

**EXECUTIVE NOTE**  
**THE POLICE ACT 1997 (CRIMINAL RECORDS) (SCOTLAND)**  
**AMENDMENT No. 2 REGULATIONS 2009 (SSI 2009/216)**

**Power under which the Instrument is made**

1. The Police Act 1997 (Criminal Records) (Scotland) Amendment (No. 2) Regulations 2009 (“the Amendment Regulations”) are made by Scottish Ministers in exercise of the powers conferred by sections 112(1)(b), 113A(1)(b), 113B(1)(b), 114(1)(b) and 116(1)(b) of Part 5 of the Police Act 1997 (“the 1997 Act”).

**Parliamentary procedure**

2. This Scottish Statutory Instrument is a class 5 instrument subject to the negative resolution procedure at the Scottish Parliament.

**Summary of policy proposals**

3. The Amendment Regulations cater for an increase in the fee for applications under section 112, 113A, 113B, 114 and 116 that is scheduled to come into force on 1 August 2009.
4. Under their powers at sections 112(1)(b), 113A(1)(b), 113B(1)(b), 114(1)(b) and 116(1)(b) Scottish Ministers can prescribe the fee to be paid for applications. Ministers have exercised this power at Regulation 4(1) of SSI 2006 No 96 where the fee is set at £20. The Amendment Regulations increase the fee to £23 for all types of checks – the basic disclosure, the standard disclosure and the enhanced disclosure.
5. The fee increase is necessary so that Disclosure Scotland can continue to provide its services efficiently and effectively. For example, for the first time, Disclosure Scotland has to pay a direct contribution to the National Policing Improvement Agency for access to information that is held recorded on the Police National Computer. In addition, the cost of free checks for volunteers in the voluntary sector working with children and adults at risk has to be met from fee

income. There is also a small annual charge for access to information held in Northern Ireland which became available to Disclosure Scotland in March 2009.

### **Consultation**

6. No formal consultation has been undertaken on this SSI. The intention to increase the fee was publicised by means of a Parliamentary Question on 31 March 2009.

### **Financial Effects**

7. There will be a cost to Disclosure Scotland to make the IT change needed to support the new fee. The proposed increase will mean additional costs to individuals and organisations who pay for criminal record checks. There will be a cost to the Scottish Government for the checks that it funds.

### **Regulatory Impact Assessment**

8. An RIA has been prepared.

The Scottish Government  
Children, Young People and Social Care Directorate  
June 2009

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**REGULATORY IMPACT ASSESSMENT**

**1. Title of proposal**

The Police Act 1997 (Criminal Records) (Scotland) Amendment No. 2 Regulations 2009.

**2. Purpose and intended effect**

*Objective*

This Regulatory Impact Assessment reviews the likely effect of the above regulations which propose to increase the fee paid for applications for criminal conviction certificates, criminal record certificates and enhanced criminal record certificates under Part 5 of the Police Act 1997 from £20 to £23.

*Background*

Under Part 5 of the Police Act 1997, Disclosure Scotland (an Executive Agency of the Scottish Government) discharge Scottish Ministers' functions by processing applications for disclosure checks for recruitment and other purposes. There is a regulation-making power at sections 112(1)(b), 113A(1)(b), 113B(1)(b), 114(1)(b) and 116(1)(b) of the Act which enables Ministers to prescribe the fee for such applications. The power is exercised now at Regulation 4(1) of Scottish Statutory Instrument 2006 No. 96 where the fee is set at £20.

*Rationale for government intervention*

The bulk of Disclosure Scotland's operating budget is funded by income from fees charged for each disclosure application. The assessment of whether or not that income would cover Disclosure Scotland's operating costs in 2009-10 identified that outcome was unlikely. The possibility of that income gap being funded in total from within the Scottish Government budget has been explored and cannot be met. Consequently, Ministers have agreed that the fee should be increased.

**3. Consultation**

Parliament was notified of this proposal by a Parliamentary Question on 31 March 2009. It said:

S3W-22419 -- Bob Doris (Glasgow) (SNP): To ask the Scottish Executive whether it plans to increase the cost of applications for criminal record checks carried out by Disclosure Scotland under Part V of the Police Act 1997.

Adam Ingram: We intend to lay a Scottish Statutory Instrument in May to increase the cost of all types of Disclosure Scotland applications to £23 with effect from 1 August 2009. The increase in the fee, which is the first since 1 April 2006, is needed to meet the rise in costs of providing the service and to ensure that Disclosure Scotland can continue to operate efficiently and effectively.

Separately, notice of the intention was published on the Disclosure Scotland website and major users were alerted by an insert in the monthly invoice for April 2009.

#### **4. Options**

(i) Do nothing: The Scottish Government considered the merits of not having a fee increase at this time. This option was discounted as additional funding would have had to be found from within the overall Scottish Government block. There is insufficient money available from that source.

(ii) Increase the fee by £3: This is the option that has been selected and therefore the increase in fees is being pursued accordingly.

(iii) Increase the fee by more than £3: This option was considered but it was discounted.

#### **5. Costs and benefits**

##### *Sectors and groups affected*

Under the 1997 Act, it falls to the applicant to ensure payment. In practice, many individuals do pay, but some organisations and employers meet the cost on behalf of the applicant. Disclosure Scotland does not gather information about when this happens as it is a matter between organisations and their staff. It is therefore not possible to say with confidence on whom the fee increase will impact.

An indication of where the costs could fall can be seen in the table below which shows the origin of applications for the financial year 2008-09.

