

ISLE OF ANGLESEY COUNTY COUNCIL	
Report to	Executive Committee
Date	22 04 2013
Subject	Criminal Records Policy
Portfolio Holder(s)	
Lead Officer(s)	Monitoring Officer
Contact Officer	Rhys Hughes Senior Solicitor
Nature and reason for reporting	
Updating the Corporate Policy following new legislation	

A – Introduction / Background / Issues
<p>Full Council adopted a Corporate Policy on 12 may 2011. Central Government’s intention to legalste was noted at that time together with the need to update the Policy.</p> <p>The Policy implements the new legislation ensuring everyone who provides a service on behalf of the Council undertake am criminal check where necessary.</p>

B - Considerations
<p>The Corporate Policy needs to be updated in accordance with new legislation</p>

C – Implications and Impacts		
1	Finance / Section 151	None

C – Implications and Impacts		
2	Legal / Monitoring Officer	Need to amend the Policy
3	Human Resources	Clarification to Departments undertaking checks
4	Property Services (see notes – separate document)	The Department will implement the new Policy
5	Information and Communications Technology (ICT)	
6	Equality (see notes – separate document)	
7	Anti-poverty and Social (see notes – separate document)	The Department will implement the new Policy
8	Communication (see notes – separate document)	
9	Consultation (see notes – separate document)	Extensive consultation was undertaken in respect of the original Policy
10	Economic	
11	Environmental (see notes – separate document)	
12	Crime and Disorder (see notes – separate document)	
13	Outcome Agreements	

CH - Summary

The current Corporate Policy needs to be updated in accordance with new legislation

D - Recommendation

1. Adopt the Policy
2. Publish on the Council's webpage
3. Arrange training workshops

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Date	11.04.2013

Appendices:

2nd Criminal Records Policy

Background papers

Cyngor Sir Ynys Môn/Isle of Anglesey County Council

2ND CRIMINAL RECORDS POLICY

This Policy applies to i) permanent and temporary staff ii) independent contractors iii) elected and co-opted members and iv) volunteers. This is an update to the Policy adopted by full Council on 12.05.2011.

<i>Paratowyd gan Swyddog Monitro / Prepared by: Monitoring Officer</i>	<i>L. Ball Cyt/Ref O.R.Hughes</i>
<i>Cyngor Llawn / Full Council:</i>	
<i>Gweithredwyd / Implemented:</i>	

Cyngor Sir Ynys Môn/Isle of Anglesey County Council

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CRIMINAL RECORDS POLICY

Introduction

On 20th September 2012 the law relating to criminal records checks changed. This is now administered by the Disclosure and Barring Service (“DBS”).

The Council is committed to safeguarding the welfare of those accessing its services. It has a statutory duty of care towards vulnerable members of society under the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012 and the Exceptions Order to the Rehabilitation of Offenders Act (1975) and other relevant legislation.

This Policy will apply to those aged 16 or older seeking employment or volunteering opportunities with the Council, seasonal work or placements, permitted drivers, elected members, contractors and other positions involving unsupervised contact with vulnerable individuals.

The Council is registered to undertake checks with the DBS to supplement background, character and other vetting checks in accordance with the current Human Resources Recruitment and Selection Policy.

Each Directorate is responsible for implementing this Policy and may supplement it with internal guidance – for example undertaking a check with any professional body with whom an applicant is a member.

NOTE:

A person affected by this Policy may already have a DBS check to the necessary level. Directorates have the discretion to accept production of the original DBS check together with the necessary identification evidence (see C1d below) provided the DBS is no more than 1 year old. This does not obviate the need to undertake a renewed check in due course in accordance with this Policy.

Further information is available from Policies

Disclosure and Barring Service :
on the Referral to the DBS, on Rehabilitation of Offenders and Self Disclosure.

A. LAW

- Rehabilitation of Offenders Act 1974 and (Exceptions) Order 1975
- Police Act 1997 and Regulations
- Data Protection Act 1998
- Human Rights Act 1998
- Protection of Children Act 1999
- Care Standards Act 2000
- Freedom of Information Act 2000
- Safeguarding Vulnerable Groups Act 2006 (as amended)
- Protection of Freedoms Act 2012
- Disclosure and Barring Service Code of Practice

B. TYPES OF DBS CHECKS

1. Standard The position is included in the Rehabilitation of Offenders Act 1974 Exceptions Order 1975.

2. Enhanced The position must be included in both the Rehabilitation of Offenders Act 1974 (its Exceptions) Order 1975 and in Police Act Regulations.

3. Enhanced and Children and/or Adult Barred List The position falls within definition of Regulated Activity under the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012.

4. Adult First An urgent DSB check in exceptional circumstances for positions with vulnerable adults only.

5. Definitions and Process

“Vulnerable people” - these comprise all children and vulnerable adults.

a) A child is someone under the age of 18 years old (Children Act 1989 s105 (1)).

b) A vulnerable adult “is or may be, in need of community care services by reason of mental or other disability, age or illness and who is, or may be, unable to take care of himself or herself, or unable to protect himself or herself against significant harm or serious exploitation” Law Commission (from “Who decides?; Making decisions on behalf of mentally incapacitated adults 1997” as adopted by the North Wales Policy and procedure for the protection of Vulnerable Adults “POVA”).

Storage of information from the DBS

The Council will comply with the Data Protection Act 1998 and the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of Checks and Disclosure information.

