

**EXPLANATORY MEMORANDUM TO**  
**THE POLICE ACT 1997 (CRIMINAL RECORDS) (AMENDMENT) REGULATIONS**  
**2020**

**2020 No. 359**

**1. Introduction**

- 1.1 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 This instrument amends the prescribed fees in the Police Act 1997 (Criminal Records) Regulations 2002 (“the 2002 Regulations”) (S.I. 2002/233) so that no fee is payable where an application for the issue of a criminal record certificate or an enhanced criminal record certificate is made by: an emergency volunteer, a person registered in one of the professions specified in regulation 4(2) of the 2002 Regulations in an emergency, or a person applying to be employed for the purposes of providing NHS health services or social care services in connection with, or in consequence of, the provision of care or treatment to a person who has, or is suspected of having, coronavirus disease.

**3. Matters of special interest to Parliament**

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

- 3.1 It has not been possible to observe the 21-day rule between laying this SI in Parliament and the SI coming into force. The SI could not have been made and laid sooner, as the need for this legislation has arisen as part of the Government response to the Covid-19 pandemic, including the enactment of the Coronavirus Act 2020 (“the 2020 Act”) on 25 March. There is an urgent need to begin recruiting people into the roles covered by this instrument and the policy intention is that the criminal record checks and barred list checks that are part of the recruitment process should be free of charge. Delaying the commencement of this instrument could have a negative impact on public health if it caused a delay in the recruitment of health and social care workers.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.  
4.2 The territorial application of this instrument is England and Wales.

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

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

## **6. Legislative Context**

- 6.1 Part V of the Police Act 1997 (“the 1997 Act”) governs the provision of criminal records checks by the Disclosure and Barring Service (DBS). A person may apply under Part V for a criminal conviction certificate, a criminal record certificate (“CRC”) or an enhanced criminal record certificate (“ECRC”) depending on the purpose for which the certificate is required. When making an application under Part V, an applicant must pay in the prescribed manner any prescribed fee. The fees for the various types of criminal record certificates are prescribed in the 2002 Regulations.
- 6.2 Schedule 1 to the 2020 Act makes modifications to relevant legislation which enables the emergency registration of certain health care professionals, including nurses and midwives. Schedule 5 to that Act makes modifications which enables the emergency registration of social workers and there are similar provisions in respect of fully registered medical practitioners and pharmacists contained in section 18A of the Medical Act 1983 and article 34 of the Pharmacy Order 2010 respectively. An applicant must be considered to meet criteria as to suitability in order to be registered. Section 9(8)(a) of the 2020 Act also provides for an appropriate authority to approve a person to be an emergency volunteer in health or social care; appropriate authorities are listed in paragraph 4 to Schedule 7 to the 2020 Act.
- 6.3 The roles covered by these registrations, and many of the activities which may be undertaken by emergency volunteers, are in regulated activity, as defined in Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (“the 2006 Act”). It is an offence under section 7 of the 2006 Act to seek, offer or engage in regulated activity with a group from which they are barred from working. It is also an offence under section 9 of the 2006 Act for an employer to employ a person in regulated activity if they know or have reason to believe that person is barred from working in that activity. The registrar, or the employer, will therefore request a check of the children’s or adult’s barred list, or both, before determining whether the applicant is suitable to undertake the role.
- 6.4 Regulation 4 of the 2002 Regulations prescribes a fee of £40 for an ECRC with a check of the relevant barred list(s); a fee of £6 where an urgent preliminary response is sought under section 113E(3)(b) of the 1997 Act (known as an ‘Adult First’ check of the adult’s barred list) and a fee of £23 for a CRC, save that no fee is payable in relation to an application made by a volunteer (as defined in regulation 2). This instrument amends regulation 4 so that, in addition to volunteers, no fee will be payable in relation to applications for a CRC or ECRC made by a person registered in an emergency in one of the professions specified in regulation 4(2) of the 2002 Regulations, emergency volunteers (as defined in section 9(8)(a) of the 2020 Act), or a person applying to be employed for the purposes of providing NHS health services or social care services in connection with the care and treatment of coronavirus disease.

## **7. Policy background**

### *What is being done and why?*

- 7.1 In response to the Covid-19 pandemic, the Government announced on 20 March 2020 that it was asking retired health and social care practitioners to consider returning to work to help deal with the Covid-19 pandemic. The relevant roles fall within “regulated activity” for the purposes of the 2006 Act and accordingly such individuals can only be re-engaged by the NHS or other employers if they have been registered with the relevant professional body. Registration with a professional body includes establishing whether they are barred from working in regulated activity with children, adults, or both. This instrument helps to encourage and facilitate the temporary return to work of such individuals. This instrument will allow for the issuing of criminal records certificates, enhanced criminal records certificates, and urgent preliminary barred list checks under section 113E(3)(c) of the 1997 Act, to be free of charge for emergency volunteers, health professionals subject to temporary emergency registration, and those applying to be employed for the purposes of providing NHS health services or social care services. This includes those who are employed to back-fill positions or cover for staff who are ill, as well as those employed directly to care for or treat a person who has or is suspected of having coronavirus disease. The intention is to avoid placing cost burdens on the employer or applicant at a time when the focus is on filling roles safely and quickly.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 This instrument does not create a need for consolidation. This instrument relates to a specific category of people in relation to specific circumstances, namely to emergency volunteers and health and other relevant professionals who apply to re-register or perform roles to assist with the response to coronavirus disease.

## **10. Consultation outcome**

- 10.1 This instrument has been developed through consultation with the Department for Health and Social Care, Department for Education and Disclosure and Barring Service. No public consultation or consultation with the relevant public sector bodies and employers has been undertaken due to the urgency with which this instrument has been made.

## **11. Guidance**

- 11.1 Guidance will be provided by the DBS to employers, Registered Bodies and Umbrella Bodies to assist with applications for criminal record checks for emergency volunteers and health and care professionals applying for emergency registration. This guidance will be provided in time for commencement of this instrument. It will not be published on gov.uk as it is not intended for the public.

## **12. Impact**

- 12.1 This instrument will have a positive impact on public sector bodies, businesses and charities as it removes costs that would otherwise be incurred.
- 12.2 The instrument has no impact on voluntary bodies as it is already the case that volunteers are not charged for DBS checks.
- 12.3 An Impact Assessment has not been prepared for this instrument due to the urgency with which this instrument has been made and because the effect is to relieve the financial burdens on employers in relation to the emergency response to coronavirus disease.

## **13. Regulating small business**

- 13.1 The legislation will have a positive impact on any small businesses which recruit people into the roles included in this instrument in relation to the emergency response to coronavirus disease.

## **14. Monitoring & review**

- 14.1 This legislation will not be subject to review because its effect will be limited to the period of emergency response to coronavirus disease.

## **15. Contact**

- 15.1 Anna Dawson at the Home Office Telephone: 0207 035 8711 or email: [anna.dawson@homeoffice.gov.uk](mailto:anna.dawson@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Krisztina Katona, Deputy Director for Public Protection, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Victoria Atkins MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.