

EXPLANATORY MEMORANDUM TO
THE POLICE ACT 1997 (CRIMINAL RECORDS) (No.2)
REGULATIONS 2009

2009 No. 1882

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 Part V of the Police Act 1997 (“the Police Act”), amends the purposes for which an enhanced criminal record certificate can be issued under section 113B of the Police Act 1997 and also prescribes the cases in which people making an application may receive suitability information in respect of children or vulnerable adults. Suitability information will include whether an individual is barred from working with children or vulnerable adults.
 - 2.2 The amendments reflect new categories of eligibility for enhanced criminal record certificates which are being added to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (“the Exceptions Order”) and support the implementation of the Vetting and Barring Scheme (“VBS”) which was established under the Safeguarding Vulnerable Groups Act 2006 (“SVGA”).
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 provides for the issuing of criminal conviction, criminal record and enhanced criminal record certificates. A criminal record certificate contains details of all the individual’s convictions, cautions, reprimands and warnings, irrespective of whether those convictions are spent under the Rehabilitation of Offenders Act. An enhanced criminal record certificate also contains non conviction information provided by the police. The link between the Exceptions Order and the Police Act is established under sections 113A and 113B of the Police Act. Section 113A provides that an application for a criminal record certificate must be accompanied by a statement that the ‘certificate is required for the purposes of an exempted question’; in other words, for a purpose that falls within the Exceptions Order. Section 113B, which provides for enhanced criminal record certificates states that the registered person must make a statement that the certificate is required for the purposes of an ‘exempted question asked for a prescribed purpose’.
 - 4.2 Firstly, the regulations will amend the Police Act 1997 (Criminal Records) Regulations 2002 (SI 2002/233) by amending the list of ‘prescribed purposes’ where an enhanced criminal record certificate may be obtained.

- 4.3 Secondly, the regulations prescribe the cases in which people making an application may receive suitability information in respect of children (under section 113BA of the Police Act) or vulnerable adults (under section 113BB of the Police Act). These are the first regulations to be made under the power at section 113BA and 113BB.

5. Territorial Extent and Application

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

- 7.1 The objective of Part V of the Police Act, under which the Criminal Records Bureau (“CRB”) operates, was 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 and other information as part of the recruitment process.
- 7.2 The CRB (acting on behalf of the Secretary of State), currently issues two levels of Disclosure: criminal record certificates (known as Standard) and enhanced criminal record certificates (known as Enhanced). Under the new VBS, eligibility for Enhanced Disclosures will change. The primary reason is because, under the new scheme, all those that fall within the definition of “regulated activity”, will be eligible for an Enhanced Disclosure.
- 7.3 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, the Protection of Children Act list barring unsuitable people from working with children (known as POCA) and the Protection of Vulnerable Adults list barring unsuitable people from working in care positions with vulnerable adults (known as POVA). These barred lists will be replaced by a children’s barred list and an adults’ barred list, for England and Wales, maintained by the Independent Safeguarding Authority (ISA)¹ under the Safeguarding Vulnerable Groups Act 2006.
- 7.4 Activities that fall within the definition of a “regulated activity” are specified in Schedule 4 to the Safeguarding Vulnerable Groups Act. Broadly, this includes a range of activities that provide an opportunity for close contact with children or vulnerable adults, other activities in key settings such as schools and care homes

¹ “Independent Safeguarding Authority” (ISA) is the working name of the Independent Barring Board, established under section 1 of SVGA.

which provide an opportunity for contact with vulnerable groups, and key positions of responsibility.

