

**EXPLANATORY MEMORANDUM TO  
THE POLICE ACT 1997 (CRIMINAL RECORDS) (AMENDMENT No. 2)  
REGULATIONS 2007**

**2007 No. 1892**

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

**2. Description**

2.1 The instrument, made under Part V of the Police Act 1997, gives effect to policy initiatives predominantly led by the Department for Education and Skills (DfES) that directly relate to the service provided by the Criminal Records Bureau (CRB). Reciprocal amendments are being made to the Rehabilitation of Offenders Act 1974 (Exceptions Order) 1975 that is currently with Parliament under the affirmative resolution procedure.

2.2 The instrument will expand the list of purposes prescribed in regulations as being eligible to undertake enhanced criminal record certificates to include –

- Staff in the DfES with access to sensitive and personal information
- ContactPoint operators
- Individuals giving advice to children over the telephone
- Members of staff of the Independent Barring Board of the new vetting and barring Scheme for those working with children and vulnerable adults.
- Staff in the Public Guardianship Office
- The Commissioner for Older People in Wales
- Persons working with under 18s in the Armed Forces
- Staff in the Gambling Commission with access to sensitive information and intelligence

2.3 The instrument will also amend current eligibility for enhanced criminal record checks by –

- Replacing existing references to the Gaming Act 1968 and the Lotteries and Amusements Act 1976 with a reference to the Gambling Act 2005 which will govern the new regulatory regime in such areas.

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

3.1 None

**4. Legislative Background**

4.1 Part V of the Police Act 1997 provides for the issuing of criminal conviction, criminal record and enhanced criminal record certificates. The original text of Part V has been amended on numerous occasions since receiving Royal Assent in 1997.

4.2 The instrument involves the exercise of power conferred on the Secretary of State for the Home Department by section 113B (2)(b) of the Police Act 1997.

4.3 Primarily the Regulations will amend the Police Act 1997 (Criminal Records) Regulations 2002 (SI 2002/233) by expanding the list of 'prescribed purposes' where an enhanced criminal record certificate may be obtained, as provided for under regulation 5A.

4.4 In addition the Regulations will replace references to the Gaming Act 1968 and the Lotteries and Amusements Act 1976 with a reference to relevant parts of the Gambling Act 2005. The Gambling Act 2005 comes fully into force on 1 September 2007 through sections 3 and 4 of The Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006 and will govern the new regulatory regime.

## **5. Extent**

5.1 This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

7.1 The objective of Part V of the Police Act 1997, under which the CRB operates, 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. The CRB works closely with other government departments in operating the service.

7.2 The CRB currently issues two levels of Disclosure criminal record certificates (termed Standard Disclosures) and enhanced criminal record certificates (termed Enhanced Disclosures). Both include checks of the Police National Computer along with a check against the lists of those considered unsuitable to work with children and/or vulnerable adults where requested. An enhanced criminal record certificate will also include a check of local police force records for information considered relevant to the position applied for.

7.3 In line with DfES and other government department policy developments these regulations will expand the list of 'prescribed purposes' for enhanced disclosure eligibility. A list of the additional categories of 'prescribed purposes' introduced by these regulations can be found in Annex A.

7.4 The regulations additionally amend eligibility for enhanced criminal record certificates previously determined under the Gaming Act 1968 and the Lotteries and Amusements Act 1976 as prescribed under the Police Act 1997 (Criminal Records) (Amendment) Regulations 2006 (SI 2006/748). Eligibility is now determined by reference to Parts 5 and 6 of the Gambling Act 2005. These provisions relate to the obtaining or holding of an operating or personal licence in the gambling industry.

7.5 The Gambling Act 2005 is also referred to at section 4.4 of this memorandum.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is negligible as these provisions are largely technical to enable other government departments to meet policy developments.

## **9. Contact**

Helen Ryan at the Criminal Records Bureau (Tel: 0151 676 1494 or email: [Helen.ryan@crb.gsi.gov.uk](mailto:Helen.ryan@crb.gsi.gov.uk)) can answer any queries regarding the instrument.

## Annex A

### List of additional categories of prescribed purposes for enhanced criminal record checks

1. The **Ministry of Justice** has requested that staff working in the Public Guardianship Office be prescribed as a purpose eligible for enhanced criminal record certificates in posts where there are specific operational security risks.
2. The **Department for Education and Skills** has asked that people in DfES, Ofsted the Government Offices for the English Regions working in sensitive posts, ContactPoint Operators (a database of children in England (0-18 years), a part of the *Every Child Matters* agenda), people giving advice to children over the telephone or other form of electronic communication including the internet and mobile telephone text messaging and Independent Barring Board Staff be prescribed. The inclusion of ContactPoint operators was committed to by the Minister for Children and Families during the passage of the Information Sharing Index (England) Regulations 2006 on 27 March 2006 (Hansard, column 16).
3. The **Gambling Commission** has requested that in addition to the current eligibility for licensing purposes that they be prescribed to undertake enhanced criminal record checks on Gambling Commission employees in accordance with the power granted to them under the Gambling Act 2005.
4. The **Ministry of Defence** has requested inclusion to enable them to undertake enhanced criminal record certificates on personnel whose normal duties bring them into contact with persons aged under-18 serving in the Armed Forces following the Deepcut Review. Recommendation 12 states that “Instructors should be vetted for their suitability to work with young people, applying standards that are no less rigorous than those applied to civilian establishments educating or training people under 18.”
5. The **Welsh Assembly Government** is seeking the Commissioner for Older People in Wales and her staff to be prescribed as a purpose eligible for enhanced criminal record certificates. This is a new position created under the Commissioner for Older People (Wales) Act 2006 whose role will be to ensure that the interests of older people in Wales are safeguarded and promoted.