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## Report of the Chief Democratic Services Officer

### Member Management Committee

Date: 1st June 2009

### Subject: Safeguarding of Vulnerable People – Implications for Members

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#### Electoral Wards Affected:

Ward Members consulted  
(referred to in report)

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

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## Executive Summary

1. In fulfilling current statutory requirements, the Council operates a system of CRB checks for Elected Members. Introduction of the Safeguarding Vulnerable Groups Act 2006 ("the Act") will require the introduction of new arrangements. These will entail a tighter vetting regime and a failure to adhere to it could constitute a criminal offence by the Council and/or an individual Elected Member.
2. This report outlines the requirements of the Act and how it might apply in Leeds. It is expected that further Government guidance will be issued over the next few months and that the new regime will be phased in at some time after autumn 2010.
3. Further reports will follow in the light at such time as of any further guidance is received.

## 1.0 Purpose of this Report

- 1.1 The purpose of this report is to advise Members of changes to legislation regarding the safeguarding of vulnerable children and adults and the likely implications in relation to arrangements for carrying out CRB checks on Members.

## 2.0 Background Information

### Current arrangements

- 2.1 Current statutory requirements are such that, for certain occupations, employers are obliged to vet the suitability employees or prospective employees, by means of a Criminal Records Bureau (CRB) check. Such checks reveal the criminal record of the individual concerned and it is then a matter for the employer to decide whether employment would be appropriate.
- 2.2 The same requirements exist in relation to elected Members holding various specific positions and, in June 2005, following consultations with the Member Management Committee, Leeds adopted the policy of asking all Members to be CRB checked upon election or re-election. The rationale behind this approach was that, by requiring all Members to be checked, it ensured maximum flexibility in assigning Members to functions whilst at the same time building in a systematic process of review (as with a vehicle MOT test, a CRB check only provides information which is valid on the date in question and, without a subsequent checking process, there is no means of updating employers regarding any later offences that may arise).
- 2.3 The system has worked well but not without some problems. CRB checking is not regarded as being compulsory for all Members and, indeed, it is not entirely clear as to which Members it should be considered compulsory. Similarly, even for those Members for whom CRB checks are considered essential, there are no clear arrangements as what action should be taken in relation to a Member who declines to participate. A small number of Members have not been checked.

### The Safeguarding Vulnerable Groups Act 2006,

- 2.4 The statutory requirements in relation to safeguarding are in the process of being changed.
- 2.5 The Act primarily addressed the failures identified by the *Bichard Inquiry* into the Soham murders, the Act being created in response to the recommendation that:

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

- 2.6 In March 2005 Sir Michael Bichard endorsed the then DfES and DH's proposal to implement his recommendation through the development of a central scheme whereby unsuitable people would be barred from working with children and / or vulnerable adults.

- 2.7 The Act provides the legal framework for a new Independent Safeguarding Authority, (“ISA”) and scheme which are due to be introduced in a phased roll-out. This was initially planned to be phased in from autumn 2009 although this has recently been put back until 2010.
- 2.8 The overriding aim of the new scheme will be to help avoid harm, or risk of harm, to children and vulnerable adults. It aims to do this by preventing those who are deemed unsuitable to work with children and vulnerable adults from gaining access to them through their work.
- 2.9 In summary the Act includes the following provisions:-
- Two barred lists, (one being a list of people barred from working with children and a second list of people barred from working with vulnerable adults)
  - An independent barring board – which will be known as the Independent Safeguarding Authority
  - Coverage of the scheme defined in terms of ‘*regulated*’ and ‘*controlled activities*’
  - The referral of relevant information
  - A right of appeal to the Care Standards Tribunal
  - A series of new criminal offences to enforce the scheme.
- 2.10 The two barring lists will form the means by which the ISA will keep a record of those who will not be permitted to work in a ‘regulated activity’ with children and/or adults, or can only work in ‘controlled activities’ with safeguards.
- 2.11 Regulated Activities are identified and defined within the Act and provide the framework for identifying whether a person is required to be checked and vetted by the ISA.
- 2.12 Regulated activity covers specific types of work and work settings where, by the nature of the work or setting, a person will be able to build relationships of trust with children or vulnerable adults, e.g. teaching, care, fostering etc. In addition, the Act lists persons who will be engaging in regulated activity by virtue of undertaking that post.
- 2.13 Duties and responsibilities in relation to regulated activities include the following:
- To undertake a regulated activity person a person must have an ISA check, have been initially vetted by the scheme and must be a member of the scheme
  - It will be an offence for a barred person to undertake a regulated activity for any length of time
  - An employer taking on a person in a regulated activity will commit a criminal offence if they fail to check the status of an applicant, employee or volunteer
  - It will also be an offence for employers/providers to permit a barred person, or a person who has not yet had an ISA check, to work for any length of time (no matter how infrequent ) in a regulated activity.
- 2.14 It should be noted that the existing Criminal Records Bureau will undertake the ISA checks.

