The RIA below follows the standard format which is set out at [www.cabinet-office.gov.uk/regulation/ria-guidance/content/ria-template/index.asp](http://www.cabinet-office.gov.uk/regulation/ria-guidance/content/ria-template/index.asp). However, as we have produced this RIA as part of the Consultation Paper, **Safer Recruitment in Northern Ireland**<sup>5</sup>, where more detailed discussion is available, we have made reference to the relevant chapter from this document.

### (I) OBJECTIVE

8.3 The Government believes that as part of its commitment to creating a safer Northern Ireland and to increasing public confidence, Part 5 of the Police Act should be commenced and implemented. This means putting in place a checking system in Northern Ireland which provides a reliable, secure, expeditious and accessible service to customers, facilitating safer recruitment and the protection of the vulnerable; and which uses all relevant available information effectively.

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<sup>5</sup> Available at: [www.nio.gov.uk/index/about-the-nio/content-newpage-2.htm](http://www.nio.gov.uk/index/about-the-nio/content-newpage-2.htm)

8.4 The system will allow, on payment of a fee, checks to be made on criminal records and other relevant information held by the police and government departments. Three different levels of check will be delivered as follows:

- **A Basic Disclosure** (BD) which will be issued only to people applying on their own behalf and who will be able to choose whether to show it to others, including employers, on request. The BD will show convictions held in national records but, in accordance with the Rehabilitation of Offenders (Northern Ireland) Order 1978, will not include convictions which are 'spent' nor will it include cautions.
- **A Standard Disclosure** (SD) which will be available to people working in positions exempted under the Rehabilitation of Offenders Act. This will include people who have regular contact with those aged under 18 or those of all ages who may be vulnerable for other reasons. The SD will also be relevant for people entering certain occupations and professions such as barristers, vets and accountants. It will contain all convictions on record including 'spent' convictions and, in addition, details of any cautions, reprimands or warnings held. If a job or voluntary position involves regular contact with children or vulnerable adults in education or healthcare, an SD will also give information on government department lists of those unsuitable to work with children or vulnerable adults in these areas. These lists are held by the Department of Health, Social Services and Public Safety and the Department of Education.
- **An Enhanced Disclosure** (ED) will be available for people in posts involving greater contact with children or vulnerable adults. Such work involves regularly caring for, training, supervising or being in sole charge of people in these categories. They will also be issued for various others such as applicants for gaming and similar licences. As well as all the information

that would be on an SD, EDs may also contain information that is held locally by the police, including relevant non-conviction information.

## **(II) BACKGROUND AND INTRODUCTION**

8.4 At present, the system for using police records in employment checking is by arrangement rather than statute. There are a number of inherent weaknesses to this system, in particular there is often uncertainty both as to the type of information which can be released and to the scope of organisations and individuals who can receive it. Further, the lack of a comprehensive system creates the possibility of abuse of the subject access rights available to individuals under the Data Protection Act 1984, where employers or others require individuals to apply to the PSNI for a copy of their full criminal record.

8.5 The Secretary of State commissioned a former senior civil servant to undertake a comprehensive review of this area and to produce recommendations for improvement and reform. *Inter Alia*, this review confirmed the need for the implementation of **Part 5**. On the basis of these recommendations a multi-departmental implementation team (ECRIT) was established to urgently address this issue, including officials from NIO, DHSSPS, PSNI and DE.

8.6 More detailed discussion of the background to the present system and this current work appears in **Chapters 1, 2 & 3** of the related consultation document.

## **(III) RISK ASSESSMENT**

8.7 There are two critical risks associated with the implementation of Part 5, both for organisations and for individuals, relating both to the continuance of the

present non-statutory arrangements and to the establishment of a new fee charging system. These are discussed below.

