EXPLANATORY MEMORANDUM TO

THE PROTECTION OF FREEDOMS ACT 2012 (CONSEQUENTIAL AMENDMENTS) No.2 ORDER 2013

2013 No. 1196

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 In accordance with the power to make amendments in consequence of provisions in the Protection of Freedoms Act 2012 ("the 2012 Act"), this instrument makes changes to the Police Act 1997 (Criminal Records) (Fees) Order 2004, to enable the Secretary of State to take into account the costs of providing criminal records certificates, enhanced criminal records certificates and up-date information under provisions in the Police Act 1997 ("the 1997 Act") free of charge to volunteers.

2.2 The effect is to permit the costs of free certificates for volunteers to be taken into account in setting the fees charged for paying applicants, in order to fully recover the costs of the service provided.

2.3 The changes brought about by this instrument are consequential upon the transfer of the function of issuing certificates from the Secretary of State to the Disclosure and Barring Service, and also the coming into force of the provisions providing for a procedure for the up-dating of certificates, effected by provisions in the 2012 Act.

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

3.1 None

4. Legislative Context

4.1 The Finance (No. 2) Act 1987 provides a power for the appropriate Minister who is empowered to fix a fee or charge under any enactment, which is payable to the Minister or to any person who is required to pay the fee into the Consolidated Fund, to specify the costs of any matters which may be taken into account in determining the level of the fee.

4.2 The 1997 Act provides the Secretary of State with a power to fix fees for the provision of criminal records certificates and enhanced criminal records certificates under Part 5 of that Act. The 2012 Act amends the Act to make provision for an up-date service, which is a procedure by which the information in a certificate can be up-dated, and to empower the Secretary of State to fix the fee for that service.

4.3 The Police Act 1997 (Criminal Records) (Fees) Order 2004 specifies that the costs of the functions of the Secretary of State in issuing criminal records

certificates and enhanced criminal records certificates to volunteers shall be taken into account in fixing the fees for those certificates. Volunteers are defined as persons engaged in spending time unpaid for the benefit of third parties, other than a close relative.

4.4 It is intended to commence the update service on 17th June 2013.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 This instrument amends the Police Act 1997 (Criminal Records) (Fees) Order 2004 in two respects. Firstly it substitutes the words "Disclosure and Barring Service" ("DBS") for the "Secretary of State". This is because the DBS is now responsible for the issuing of criminal records certificates and enhanced criminal records certificates under the 1997 Act. Fees for these services, and for the new update service, are now paid to the DBS. Secondly, the changes make provision for the costs of providing certificates subject to update arrangements free of charge to volunteers to be taken into account in determining the fee set for the new update service.

7.2 It is Government policy to encourage volunteering and the provision of free criminal records checks to volunteers is one element of this policy.

- Consolidation

7.3 The legislation has recently been revised and consolidation is not considered necessary at this time.

8. Consultation outcome

8.1 The changes in this instrument are consequential upon or form part of the changes made under the 2012 Act, which were based on a full review of the then vetting and barring scheme. That review involved consultation with a range of parties and the specific changes in this instrument have not been subject to further review.

9. Guidance

9.1 Information on the changes in the 2012 Act to which the changes in this instrument relate are available on Departmental websites.

10. Impact

10.1 The impact on business, charities and voluntary bodies of the changes in the 2012 Act to which the changes in this instrument relate was set out in the Impact Assessment in relation to Part 5 of the Protection of Freedoms Bill. The changes are de-regulatory overall.

10.2 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The Impact Assessment for Part 5 of the Protection of Freedoms Bill explored the impact on small firms of the changes to which the changes in this instrument relate. It found that there would be no disproportionate impact on small firms.

12. Monitoring & review

12.1 The scope of eligibility for criminal record certificates, and other aspects of the barring arrangements, will remain subject to internal review.

13. Contact

Stewart Baxter at the Home Office Tel: 020 7035 3265 or email: Stewart.Baxter2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.