EXPLANATORY MEMORANDUM TO

THE POLICE ACT 1997 (CRIMINAL RECORDS) (AMENDMENT AND SAVING PROVISION) REGULATIONS 2023

2023 No. 435

1. Introduction

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

2. Purpose of the instrument

2.1 This Statutory Instrument amends the Police Act 1997 (Criminal Records) Regulations 2002, which include regulations setting the fees for criminal record certificates and enhanced criminal record certificates from the Disclosure and Barring Service (DBS) and also the categories of worker who are eligible to obtain those certificates for free. The amendments will delete emergency provisions which made free checks available for certain categories of health and social care worker employed 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 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Fees for criminal record checks issued by the DBS are set out in legislation in the Police Act 1997 (Criminal Records) Regulations 2002 (S.I. 2002/233). The Regulations set out the fee for criminal record certificates (commonly referred to as "standard checks") and enhanced criminal record certificates (commonly referred to as "enhanced checks with or without a check of the adults' and/or children's barred lists"). They also set out, in regulation 4(2), the categories of person who are not required to pay a fee. Before the coronavirus pandemic, the only category of person not required to pay a fee was unpaid volunteers, such as those undertaking voluntary work for a charity or community group and school governors.

6.2 In March 2020, as a response to the Covid emergency, the Government amended regulation 4(2) of the Police Act 1997 (Criminal Records) Regulations 2002 to extend free checks to health and social care workers who were employed 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. This change was made to support recruitment of large numbers of new personnel required to deal with coronavirus. The amendment was made by the Police Act 1997 (Criminal Records) (Amendment) Regulations 2020.

7. Policy background

What is being done and why?

7.1 The urgency and need to recruit large numbers of staff into Covid-related roles across health and social care has significantly reduced. The Government therefore concludes that the time is right to remove these emergency provisions and to cease the free check arrangements. This is aligned with the Government's 'Living with Covid' strategy and the expiry of other emergency, temporary provisions under the Coronavirus Act 2020, which came to an end in March and September 2022.

7.2 The purpose of these Regulations is therefore to remove the additional categories of health and social care workers which were added to the Police Act 1997 (Criminal Records) Regulations 2002 in 2020. However, volunteers will continue to be eligible for free standard or enhanced checks, which was the pre-2020 position.

7.3 These Regulations will not apply to any applications for standard or enhanced checks made before the date when these Regulations come into force (11 May 2023).

8. European Union Withdrawal and Future Relationship

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 No consolidation is planned.

10. Consultation outcome

10.1 There is no statutory requirement to consult on these Regulations. The DHSC continues to work with sector partners to ensure that the change under these Regulations and the timing for this to come into effect, is widely understood and employers across the sector have time to change local recruitment policies and procedures.

11. Guidance

11.1 The Government is not issuing guidance as the legislative change simply entails a reversion to long-standing and pre-established arrangements that have been in place since DBS checks were first mandated in 2002. DHSC has been communicating with employers in the health and care sectors to let them know that free checks for employees in Covid-related roles will cease. DHSC will continue to engage with sector partners (i.e., NHS Employers and Skills for Care) around the timing of the changes to support the return to business-as-usual arrangements whereby costs are met by individuals or employers.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because this change is simply reverting to the situation prior to the covid emergency, mirroring arrangements for paying for checks in non-covid contexts in health and care settings and across other sectors. With the covid emergency no longer applying, the rationale for the emergency provisions made in 2020 will no longer be present.

13. Regulating small business

13.1 The activities to which the legislation applies includes activities that are undertaken by small businesses. However, as stated above, there should not be a significant impact because the roles for which free check arrangements were made are not required in any significant number.

14. Monitoring & review

14.1 The Home Office will continue to engage with DBS and DHSC as these changes are implemented.

15. Contact

15.1 Alison Ryan at the Home Office, email: Alison.Ryan1@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Shehla Husain, Deputy Director for Public Protection Unit, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister Dines, Parliamentary Under Secretary of State at the Home Office can confirm that this Explanatory Memorandum meets the required standard.