##### **Disclosure Scotland applications 2008-09**

Source	Number of applications
Basic disclosures	501,279
Central Registered Body Scotland	55,263
Councils	91,450
NHS in Scotland	29,590
Regulatory Bodies	20,321
Universities and Colleges	40,739
Others	142,993
<b>Total</b>	<b>881,635</b>

## ***Benefits***

- (i) Do nothing: There would have been no benefit to the Scottish Government if this approach was adopted and substantial additional funding from the overall Scottish Government block would have to be found. There would have been a benefit to users of the service in that their costs for using the Disclosure Scotland service would have remained unchanged.
- (ii) Increase the fee by £3: The intended benefit of the proposed fee increase is to help Disclosure Scotland meet its costs in 2009-10. It also means that Disclosure Scotland will be better able to maintain its current level of service. This is the preferred option.
- (iii) Increase the fee by more than £3: Users would have been faced with a higher fee increase, and as such the option was discounted.

## ***Costs***

The fee increase will contribute to increases in Disclosure Scotland's operating costs which include, for example:

- Disclosure Scotland's access to information held on the Police National Computer was previously covered by the overall Scottish Government contribution to the National Policing Improvement Agency for access to information held on the Police National Computer. That is no longer the case. In 2009-10 a contribution estimated to be around £1.36 Million will be needed.
- Until 2008-09, Scottish Ministers met the costs of checks for volunteers in the voluntary sector working with children and adults at risk. The money to fund this (£1 million) came from central funds. This funding is no longer available and from this financial year, Disclosure Scotland has to seek to cover the cost from the revenue it generates.
- Accessing information from Northern Ireland.

The fee increase would contribute to these and other cost increases.

In the financial year 2008-09, Disclosure Scotland received 881,635 applications which resulted in fee receipts of £17.51 million. Disclosure Scotland's total income was slightly higher at £17,898,533 due to income from the Criminal Records Bureau (CRB). The total expenditure was £20,894,411 and so a deficit of £2,995,878 was incurred. This was covered by funding from the Scottish Government.

- (i) Do nothing: The effect of this option would mean that Disclosure Scotland would be likely to have costs in excess of income and that substantial Scottish Government funding would be needed to meet the gap. That is not available.
- (ii) Increase the fee by £3: Disclosure Scotland is projecting 900,657 applications in 2009-10 which is slightly higher than in 2008-09. If that happens, then the full-year additional income would have been £3.08 million. As the proposed increase will come into effect after a third of the financial year has elapsed, the additional

income generated will be less but will contribute to Disclosure Scotland's costs which we expect to be broadly similar to 2008-09.

(iii) Increase the fee by more than £3: An increase of £5 in the fee was considered and this would have raised an additional £4.45 million in a full-year. As noted, this option was discounted.

## **6. Small/Micro firms impact test**

All businesses that use disclosure checks will be affected if this fee increase is approved therefore there will be no extra impact on small business. The onus is not on an organisation or business to meet the fee; that responsibility rests with the applicant.

## **7. Legal Aid impact test**

The proposed fee increase will not impact on legal aid in Scotland.

## **8. Test run of business forms**

There will be no change made to the application forms that are used when applying to Disclosure Scotland.

## **9. Competition assessment**

Disclosure Scotland does not compete in discharging Scottish Ministers' functions under the Police Act 1997.

Disclosure Scotland carry out Basic Disclosures checks for organisations in Scotland, England and Wales, and Standard and Enhanced Disclosures for organisations in Scotland. Basic, Standard and Enhanced Disclosures are provided for organisations in Northern Ireland by Access NI. Standard and Enhanced Disclosures are provided for organisations in England and Wales by the CRB. CRB does not currently offer the Basic Disclosure which is why Disclosure Scotland does that work for England and Wales.

Access NI charges the following fees: Basic Disclosure - £26; Standard Disclosure - £28; and Enhanced Disclosure - £30. The CRB charge £31 for a Standard Disclosure and £36 for an Enhanced Disclosure. The proposed increase in Disclosure Scotland's fee will mean that all types of applications will still cost less than charges elsewhere in the UK.

## **10. Enforcement, sanctions and monitoring**

The sanction for not sending payment with an application is that the application will not be processed. If organisations agree to pay by invoice and do not do so, that facility will be withdrawn and payment will be required to accompany applications.

Aged-debt is monitored on a monthly basis and reports on such are provided to the Disclosure Scotland Joint Management Board. If it is shown that an organisation

persists in not paying invoices on time, then Disclosure Scotland will write to the organisation concerned and advise it that the invoicing facility will be withdrawn, and that all future applications should have payment attached.

### **11. Implementation and delivery plan**

An implementation plan will be created and distributed to all known users prior to the date of the increase. Information will also be put on the Disclosure Scotland website for those users applying online for the basic disclosure. This will explain the grace period during which applications at the old fee will be honoured and that after a certain date has passed applications with the old fee attached will be returned to the applicant.

### **12. Post-implementation review**

The effectiveness of the transitional arrangements will be reviewed by the Joint Management Board. The question of whether or not the increase is sufficient for Disclosure Scotland's financial needs will be monitored on a month-by-month basis.

### **13. Summary and recommendation**

This fee increase is needed to assist Disclosure Scotland in covering its operating costs in 2009-10. It is recommended that the proposed regulations are introduced to enable that to happen.

### **14. Declaration and publication**

I have read this Regulatory Impact Assessment and am satisfied that the benefits justify the costs.

Signed **ADAM INGRAM**.....

Date **3<sup>rd</sup> JUNE 2009**.....

**ADAM INGRAM MSP**  
**Minister for Children and Early Years**