### *Doing Nothing*

- 8.8 Allowing the **current systems to continue** would not afford the most effective protection to the vulnerable and to employers. The scope of the current regime does not include all of those who would have legitimate access to criminal and police records under Part 5. Therefore a risk arises that employers are not able to properly protect vulnerable people in their care or their business. Action is required to ensure that, as far as is possible, mechanisms are in place to reduce the likelihood of unsuitable people being appointed to sensitive posts. Further, the abuse of the current subject access regime would continue unchecked; this is something about which the Office of the **Information Commissioner** has expressed particular concern.
- 8.9 Due to the nature of the risk, the degree of threat to the vulnerable is not fully known. For example, the present scale of the **risk to children** has historically been difficult to quantify. It has been calculated that nearly three-quarters (72%)<sup>6</sup> of sexually abused children did not report the abuse at the time. However, as an indication of scale, a large study found that between 1980 and 2001, almost **70,000**<sup>7</sup> crimes were reported involving gross indecency with a child and unlawful sexual intercourse with a female child in the UK. This figure excludes other reported offences against children, such as other types of physical or mental abuse. Clearly, if this figure represents only a quarter of the actual picture, there is a huge threat to be addressed.
- 8.10 Looking more specifically at the issue in Northern Ireland; between the years 2002/ 03 and 2003/ 04 sexual offences, including offences against children, increased overall by **21.2%**; in 2003/04 this represented some **5,335**

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<sup>6</sup> Cawson et al., 2000, Child Maltreatment in the UK: A Study of the Prevalence of Child Abuse and Neglect, NSPCC

<sup>7</sup> Source: **National Criminal Intelligence Service**

recorded offences against children<sup>8</sup>. Again, this would seem to hugely under represent the scale of the problem when it is considered that in 2001/02, there were some **2,270** child protection investigations<sup>9</sup>.

- 8.11 A further key risk area is **internal fraud** which impacts upon businesses across the UK. KPMG's 'Fraud Barometer', shows that the total number of fraud cases in the UK rose by **14%** in 2004. In all, 174 fraud cases came to court last year, with a total value just under **£330 million**; management and employees accounted for a third of all cases, defrauding their companies of around **£106 million**<sup>10</sup>.
- 8.12 It is not suggested that access to an individual's criminal or police record would prevent all such criminal activity as outlined above. However, the Government believes that when integrated as part of a **robust employment decision making process** and where effective mechanisms to **monitor and control** employees are in place, a Part 5 check would provide a valuable tool to assist employers to safeguard those in their care and to protect their business. To be most effective, the system must be accessible to all those with a legitimate need and must be sustainable in the long term.

### *Charging Fees*

- 8.13 Previously, the system in Northern Ireland was free of charge at the point of use, although there was clearly a cost to Government. The issue of **costs** is dealt with more specifically below, in particular the impact on those users who will now have to pay for checks is considered, as well any associated administrative costs. Part 5 is explicitly a fee paying system, this is in recognition of the fact that once the scope of access is widened, the cost to Government of running the system increases. The charging of fees is intended to allow a system which provides timely and effective access to all

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<sup>8</sup> **NISRA**: Recorded Crime in Northern Ireland 2003/ 2004

<sup>9</sup> Source: **NSPCC**

<sup>10</sup> Source: **National Criminal Intelligence Service**

those with a legitimate need to be self funding and not a burden on the public purse. It should be noted that checks will continue to be free for unpaid volunteers. Further, it should be remembered that only those who wish to use the system must pay for it: Part 5 does not create any obligations to check staff. However, the charging of fees itself creates a number of risks.

- 8.14 If fees are set too **high**, some organisations may find it difficult to meet the costs, therefore risking appointing someone unsuitable to a sensitive post as they have not completed a check. As a result, employers may opt out of making a check in cases when it would have been appropriate and prudent to do so.
- 8.15 Conversely, if the fees are set too **low**, requests for checks will increase leading to potential abuse of the system. There would be a temptation for employers to request a check as part of the initial sifting rather than at the point of offering a job. Similarly, employers may be more inclined to seek a check even where there is insufficient sensitivity attached to the post to justify a check; this could be to the disadvantage of candidates with previous convictions.
- 8.16 Finally, a further risk arising from low fees is that it could **attract organisations from the rest of the UK** seeking cheaper checks thereby overloading a system developed to address the specific needs of Northern Ireland.
- 8.17 In setting the fees we have sought to ensure that a balance is struck between the competing needs set out above, whilst maintaining sufficient funds to run and effective disclosure service.

