

EXPLANATORY MEMORANDUM TO
THE POLICE ACT 1997 (CRIMINAL RECORDS) (AMENDMENT) (No.2)
REGULATIONS 2004

2004 No. 1759

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the House of Lords Select Committee on the Merits of Statutory Instruments and the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 These Regulations amend the Police Act 1997 (Criminal Records) Regulations 2002 ("the 2002 Regulations") which make detailed provision in relation to applications for criminal record certificates and enhanced criminal record certificates under Part 5 of the Police Act 1997.

- 2.2 A new regulation 8 is substituted which specifies the details of information, drawn from the list kept under section 81 of the Care Standards Act 2000, which will appear on criminal record certificates and enhanced criminal record certificates.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 It is necessary to draw attention to the failure to observe the "21-day rule" as regards these Regulations.

- 3.2 These Regulations need to be brought into force on 26 July 2004 in line with the commencement of the relevant provisions in Part 7 of the Care Standards Act 2000, and of the Care Standards Act 2000 (Establishments and Agencies) (Miscellaneous Amendments) Regulations 2004.

- 3.3 A separate Memorandum to the Joint Committee about the Care Standards Act 2000 (Establishments and Agencies) (Miscellaneous Amendments) Regulations 2004, submitted by the Department of Health, explains that a Commencement Order has already been made which brings the provisions in Part 7 of the Care Standards Act 2000 into force with effect from 26 July 2004. The Memorandum further explains that that date has been given wide currency and that, despite a need for further consideration of the proposals which has delayed making and laying the Care Standards Act 2000 (Establishments and Agencies) (Miscellaneous Amendments) Regulations 2004, it is necessary for those Regulations to operate from 26 July and thus to breach the "21-day rule".

3.4 The Police Act 1997 (Criminal Records) (Amendment) (No.2) Regulations 2004 complement and support the other provisions referred to. It has therefore not been possible for them to be made and laid earlier; and, because it is essential that they also come into force on 26 July, it has not been possible to observe the "21-day rule" in this case either.

4. Legislative Background

4.1 Part 7 of the Care Standards Act 2000 provides for the establishment and operation of the list under section 81 of that Act, which will include details of individuals who are considered unsuitable to work in a care position with vulnerable adults. Provisions in Part 7 are being commenced by the Department of Health with effect from 26 July 2004 (under the Care Standards Act 2000 (Commencement No.20) Order 2004).

4.2 The Police Act 1997 provides for searches of the list to be made under applications for criminal record certificates and enhanced criminal record certificates under Part 5 of the Police Act 1997 and for details drawn from the list to be included in such certificates.

4.3 Part 5 of the Police Act 1997 provides that the details are to be prescribed in Regulations made under the 1997 Act.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

The Minister of State, Ms Hazel Blears, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Police Act 1997 (Criminal Records) (Amendment) (No.2) Regulations 2004 are compatible with the Convention rights.

7. Policy background

7.1 The Care Standards Act 2000 provided new safeguards for the protection of vulnerable people, including the establishment of the list under section 81 identifying individuals considered unsuitable to occupy care positions working with vulnerable adults. The list is equivalent to that under the Protection of Children Act 1999.

7.2 Providers of care services are required to refer to the Secretary of State for inclusion in the list persons employed in care positions because of misconduct which harmed or placed at risk of harm a vulnerable adult. A person included on the list will be barred from working in a care position with vulnerable adults, and it will be an offence for someone who knows that he is included on the list (other than provisionally) to apply for or accept employment in such a position.

7.3 All persons being considered for a care position (as defined in the Care Standards Act 2000, and including

- employment in a residential care home for adults, and
- employment providing personal care in their own homes for people who, by reason of illness, infirmity or disability are unable to provide it for themselves without assistance)

are required to be checked against the list prior to appointment. (It is intended in the near future that, through an amendment to the definition of care position in the Care Standards Act 2000, the list will also apply to providers and managers of adult placement schemes and any other persons employed for the purposes of adult placement schemes in a position enabling them to have regular and unsupervised contact in the course of their duties with adults who are, or may be, placed as part of such a scheme.) The check will be carried out under an application to the Criminal Records Bureau for a criminal record certificate or enhanced criminal record certificate.

7.4 The introduction of these arrangements represents a significant step in improving protection for the vulnerable.

7.5 This instrument supports the main initiative by prescribing the details that are to be given on a criminal record certificate or enhanced criminal record certificate if a person is found to be included in the list.

8. Impact

8.1 The Department of Health has produced a full Regulatory Impact Assessment in relation to the introduction of the list ("Protection of Vulnerable Adults Scheme", May 2004).

8.2 The impact on the public sector is dealt with in the same Regulatory Impact Assessment.

9. Contact

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