EXPLANATORY MEMORANDUM TO

THE POLICE ACT 1997 (CRIMINAL RECORDS) (AMENDMENT) REGULATIONS 2025

2025 No. 1240

1. Introduction

1.1 This Explanatory Memorandum has been prepared by Home Office and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Jess Phillips, Minister for Safeguarding and Violence against Women and Girls at the Home Office, confirms that this Explanatory Memorandum meets the required standard.

2.2 Shehla Husain, Deputy Director for the Public Protection Unit at the Home Office, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Brogan King at the Home Office can be contacted by email at the following address with any queries regarding the instrument:

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Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument will enable those who hold a 'Pedicab driver licence' in London and 'Health Care Professionals' (HCPs) employed or engaged by the Secretary of State for Work and Pensions (SSWP) or contractors and subcontractors (who carry out activities for the SSWP) to be eligible for the highest level of criminal record check issued by the Disclosure and Barring Service (DBS), namely an Enhanced criminal record certificate with Barred Lists checks. This will enable Transport for London (TfL) and the SSWP to require this level of DBS check for the roles of London pedicab driver and HCPs respectively, as part of their broader vetting arrangements. These requirements will be set out separately and subsequently to this instrument.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 There are three main types of DBS checks: Basic, Standard, and Enhanced each providing increasing levels of criminal record information in proportion to the risk posed by the role for which the check is sought. The Enhanced with Barred Lists

check is the highest-level check, disclosing both spent and unspent convictions and cautions (subject to filtering rules), any relevant police information, and information from DBS's children's and/or adults' Barred Lists.

5.2 The Police Act 1997 (Criminal Records) Regulations 2002 and (No. 2) 2009 set out the roles and activities that are eligible for an Enhanced DBS check with Barred Lists. These roles and activities are highly sensitive as they involve working closely with children or vulnerable adults and the eligibility for higher-level DBS checks, which disclose more information, is intended to provide increased safeguarding for vulnerable groups. These regulations stipulate eligibility for these levels of DBS check; they do not impose requirements for checks.

5.3 This instrument adds two further roles to the Police Act 1997 (Criminal Records) Regulations 2002 and (No. 2) 2009: Pedicab Driver Licence holders in London and HCPs employed or engaged by the SSWP or contractors and subcontractors (who carry out activities for the SSWP). This makes these roles eligible for Enhanced with children's and adults' Barred Lists checks. This does not impose any requirements for DBS checks in relation to these roles. However, it does enable Transport for London (TfL) and the SSWP to subsequently set requirements for this level of DBS check so that they can make informed decisions about the suitability of a person for the role in question.

Pedicabs

5.4 The Pedicabs (London) Act 2024 conferred powers onto TfL to regulate London's pedicab industry for the first time, closing a legal anomaly which had meant that pedicabs were an unregulated form of public transport on London's roads. Across England and Wales, licensed taxi and Private Hire Vehicle (PHV) drivers are required by local authority licensing committees to undergo Enhanced with Barred Lists checks every six months. Outside London, pedicabs are considered in law to be PHVs so are automatically subject to this regime. However**,** the law in London is different. Pedicabs were not considered to be PHVs so were unregulated and pedicab drivers were neither eligible for Enhanced with Barred Lists DBS checks nor were they subject to DBS checks of any kind.

5.5 A pedicab is legally defined in the Pedicabs (London) Act 2024 as 'a pedal cycle, or a pedal cycle in combination with a trailer, that is constructed or adapted for carrying one of more passengers and is made available with a driver for hire or reward'.

5.6 The purpose of adding 'Pedicab Driver Licence' to The Police Act 1997 (Criminal Records) Regulations 2002 and (No. 2) 2009 is to make licensed pedicab driver roles in London eligible for an Enhanced DBS check including a check of the children's and adults' Barred Lists. This provides these roles with the same eligibility for higher level DBS checks as licensed taxi and PHV drivers across England and Wales, including licensed pedicab drivers outside of London.

5.7 This will enable TfL to require Pedicab drivers seeking a licence to operate under regulations made under the Pedicabs (London) Act 2024 to get this higher-level DBS check, as part of TfL's vetting process.

Health Care Professionals (HCPs)

5.8 HCPs are engaged by the SSWP to assess entitlement for health-related benefits and to support the work that the Department of Work and Pensions (DWP) carries out. HCPs encompass a range of roles, including but not limited to doctors, nurses, pharmacists, physiotherapists, occupational therapists and paramedics. They are all qualified in their respective fields. Some of the activities HCPs perform are similar to

those carried out by NHS professionals such as doctors, physiotherapists and nurses who are providing healthcare and are thus already eligible for the highest-level checks. The activities include handling confidential patient information, conducting assessments, performing examinations, identifying undiagnosed conditions, reporting safeguarding concerns as well as engaging with vulnerable individuals on a 1:1 basis.

