EXPLANATORY MEMORANDUM TO

THE POLICE ACT 1997 (CRIMINAL RECORDS) (AMENDMENT NO. 2) REGULATIONS 2022

2022 No. 979

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 current legislation to enable any current or potential sponsor on the Homes for Ukraine (HfU) scheme to be eligible for the highest level of criminal record check undertaken by the Disclosure and Barring Service (DBS), namely an Enhanced criminal record certificate with Barred List checks.

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

6. Legislative Context

6.1 Eligibility for DBS checks is set out in legislation: To be eligible for the highest level of check, the enhanced with check of the barred list(s), the position or role must be included in both the Rehabilitation of Offenders Act (Exceptions) Order 1975 and in the Police Act 1997 (Criminal Records) Regulations 2002, and the Police Act 1997 (Criminal Records) (No. 2) Regulations 2009, the latter to ensure eligibility to check the appropriate barred lists.

6.2 Section 113B(2)(b) of the Police Act 1997 requires that an application to the DBS for an enhanced criminal record check must be accompanied by a statement by the registered person (defined in s.120 as a person who is listed in a register to be maintained by DBS) that the certificate is required for the purposes of an exempted question asked for a 'prescribed purpose'. Section 125(1) of the Act states that this shall be prescribed by regulations made by the Secretary of State in accordance with the negative procedure. These are set out in the Police Act 1997 (Criminal Records) Regulations 2002 and subsequent amendment regulations.

6.3 By means of an amendment to the Police Act 1997 (Criminal Records) Regulations 2002, we are adding a new 'prescribed purpose' relating to considering an individual's

suitability to be a sponsor in the Homes for Ukraine scheme. Furthermore, an amendment will also be made to the Police Act 1997 (Criminal Records) (No. 2) Regulations 2009 to include the sponsoring role so that it would be prescribed for the purposes of s.113BA and s.113BB of the Police Act 1997, which will enable the adult and child barred list check to be undertaken. This will be done alongside a required corresponding amendment which the Ministry of Justice is bringing forward in parallel with these Regulations, the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2022, allowing the relevant body to ask an individual to reveal their full criminal history, including both spent and unspent convictions and cautions as part of their application to be a sponsor under the Homes for Ukraine scheme.

6.4 The amendments would mean that the role of a sponsor in the HfU scheme would be a 'prescribed purpose' in its own right, supplementing the current eligibility under 'regulated activity' (Safeguarding Vulnerable Groups Act 2006 ('the SVGA 2006')) so that an Enhanced DBS check (with check of the barred list(s)) can be undertaken. This would also mean that eligibility would not be affected by the provisions in the SVGA 2006 which prevent enhanced with barred list checks being carried out where a 'family relationship' exists between sponsor and beneficiary.

7. Policy background

What is being done and why?

7.1 Since the launch of the HfU scheme in March 2022, in addition to security checks carried out by the Home Office on sponsors and applicants as part of the visa decision-making process, local authorities (LAs) have carried out DBS checks on sponsors to inform the suitability decision. Currently, LAs can legally undertake the highest-level DBS check (enhanced with barred list check) when a sponsor's guests include a child under 18 not related to the sponsor; or when a sponsor is providing additional services to an unrelated guest adult with needs due to age, disability or illness. In all other circumstances, LAs can undertake only a basic DBS check. Enhanced with barred list checks disclose more information than basic checks: spent convictions, police information, any conviction for a serious offence or in respect of which a custodial sentence was imposed, and whether someone is barred from regulated activity with children or adults.

7.2 These changes to eligibility for DBS checks on sponsors are being introduced in response to the evolving nature of the HfU scheme, which for example now includes eligible minors, and requires checks to be undertaken in a wider range of circumstances than when the scheme was first launched. These changes will give LAs more flexibility to undertake the highest level of DBS check on sponsors of children and/or of adults who have additional needs (due to age, disability or illness), regardless of whether they are related to the sponsor, and in limited additional circumstances where LAs assess this to be appropriate and proportionate.

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 The Department for Levelling Up, Housing and Communities (DLUHC) has engaged informally with the Local Government Association, the LA operations group, the Association of Adult Social Services and the Association of Directors of Children's Services, who were broadly supportive of this change.

11. Guidance

11.1 HfU Guidance from DLUHC to LAs and sponsors regarding the checks to be carried out by LAs to inform their suitability decision on potential sponsors will be updated to reflect the expanded eligibility regarding DBS enhanced with barred list checks for sponsors.

12. Impact

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

12.2 With the cost of enhanced DBS checks higher than that for basic checks, there may be an increase of cost for LAs who are required to cover the cost of the checks from the £10,500 per person funding given to them by the Government to enable them to provide support for beneficiaries to settle in. This additional cost may be offset by enhanced checks of the same type/workforce being available through the DBS' Update service at a lower cost, where the sponsor is signed up to the Update service and gives their permission.

12.3 A full Impact Assessment has not been prepared for this instrument because the costs only have an impact on the public sector and because there is a low impact for each LA, within existing funding provision.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 There are no plans to monitor or review this SI.

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