EXPLANATORY MEMORANDUM TO

THE POLICE ACT 1997 (CRIMINAL RECORDS) (AMENDMENT) REGULATIONS 2024

2024 No. 1111

AND

THE POLICE ACT 1997 (CRIMINAL RECORDS AND REGISTRATION) (GUERNSEY) (AMENDMENT) REGULATIONS 2024

2024 No. 1112

AND

THE POLICE ACT 1997 (CRIMINAL RECORDS AND REGISTRATION) (JERSEY) (AMENDMENT) REGULATIONS 2024

2024 No. 1113

AND

THE POLICE ACT 1997 (CRIMINAL RECORDS AND REGISTRATION) (ISLE OF MAN) (AMENDMENT) REGULATIONS 2024

2024 No. 1114

1. Introduction

1.1 This explanatory memorandum has been prepared by the 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 Jodie Gibson, Senior Civil Servant for the Home Office Sponsorship Unit at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Nick Brown at the Home Office Sponsorship Unit (email: NicholasDerek.Brown8@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These statutory instruments amend and insert the relevant regulations for the fees payable to the Disclosure and Barring Service (DBS) for basic, standard, or enhanced criminal records certificates and the update service, aligning the Crown Dependencies with England and Wales.

Where does the legislation extend to, and apply?

4.2 The extent of these instruments (that is, the jurisdiction(s) which the instruments form part of the law of) is respectively England and Wales, and the Crown Dependencies of the Isle of Man, Jersey, and Guernsey.

4.3 The territorial application of these instruments (that is, where the instrument produces a practical effect) is respectively England and Wales, and the Crown Dependencies of the Isle of Man, Jersey, and Guernsey.

5. Policy Context

What is being done and why?

5.1 The DBS is a non-departmental public body which administers the processes that implement the criminal records disclosure system established in the Police Act 1997. A principal responsibility of the DBS is to issue certificates to employers either confirming that the individual has no convictions and is of no interest to police or detailing relevant criminal record information about the individual. 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.
- **Update Service** for England and Wales, Jersey, Guernsey, and the Isle of Man, which allows applicants to keep their certificates up to date and enables employers to check them.

5.2 The DBS is seeking to raise fees to generate the necessary revenue to deliver its business-critical Legacy Technology Estates Replacement programme, which will replace 20-year-old IT, comply with Public Accounts Committee commitments on digital modernisation, and minimise customer impact. It also needs to: fund a pay uplift for DBS staff; meet increased costs passed on by police forces (also as a result of a pay uplift) to the DBS for their checking of police intelligence databases for disclosure purposes; and adjust its fees in light of reduced demand. These instruments will insert and amend fees for DBS certificates and the update service.

5.3 The overall consequences of not increasing fees could include technical outages to the current IT estate, and in the longer-term would mean the DBS has to sustain high costs of maintaining and running a legacy system. Failure to proceed with these instruments would result in the DBS not complying with HM Treasury's Managing Public Money guidance.[1]

5.4 In order to adhere to the principles in the Managing Public Money, the DBS should meet the full costs of service while neither producing a loss or a surplus. The DBS reviews its fees on an annual basis. The fee review forecast a £17.5m end-of-year deficit, requiring a fee increase across DBS products. It is therefore now necessary to generate income by raising the fees payable to the DBS for basic, standard, or enhanced criminal records certificates and the update service in England and Wales and bringing the Crown Dependencies into alignment. The fees will therefore be increased as follows:

- Basic certificate - £18 to £21.50
- Standard certificate - £18 to £21.50
- Enhanced certificate - £38 to £49.50
- Update Service - £13 to £16, excepting for applicants from voluntary groups for whom the fee is waived.

5.5 Additionally, it is imperative that the instruments in relation to the Crown Dependencies proceed where fees are currently not prescribed, to align the Crown Dependencies with England and Wales. Therefore:

- For **England and Wales**, the Police Act 1997 (Criminal Records) (Amendment) Regulations 2024 amend the Police Act 1997 (Criminal Records) Regulations 2002 to increase the fee for basic, standard, and enhanced certificates and for the update service.
- For **Jersey**, the Police Act 1997 (Criminal Records and Registration) (Jersey) (Amendment) Regulations 2024 amend the Police Act 1997 (Criminal Records and Registration) (Jersey) Regulations 2010 to increase the fee for basic, standard and enhanced certificates and insert a fee for the update service, in line with the position in England and Wales.
- For **Guernsey**, the Police Act 1997 (Criminal Records and Registration) (Guernsey) (Amendment) Regulations 2024 amend the Police Act 1997 (Criminal Records and Registration) (Guernsey) (Regulations) 2009 to insert a fee for basic certificates; increase the fee for standard and enhanced certificates and insert a fee for the update service, in line with the position in England and Wales.
- For the **Isle of Man**, the Police Act 1997 (Criminal Records and Registration) (Isle of Man) (Amendment) Regulations 2024 amend the Police Act 1997 (Criminal Records and Registration) (Isle of Man) Regulations 2011 to insert a fee for basic certificates; increase the fee for standard and enhanced certificates and insert a fee for the update service, in line with England and Wales.