## (IV) OPTIONS

8.18 The 3 options for implementation set out below are analysed in more detail in **Chapter 6**.

- (I) **Greenfield** (Disclosure Northern Ireland) – an entirely new checking body, distinct for Northern Ireland and equivalent to CRB/DS.
- (II) **Outsourcing** – employment checking and associated services are delivered for Northern Ireland through pre-existing systems used by CRB/DS.
- (III) **Enhancing existing systems** – Part V is operated using existing technologies and structures, with functions spread across a number of areas.

8.19 As set out in **Chapter 7** the Government is proposing to implement Part 5 using the model described at **Option (III)** and it is seeking views on this. The core reasons for the selection of this choice are set out below:

- It is the most **cost effective** option both in terms of capital and running costs. It therefore produces the lowest cost per check (see below)
- It provides **local control** over the system, in particular control over pricing policy and prioritisation of work.
- In our initial round of consultation, this was the clearly stated **customer preference**.

- It provides the **flexibility** to respond to future reforms in line with Northern Ireland's needs.

## (V) BENEFITS

8.20 With the establishment of any new system, there is inevitably a certain amount of disruption and transitional working. As noted above, perhaps the most significant change for Northern Ireland is the introduction of fees. It is therefore important that Government clearly sets out the benefits of reform, properly demonstrating why change is necessary. The Government has identified the following benefits flowing from the implementation of Part 5:

- The establishment of a **Legislative framework**. At present, there is a degree of uncertainty throughout the system arising from the lack of a statutory basis for the disclosure of criminal and police records. A legislative system will address this uncertainty, producing end to end improvements in processes through clear roles and responsibilities.
- **Faster delivery of checks**. A risk under the present system is that, due to delays in the system, employers often take risks and employ individuals without having had access to a completed check. The new system will significantly reduce present turnaround times and ensure that employers are able to effectively plan their processes around the timely delivery of a check.
- Checks on the basis of **UK wide records**. Part 5 will allow Northern Ireland to benefit from, for the first time, a system which automatically provides for a check against criminal records from across the UK. This manages the risk that some applicants may not reveal a true previous address history. In addition, it will allow Northern Ireland to be part of national reforms in this area.

- The move to a statutory system will also lead to greater **confidence**, both for customers and for those operating the system. Confidence amongst **employers** will increase with the knowledge that they now have accurate and timely information to assist with their recruitment decisions. A vital part of making the right decisions is having confidence; both in the information provided and the ability to make decisions on the basis of that information. Further, the Police will be more sure of their grounds in releasing sensitive information.
- The increased **investment** generated by fees will ensure the system is able to cope with the rapidly growing demand for checks. As new systems for regulating professions are introduced, employers and voluntary sector organisations increasingly appreciate the importance of checking their staff. 2004 saw the number of checks in Northern Ireland increase by more than **6,000**.
- **Increased access to checking.** As noted above, organisations face a number of risks which could be more effectively managed through the use of a Part 5 check. However, at present, access to checks is very strictly limited. The Police are regularly approached by organisations seeking checks on prospective employees, unfortunately, without a legislative basis for providing access, police must make decisions on a case by case basis, through reference to the common law. Protections are therefore reduced as those who would gain legitimate access under Part 5 are unable to. The new system will effectively address this, as Part 5 sets out very clearly which positions warrant disclosures, the type of disclosure this will be and, crucially, who can seek them.

- **Increased scope of checking.** Part 5 allows for the specification of additional sources of relevant information as part of the checking process.
- **Harmonisation with other systems in the UK.** England, Wales and Scotland have already established systems through Part 5. Given the significant amount of migration throughout the UK, it is crucially important that each checking body is able to properly work together, and that consistency in the way each operates is achieved. It is the Government's view that the most effective way to ensure this is to establish systems based in the same legislation.
- Matching pace with the **Bichard reforms.** The recommendations of the Bichard report into the terrible events at Soham, represent a significant package of measures which will fundamentally change the way in Part 5 works. By moving to a Part 5 based system, the Government will be in the best position to implement the Bichard reforms in Northern Ireland, ensuring that the community will be able to benefit from the improved new systems and more effective safeguards.
- **Streamlined processes.** A key difficulty with present arrangements is the complexity of the processes and procedures, leading to confusion, bureaucracy and delay. The new system will provide a simplified one-stop-shop for all users.
- Increased **customer support.** An important feature of the new system will be more effective support for users, both in terms of written guidance on how to use the system and the information it provides, and one-to-one support directly from the checking body itself. This is something which has been identified as a critical deficiency in present arrangements.

