
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 97

POLICE

**The Police Act 1997 (Criminal Records)
(Registration) (Scotland) Regulations 2006**

<i>Made</i>	- - - -	<i>2nd March 2006</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>6th March 2006</i>
<i>Coming into force</i>	- -	<i>1st April 2006</i>

The Scottish Ministers, in exercise of the powers conferred by sections 120(3), 120A(7), 124A(4) and 125(5) of the Police Act 1997(1) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2006 and shall come into force on 1st April 2006.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the 1997 Act” means the Police Act 1997;

“the register” means the register maintained by the Scottish Ministers under section 120(1) of the 1997 Act for the purposes of Part 5 of the 1997 Act;

“exempted question” has the same meaning as in section 113A of the 1997 Act(2);

“mental disorder” means mental illness (including personality disorder) or mental handicap however caused or manifested;

“statutory office holder” means a person appointed to an office by virtue of an enactment;

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- (1) 1997 c. 50. By virtue of section 126(3) in the application of Part 5 of the Police Act 1997 (“the 1997 Act”) to Scotland, as amended by the Serious Organised Crime and Police Act 2005 (c. 15) (“the 2005 Act”), section 166(2), references to the Secretary of State must be construed as references to the Scottish Ministers (except in sections 118(2A)(d) and 124A(1) and (2)). Subsections 3(aa), (ab) and (ac) of section 120 are inserted by section 70(6)(b) of the Criminal Justice (Scotland) Act 2003, asp 7 (“the 2003 Act”). Section 120A is inserted by section 70(2) of the 2003 Act and section 120A(7) is inserted by the 2005 Act, section 163(3) and Schedule 14, paragraph 9. Section 124A is inserted by section 70(8) of the 2003 Act. See section 125(1) for the definition of “prescribed”.
- (2) Section 113A is inserted into the 1997 Act by the 2005 Act, section 163(2).

any reference to a numbered section shall be construed as a reference to the section bearing that number in the 1997 Act;

any reference to a numbered regulation is to the regulation bearing that number in these Regulations;

any reference to a numbered paragraph is to the paragraph bearing that number in that regulation; and

any words or expressions used in these Regulations to which meanings are assigned by Part 5 of the 1997 Act shall have the same meanings as in the 1997 Act.

(2) A requirement in these Regulations that any notification or representations should be “in writing” is satisfied where (apart from the usual meaning of that expression) the text of it—

- (a) is transmitted by electronic means;
- (b) is received in legible form; and
- (c) is capable of being used for subsequent reference.

The register

3.—(1) The information to be included in the register in respect of a registered person shall be—

- (a) the name, address and date of birth of the person and any telephone or facsimile number or electronic mailing address which has been notified by that person to the Scottish Ministers for communication purposes;
- (b) the date on which the name of the person was first listed in the register;
- (c) the number assigned to the person on being so listed;
- (d) the nature and purpose of the exempted questions, if any, that the person is likely to ask;
- (e) where the person is a body corporate or unincorporate—
 - (i) whether the body is likely to countersign applications under section 113A (criminal record certificates) or 113B (enhanced criminal record certificates)⁽³⁾ at the request of bodies or individuals asking exempted questions and, if so, the nature and purpose of those questions;
 - (ii) the name, address and date of birth of any individual for the time being nominated in accordance with regulation 4 below as being authorised to act for the body in relation to the countersigning of applications under section 113A or 113B and any telephone or facsimile number or electronic mailing address which has been notified by that body to the Scottish Ministers for communication purposes;
 - (iii) the date on which the name of that individual was first listed on the register;
 - (iv) the number assigned to that individual on being listed; and
 - (v) a specimen of the signature of that individual;
- (f) where the person is a statutory office holder—
 - (i) the name, address and date of birth of any individual for the time being nominated in accordance with regulation 4 as being authorised to act for the statutory office holder in relation to the countersigning of applications under section 113A or 113B and any telephone or facsimile or electronic mailing address which has been notified to the Scottish Ministers for communications purposes;
 - (ii) the date on which the name of that individual was first listed on the register;
 - (iii) the number assigned to that individual on being listed; and

(3) Section 113B is inserted into the 1997 Act by the 2005 Act, section 163(2).

- (iv) a specimen of the signature of that individual; and
- (g) in respect of each registered person other than a body corporate or unincorporate, a specimen of any signature which will be used by that person for the purposes of countersigning applications under section 113A or 113B.

(2) In paragraph (1), any reference to the address of a registered person is a reference to the address of the principal place of business of that person, subject to the requirement that where that person's principal place of business is not within Scotland, the address of the principal place of business in Scotland shall also be included in the register.

(3) A registered person shall notify the Scottish Ministers in writing, as soon as is reasonably practicable, of the details of any alteration to the information that has been supplied by that person for the purposes of paragraph (1)(a), (d), (e) and (f).

