

**EXPLANATORY MEMORANDUM TO
THE POLICE ACT 1997 (CRIMINAL RECORDS) (AMENDMENT)
REGULATIONS 2014**

2014 No. 239

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 The purpose of this instrument is to prescribe (i) the fee payable on application for a criminal conviction certificate (being a certificate issued under s112 of the Police Act 1997 which includes details of unspent convictions and conditional cautions only); (ii) the details that such a certificate must contain; and (iii) the meaning of “central records”, which are the records where convictions and conditional cautions that may be disclosed are held.

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

3.1 None

4. Legislative Context

4.1 Section 112 of the Police Act 1997 provides for a criminal conviction certificate to be issued to any individual who makes an application for one. These certificates will provide details of any unspent criminal convictions or conditional cautions (“simple” cautions becoming spent immediately in accordance with the provisions of the Rehabilitation of Offenders Act 1974). This contrasts with standard or enhanced criminal record certificates which include details of spent convictions and cautions and which are only available for posts or activities specified in the Rehabilitation of Offenders 1974 (Exceptions Order) 1975. Individuals may obtain criminal conviction certificates in order to inform their employer or other organisations of their criminal record information, or to demonstrate that they have no unspent convictions or conditional cautions. The measure had not previously been commenced in England and Wales as the Disclosure and Barring Service (DBS), and previously the Criminal Records Bureau, were not able to provide the relevant service owing to operational and IT issues. This service will now be provided by delegation to Disclosure Scotland, who already have arrangements in place to provide this service, with the DBS developing a service provision in the future.

4.2 These regulations prescribe required details to enable s112 of the Police Act 1997 to operate once it is commenced, enabling an individual to apply for a criminal conviction certificate. They set the fee required to obtain a

certificate, prescribe the details to be provided on the certificate and define the central records from which criminal record information is to be obtained.

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 These regulations prescribe such details as are necessary to enable s112 of the Police Act 1997 to operate once that provision is commenced in England and Wales. This will mean that individuals will be able to apply for a criminal conviction certificate detailing their unspent convictions and conditional cautions (as defined by the Rehabilitation of Offenders Act 1974 as it applies in England and Wales). This is a new certificate and the measure is being commenced in order to enable individuals to provide information to employers or other organisations about their unspent convictions and conditional cautions, for example when seeking employment or voluntary work. The certificate does not provide any information about spent convictions or cautions which are only available for posts subject to the Exceptions Order to the 1974 Act mentioned above.

7.2 The ability for an individual to apply for a criminal conviction certificate in England and Wales will also enable s56 of the Data Protection Act 1998 to be commenced, creating the offence of enforced subject access. This will prevent employers or other organisations from requiring individuals to obtain subject access disclosures to support applications for employment or for the provision of services. It is intended to commence s56 immediately following the commencement of s112 of the 1997 Act.

- Consolidation

7.3 There are no current plans to consolidate relevant legislation.

8. Consultation outcome

8.1 No consultation was considered necessary. The details to be prescribed mirror existing provisions in relation to the disclosure of criminal record information, and the fee mirrors that currently charged by Disclosure Scotland for the provision of a Criminal Conviction Certificate on a full cost recovery basis. Guidance will be provided to applicants and stakeholders, and the government will publicly announce the commencement of s112.

9. Guidance

9.1 Guidance will be available on the Disclosure and Barring Service website.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

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

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The issuing of criminal conviction certificates will be subject to internal review.

13. Contact

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