EXPLANATORY MEMORANDUM TO

THE POLICE ACT 1997 (CRIMINAL RECORDS) (AMENDMENT) REGULATIONS 2022

2022 No. 303

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument reduces the fees payable to the Disclosure and Barring Service (DBS) for a basic, standard, or enhanced criminal records certificate, as set out in the Police Act 1997 ('the 1997 Act') and further prescribed in the Police Act 1997 (Criminal Records) Regulations 2002 ('the 2002 Regulations'). This change is to ensure that the fees charged are commensurate with the cost-recovery principles of Managing Public Money.

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 The criminal records disclosure regime for England and Wales was established under Part V of the Police Act 1997, as amended by the Protection of Freedoms Act 2012. The 1997 Act makes provision for criminal record certificates to be provided to eligible applicants and permits the Secretary of State to prescribe fees for certificates, or to waive the fee.

6.2 The current fees are set out in the Police Act 1997 (Criminal Records) Regulations 2002 (SI 2002/233), as amended. There are three types of certificate for which applications may be made under existing legislation: (i) basic; (ii) standard; and, (iii) enhanced. These are described further in section 7 below. These regulations reduce the fees payable. There is no change to the fee waiver, which is being retained. The DBS also operates an update service but there is no intention to reduce the fee for that.

7. Policy background

What is being done and why?

7.1 The Disclosure and Barring Service (DBS) is a non-departmental public body. The DBS administers the processes that implement the criminal records disclosure system established in the 1997 Act. A principal responsibility of the DBS is to issue certificates either confirming that the individual has no convictions and is of no other interest to police, or detailing relevant criminal record information about the individual.

7.2 Following several years of surpluses, DBS implemented a fee reduction for its disclosure products effective 1st October 2019. The proposal at that point in time also provided that because of DBS' robust and sustainable financial planning, a further reduction in fees could be accommodated from 1st October 2020. However, due to the risk, uncertainty and volatility caused by the Covid-19 pandemic which impacted demand for products and services, it was agreed that it was not practicable to implement this further reduction.

7.3 Since the fees payable set out in the Police Act 1997 (Criminal Records) Regulations 2002 (SI 2002/233) were amended in October 2019, the DBS has modernised its technology system, securing efficiencies of scale. This change has facilitated higher than forecast volumes of applications being received and processed. Therefore, fees need to be amended to ensure that the cost savings are reflected in the fees, and individuals are not being overcharged for services received.

7.4 The Fees are being reduced to ensure that the principles in Managing Public Money are adhered to which requires that DBS fees should meet the full costs of the service and neither produce a loss nor a surplus; and to review its fees annually. DBS has reviewed its fees on an annual basis and did not look to reduce fees in 2020-21 due to uncertainty of demand due to Covid-19.

7.5 This instrument reduces fees for basic, standard, and enhanced DBS checks, where the fee is payable.

7.6 There is no change to the fee for the update service, which allows applicants to keep their certificates up to date and enables employers to check them. This is because the fee reductions are based on what it actually costs DBS to produce the product and the Update Service will still cost £13 to service.

7.7 The different certificates are:

Basic Certificates that include details of unspent convictions and unspent conditional cautions. A basic check can be used for any position or purpose; any employer can therefore ask to see a basic criminal record check.

Standard Certificates are for those working in roles listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (for example solicitor, accountant, private security). These include spent and unspent convictions and cautions, subject to filtering arrangements.

Enhanced Certificates are for those working in roles listed in the Exceptions Order and the 2002 Regulations (for example those working with children in a supervised capacity). These include spent and unspent convictions and cautions, subject to filtering arrangements, plus any additional information considered relevant by the local police force to the role being applied for.

7.8 The fees will be reduced as follows:

Basic certificate from £23 to £18

Standard certificate from £23 to £18

Enhanced certificate from £40 to £38

7.9 The online DBS Update Service allows applicants to keep their DBS certificates up to date and for employers to check a DBS certificate. The price of the Update Service will remain at £13, excepting for applicants from voluntary groups, for whom the fee is waived.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 No consolidation is required.

10. Consultation outcome

10.1 No formal consultation has been undertaken. There is no change in policy – this is simply to ensure that the DBS operates on a cost recovery basis.

11. Guidance

11.1 The DBS will inform their customers and stakeholders of the changes via their website, social media and all other channels of communication open to them.

12. Impact

12.1 The impact on business, charities or voluntary bodies is positive due to reduced certificate fees.

12.2 The impact on the public sector is positive due to reduced certificate fees.

12.3 A full Impact Assessment has not been prepared for this instrument because this order relates to reducing certificate fees.

12.4 An Economic Note is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is taken is that the fees apply equally to all those who carry out licensable activity, regardless of the size of the business that they work for. Therefore, businesses, regardless of size will benefit from the reduced fees.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is the DBS will inform the Home Office of its effectiveness and any future changes to the fees which may be required.

14.2 As part the monitoring approach set out above, the instrument itself and its effectiveness will be subject to review to ensure its continued utility.

15. Contact

15.1 David Watson at the Home Office (telephone: 07918 497 773 or email: david.watson1@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Mary Halle, Deputy Director of the Home Office Sponsorship Unit at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

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