8.21 **Chapter 3** contains further discussion around the need for reform.

## **(VI) COSTS**

8.22 The costs of adopting Part 5 will have implications for both the Government and employers; specific consideration is given to small business below. A break down of estimated costs for Government is included at **Appendix A**.

8.23 There will be a number of **direct costs** for organisations seeking access to criminal records, these will include:

- the cost of **each check** (we estimate this will be around £24)
- the cost of **registration** to use the scheme (a one-off fee of around £150)
- the cost of each additional **counter signatory** (£10)

### *Business Users*

8.24 Although the system will not be mandatory; it is projected that some organisations may face additional administrative costs arising from the need to apply for, receive and handle criminal records certificates. However, these costs should be negligible if the business already has robust employment practices in place, as the check should simply be part of the overall administrative process involved in selecting an individual for employment. This process should already involve the handling of sensitive information (i.e. personnel records) and therefore costs involved in the handling of certificates should likewise be minimum. Further, as it is envisaged that a check should take place only when a decision to employ has been made in principle, the cost of checking can be kept to the absolute minimum.

8.25 Clearly, where employers increase their level of checking under Part 5, they will face additional costs. Research commissioned by the Home Office prior to the establishment of a Part 5 based checking system in England and Wales suggested that such additional costs would vary massively across the business sector. However they estimated that, on average, additional checks would represent a cost of **1.2%** per employee on top of current costs in the small businesses sector, where such increases would be felt more sharply. This would seem to be a reasonable increase, given the benefits outlined above. It should also be noted that it is clearly open to any business to recover the costs of the check from the applicant. **We would welcome any comments on this aspect of our proposals.**

### *The Voluntary Sector*

8.26 The heaviest impact of charging will be felt by the voluntary sector as they will be one of the core users of the new scheme. Northern Ireland has a huge and varied scope of voluntary organisations, performing a number of vital roles in the life of the community, with often stretched resources. For example, there would be virtually no after-school sports clubs if it was not for volunteers. Overall, we estimate that the voluntary sector will account for around **50%** of all checks under the new system. The imposition of charges in this context would leave many smaller organisations unable to afford them. Therefore they may find themselves unable to continue as an organisation or, alternatively, they may choose to take risks with unchecked staff. It is the Government's intention to safeguard these organisations and to shield them, in so far as this is possible, from the impact of the new charges in two ways.

8.27 Firstly, checks for unpaid volunteers will be **free**, therefore organisations will be able to check all of their members who in are relevant roles at no cost. However, given the likely higher rate of take up, there will be an administrative impact on voluntary bodies as well. As was clear from the consultation event on 30 November, many such organisations in Northern

Ireland often find such administrative burdens difficult to meet. This is particularly true where they will also need to comply with other Government schemes such as the DHSS&PS **Accreditation Scheme** which is presently being piloted in the Voluntary Sector. We therefore intend to mitigate the impact of any costs associated with this by delivering a central administrative service, an **Umbrella Registered Body**, established to provide support to those voluntary organisations seeking assistance with applications for checks. As the checking scheme develops, we will seek to make connections with other Government systems, with a view to reducing the bureaucratic burden on all customers.

### *Indirect Costs*

8.28 At the time of writing, data is not available to provide details of any other additional costs arising indirectly for businesses and organisations from the implementation of this policy. **We would welcome any discussion on this issue.**

### *Impact*

8.29 At this stage we do not know how many organisations will be affected by this policy change as it is not a mandatory scheme. However, It should be noted that under the **Protection of Children and Vulnerable Adults regime**, such checking will become effectively mandatory for ‘regulated’ bodies, within the meaning of the 2003 Order.

### *Conclusion*

8.30 While some organisations may face increased costs as a result of the implementation of Part 5, these additional costs arise from the need to pay for a more effective and comprehensive checking service, in which customers can have greater confidence. The Government believes that, in light of the risks which will be addressed and the deliverable benefits, this cost represents value for money. It is confident that the social and environmental

outcome of the benefits of Part 5 will far outweigh any potentially negative economic implications.

