

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT POLICE ACT 1997 (CRIMINAL RECORD
CERTIFICATES: RELEVANT MATTER)
(AMENDMENT) (ENGLAND AND WALES)
ORDER 2023

Monday 4 September 2023

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The Committee consisted of the following Members:

Chair: DAME ANGELA EAGLE

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| † Bailey, Shaun (<i>West Bromwich West</i>) (Con) | † Mann, Scott (<i>Lord Commissioner of His Majesty's Treasury</i>) |
| † Blake, Olivia (<i>Sheffield, Hallam</i>) (Lab) | † Maynard, Paul (<i>Blackpool North and Cleveleys</i>) (Con) |
| De Cordova, Marsha (<i>Battersea</i>) (Lab) | † Morton, Wendy (<i>Aldridge-Brownhills</i>) (Con) |
| † Dines, Miss Sarah (<i>Parliamentary Under-Secretary of State for the Home Department</i>) | † Spellar, John (<i>Warley</i>) (Lab) |
| † Fabricant, Michael (<i>Lichfield</i>) (Con) | † Stewart, Bob (<i>Beckenham</i>) (Con) |
| † Grundy, James (<i>Leigh</i>) (Con) | † Tolhurst, Kelly (<i>Rochester and Strood</i>) (Con) |
| Gullis, Jonathan (<i>Stoke-on-Trent North</i>) (Con) | Turner, Karl (<i>Kingston upon Hull East</i>) (Lab) |
| † Jones, Gerald (<i>Merthyr Tydfil and Rhymney</i>) (Lab) | Kevin Maddison, <i>Committee Clerk</i> |
| † Jones, Sarah (<i>Croydon Central</i>) (Lab) | † attended the Committee |
| Lewell-Buck, Mrs Emma (<i>South Shields</i>) (Lab) | |

First Delegated Legislation Committee

Monday 4 September 2023

[DAME ANGELA EAGLE *in the Chair*]

Draft Police Act 1997 (Criminal Record Certificates: Relevant Matter) (Amendment) (England and Wales) Order 2023

6 pm

The Parliamentary Under-Secretary of State for the Home Department (Miss Sarah Dines): I beg to move,

That the Committee has considered the draft Police Act 1997 (Criminal Record Certificates: Relevant Matter) (Amendment) (England and Wales) Order 2023.

It is an honour to serve before you, Dame Angela.

The draft order amends the Police Act 1997 to require all unspent convictions and cautions to be disclosed on standard or enhanced criminal records certificates issued by the Disclosure and Barring Service. The DBS issues three types of criminal records certificate: a basic certificate, which is available for any role, and two higher level certificates, standard and enhanced, which are available for roles that require a higher level of public trust and/or close working with children or vulnerable adults. More criminal history information is disclosed on standard and enhanced checks than on the basic, in proportion to the sensitivity of the roles to which they relate.

The legislation that governs disclosure on basic certificates is different from that which determines what is disclosed on standard and enhanced. Disclosure on a basic certificate is governed by the Rehabilitation of Offenders Act 1974, which sets out the periods of time after which convictions and cautions become spent; once spent, they are not disclosed on a basic DBS certificate. Disclosure on standard or enhanced certificates is governed by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and section 113A of the Police Act 1997, which together allow an employer recruiting for more sensitive roles to see a person's fuller criminal history.

The filtering rules that govern disclosure on standard and enhanced certificates define particular criminal records as a "relevant matter" that must be disclosed. The definition of relevant matter includes the seriousness of the offence, whether there was a custodial sentence and the length of time since the date of conviction or caution. The intention is that the convictions covered by the definition of relevant matter should include the unspent convictions disclosed on a basic check in addition to the more serious spent convictions that are relevant to the more sensitive roles. However, the filtering rules do not currently include explicit reference to whether a conviction or caution is spent. That has created an anomaly whereby, in certain very limited circumstances, an unspent conviction that would be disclosed on a basic certificate would not be disclosed on a standard or enhanced certificate.

An example may assist the Committee. The most straightforward example involves youth conditional cautions, which remain unspent for three months or

until the condition is met, if earlier. If someone applies for a basic DBS check during that three-month window, the youth conditional caution will be disclosed. However, there is no provision for youth conditional cautions to be automatically disclosed on a standard or enhanced check, even during the three-month window in which they remain unspent. That might play out as follows. Let us say that a 17-year-old receives a youth conditional caution for common assault. Two months later, they apply to volunteer in a nursery and are required to undertake an enhanced DBS check. There is no provision for their youth conditional caution to be automatically disclosed on the enhanced check, so it comes back clean. To earn some more money alongside their volunteering, the 17-year-old also applies for a job in a supermarket, for which they are asked for the basic DBS check. The basic check discloses the youth conditional caution, because it is not yet spent. The supermarket thus ends up with access to more information than the nursery.

In that situation, the anomaly in disclosure is temporary, as a youth conditional caution will be unspent for a maximum of three months. Once that time is up, the youth conditional caution would not automatically be disclosed on any DBS check. However, the draft order will remove the anomaly altogether, and in cases such as this 17-year-old's, ensure that the youth conditional caution would automatically be disclosed on any type of DBS check for the three months that it remains unspent. The order amends the filtering rules so that the unspent convictions and cautions are included in the definition of relevant matter and are therefore always disclosed on standard as well as enhanced certificates.