Nomination of individuals to act for registered person

4.—(1) A body corporate or unincorporate or statutory office holder applying for registration under section 120(4) shall, if that body or person wishes to nominate an individual to act for it or, as the case may be, him or her, submit with the application the names, addresses, dates of birth and specimen signatures of the individuals nominated to act for the body or statutory office holder in relation to the countersigning of applications under section 113A or 113B.

(2) A registered body and a registered person who is a statutory office holder shall, if that body or person wishes to nominate an individual to act for it or, as the case may be, him or her, submit to the Scottish Ministers the names, addresses, dates of birth and specimen signatures of any individuals so nominated after the registration of the body or the statutory office holder, whether or not in substitution for any name previously submitted.

(3) The Scottish Ministers may refuse to accept, or to continue to accept, the nomination of an individual if, in the opinion of the Scottish Ministers, that individual is not a suitable person to have access to information which has become, or is likely to become, available to that individual as a result of the registration of the body or the statutory office holder which nominated that individual.

(4) In determining for the purposes of this regulation whether an individual is a suitable person to have access to any information, the Scottish Ministers may have regard, in particular, to—

- (a) the matters specified in section 120A(3)(5);
- (b) whether or not Scottish Ministers have previously refused to accept or continue to accept that person's nomination; and
- (c) whether or not that person has previously been removed from the register, or has had conditions imposed on them as respects their continued listing in the register, by Scottish Ministers under section 122(4).

(5) Before the Scottish Ministers refuse to accept, or to continue to accept, the nomination of an individual under this regulation, they shall notify in writing—

- (a) the body or the statutory office holder concerned, and that body or statutory office holder may submit the name of another individual in substitution; and
- (b) the individual nominated that they are of that opinion and the reasons for that opinion and shall inform that individual of the right to make representations under paragraph (6).

(6) An individual who has been notified in accordance with paragraph (5)(b) may, within 28 days of the service of such notice, make representations in writing to the Scottish Ministers as to why the

(4) Section 120 is amended by section 70(1) and (6) of the 2003 Act and by the 2005 Act, section 163(3) and Schedule 14, paragraph 6.

(5) Section 120A(3) is inserted by section 70(2) of the 2003 Act and amended by the 2005 Act, section 166(1) and Schedule 14, paragraph 9.

Scottish Ministers should not refuse to accept or continue to accept their nomination and the Scottish Ministers shall consider any such representations.

(7) After considering such representations, the Scottish Ministers shall inform the nominated individual—

- (a) that they are of the opinion that they should refuse to accept or continue to accept the nomination of that individual, and the reasons for that opinion; or
- (b) that they do not propose to refuse to accept or continue to accept the nomination of that individual.

(8) If no representations are received within the period mentioned in paragraph (6), the Scottish Ministers may proceed at the end of that period to refuse to accept or continue to accept that individual's nomination.

(9) If representations are received under paragraph (6) and the Scottish Ministers decide under paragraph (7)(a) to refuse to accept or continue to accept the nomination of that individual, the period within which that decision shall be implemented is the end of a further period of 28 days beginning with the day of service of the notification of the results of the Scottish Ministers' consideration of their representations.

(10) No individual may be nominated under section 120(3)(aa) if the Scottish Ministers have, within the period of two years prior to the date on which the nomination is received by them, refused to accept or continue to accept that individual's nomination.

Removal from the register under section 120(3)(b)

5.—(1) Subject to paragraphs (2) to (5), the Scottish Ministers may remove from the register any person who is, in the opinion of the Scottish Ministers, no longer likely to wish to countersign applications under section 113A or 113B.

(2) Before removing a person from the register, the Scottish Ministers shall notify that person in writing that they are of that opinion and the reasons for that opinion and shall inform that person of the right to make representations under paragraph (3).

(3) A person who has been notified in accordance with paragraph (2) may, within 28 days of the service of such notice, make representations in writing to the Scottish Ministers as to why that person should not be removed from the register and the Scottish Ministers shall consider any such representations.

(4) After considering such representations, the Scottish Ministers shall inform the registered person—

- (a) that they are of the opinion that that person is unlikely to wish to countersign applications under section 113A or 113B and the reasons for that opinion and that that person will be removed from the register at the end of a further period of 28 days; or
- (b) that they do not propose to take any further action under this regulation.

(5) If no representations are received within the period mentioned in paragraph (3), the Scottish Ministers may remove the person from the register at the end of that period.

(6) Where—

- (a) the Scottish Ministers are satisfied, in the case of a registered person other than a body, that the person has died or is incapable, by reason of physical impairment or mental disorder, of countersigning applications under section 113A or 113B; or
- (b) the registered person has requested that the Scottish Ministers remove that person from the register,

paragraphs (2) to (5) shall not apply.