## **(VII) EQUITY AND FAIRNESS**

8.31 The Northern Ireland Office is fully committed to promoting equality of opportunity and good community relations in all its policies. As part of the consultation process an **Equality Screening Assessment** was conducted and the result indicated that the implementation of Part 5 should not have an adverse impact on any of the categories listed under Section 75.

8.32 In any consideration of the effects of this legislation, it is important to note that a disclosure under Part 5 should never be the deciding factor in an employment decision, save for instances where there is a **Statutory Disqualification**. An employer must consider any material disclosed within the context of good employment practice. Therefore, the fact that an employer is aware of a criminal conviction will not automatically prevent a candidate from being successful in an employment competition. Balanced against the aims of the legislation, it is the Government's opinion that the implementation of Part 5 will not have an adverse impact on anyone within the scope of Section 75. **Chapter 9** contains a fuller discussion of this aspect of the scheme.

## **(VIII) THE SMALL FIRMS' IMPACT TEST**

8.33 There are over **59,000** small to medium sized enterprises (SMEs) in existence in Northern Ireland, accounting for over **99%** of all businesses, **79%** of employment and **75%** of overall turnover<sup>11</sup>. Clearly, any policy which has an impact in this area will have significant implications for the economy of Northern Ireland.

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<sup>11</sup> Source: [Federation of Small Businesses \(FSB\)](#)

8.34 As noted above, where an employer increases the level of checking they undertake, there will be an economic impact. However, providing they are already operating best management practice methods, this impact should not be disproportionately large. Further, the core market areas<sup>12</sup> for SMEs in Northern Ireland are:

- agriculture;
- forestry;
- fishing;
- wholesale;
- retail;
- repair;
- construction;
- transport;
- storage; and
- communication.

We project that only one of the above (transport) is likely to attract any significant levels of checking under a Part 5 system, as the legislation currently stands. Through **DVLNI**'s existing public transport licensing scheme, which charges a fee to the applicant, such checks are already taking place, therefore the impact of Part 5 in this area is likely to be minimal.

8.35 A further key concern of SMEs at present is the administrative burden placed on them by Government<sup>13</sup>. Regulations covering tax, environmental hazards, and health and safety, for example, are often difficult for smaller firms to comply fully with. Often, companies are unsure of their obligations, or find themselves struggling to keep up with regulatory reforms as they cannot

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<sup>12</sup> Source: **FSB**

<sup>13</sup> Source: **FSB**

afford professional in-house advice. It has also been noted that it is often problematic to get advice from Government as to what the implications for their business are.

8.36 This is an issue which was also raised at our Consultation Event and is something we have sought to take into account in the design of the system. Through the implementation model, we have sought to address the issue of bureaucracy in three ways:

- **Streamlined processes**, a one-stop-shop combined with end to end improvements in the checking system;
- **Effective written guidance**, covering how to make applications and how to treat a disclosure – this will include a written code of practice for registered bodies; and
- **Dedicated customer support**, an integral part of the new scheme will be a helpline to assist users negotiate the system.

8.37 Taking all of the above into account, the Government does not believe that these new measures represent a risk to SMEs, nor will they have a disproportionate economic impact.

## **(IX) ENFORCEMENT AND SANCTIONS**

8.38 It will be a criminal offence, punishable by up to 6 months imprisonment, to falsify a disclosure certificate. Once an organisation has come within the scope of the system as a registered body, a number of offences are associated with Part 5. Under the new system it will be an offence to improperly disclose, or use, any certificate received. Again, such offences will attract a sentence of up to 6 months. Non-compliance with regulations under the 1997 Act or with the

**Code of Practice** can result in sanctions against registered bodies, including de-registration.

**(X) MONITORING AND REVIEW**

8.39 The system will be monitored and reviewed throughout its lifespan in Northern Ireland and mechanisms will be built into the new system to encourage adherence with the Code of Practice amongst users. Governance arrangements will be established to ensure continuous improvement of the service, through policy development and modernisation. The Government will also continuously monitor the impact of Part 5 and act where any unforeseen consequences emerge. The Government also intends to review the cost of checks after an appropriate period, particularly in relation to the overall policy, viability and desirability of full cost recovery but also in relation to the appropriate balance of risks and fees between the various sectors.