What was the previous policy, how is this different?

5.6 The policy intention has been to ensure that fees for basic, standard, and enhanced DBS checks and for the update service are consistent across England and Wales and the Crown Dependencies. During initial consideration of the fee changes, it was identified that some fees were not set out for the Crown Dependencies, so in addition

[1] https://assets.publishing.service.gov.uk/media/65c4a3773f634b001242c6b7/Managing_Public_Money_-_May_2023_2.pdf

to increasing fees for certificates and the update service where they are currently set out, the statutory instruments for the Crown Dependencies also insert fees for certificates where they are not currently set out, and fees for the update service, to ensure alignment across the jurisdictions.

5.7 In charging applicants since 2013 from Guernsey and the Isle of Man for Basic certificates, and for subscribers from Jersey, Guernsey, and the Isle of Man for the update service, this money has been charged without a statutory basis by the DBS. The three instruments relating to the Crown Dependences will correct this position and regularise the statutory basis of charging going forward in keeping with England and Wales.

5.8 On identifying fees had been obtained without a statutory basis, the DBS swiftly took steps to stop charging new applicants and subscribers from the Crown Dependencies, with effect from 1 August 2024. For those applicants and subscribers who have historically been charged without a statutory basis, although they still received their basic certificate or subscription to the update service and therefore the benefit of that service, the DBS is considering all options to provide a remedy, including the potential for refunds where appropriate. It is considering how best to communicate with those affected. The DBS estimates that c.15,000 basic applicants and c.16,000 update service subscribers are affected. The value is c.£615k over 13 years. The Home Office will update Parliament further once the DBS has decided how to proceed, and we expect to be in a position to do so by the end of the calendar year.

6. Legislative and Legal Context

How has the law changed?

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 for England and Wales are set out in the Police Act 1997 (Criminal Records) Regulations 2002 (SI 2002/233), as amended by the Police Act 1997 (Criminal Records) (Amendment) Regulations 2022. There are three types of certificates for which applications may be made under existing legislation: (i) basic; (ii) standard; and, (iii) enhanced. These are described further in section 5.1. The Police Act 1997 (Criminal Records) (Amendment) Regulations 2024 increase the fees payable. There is no change to the fee waiver, which is being retained. The DBS also operates an update service for which the fee is also being increased. Additionally, the Police Act 1997 (Criminal Records and Registration) (Jersey) (Amendment) Regulations 2024, the Police Act 1997 (Criminal Records and Registration) (Guernsey) (Amendment) Regulations 2024, and the Police Act 1997 (Criminal Records and Registration) (Isle of Man) (Amendment) Regulations 2024 will increase fees where they are currently set out in the relevant regulations (referenced in section 5.5 above) and insert the fees that are not currently set out, aligning the Crown Dependencies with England and Wales.

Why was this approach taken to change the law?

6.3 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Department has worked closely with the Disclosure & Barring Service on these statutory instruments. Consultation has been conducted with the Department of Home Affairs of the Isle of Man as reflected in Article 9 of the of the Police Act 1997 (Criminal Records) (Isle of Man) 2010. The Department has also liaised with the Guernsey and Jersey authorities and the Devolved Administrations.

8. Applicable Guidance

8.1 The DBS will inform its customers and stakeholders of the fee increases via its website, social media, and other channels of communication open to them.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument, as it relates to a fees change outside the scope of the Better Regulation Framework. Proportionate economic analysis has been undertaken to accompany the instrument, and presented in an Economic Note to be published alongside the Explanatory Memorandum.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is minimal. The increased fees could impact applicants with lower incomes if they are expected to pay for checks themselves. However, these effects are likely to be minimal for applicants, as the majority of organisations accept the responsibility of paying for DBS checks for their employees, while charities and voluntary bodies are largely exempt from paying for standard and enhanced fees.

9.3 The legislation could impact small or micro businesses.

9.4 The increase in DBS fees will impact smaller businesses by taking up a greater share of their expenditure. However, all businesses that require DBS checks are subject to the fee increase and exempting Small and Micro Businesses (SMBs) from paying for DBS checks would place an added financial pressure on the DBS, which must adhere to the principles of *Managing Public Money*. The DBS does not collect data on the size of firms who request checks, so it is not possible to calculate the number of SMBs affected.

9.5 There will be an ongoing impact on the public sector, as the majority of public sector organisations accept the responsibility of paying for DBS checks for their employees.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The monitoring of this legislation will be carried out annually by the DBS, who will inform the Home Office of its effectiveness and any future changes to the fees which may be required.

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 these instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 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").