Refusal of inclusion in and removal from register – further provision

6.—(1) Where the Scottish Ministers decide to refuse to include a person in the register or, other than by virtue of section 120(3)(b), to remove a person from the register, in addition to including information as to the provisions of regulation 10, the notification of that decision and the reasons for the decision shall—

- (a) give the period within which the decision will be implemented; and
- (b) inform the person concerned of the right to require the Scottish Ministers to review their decision under section 124A(2) and the period within which such a requirement may be made.

(2) A requirement made to Scottish Ministers under section 124A(2) for them to review the decision under section 124A(1) may be made within 28 days of the service of the notification of the decision.

(3) Where a decision under section 124A(1) has been reviewed in accordance with section 124A(2), the notification of the results of the review and any consequential change in the decision shall—

- (a) give the period within which the decision will be implemented; or
- (b) inform the person concerned that the Scottish Ministers do not propose to take any further action under or by virtue of section 124A.

(4) The period within which a decision to refuse to include a person in the register or, other than by virtue of section 120(3)(b), to remove that person from the register shall be implemented is—

- (a) where no requirement has been made under section 124A(2), the end of the period mentioned in paragraph (2); or
- (b) where a requirement has been made under section 124A(2), the end of a further period of 28 days beginning with the day of the service of the notification of the results of the review.

Bodies equivalent to police authorities

7. For the purposes of section 120A(7) the reference to the appropriate police authority in section 120(5) must be construed as a reference to—

- (a) the Provost Marshal for the Royal Navy Regulating Branch;
- (b) the Provost Marshal for the Royal Marines Police;
- (c) the Provost Marshal for the Royal Military Police;
- (d) the Provost Marshal for the Royal Air Force Police;
- (e) the Ministry of Defence Police Committee for the Ministry of Defence Police;
- (f) the British Transport Police Authority for the British Transport Police;
- (g) the Civil Nuclear Police Authority for the Civil Nuclear Constabulary;
- (h) the Home Affairs Committee for the States of Jersey Police Force;
- (i) the Home Department for the salaried police force of the Island of Guernsey;
- (j) the Department of Home Affairs for the Isle of Man Constabulary;
- (k) the Board of the Serious Organised Crime Agency; and
- (l) the Department of Justice, Equality and Law Reform for the Garda Síochána.

Fees

8. The fee payable by a person in respect of an application for inclusion in the register shall be £150.

Additional fees

9.—(1) There shall be payable by a registered person which is a body corporate or unincorporate a fee of £10 in respect of the second and each subsequent name entered in the register in accordance with regulation 3(e)(ii).

(2) There shall be payable by a registered person which is a statutory office holder a fee of £10 in respect of the second and each subsequent name entered in the register in accordance with regulation 3(f)(i).

Persons who re apply for inclusion in the register

10. For the purposes of section 120(3)(ac), the period which must elapse before any person refused registration or removed from the register may apply to be included in the register is—

- (a) 28 days where the person has been removed from the register under these Regulations; and
- (b) two years where the person has been refused registration or removed from the register, as the case may be, under section 120A(1) or (2), or 122(4).

Revocation

11. The Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2002(6) are hereby revoked.

St Andrew's House,
Edinburgh
2nd March 2006

CATHY JAMIESON
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with the register maintained under Part 5 of the Police Act 1997 (“the 1997 Act”), and registration thereon. They come into force on 1st April 2006.

Regulation 3 sets out the information to be included in the register maintained by the Scottish Ministers under section 120 of the 1997 Act.

Regulation 4 sets out the procedure for the nomination of individuals to act in relation to the countersigning of applications under Part 5 of the 1997 Act. A body or statutory office holder which has registered person status must, if it wishes to nominate such individuals, submit the names, addresses, dates of birth and specimen signatures of these individuals nominated to countersign applications for criminal record and enhanced criminal record certificates.

Regulation 5 details the procedure, under section 120(3)(b) of the 1997 Act, for the removal from the register of persons who are, in the opinion of the Scottish Ministers, no longer likely to wish to countersign applications under section 113A or 113B of the 1997 Act. Such persons may be bodies corporate or unincorporate, statutory office-holders or employers.

Regulation 6 concerns the procedure to be followed where the Scottish Ministers decide under sections 120(3)(ab), 120A(1) or (2), or 122(4) to refuse to include a person in the register or to remove a person from the register.

Regulation 7 prescribes the bodies equivalent to police authorities that are to receive payment in respect of information relating to registration sought from them by the Scottish Ministers.

Regulation 8 sets out the fee payable on application for inclusion in the register.

Regulation 9 sets out additional fees which are payable by a registered person which is a body or a statutory office holder for inclusion in the register of a second and each subsequent name of those individuals nominated to countersign applications under Part 5 of the Act.

Regulation 10 makes provision as to the periods which must elapse before a person refused registration or removed from the register can apply again to be included in the register.

Regulation 11 revokes the Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2002 (S.S.I. 2002/23).