EXPLANATORY MEMORANDUM TO

THE DISCLOSURE AND BARRING SERVICE (CORE FUNCTIONS) (AMENDMENT) ORDER 2014

2014 No. 238

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 remove certain functions relating to application handling, identity verification and dispute handling from the Disclosure and Barring Service (Core Functions) Order 2012, where those functions relate to criminal conviction certificates issued under s112 of the Police Act 1997. This will enable these functions to be delegated by the Disclosure and Barring Service (DBS) under paragraph 7 of Schedule 8 to the Protection of Freedoms Act 2012.

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 Schedule 8 to the Protection of Freedoms Act 2012, which concerns the functions and powers of the DBS, places restrictions on the delegation of certain core functions by the DBS to other parties (paragraph 7). These core

functions are set out in the Disclosure and Barring Service (Core Functions) Order 2012 which is amended by this Order. The effect of the change is to enable the delegation of functions to Disclosure Scotland which, for the policy reasons set out below, will be providing criminal conviction certificates issued under s112 of the Police Act 1997 under powers delegated from the DBS.

4.3 This Order removes functions relating to the handling of applications, identity verification and dispute handling from the Disclosure and Barring Service (Core Functions) Order 2012, where those functions relate to criminal conviction certificates issued under s112 of the Police Act 1997, so that they are no longer core functions within the meaning of paragraph 8 of Schedule 8 to the Protection of Freedoms Act 2012. This allows those functions to be delegated by the DBS under paragraph 7 of Schedule 8 to the Protection of Freedoms Act 2012. The Order enables the delegation of only those functions which are necessary for Disclosure Scotland to provide the relevant service.

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 The Government has decided to commence s112 of the Police Act 1997 in order to enable individuals to obtain a certificate which details their unspent convictions and conditional cautions for the purposes of obtaining employment or for the information of other organisations such as voluntary groups. At present, the service required to provide these certificates cannot be provided by the DBS for England and Wales, but can be provided to applicants in England and Wales which provides criminal record certificates within that jurisdiction. It is intended to formally delegate provision of this service to Disclosure Scotland from the DBS on commencement of s112 of the 1997 Act, in order to enable Disclosure Scotland to provide criminal conviction certificates which align with the requirements of the Rehabilitation of Offenders Act in England and Wales. It is intended that DBS will be able to provide this service at some stage in the future.

7.2 In order for this delegation to work, it is necessary to remove certain restrictions on the delegation of core functions by the DBS, enabling them to delegate such functions to Disclosure Scotland for this purpose. This Order amends the Disclosure and Barring Service (Core Functions) Order 2012 to enable the DBS to delegate functions critical to the provision of criminal conviction certificates under s112 of the Police Act 1997.

- Consolidation

7.3 There are no current plans to consolidate relevant legislation.

8. Consultation outcome

8.1 No consultation was considered necessary.

9. Guidance

9.1 Guidance on where and how to apply for a Criminal Conviction Certificate 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 Any agreement whereby the DBS delegates functions so as to enable other organisations to provide criminal conviction certificates pursuant to s112 of the Police Act 1997 will be subject to internal monitoring and review.

13. Contact

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