EXPLANATORY MEMORANDUM TO

THE POLICE ACT 1997 (CRIMINAL RECORDS) (ELECTRONIC COMMUNICATIONS) ORDER 2009

2009 No. [203]

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, made under section 8 of the Electronic Communications Act 2000, provides that when a Disclosure application is submitted electronically to the Criminal Records Bureau it is to be treated as though it is made on the paper application form already prescribed in regulations and must be submitted in accordance with conditions and requirements determined by the Secretary of State.

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

3.1 None.

4. Legislative Context

4.1 Part V of the Police Act 1997 provides for the issuing of criminal conviction, criminal record and enhanced criminal record certificates. For the latter two certificates the Act requires that applications must be 'countersigned by a registered person'. Currently the 'countersigning' is done on paper forms only. This Order is being made under the Electronic Communications Act 2000 in order to facilitate the use of electronic communications in the CRB Disclosure process.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

Meg Hillier has made the following statement regarding Human Rights:

In my view the provisions of the Police Act 1997 (Criminal Records) (Electronic Communications) Order 2009 are compatible with the Convention rights.

7. Policy background

7.1 The objective of Part V of the Police Act 1997 is to widen access to criminal record checks to the private, public and voluntary sectors. The CRB provides an effective means through which employers, voluntary organisations and others can obtain details of an individual's criminal history as part of the recruitment process.

7.2 The CRB currently issues two levels of Disclosure: Standard and Enhanced. Both include checks of the Police National Computer along with, where requested, a check against the lists of those considered unsuitable to work with children and/or vulnerable adults. An Enhanced Disclosure will also include a check of local police force records for information considered relevant to the position applied for. Applications for Standard and Enhanced Disclosures are made via organisations registered with the CRB known as Registered Bodies (RBs).

7.3 Currently Disclosure applications are made by submitting a paper application form to the CRB and the RB signs a declaration by which, amongst other things, they declare that all the information they have provided is correct in accordance with CRB requirements. This amendment will enable the information contained in the paper application form to be submitted electronically, without requiring the physical counter-signature of the RB. However, this will not remove the requirement for the RB to make a declaration statement, albeit this will be made in a different manner.

7.4 The initial service will be for RBs to submit multiple applications electronically which will be known as e-bulk. RBs that wish to use the service must meet predefined criteria set by the CRB. This supports the CRB's strategic objective 'to make all services available electronically'.

7.5 Proposals are underway, in the Policing and Crime Bill currently before Parliament, to enable the CRB to determine administratively the way that Disclosure applications are made. This will include further provision for electronic or on-line applications and will remove the requirement on the CRB to make further regulations in respect of the application process.

7.6 As the proposed amendments in the Policing and Crime Bill are expected to come into force after the e-bulk service is implemented in March 2009 the CRB need regulations to be made to enable the use of the e-bulk service in the interim period.

7.7 Amendments are also being made in this Order to the Safeguarding Vulnerable Groups Act 2006. The Safeguarding Vulnerable Groups Act 2006 brings into effect the new Vetting and Barring Scheme (VBS). The VBS will be the first centralised system for all those working with children and vulnerable adults. It responds to recommendations to improve safeguarding, in the Bichard report on the Soham murders. It replaces the current List 99 which bars unsuitable people from working in education, and Protection of Children Act and Protection of Vulnerable Adults lists barring unsuitable people from working with children and from working in care positions with vulnerable adults. Under the Safeguarding Vulnerable Groups Act 2006 the role of the 'registered person' will be the same as that under Part V of the Police Act 1997 and will hold similar responsibilities.

8. Consultation outcome

8.1 The introduction of the e-bulk service is in response to customer requirements and has accordingly involved continuous consultation with CRB customers and stakeholders.

9. Guidance

9.1 Support will be provided to those RB's that use the e-bulk service which will be rolled out gradually and guidance will be published on the CRB website. The launch of the service for electronic applications will be published in the CRB newsletter Disclosure News.

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for this instrument as there is no foreseen impact on the private or voluntary sector.

11. Regulating small business

11.1 There is no impact on small businesses as any changes will be minimal.

12. Monitoring & review

12.1 This provision will be reviewed and monitored as part of the CRB's RB assurance process.

13. Contact

Julie Pemberton at the Criminal Records Bureau Tel: 0151 224 8667 or email: Julie.pemberton@crb.gsi.gov.uk, can answer any queries regarding the instrument.