6. How to decide upon a DBS check.

a) Employees Volunteers Placements Drivers Contractors

Directorates will compare the position specification with the Appendices to the Human Resources Services’ Recruitment and Selection Policy to determine whether a position requires a DBS check and if so what kind. This will be recorded with the Human Resources Section.

b) Anyone undertaking a position requiring a check cannot commence without an acceptable DBS certificate.

c) DBS checks will be repeated every 3 years for all those posts for which checks are required.

d) Directorates may decide to repeat a DBS check more frequently or change the type of check at their discretion.

C1 Recruitment by the Local Authority in a post requiring a DBS check

a) Every post requiring a DBS check will be advertised as being conditional upon a satisfactory DBS check. The application pack for such a post will include the Authority's Policy Statement on the Recruitment of ex-Offenders.

b) Every post requiring a DBS check will require the disclosure of all offences including spent convictions, details of any cautions, reprimands or warnings. Employment is conditional on a satisfactory DBS check.

c) DBS Disclosure Applications will be submitted once an offer of employment has been accepted with the aim that employment will only commence upon the return of a satisfactory DBS check. A decision on whether or not a DBS check is satisfactory will be made by the relevant Head of Service in consultation with HR.

d) The applicant for the post will verify his/her identity by producing original documents for inspection and copying. The following are essential;

- Birth Certificate
- Evidence of any change of name
- Passport or photo card driving licence
- 2 documents proving current address e.g. utility bills or bank/credit card statements.

C2 Criminal records disclosed by the applicant – Paid Employees

a) Past convictions/cautions/reprimands or warnings may not necessarily be a bar to obtaining employment.

b) Consideration will be given to the nature of the matters disclosed by the applicant in his/her application form and relevance to the post applied for. This will be considered by designated officers of the Directorate who would interview the person and assess the risk against set criteria.

c) Failure to disclose past criminal history at the application stage may be seen as an attempt to gain employment by deception, and will normally result in the withdrawal of any offer of employment.

d) Failure to return a correctly completed DBS Disclosure Application (together with the documentation required for identification purposes) within a timescale set by the officer designated to oversee the recruitment process will lead to a withdrawal of any offer of employment.

e) A DBS check is one part of a sound recruitment process and does not obviate the need for a thorough selection process appropriate to the level of the position, the checking of work and personal references employment history and appropriate qualifications and membership of professional body/ies.

C3 Independent Contractors and other types of Agency Workers (“the contractor”) undertaking work on behalf of the Council

- a) Work to be undertaken will be risk assessed (as for employed staff) and the advertisement and contract of work will state whether a satisfactory DBS check is required and if so what type. The DBS check will not be more than 1 year old.
- b) The contractor will produce an original DBS check and evidence as to identity (as set out above) for every person undertaking the work. Copies will be retained securely by the Directorate.
- c) A contractor with a criminal history wishing to undertake work with vulnerable people will be subject to the same process as set out in C2b) above.
- d) For the avoidance of any doubt these requirements are in addition to the requirements of the Care Standards Act 2000 and Regulations thereunder and the requirements of the Care and Social Services Inspectorate Wales and other relevant legislation.

C4 Elected and Co-opted Members of the Council

- a) Members are an integral part of the Council’s work. They are the public face of the Council and make vital decisions in relation to sensitive matters including decisions which fundamentally affect the lives and interests of children and vulnerable adults. Certain Member roles will also involve disclosure to them of personal and sensitive information about children and vulnerable adults individually, and collectively, in the context of service provision of Education and / or Social Services. The enhanced DBS vetting process will ensure every Member undertaking these roles is able to do so.
- b) Currently Members serving or attending the following Committees, Panels or Boards are required to undertake an Enhanced DBS check :

Executive
Corporate Parenting Panel
Scrutiny Committees when considering issues relating to Education / Social Services
Special Educational Needs Joint Committee
Licencing Committee
Relevant Task Panels
Local Safeguarding Children’s Board

- c) Within 1 month of being appointed to any of the roles described in paragraph C4 b) above each elected and co-opted Member will complete an Enhanced DBS check application form and produce the supporting paperwork as to identification. This will be repeated at the commencement of every new term of office (that is, generally, every 4 years). If, at the date of appointment, a Member, or co-opted Member, already holds an Enhanced DBS check which is 12 months old or less, such check will be accepted for the remainder of the Member’s term of office and no further DBS check will be required.

d) In the event of non-participation with the Enhanced DBS check process, or if the information revealed in the Enhanced DBS check raises concerns about the Member's suitability to participate in any of the roles described in paragraph C4b) above, then the Monitoring Officer will, following consultation with the relevant Group Leader (or all Group Leaders in the case of any unaffiliated or co-opted Member):-

i) Determine whether an elected or co-opted Member is suitable to be appointed to any internal post or external body.

ii) Notify the Member accordingly, and if already in post or on an external body, invite the Member to withdraw from serving thereon.

iii) Failure to comply with such decision will be in breach of Council Policy and liable to be the subject of a complaint to the Public Services Ombudsman for Wales and / or notification of the concern to any appropriate external body. The issue may also be a matter for discipline within any relevant political group.

e) All DBS check disclosure information will be held securely by the Monitoring Officer.

C5 Volunteers on behalf of the Council or Independent Contractors.

A volunteer is a person who performs an activity which involves spending time unpaid (except for expenses) doing something which aims to benefit someone (individuals or groups) other than or in addition to close relatives.

Directorates will determine whether, at what level, and at what frequency DBS checks will be undertaken and by whom.