**(XI) CONSULTATION**

8.40 Prior to the publication of this document, consultation was carried out with the three main checking organisations in the UK i.e. CRB, DS and CRO. Over the last six months ECRIT has conducted a series of meetings with key stakeholders and delivery partners, seeking their opinions on the way forward.

8.41 In addition, an Interactive Consultation Event was held on 30 November 2004 which involved representatives from all the main interested bodies. A wide range of issues around employment checking were discussed and this resulted in the analysis of options contained in **Chapter 6** of this document. This Regulatory Impact Assessment forms an important element of the Government's Consultation Document, which is the final stage of the overall programme of consultation, and the basis of full public consultation.

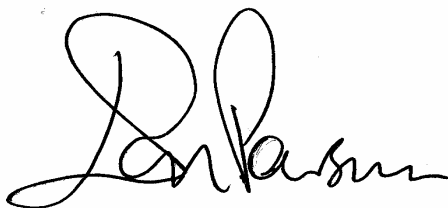
## **(XII) SUMMARY AND RECOMMENDATION**

8.42 The Government's policy is to introduce a robust employing checking system in line with Part 5 of the Police Act 1997. This will be achieved through the use of existing systems and technology. The system will be accessible to all those with a legitimate and will ensure high standards of protection for the vulnerable through the timely provision of criminal record certificates. It is important that the cost of this new system is transparent and borne by those using the system in Northern Ireland. The benefits of putting such a system in place, as described above, outweigh the impact of the reforms required.

## **(XIII) DECLARATION**

**I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.**

*Signed*

A handwritten signature in black ink, appearing to read 'Ian Pearson', written in a cursive style.

**9 February 2005**

**Ian Pearson**  
**Parliamentary Under Secretary of State for Northern Ireland**

## 9. EQUALITY

### Overview

Following the completion of an Equality Screening Assessment, the Government believes that the Implementation of Part 5 will not have an adverse impact on any individuals falling with the scope of Section 75 of the Northern Ireland Act 1998.

9.1 The Statutory Equality requirements of **Section 75 of the Northern Ireland Act 1998** require public authorities to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations between the nine categories listed below:

- Religious belief
- Political opinion
- Race or ethnic group
- Age
- Marital status
- Sexual orientation
- Gender
- Disability
- Dependency

9.2 The **Northern Ireland Office** is fully committed to promoting equality of opportunity and good community relations in all its policies.

9.3 **Part 5 of the Police Act 1997** is enabling legislation aimed at helping employers and other organisations assess the suitability of applicants for employment, and to make safer and better recruitment decisions, particularly

in relation to those who are in positions of trust, or who work with children or vulnerable adults.

- 9.4 The legislation has already been enacted in England and Wales, and Scotland through Criminal Records Bureau and Disclosure Scotland respectively.
- 9.5 As part of this consultation process, the Northern Ireland Office has conducted an **Equality Screening Assessment**, which indicates that implementation of **Part 5 should not have an adverse impact** on any of the categories listed in Paragraph 9.1 above.
- 9.6 It is acknowledged that persons with criminal convictions, or on whom other relevant information is held, may be effected by the new arrangements. In practice this is likely to lead to a higher impact on men than women, as men have historically been convicted of criminal offences in greater numbers than women. However, this consideration must be balanced against the need to make better and more informed recruitment decisions which help safeguard the employer, the public and in particular, children and vulnerable adults.
- 9.7 Further, it must also be remembered that a disclosure under Part 5 should never be the deciding factor in an employment decision, save for instances where there is a Statutory Disqualification. An employer must consider any material disclosed within the context of good employment practice. Therefore, the fact that an employer is aware of a criminal conviction will not automatically prevent a candidate from being successful in an employment competition. Balanced against the aims of the legislation, it is the Government's opinion that the implementation of Part 5 will not have an adverse impact on anyone within the scope of Section 75.
- 9.8 As part of this consultation exercise we would welcome your

views in this area, particularly in relation to the following three questions:

- Do you believe that the Implementation of Part 5 will have an **adverse impact** on individuals within the scope of Section 75?
- Although the Government has outlined it's proposals, do you feel any of the options for consultation in particular will **impact adversely** on anyone within the categories described above?
- If you disagree with our assessment, are there any measures that should be implemented to **mitigate against adverse impact** on people in the Section 75 equality groups?

