

EXPLANATORY MEMORANDUM TO
THE POLICE ACT 1997 (CRIMINAL RECORDS) (AMENDMENT)
REGULATIONS 2008

2008 No. 2143

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 This instrument made under Part V of the Police Act 1997, gives effect to policy initiatives led by the Department for Children, Schools and Families (DCSF) and the Welsh Assembly Government that directly relate to the service provided by the Criminal Records Bureau (CRB).

2.2 The first purpose of the instrument is so Enhanced Disclosure eligibility may continue for those connected with the registered childcare sector in England after the 1st September 2008 when the registration system under the Childcare Act 2006 comes into force. Related amendments will be made to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 on 1st December 2008 which will be subject to the affirmative resolution procedure.

2.3 The second amendment provides eligibility for the Commissioner for Older People in Wales, her deputy and appointees to be checked against the Protection of Vulnerable Adults list (POVA).

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 powers conferred on the Secretary of State for the Home Department by sections 113B (2) (b), 113D (4) (d) and 125 of the Police Act 1997.

4.3 The Regulations will amend the Police Act 1997 (Criminal Records) Regulations 2002 (SI 2002/233) by amending the list of 'prescribed purposes' provided for under regulation 5A so that Enhanced Disclosure eligibility may continue for certain people connected with the registered childcare sector in England. From 1st September 2008, the regime for the registration and inspection of childcare in England will change. The current regime under Part 10A of the

Children Act 1989 will be repealed (in relation to England only) and Part 3 of the Childcare Act 2006 will take its place.

4.4 The second amendment extends the positions in respect of which information held on the POVA list may be disclosed on criminal record certificates and enhanced criminal record certificates. The POVA list is maintained under Section 81 of the Care Standards Act 2000 with the Department of Health as policy owners. The list contains details of persons considered unsuitable to work with vulnerable adults in England and Wales. Checks against the POVA list can only be made through the CRB as part of a Disclosure under Part V.

5. Extent

This instrument applies to England and Wales.

6. European Convention on Human Rights

The instrument is subject to negative resolution procedure and does not amend primary legislation. No statement is therefore required.

7. Policy background

7.1 The objective of Part V of the Police Act 1997 (“the Act”), under which the 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 as part of the recruitment process.

7.2 The CRB currently issues two levels of Disclosure: Standard and Enhanced. Both will 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 in prescribed circumstances. An Enhanced Disclosure will also include a check of local police force records for information considered relevant to the position applied for.

7.3 The first amendment contained within this instrument relates to individuals working within the registered childcare sector in England. Currently, childcare providers in England and Wales are required to register under Part 10A of the Children Act 1989 (“the 1989 Act”). From 1st September 2008, this changes and providers in England will instead be registered in one of the new registers maintained under Part 3 of the Childcare Act 2006 (“the 2006 Act”). Registration under Part 10A of the 1989 Act is currently a prescribed purpose (in regulation 5A (g) of Part V), and for providers in England, an amendment is made to the Regulations so that registration under the 2006 Act is also a prescribed purpose. This will provide that categories of persons currently eligible for Enhanced Disclosures in relation to registration under Part 10A of the 1989 Act may continue to be eligible for registration under the 2006 Act. Part 3 of the 2006 Act comes fully into force on 1st September 2008 and regulations made under that Act will require all individuals providing or managing registered childcare, or living or working on the childcare premises

to be the subject of an Enhanced Disclosure. Regulation 5A (g) will remain as the 1989 Act will continue to apply in Wales.

7.4 Minor consequential amendments are also being made to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 to ensure that this will enable checks to be carried out on all those involved in childcare registered under the Childcare Act 2006. These amendments are proposed to come into force on 1st December 2008.

7.5 The second amendment provides for checks to be made against the POVA list for the positions of the Commissioner for Older People in Wales, her deputy and appointees. It is envisaged that this amendment will affect a maximum number of 30 individuals employed by the Commissioner. The role of the Commissioner and her staff will involve frequent contact with, and access to, older people. This contact is often unsupervised. Consequently the Welsh Assembly Government is keen to ensure that a POVA check is undertaken in respect of these positions. The Department of Health, as policy owners for the POVA list are content with this proposal.

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

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.