In conclusion, the disclosure and barring regime is based on the principles that those making employment decisions for the most risky jobs have access to—

John Spellar (Warley) (Lab): I have been dealing with quite a bit of casework on this issue, and it seems to me that convictions incurred at an early age, particularly during teenage years, seem to debar people from jobs way into their 20s and 30s. The Minister referred to working in a nursery. We have a chronic shortage of workers in the care sector, yet mistakes people made when they were younger are counted against them, even though the principle of the Rehabilitation of Offenders Act is to accept that most people can turn their lives around, and its aim is to enable them to do so.

People say, "Oh, the offence is one that the employer will disregard," but employers do not do that. If they get back a form saying that there is something in a person's record, they stop looking at the application. Then they come to us saying that they have to bring in people from abroad because they cannot get workers in this country. Is the Department looking at this aspect as well?

Miss Dines: The right hon. Gentleman is absolutely right that an important part of our criminal justice system and our democracy is that people have the right to turn their lives around and become rehabilitated. That is why offences by younger members of our society often have shorter rehabilitation periods. It is right that there is a period after which a conviction, caution or court adjudication and sentence becomes spent, but it is important to strike a balance, and the Government feel

that the current balance is the right one. Of course, this is precisely the sort of matter that we should always keep under review, and I am sure that the Ministry of Justice will continue to look at it from time to time. It would also be a very good subject for a debate, which the right hon. Gentleman might want to apply for.

John Spellar: I thank the Minister for her helpful reply. May I send her details of two recent cases I am dealing with, so she can consider whether the public purpose—the thoroughly understandable and correct purpose—of the legislation is being served, or whether we are preventing people from turning their lives around? One case involves not even a caution, but a notification by someone working as a prison officer that “the dog sat down” over drugs; no drugs were ever found on her, yet this notification is coming up in enhanced disclosures. There is no evidential proof, there was no court case; it is merely the—possibly prejudiced—view of one individual.

Miss Dines: That is a really important point. Although these matters may come up on a check, it does not necessarily bar the individual from working; it is a matter for the employer. None the less, I hear what the right hon. Gentleman says, and sometimes employers can be too zealous in considering someone’s history. I welcome employers taking a balanced, long-term view, because we know that people with a criminal record incurred at an early age often turn their life around—and thank goodness they do. There has to be scope in any system for people who have made mistakes to recover from them.

I shall be grateful to see the two cases the right hon. Gentleman mentioned. The Ministry of Justice will be looking at this system. The barring system is in my portfolio, but there are wider criminal justice issues as well. Change is sometimes necessary, and it is led by Members of Parliament, so I look forward to seeing those examples.

6.8 pm

Sarah Jones (Croydon Central) (Lab): It is a pleasure to serve under your chairship on our first day back after the summer recess, Dame Angela. I thank the Minister for her remarks. I will not keep the Committee long, because the Opposition support the draft order.

We have heard an interesting debate about some of the wider challenges. It is important to note that rehabilitation rates are pretty poor under this Government. We want people to rehabilitate themselves, but many do not because they are not given the support they need.

As the explanatory notes set out, the draft order will align the rules determining what criminal record information is automatically disclosed on basic DBS checks and what

is disclosed on the higher level standard and enhanced DBS checks. The House of Lords debate on the instrument, which was also relatively brief, concluded that it seems to be a sensible and straightforward measure, although concern was voiced about the wider picture. Organisations including Unlock—a charity that deals with people leaving prison—talk about the very complex picture of criminal records processes, which is confusing for individuals and organisations. There is still work to be done to unpick that complexity. The Minister in the other place said that it was a fair point that the rules are unclear, and that needed to be looked into. I hope the Minister will look into whether some of the rules need to be reformed.

It is important to get the balance right. We must not create further confusion, but we must ensure that the right information is disclosed at the right time. On this occasion, the Opposition are happy to support the draft order.

6.11 pm

Miss Dines: I am grateful to right hon. and hon. Members for their contributions to the debate and the Opposition’s agreement that the instrument is necessary to align the two sets of rules that determine disclosure of criminal records on basic certificates and on standard and enhanced certificates. It will ensure that on all occasions the period of disclosure on criminal record certificates aligns with the levels of risk and vulnerability inherent in particular rules.

We have a very complex system, which has developed over hundreds of years, and the Government are always looking to see where improvements can be made. I am hopeful that further improvements will be made in the future. We have to get the balance right between protecting society and enabling rehabilitation. We must especially ensure that people being looked after are safe—that goes to the heart of my role as Minister responsible for safeguarding.

Change is always possible. We laid this statutory instrument precisely to ensure consistency in the development of two pieces of legislation governing the same scheme. There were practical difficulties, but the approach taken is both necessary and proportionate to deal with the differences that have evolved. The anomaly is small, but it is important that we put it right.

I am grateful to the Opposition Members for their questions. I hope I have answered them, and I look forward to seeing the details of the individual cases the right hon. Member for Warley mentioned.

Question put and agreed to.

6.13 pm

Committee rose.

