EXPLANATORY MEMORANDUM TO THE POLICE ACT 1997 (CRIMINAL RECORDS) (AMENDMENT NO. 2) REGULATIONS 2013

2013 No. 2669

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 brings together the various prescribed purposes relating to work with children for which an enhanced criminal record certificate may be provided under Part V of the Police Act 1997, into a single prescribed purpose.

2.2 The instrument also provides that national security should be a prescribed purpose, which allows for the disclosure of local police information on an enhanced criminal record certificate.

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

3.1 None

4. Legislative Context

4.1 Section 113B of the Police Act 1997 makes provision for enhanced criminal record certificates to include information which the relevant chief officer of police reasonably believes is relevant to the purpose of the application and ought to be included. Enhanced criminal record certificates can only be provided for a "prescribed purpose". Such purposes are prescribed in the Police Act 1997 (Criminal Records) Regulations 2002, which this instrument amends. Section 113BA of the Police Act 1997 provides that suitability information relating to children should be provided in such cases as are prescribed. "Suitability information" includes information about whether a person is barred from working with children.

4.2 Section 83 of the Protection of Freedoms Act 2012 introduced a process for updating criminal record certificates, known as the Update Service, to be provided by the Disclosure and Barring Service. The Update Service provides information to persons entitled to ask, whether a previously issued criminal record certificate remains up to date, or whether new information has arisen in respect of the individual to whom the certificate was issued.

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 negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 Three changes are made by this instrument. Firstly, it brings together the various prescribed purposes relating to working with children for which an enhanced criminal records certificate may be provided into a single prescribed purpose. Such purposes are currently prescribed as a number of separate purposes rather than a single category. This change is to ensure that all local police information which may be disclosed on a certificate is subject to the same test of relevance by the chief officer of police responsible for deciding what to disclose. It will also ensure that processes to provide an Update Service under the Protection of Freedoms Act 2012 can recognise any new information relevant to any work with children, in cases where a criminal record certificate has previously been provided.

7.2 Secondly, this instrument amends the Police Act 1997 (Criminal Records) (No. 2) Regulations 2009 to substitute a new prescribed purpose for which suitability information in relation to children must be included in an enhanced criminal record certificate (which relates to decisions on a person's suitability to adopt a child).

7.3 The third change brings within the prescribed purposes for an enhanced criminal record certificate posts or activities for which suitability in relation to national security must be considered. This will enable any local police information to be provided on an enhanced criminal record certificate issued for this purpose.

Consolidation

7.4 The Home Office does not consider it necessary to consolidate legislation at this time.

8. Consultation outcome

8.1 Consultation was carried out as part of the Government's review of the criminal records disclosure arrangements, and in developing the Update Service. No separate consultation has been carried out in respect of this instrument.

9. Guidance

9.1 Information on the changes in the Police Act 1997 (Criminal Records) Regulations 2002 to which this instrument relates will be available on

departmental websites and statutory guidance on the relevance test for disclosure purposes has been issued by the Secretary of State under section 113B(4A) of the 1997 Act.

10. Impact

10.1 There is not considered to be any direct impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is to enable the police service to make a single decision as to the test of relevance for all local police information which may be disclosed on an enhanced criminal record certificate issued for the purposes of work with children; to enable the Disclosure and Barring Service to include on enhanced certificates for regulated activity suitability information in respect of this prescribed purpose; and to allow the police service to disclose local information for applications for certificates for national security purposes.

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 businesses.

12 Monitoring and review

12.1 The work and performance of the DBS and the new update service is subject to regular monitoring.

13. Contact

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