

**EXPLANATORY MEMORANDUM TO
THE POLICE ACT 1997 (CRIMINAL RECORDS) (AMENDMENT)
REGULATIONS 2013**

2013 No. 1194

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

2. Purpose of the instrument

2.1 In consequence of changes made to the definition of “regulated activity” made by the Protection of Freedoms Act 2012 (“the 2012 Act”), these Regulations make changes to the Police Act 1997 (Criminal Records) Regulations 2002. An enhanced criminal record certificate under the 1997 Act can only be obtained where required for a “prescribed purpose”. These regulations bring together all elements of work with adults which are eligible for an enhanced criminal records certificate as a single prescribed purpose, for which relevant local police information may be disclosed. This change facilitates the up-date of information by enabling police forces to provide information relevant to this new prescribed purpose in response to an application for up-to-date information under section 116A of the Police Act 1997.

2.2 The instrument also sets a fee for the new up-date service which will be brought into effect by the 2012 Act (by bringing into force section 116A of the Police Act 1997) and prescribes conditions in relation to when copies of certificates may be provided to registered bodies in response to a request once the provisions dispensing with the general requirement to send a copy of a criminal record certificate to such bodies is brought into effect by the 2012 Act (the “single certificate arrangements”).

2.3 It is intended to commence the up-date service and the single certificate arrangements from 17th June 2013.

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

3.1 None

4. Legislative Context

4.1 The 2012 Act made significant changes to the categories of work and other activities defined as “regulated activity” under the Safeguarding Vulnerable Groups Act 2006. “Regulated activity” is work or other activities with children or adults which an individual may be barred from engaging in. During the passage of the 2012 Act the Government gave assurances that those activities which were removed from the definition of regulated activity would remain prescribed purposes for enhanced criminal records checks. This instrument gives effect to those assurances.

4.2 The 2012 Act allows for a fee to be set for the new update service.

4.3 The 2012 Act also provides for a single certificate to be issued to applicants for criminal record applications, rather than for a copy to be provided to the registered body which countersigns the application. The Act provides that a copy of a certificate may be requested by the registered body in prescribed circumstances.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 This instrument defines all the activities with adults which are eligible for enhanced criminal record certificates. For the purposes of the new update service, it is necessary to group together the various categories of work with adults as a single “prescribed purpose” as defined by the 1997 Act. This ensures that any information considered relevant to the prescribed purpose by the chief officer of police can be considered for disclosure and any new information will inform the up-date process.

7.2 The instrument sets a fee for the update service which is based on cost-recovery for the service. It also prescribes the conditions under which a copy of a certificate may be requested by a body registered with the Disclosure and Barring Service, which has previously countersigned the application.

- Consolidation

7.3 The legislation has recently been revised and consolidation is not considered necessary at this time.

8. Consultation outcome

8.1 The changes in this instrument are consequential upon changes effected by the 2012 Act, which were based on a full review of the then vetting and barring scheme. That review involved consultation with a range of parties and the specific changes in the regulations have not been subject to further review.

9. Guidance

9.1 Information on the changes in the 2012 Act to which the changes in this instrument relate is available on Departmental websites.

10. Impact

10.1 The impact on business, charities and voluntary bodies of the changes in the 2012 Act to which the changes in this instrument relate was set out in the Impact Assessment for Part 5 of the Protection of Freedoms Bill. The changes are de-regulatory overall.

10.2 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The Impact Assessment for Part 5 of the Protection of Freedoms Bill explored the impact on small firms of the changes to which the changes in this instrument relate. It found that there would be no disproportionate impact on small firms.

12. Monitoring & review

12.1 The scope of eligibility for enhanced criminal record certificates, and other aspects of the barring arrangements, will remain subject to internal review.

13. Contact

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