2.15 As with the current regime of CRB checks, Members also come within the ambit of the new Act. In relation to children, a Member will be engaged in a regulated activity, and consequently be required to be checked and vetted under the new Scheme if, inter alia, they are a “Member of a relevant local government body”, which is defined as follows:

- a) he is a member of a local authority and discharges any education functions or social services functions of a local authority
- b) he is a member of an executive of a local authority which discharges any such functions
- c) he is a member of a committee of an executive of a local authority which discharges any such functions
- d) he is a member of an area committee, or any other committee, of a local authority which discharges any such functions

2.16 In relation to vulnerable adults, the provisions are almost identical apart from point a) which is worded in the Act as follows:

- a) he is a member of a local authority and discharges any social services functions of a local authority *which relate wholly or mainly to vulnerable adults.*

### **3.0 Main Issues**

3.1 The Council will be required to apply the new arrangements under the Act in respect of Elected Members and, as indicated above, these will be mandatory for Elected Members in certain specified positions. Conversely, it is likely to be unlawful to require participation by those Members not specifically included although it may be possible to continue with the current practice of voluntary participation for all Members should that be considered an appropriate approach.

3.2 Initial legal advice has been sought as to which LCC Members would be included in the definition of undertaking a Regulated Activity although this is subject to any final Government guidance being given. In the absence of any such guidance, Members of the following bodies are likely to be deemed to be undertaking regulated activities and consequently require registration and vetting under the Act:

Executive Board  
Adoption Panel  
Fostering Panel  
Corporate Carers' Group

Members who are school governors will also need to be registered under the new Scheme.

3.3 Members on certain outside bodies would also be included within the new regime although, in these cases, it would be the responsibility of the bodies in question to ensure that a Member was appropriately registered.

- 3.4 It is not yet clear when, following commencement of the roll-out, Members will be incorporated into the scheme although it is anticipated that the roll-out will be completed over five years.
- 3.5 In January 2009, Government concluded a consultation exercise regarding implementation of the new regime. The results of this consultation exercise have yet to be published although it is hoped that this will clarify details of how the scheme should be applied and, in particular, give further guidance as to the implementation timetable, how quickly checks must be carried out, which Members should be included within the scheme, and who should be responsible for carrying out checks.

#### **4.0 Implications for Council Policy and Governance**

- 4.1 There are clear governance implications in ensuring that Elected Members are appropriately cleared to undertake their full range of responsibilities.

#### **5.0 Legal and Resource Implications**

- 5.1 As indicated above, it will be a statutory requirement that the Council complies with the new vetting and barring arrangements. Failure to comply with it could lead to criminal liability on the part of the Council and/or individual Elected Members.
- 5.2 It is anticipated that, whilst the new arrangements will require some changes to working practices, there will be no significant impact on overall resource requirements. There may be some minor increase in the cost of carrying out necessary checks although this has been provided for in 2009/10 base budgets (and will be carried forward in light of the anticipated timetable having been put back until late 2010 at the earliest).

#### **6.0 Conclusions**

- 6.1 Introduction of the Safeguarding Vulnerable Groups Act 2006 will entail changes to the Council's arrangements for vetting Elected Members before they can carry out certain functions. These are likely to be phased in at some time after autumn 2010.
- 6.2 Further guidance is anticipated over the next few months at which stage and a further report will be brought to this Committee.

#### **7.0 Recommendations**

- 7.1 That Members note the contents of this report.