- 7.5 Many of the positions that fall within the definition of “regulated activity” were already eligible for Enhanced Disclosures, through different categories of prescribed purposes in Police Act regulations. Now that these positions are captured within the definition of “regulated activity”, these categories have been omitted. In addition, there are some categories that will not be classed as “regulated activity” but which still require eligibility for Enhanced Disclosures. For this reason, provisions have been inserted or amended to allow for continuation of existing eligibility.
- 7.6 Simultaneously, amendments have been made to existing provisions relating to childcare, adoption and fostering to clarify that there is eligibility for Enhanced Disclosures of those persons living or working on premises where such activity is taking place.
- 7.7 The amendments also include three new purposes for which applications for Enhanced Disclosures can be made. These are as follows –
- **Immigration Advisors** – The Office of the Immigration Service Commissioner has requested that staff providing immigration advice and services be prescribed as a purpose for enhanced criminal record certificates as they are in positions of substantial trust.
 - **Drug licences** – The Home Office Drug Licensing and Compliance Unit have asked that those persons applying for drugs licences are prescribed as a purpose for enhanced criminal record certificates in line with recommendations following an independent review of the Unit.
 - **CRB staff**– providing eligibility for Enhanced Disclosures for staff working in the CRB will ensure consistency of approach with both the Independent Safeguarding Authority, who undertake Enhanced Disclosures on all staff and board members and the Department for Children, Schools and Families who undertake Enhanced Disclosures on all those working on databases that contain sensitive information.
- 7.8 The regulations then prescribe the circumstances in which suitability information in relation to children and vulnerable adults must be included on an Enhanced Disclosure. Suitability information includes, as listed in section 113BA and 113BB of the Police Act 1997, information as to whether the individual is barred from engaging in “regulated activity” relating to children or vulnerable adults or is subject to monitoring in relation to such regulated activity.
- 7.9 The cases that have been prescribed include all those applying to work in “regulated activity” with children or vulnerable adults but also other specific positions of trust that fall outside the definition of regulated activity such as adoptive parents and those living in the same household, those working for the

Department for Children, Schools and Families with access to sensitive records on children and those working for the Commissioner for Older People in Wales.

8. Consultation outcome

- 8.1 There was a public consultation on various aspects of the VBS in November 2007, with the Government's response being published in May 2008. The Government response can be viewed at www.dcsf.gov.uk/consultations.
- 8.2 The CRB has also been in continuous consultation with CRB customers and stakeholders over the implementation of the VBS.
- 8.3 The requirement to undertake Enhanced Disclosure checks on CRB staff has already been subject to consultation with trade union representatives and will be communicated to all staff through internal mechanisms.

9. Guidance

- 9.1 Comprehensive guidance about the operation of the VBS, will be published during 2009. It is essential that both the 11 million strong workforce to whom the Vetting and Barring Scheme will apply and their employers are aware of the requirements of the scheme in relation to registration to work in regulated activity, checking applicants for posts and the implications of being barred. Guidance is under development in consultation with stakeholders. At the same time, marketing and communications campaigns are publicising the scheme to stakeholders, by means of direct mailing, a programme of roadshows and various other methods.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is that from the 12th October 2009, positions that fall within the prescribed purposes will be entitled to Enhanced Disclosures and will enable existing requirements to carry out barred list checks on individuals to continue, but will refer to the new ISA barred lists instead of the current barred lists relating to List 99, PoCA or PoVA.
- 10.2 The impact on the public sector is the same because the CRB do not differentiate in their services between the public and private sectors.
- 10.3 An Impact Assessment has not been prepared for this instrument because these provisions are to facilitate the VBS. There is a separate Impact Assessment for the overall VBS which CRB are supporting. The existing published Assessment for the overall VBS signed by a Minister in July 2006, is at: www.dfes.gov.uk/ria/index.cfm?action=assessments.view&i_assessmentID=73
- 10.4 This Impact Assessment is currently under review and an updated version will be published once this review is completed.

11. Regulating small business

- 11.1 The legislation applies to small business. There will be minimal impact on small businesses because the majority are already eligible for Enhanced Disclosures and utilising the Disclosure Service.

12. Monitoring & review

- 12.1 This provision will be reviewed and monitored as part of the CRB's general regulation reviews.

13. Contact

Sarah Atherden at the Criminal Records Bureau Tel: 0151 224 6623 or e-mail: sarah.atherden@crb.gsi.gov.uk can answer any queries regarding the instrument.