5.9 However, because HCPs are carrying out these activities for the purpose of assessing whether individuals are entitled to a health-related benefit rather than for the purpose of providing them with healthcare, they are not covered by the definition of regulated activity in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006. The purpose of adding the role of HCPs to the Police Act 1997 (Criminal Records) Regulations 2002 and the Police Act 1997 (Criminal Records) Regulations (No. 2) 2009 is to make the role eligible for Enhanced with Barred Lists checks.

What was the previous policy, how is this different?

5.10 Previously, pedicab drivers in London were only eligible for a Basic DBS check which discloses unspent criminal record information only.

5.11 Prior to this change in legislation, HCPs employed by the SSWP or their contractors were also only eligible for a Basic DBS check. All HCPs are qualified in their respective fields. Doctors undergo regular appraisal and revalidation, which includes declaring fitness to practise and notifying regulators of any criminal convictions or cautions. Other HCPs follow similar processes through revalidation, reregistration, or appraisal. As such, any spent or unspent convictions should already have been disclosed to their regulator. Within this framework, disclosure of convictions or cautions to regulatory bodies is self-referred. A failure to disclosure convictions may result in an internal investigation by the regulator and potential disciplinary ramifications against the HCP. The risk that such convictions remain undisclosed is low given the regulatory and professional body obligations that exist on HCPs to disclose these convictions. Nonetheless, once the legislation is enacted, all convictions—whether self-disclosed or not—will be identified through enhanced DBS checks, providing a further layer of protection.

6. Legislative and Legal Context

How has the law changed?

6.1 Amending Section 5A of the Police Act 1997 (Criminal Records) Regulations 2002 (which enables Enhanced Level checks), and sections 5 and 6 of the Police Act 1997 (Criminal Records) (No. 2) Regulations 2009 (which provides Barred List checks) to include pedicabs and HCPs makes both roles eligible for Enhanced with Barred List checks.

Why was this approach taken to change the law?

6.2 Given that both pedicab driver licence holders and HCPs employed or engaged by the SSWP are clearly defined roles, this approach ensures consistency with similar roles already listed in the ‘other workforce’ category particularly taxi drivers and private hire vehicle drivers, who are also eligible for Enhanced DBS checks with Barred List information.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Home Office has complied with the requirement to consult with the Information Commissioner's Office (ICO). The ICO has raised no concerns regarding this legislative change with respect to General Data Protection Regulation (GDPR).

7.2 DfT and TfL were consulted extensively throughout the development of this Instrument. The change in eligibility is being made to support TfL's intent to regulate pedicabs in London, the principle of which was passed through the Pedicabs (London) Act 2024.As this amendment only affects pedicab drivers in London, there is no requirement to notify devolved authorities.

7.3 DWP was consulted extensively throughout the development of this instrument. The change in eligibility is being made to enable the SSWP to require the highest level of DBS checks as part of its vetting process for HCPs. The legislative changes affect HCPs employed or engaged by the SSWP and contractors or sub-contractors (who are carrying out activities for the SSWP) in England and Wales. The Scottish, Welsh and Northern Ireland governments have been notified.

8. Applicable Guidance

8.1 TfL is developing sector-specific guidance to support consistent and informed decision-making. DWP is updating existing Human Resourcing (HR) guidance on behalf of the SSWP. Both TfL's and DWP's guidance will set out a proportionate approach that balances public safety with fairness and transparency. It will clearly define the types of offences that may be considered relevant for risk assessment purposes, ensuring that decisions are evidence-based and context-sensitive. In line with the Public Sector Equality Duty, the guidance will also emphasise the importance of considering equality throughout the process, helping to ensure that decisions do not disproportionately affect individuals with protected characteristics.

8.2 This legislation comes into force ahead of TfL's guidance. The guidance relates to TfL's regulations and the range of Pedicab licensee conditions contained therein, including the use of higher-level criminal record checks, using the eligibility conferred by this legislation. The guidance will be made available when the commencement regulations to the Pedicab Act is laid by TfL and will be published on TfL's pedicab dedicated webpage[1] to support the implementation of TfL's regulations. Both guidance and regulations will be determined by the outcome of TfL's public consultation on licensing requirements for pedicab drivers; TfL are waiting to publish their guidance to mitigate any pre-determination of that outcome.

