EXPLANATORY MEMORANDUM TO

THE POLICE ACT 1997 (CRIMINAL RECORDS) (AMENDMENT No. 2) REGULATIONS 2010

2010 No. 2702

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 criteria of when a police force becomes a "relevant police force" for the purpose of enhanced criminal record certificates.

2.2 The amendments are being made to remove the requirement to search local police force records on the basis of previous addresses alone, where it is known that no information exists in the local police force records from searches of police data sources.

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

3.1 None.

4. Legislative Context

4.1 Part V of the Police Act 1997 ("the Act") provides for the issuing of criminal conviction, criminal record and enhanced criminal record certificates. A criminal record certificate contains details of all of the individual's convictions, cautions, reprimands and warnings, irrespective of whether those convictions are spent under the Rehabilitation of Offenders Act 1974 ("ROA"). An enhanced criminal record certificate also contains non-conviction information provided by the police.

4.2 Section 113B (4) of the Act provides that when an application is made for an enhanced criminal record certificate, the Secretary of State must ask the chief officer of "every relevant police force" to provide any information which they consider might be relevant to the particular position and which ought to be included on the certificate. Section 113B(5) of the Act provides that the Secretary of State must also ask the chief officer of "every relevant police force" to provide any information which they consider might be relevant to the particular position, which, in the interests of the prevention or detection of crime, ought not to be included in the certificate but which can, without harming those interests, be disclosed to the registered person.

4.3 Section 113B (9) of the Act provides that a "relevant police force", in relation to an application under the Act, means a police force which is a relevant force in relation to that application under regulations made by the Secretary of State.

4.4 Regulation 10 of the Police Act 1997 (Criminal Records) Regulations 2002 as amended (SI 2002/233 - "the 2002 Regulations") prescribes the criteria which determine which force is a "relevant police force" in relation to any given application. In other words, regulation 10 sets out from which chief officer(s) of police the Secretary of State must request information in relation to an enhanced criminal record certificate application. Regulation 10 (a) – (c) currently provides that a "relevant police force" is the police force maintained for the police area in which the applicant has resided (at any point in the preceding 5 years) in the United Kingdom, Jersey, Guernsey or the Isle of Man, or where the chief officer of this force identifies another force as being relevant. Regulation 10(d) provides that a "relevant police force" is "any force that the Secretary of State determines to be relevant to the application".

4.5 These regulations amend regulation 10 (a) to (c) with the effect of replacing the previous-address based system of asking a chief officer if they hold information, to a system whereby the Secretary of State will ask:

- The chief officer of the applicant's local force where information is held on the "central record";
- The chief officer of any force which the Secretary of State believes holds local intelligence on the applicant (based on an intelligence database – see Policy background section below);
- The chief officer of the applicant's local force where the position in question is carried out primarily at the applicant's place of residence.

4.6 Regulation 10(d) will remain unchanged.

4.7 The term "central record" is defined in regulation 9 of the 2002 Regulations as "Information in any form relating to convictions, cautions, reprimands and warnings on a names database held by the National Policing Improvement Agency for the use of constables".

5. Territorial Extent and Application

This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 The objective of Part V of the Police Act, under which the Criminal Records Bureau ("CRB") operates, was to widen access to criminal record checks to the private, public and voluntary sectors. The CRB provides the means through which employers, voluntary organisations and others can obtain details of an individual's criminal history and other information as part of their recruitment processes.

7.2 The CRB (acting on behalf of the Secretary of State) currently issues two levels of certificate: criminal record certificates and enhanced criminal record certificates.

7.3 When an application is made for an enhanced criminal record certificate, the CRB must ask the chief officer of every relevant police force to disclose any information which he considers relevant to the position in relation to which the application was made and which he either considers ought to be included in the certificate or considers ought not to be included in the certificate in the interests of crime prevention or detection but can still be disclosed to the registered person. The CRB terms this process as a referral. Referrals are sent to:

- police forces in the areas where the applicant has lived over the last five years; and
- where the CRB have undertaken a check of the intelligence nominal index (Police Cross-Referencing Database – PLX) and believe that a force may hold information on the applicant, the police force appearing to hold that information.

7.4 The address-based searching element of the process was introduced prior to the development of the PLX system in 2004. The PLX database provides the ability to discover those records in which local police information is held on all key categories of information in relation to any one particular individual. PLX searching enables a targeted process whereby CRB would only contact forces when there is a hit against the nominal database which indicates that there is local police information relating to the individual on the database.

7.5 The CRB have worked closely with the Association of Chief Police Officers (ACPO) and individual forces since 2004 to ensure that all relevant records are included on the PLX database. This has ensured that the database is updated in a timely manner and that data is recorded in accordance with the requirements of the Management of Police Information Code (MOPI), issued under the Police Act 1996. The PLX database has been developed significantly and the CRB is now able to reflect this within the search criteria undertaken by the CRB.

7.6 Where a position is carried out primarily at the residential address of the applicant (termed Home Based Occupations and including such positions as fostering, adoption and child-minding) the applicant's local police force may also undertake a search to identify whether information is held in relation to the address where the work is undertaken. This is most commonly information relating to third parties such as other members of the household or frequent visitors.

7.6 The address-based search criteria have frequently created more than one referral to a police force for an application involving an applicant who moved between force areas in the preceding 5 years. The large majority of the referrals sent to forces are where the PLX database has not identified information but where, under the current provisions, the CRB must send a referral based on address profile only.

7.7 This means that forces have to deal with vast numbers of applications where the CRB believe that no information is held on an individual on any of the police databases. This system has caused unnecessary delays and cost which can impact negatively on CRB customers, both employers and individuals.

7.8 Where a referral is sent because of a PNC record, the police force will look to see whether any further relevant information exists on the record. An example would be the 'modus operandi' of a certain conviction which may detail, for example, whether the relationship between a victim and an offender was an abuse of trust.

7.9 The change in the referral system will have no impact on CRB customers in terms of the application process as it is a change to the IT process that determines to which police force applications are sent. The change will however reduce the burden on customers as it will mean that the majority of enhanced criminal record certificates will be issued more quickly than at present which in turn enables recruitment or other decisions to be made earlier.

7.10 The amendments therefore make explicit provision as to when the CRB will send a referral to a force, these being:

- where the applicant has a PNC record;
- where the PLX database indicates that information may be held;
- where the position is carried out primarily in the residence of the applicant; or
- any other force that the CRB determines to be relevant.

8. Consultation outcome

8.1 A formal consultation was not required as the amendments relate to technical changes in the CRB process. The CRB has consulted with ACPO on the development of the amendments.

9. Guidance

9.1 The amendments are technical in terms of the CRB process so does not require guidance to be issued.

10. Impact

10.1 There has not been an Impact Assessment completed as no impact on the private, voluntary and public sector is foreseen.

11. Regulating small business

11.1 The legislation applies to small business however impact on small businesses will be minimal.

12. Monitoring & review

12.1 This provision will be reviewed and monitored as part of the CRB's general regulation reviews.

13. Contact

Helen Ryan at the Criminal Records Bureau Tel: 0151 224 6676 or e-mail: helen.ryan@crb.gsi.gov.uk can answer any queries regarding the instrument.