9.9 In responding, please use the form at **Appendix C**.

## Appendix A

# ESTIMATED COSTS FOR ESTABLISHMENT AND RUNNING OF DISCLOSURE BODY UNDER EACH OPTION

	Option I	Option II	Option III
	Greenfield 47 staff £	Outsourcing 17 staff £	Enhancing 47 staff £
<b>Set Up Costs</b>			
IT Systems Hardware	33,000	12,800	33,000
Connection cost with causeway CRV	80,000	80,000	
Fit out Office	278,240	100,640	278,240
Furniture ( Computer )	28,078	10,156	28,078
Workflow Systems Software	1,036,169		
Advertising & Promotion	5,966	5,966	5,966
Recruitment Costs	70,265	25,415	70,265
<b>Total Set up Costs</b>	<b>£1,531,718</b>	<b>£234,977</b>	<b>£415,549</b>
<b>Operating Costs</b>			
Staff costs	984,430	550,500	984,430
Heat and Light	7,925	3,963	7,925
Rent	72,345	26,166	72,345
Rates	36,173	13,083	36,173
Telephone	22,545	8,155	22,545
Staff Training	12,925	4,675	12,925
Travel & Subsistence	26,750	9,676	26,750
Stationery, Postage & Publication	13,246	4,791	13,246
Application Packs	186,000	186,000	186,000
Repair & Maintenance	7,447	7,447	7,447
Depreciation (Non-cash)	263,273	30,655	40,040
PNC Link	1,000,000		
Causeway link charge	20,000	20,000	
Fees payable to CRB		1,125,000	
Cost of Capital (Non-cash)	46,335	6,589	11,175
Cleaning	2,644	563	2,644
Premises Insurance	1,602	1,602	1,602
Room Hire & Hospitality	3,508	1,269	3,508
Contingency for temp staff	141,587	56,635	141,587
Optimism 10% of Operating costs	284,874	205,677	157,034
<b>Total Operating Costs</b>	<b>£3,133,608</b>	<b>£2,262,445</b>	<b>£1,727,376</b>
<b>Total Costs</b>	<b>£4,665,327</b>	<b>£2,497,422</b>	<b>£2,142,925</b>

## RESPONSE FORM

For analysis purposes it would be helpful if consultees could respond to individual proposals using the same numbering as that contained within this consultation document. It would be appreciated if all aspects on the consultation form are addressed. In some cases you may have no particular view or comment to make and in such cases we would like you to say if that is the case rather than leave the section blank. **Please use additional sheets if necessary.**

Unless confidentiality is requested, it will be assumed that responses can be made available to others. However, if comments are made publicly available, they will not be attributed to individual respondents. If you are responding on behalf of a group or organisation please make this clear. Please also provide details of a person in your organisation who can be contacted for clarification if required.

- **Contact Name**.....
- **E-mail Address**.....
- **Telephone Number**.....
- **Office Address**.....  
.....  
.....  
.....

1 Do you agree with our proposal for the implementation of Part 5, specifically through the enhancement of existing systems?

2 Your views are invited on any individual aspect of the checking system as described in Chapter 7, however we would welcome comments in particular on the following issues:

- the **application form**;
  
- the documents used as **proof of identity**. In particular, the proposal that at least one of the documents put forward as proof of identity should include a photograph;
  
- the creation of an **Umbrella Registered Body** to support the Voluntary Sector;
  
- whether a heavily reduced fee should be charged for any **umbrella service** or whether it should be paid for by an additional levy on paying customers;

- other **databases** to which we might seek to gain access for the purposes of an employment check under Part 5; and
  
- the keeping of a **separate register**, specifically of those checked to work with the vulnerable, in order to allow early action to be taken on any subsequent and relevant criminal activity.

**3** We would be interested to hear any other comments which you wish to be taken into account. Please be as specific as possible in your response.

# EQUALITY SCREENING FORM

Category	Likely to have an adverse impact on options 1 to 3 Yes (Y) or No (N)			Comments <i>(Please use additional sheets if necessary)</i>
	Option 1	Option 2	Option 3	
Religious belief				
Political opinion				
Race or ethnic group				
Age				
Marital status				
Sexual orientation				
Gender				
Disability				
Dependency				