8.3 The updated HR guidance for HCPs will be made available to employees via the DWP intranet. It will not be made publicly available in line with DWP internal HR recruitment policies. New or potential recruits will have the policy regarding Enhanced with Barred list checks detailed on the job advertisement.

[1] https://tfl.gov.uk/info-for/taxis-and-private-hire/pedicab-licensing

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because of the small scale of impact. This instrument does not impose a requirement for checks; it creates eligibility for a higher-level DBS check.

9.2 It will enable TfL to require that pedicab drivers in London applying for a licence to get an enhanced DBS with barred lists check. Transport for London has estimated that there are around 200 pedicabs in operation, with this number increasing to around 900 in peak season. As a function of the change in eligibility afforded by this instrument, and the separate setting of DBS check requirements by TfL, it will enable TfL to subject 100% of those pedicab drivers currently operating in London to Enhanced DBS with Barred Lists' checks as part of the wider future pedicab licensing regime. Drivers lacking a licence will be unable to legally drive a pedicab once the proposed pedicab regulations are implemented by TfL. It is expected that a smaller proportion of pedicab drivers will apply for a licence, as it is estimated that some pedicabs operators may be unable to get a licence due to licensing conditions and/or failing to pass right to work checks.

9.3 HCPs are already required to get a basic DBS check by the SSWP in addition to complying with their obligations as set out by their respective regulators. This change will enable the SSWP to require all current and prospective HCPs to get a higher-level DBS check, then they can get currently. Changes to requirements made by the SSWP will affect up to 5000 HCPs in the first year, with subsequent DBS checks repeated every three years. It is likely to have minimal impact on HCPs working for contractors and subcontractors (who are carrying out activities for the SSWP) or employed directly by the SSWP. The SSWP do not expect a significant number of applications to be declined as the HCPs are expected to be in good standing with their regulatory body, as they are within the NHS and so should have reported any convictions to their regulator already. If any current member of staff is found to have undisclosed convictions, then DWP will work with the individual and their regulator to understand the impact of those convictions on their current role.

Impact on businesses, charities and voluntary bodies

9.4 There is no, or no significant, impact on business, charities or voluntary bodies because both pedicab drivers and HCPs are employed by SSWP or contractors and subcontractors (who are carrying out activities for the SSWP) are niche roles which do not intersect with business, charities or voluntary bodies.

9.5 The legislation does not impact small or micro businesses.

9.6 There is no, or no significant, impact on the public sector because it affects only those seeking to obtain or retain a pedicab driver licence or to work as a Health Care Professional working for the SSWP. The standard fee for an initial Enhanced with Barred List check is £49.50, whilst the cost for an Enhanced with Barred List check through TfL's chosen provider First Advantage is £52.00. The cost for an Enhanced check is higher than that for a 'Basic' check (which everyone is eligible to receive). The cost of subsequent DBS checks is lower for those who subscribe to DBS's Update Service for £16.00 per year. Therefore, in relation to pedicab licensed drivers, there is no significant cost to TfL or DfT. This would incur a cost to applicants overall (not individually) of £10,400 to £46,800 with a central estimate of £28,600 in the first year. This is the same process as it is for Taxi Drivers and Private Hire Vehicle

operators in London. The introduction of these checks enhances passenger safety and wellbeing - an outcome deemed of greater public value.

9.7 Increasing eligibility for HCPs to access an Enhanced with Barred Lists' level check and the SSWP's subsequent requirement that HCPs get this level of check has a small impact on the public sector. Based on the total 5,000 HCPs employed by SSWP or contractors and subcontractors (who are carrying out activities for the SSWP), it will cost £140,000 in the first year to move to the higher-level check from the basic, reflecting the higher DBS fee of £49.50 each for an 'Enhanced' compared to the 'Basic' level check cost of £21.50; this will be paid for by the SSWP. There will also be costs in future years for new starters and for the SSWP or contractors and subcontractors (who are carrying out activities for the SSWP) to recheck its employees every three years. This investment ensures that only individuals who have demonstrated their suitability are granted access to the most sensitive roles, thereby strengthening public trust and safeguarding standards.

9.8 The DBS have confirmed that the additional volumes of requests received by making this change will be manageable within their existing processes.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to use existing mechanisms of engagement with the Department of Transport, Transport for London and the SSWP, alongside the Ministry of Justice to monitor the implementation of the legislation and identify any issues.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").