

**EXPLANATORY MEMORANDUM TO
THE POLICE ACT 1997 (CRIMINAL RECORDS) (AMENDMENT)
REGULATIONS 2012**

2012 No. 523

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 To amend regulations made under the Police Act 1997 in order to provide eligibility for enhanced criminal records certificates including suitability information for persons obtaining or seeking taxi and Private Hire Vehicle (“PHV”) licences.

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

3.1 None.

4. Legislative Context

4.1 The Police Act 1997 (“the Act”) makes provision for the disclosure of criminal records information by the Secretary of State. Regulations made under the Act provide for certain posts to be eligible for enhanced criminal record certificates, that is, certificates which include any relevant police information held locally, in addition to a record of any criminal convictions, cautions, warnings or reprimands. Regulations also enable certain enhanced criminal record certificates to include barring information.

5. Territorial Extent and Application

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

- *What is being done and why*

7.1 Taxi and PHV drivers are entitled to obtain a criminal record certificate (known as a “standard certificate”) by virtue of their inclusion in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. In addition, those engaging in a regulated activity with either children or vulnerable adults are entitled to enhanced criminal record certificates (known as “enhanced certificates”) as they fall within the prescribed purposes defined under section

113B(2) of the Police Act 1997. People in certain positions are also eligible to obtain suitability information on enhanced certificates under sections 113BA and 113BB of the 1997 Act. Suitability information is essentially information about whether the person is included on the barred lists maintained by the Independent Safeguarding Authority, and therefore barred from engaging in regulated activity with children or vulnerable adults.

7.2 Ministers have agreed that all taxi and PHV drivers should be eligible for enhanced certificates with suitability information. These would normally be obtained by local licensing authorities, which consider suitability for persons holding or seeking to obtain a taxi or PHV licence. The Regulations amend current provisions to provide such eligibility.

- ***Consolidation***

7.3 As the changes being made by these Regulations are relatively limited, the Home Office is not consolidating the legislation on this occasion.

8. Consultation outcome

8.1 Consultation with sector interests including licensing authorities took place as part of policy consideration and the results were supportive of the proposed change.

9. Guidance

9.1 Local authorities and other interested parties will be advised of the changes.

10. Impact

10.1 There should be very limited impact on any sector as, over time, the practice has grown up of licensing authorities and employers (where entitled) seeking enhanced certificates for the majority of taxi driver and PHV posts. The change amends eligibility for such applications, but it will remain a matter for licensing authorities to determine when they should be made. In the relatively small proportion of cases for which standard certificates were applied, there will be a difference in the fee charged (£44 compared to £26).

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

11. Regulating small business

11.1 The legislation applies to small business. However, the majority of taxi drivers are self-employed and as such, checks are normally undertaken by public authorities rather than individual businesses.

12. Monitoring & review

12.1 Consultation with interested parties will continue as the measure is implemented.

13. Contact

Stewart Baxter on 0207 035 3265 or Stewart.Baxter2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.