

**EXPLANATORY MEMORANDUM TO  
THE POLICE ACT 1997 (CRIMINAL RECORDS) (AMENDMENT No. 2)  
REGULATIONS 2006**

**2006 No.2181**

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

**2. Description**

2.1 The instrument, made under Part 5 of the Police Act 1997, gives effect to policy initiatives led by the Department for Education and Skills (DfES) and the Department of Health (DH) that directly relate to the service provided by the Criminal Records Bureau (CRB) and the introduction of an additional data source as part of the Enhanced Disclosure process operated by the CRB.

2.2 The instrument in particular will:

- Expand Enhanced Disclosure eligibility to include Independent Mental Capacity Advocates (IMCAs) and School Governors
- Provide for eligibility for checks of the Protection of Vulnerable Adults list (POVA) in respect of IMCAs
- Prescribe the British Transport Police (BTP) as a ‘relevant force’ to enable the CRB to request information from the Chief Officer when processing an application for an Enhanced Disclosure certificate.
- Provide for an exemption to the general prohibitions on the passing of Disclosure information under section 124 of the Police Act 1997 in the case of information passed between employment agencies supplying school staff and schools which are considering employing such persons.

2.3 The instrument is being laid outside of the common commencement dates to correspond with the start of the school term and to coincide with the technical implementation of the decision to incorporate BTP data into the CRB service.

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

3.1 None

**4. Legislative Background**

4.1 Part 5 of the Police Act 1997 provides for the issuing of criminal conviction, criminal record and enhanced criminal record certificates. The original text of Part 5 has been amended on numerous occasions since receiving Royal Assent in 1997, most recently to take account of amendments made by section 163(2) of the Serious Organised Crime and Police Act 2005.

4.2 The instrument involves the exercise of powers conferred on the Secretary of State for the Home Department by sections 113B (2)(b), 113B (9), 113D (4)(d), 124 (6) (e) and (f) and 125 of the Police Act 1997.

4.3 The instrument will be accompanied by a commencement order made under the Serious Organised Crime and Police Act 2005, which will commence the amendment to Part 5 of the Police Act 1997 contained in section 163 of the 2005 Act to introduce the BTP as a part of the disclosure service.

## **5. Extent**

5.1 This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The objective of Part 5 of the Police Act 1997, under which the CRB operates, is to widen access to criminal record checks to the private, public and voluntary sectors. The CRB provides an effective means through which employers, voluntary organisations and others can obtain details of an individual's criminal history as part of the recruitment process. The CRB works closely with the DH and the DfES in operating this service.

7.2 The CRB currently issues two levels of Disclosure: Standard and Enhanced. Both will include checks of the Police National Computer along with a check against the lists of those considered unsuitable to work with children and/or vulnerable adults where requested. An Enhanced Disclosure will also include a check of local police force records for information considered relevant to the position applied for.

7.3 In line with DH and DfES policy developments the regulations will expand the list of 'prescribed purposes' for enhanced eligibility, along with those who can check the barring lists, by prescribing additional categories.

7.4 The first amendment contained within this instrument relates to a new statutory position of Independent Mental Capacity Advocate (IMCA), created under the Mental Capacity Act 2005. IMCAs provide assistance to certain vulnerable people who lack capacity and who are faced with important decisions about issues ranging from medical treatment to changes in residence. The DH, which holds responsibility for implementing the IMCA provisions, has articulated a requirement for individuals taking up a position as an IMCA to be able to apply for an Enhanced Disclosure.

7.5 There is a further provision for IMCAs to be checked against the Protection of Vulnerable Adults (PoVA) list as part of a CRB Disclosure application. Currently, eligibility to request POVA checks through the CRB is limited to three distinct categories of position: care home staff, domiciliary workers and adult placement workers. Section 113D(4)(d) of Part 5 of the Police Act 1997 does however provide a power for the Secretary of State to prescribe other positions as eligible for POVA list checks.

7.6 The regulations also implement a DfES policy initiative to specify enhanced eligibility for the post of school governor. The DfES intend for school governors *as a whole*, regardless of the extent of their involvement with day to day school activities, to be eligible for Enhanced Disclosure to support recent developments in terms of those working within the schools workforce.

7.7 The regulations will also prescribe BTP as a relevant force under the Act for the purpose of obtaining disclosure information as part of the programme of work to expand the data sources available to the CRB. The CRB is scheduled to incorporate data from the BTP into the Disclosure service with effect from the 25<sup>th</sup> September 2006. The expansion of CRB data sources is aligned with recommendation 31 of Sir Michael Bichard's report into the Soham murders, and the CRB Strategy.

7.8 BTP are therefore included in the definition of 'relevant police force' contained in the Police Act 1997 (Criminal Records) Regulations 2002 to give complete statutory cover for the referral of an Enhanced Disclosure application from the CRB to BTP.

7.9 Finally the regulations provide an exception to the prohibition contained in the 1997 Act on the passing of Disclosure certificate information from the original recipient organisation of that information to other persons outside of that organisation.

7.10 In relation to the schools and further education sector, for example, this prohibition (in section 124 of the 1997 Act) currently precludes the passing of Disclosures from supply agencies to the schools/further education institution seeking to make use of staff supplied by those agencies. The Secretary of State for Education, in his statement to the House of Commons on the 19<sup>th</sup> June 2006, responding to the Ofsted report into the vetting practices in schools, colleges and local authorities, said that he will tighten regulations so that schools are legally required to obtain confirmation from agencies that CRB checks have been carried out. This requirement will apply to both schools and further education institutions.

7.11 To this end the regulations will permit the passing of Disclosure information between supply agencies and recruiting schools and/or further education institutions where the school or further education institution is assessing for itself the suitability of the individual being put forward for a position. This will help to ensure that schools have access to all the information they may require in order to ensure that only those suitable to work with children, including those supplied via agencies, are given employment within a school.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is negligible as these provisions are largely technical to enable other government departments to meet policy developments, and to enable more data to be captured through the Disclosure process.

## **9. Contact**

Helen Ryan at the Criminal Records Bureau (Tel: 0151 676 1494 or email: [Helen.ryan@crb.gsi.gov.uk](mailto:Helen.ryan@crb.gsi.gov.uk)) can answer any queries regarding the instrument