EXPLANATORY MEMORANDUM TO THE

POLICE ACT 1997 (CRIMINAL RECORDS) (AMENDMENT) (No.3) REGULATIONS 2004

2004 No. 2592

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

2. Description

2.1 These Regulations amend the Police Act 1997 (Criminal Records) Regulations 2002 which make detailed provision in relation to applications for criminal record certificates and enhanced criminal record certificates under Part 5 of the Police Act 1997.

2.2 This instrument sets out revised fees payable to the police for conducting searches of local police records for the purposes

(a) of enhanced criminal record certificates, or

(b) of applications to register with the Criminal Records Bureau to be able to countersign applications for criminal record certificates and enhanced criminal record certificates,

taking account of the most recent information available about the costs of undertaking such searches.

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

3.1 The fees paid by the Criminal Records Bureau to police forces for the work entailed in undertaking searches of police records are kept under review. They were last amended by the Police Act 1997 (Criminal Records) (Amendment) Regulations 2004, with effect from 9 March 2004.

3.2 Subsequent review has indicated a need to make further amendments. The revised figures reflect actual costs since the previous change, and the need to achieve an overall balance across the current financial year.

3.3 In the cases of Hampshire, Lincolnshire, the Metropolitan Police, South Yorkshire, Sussex, Thames Valley and West Midlands, and the 8 Scottish forces, the level of fee is reduced, while in City of London, Essex, South Wales and Surrey, it remains the same. In all other cases, the level of fee is increased.

4. Legislative Background

4.1 Part 5 of the Police Act 1997 provides for persons to make application for criminal record certificates or enhanced criminal record certificates. Sections 115 and 116 deal with enhanced criminal record certificates, which, in addition to information about convictions, cautions, reprimands and final warnings, include other information from police records which the chief officer of police considers relevant to the purpose for which the certificate has been sought.

4.2 Applications for criminal record certificates or enhanced criminal record certificates have to be countersigned by someone registered with the Criminal Records Bureau for this purpose. Sections 119 and 120A provide for similar searches to be made by the police in relation to applications for registration.

4.3 Section 119 requires that fees be paid to the police for conducting such searches, and for the level of fee to be prescribed in Regulations.

5. Extent

This instrument applies to England Wales.

6. European Convention on Human Rights

Fiona MacTaggart, Parliamentary Under-Secretary of State for the Home Department, has made the following statement regarding Human Rights:

In my view the provisions of the Police Act 1997 (Criminal Records) (Amendment) (No. 3) Regulations 2004 are compatible with the Convention rights.

7. Policy background

7.1 The policy objective of Part 5 of the Police Act 1997 was to widen access to criminal record checks to the private, public and voluntary sectors.

7.2 In addition to providing details from national records held by the police and, in appropriate cases, checks against lists kept by other government departments of people who are unsuitable to work with children or vulnerable adults, the highest level of certificate, the enhanced criminal record certificate, includes other relevant information recorded by the police.

7.3 Prior to introduction of the Police Act 1997, police checks were conducted on persons applying for positions, principally in the public sector, affording substantial unsupervised access to children. This work was time-consuming, and the police were not separately resourced to undertake it. The Police Act 1997 therefore included provision for the police to be reimbursed for such work undertaken under the terms of the Act.

7.4 The process of calculating the fee level for each force is undertaken in conjunction with the police.

7.5 The change to the fee levels is not politically or legally important, and, since it represents only a small proportion of the overall fee that is charged for completed certificates, public interest is minimal.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is to seek to ensure that police forces are properly rewarded for the work that they undertake.

9. Contact

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- can answer any queries regarding the instrument.