

2010 No. 168

POLICE

**The Police Act 1997 (Criminal Records) (Scotland)
Regulations 2010**

Made - - - - - *28th April 2010*

Laid before the Scottish Parliament *29th April 2010*

Coming into force in accordance with regulation 1(1)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by the provisions of the Police Act 1997(a) which are specified in the Schedule to these Regulations and all other powers enabling them to do so.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Police Act 1997 (Criminal Records) (Scotland) Regulations 2010 and come into force on the same day as section 78 of the Protection of Vulnerable Groups (Scotland) Act 2007(b).

(2) These Regulations extend to Scotland and, in so far as regulations 5 and 7 to 16 extend beyond Scotland, they do so only as a matter of Scots law.

Interpretation

2. In these Regulations—

- (a) any reference to a numbered section or part is to the section or part bearing that number in the Police Act 1997;
- (b) any reference to a numbered regulation is to the regulation bearing that number in these Regulations;
- (c) any reference in a regulation to a numbered paragraph is to the paragraph bearing that number in that regulation; and
- (d) any words or expressions used in these Regulations to which meanings are assigned by Part 5 of the Police Act 1997 have the same meanings as in that Part of that Act.

(a) 1997 c.50. See section 125(1) for a definition of “prescribed”. By virtue of section 126(3) and (4), as inserted by section 166(2) of the Serious Organised Crime and Police Act 2005 (c.15), in the application of Part 5 to Scotland, references to the Secretary of State must be construed as references to the Scottish Ministers (except in section 118(2A)(d) or 124A(1) and (2)).

(b) 2007 asp 14.

Criminal conviction certificates, criminal record certificates and enhanced criminal record certificates: prescribed fees and manner of payment

3.—(1) The fee prescribed in relation to an application for the issue of—

- (a) a criminal conviction certificate is £25;
- (b) a criminal record certificate is £25;
- (c) an enhanced criminal record certificate is £25.

(2) Payments by cheque, credit or debit card, voucher, postal order, direct debit or invoice are prescribed as the manner in which payment of the fees prescribed under paragraph (1) can be made.

Criminal conviction certificates: prescribed details

4. The following details of a conviction are prescribed for the purposes of section 112(2)(a)—

- (a) the date of the conviction;
- (b) the convicting court;
- (c) the offence; and
- (d) the method of disposal for the offence.

Central records: prescribed details

5.—(1) Information in any form relating to convictions—

- (a) held in the criminal history database of the Scottish Police Services Authority for the use of police forces generally;
- (b) on a names database held by the National Policing Improvement Agency for the use of police forces generally; and
- (c) held in the criminal records database of the Criminal Justice System Northern Ireland for the use of police forces generally,

is prescribed as “central records” for the purposes of section 112(3).

(2) Information in any form relating to—

- (a) convictions held in the criminal history database of the Scottish Police Services Authority for the use of police forces generally;
- (b) convictions and cautions on a names database held by the National Policing Improvement Agency for the use of police forces generally; and
- (c) convictions and cautions held on the criminal records database of the Criminal Justice System Northern Ireland for the use of police forces generally,

is prescribed as “central records” for the purposes of section 113A(6) (including that provision as it has effect for the purposes of section 113B(9) and as it is applied by sections 114(3) and 116(3)).

Relevant matters: prescribed details

6. The following details of a relevant matter are prescribed for the purposes of sections 113A(3)(a) and 113B(3)(a) (including those provisions as applied by sections 114(3) and 116(3) respectively)—

- (a) in the case of a conviction within the meaning of the Rehabilitation of Offenders Act 1974(a), including a spent conviction—
 - (i) the date of the conviction;
 - (ii) the convicting court;
 - (iii) the offence; and
 - (iv) the method of disposal for the offence including any penalty imposed;
- (b) in the case of a caution—
 - (i) the date of the caution;
 - (ii) the police force which gave the caution; and
 - (iii) the offence which the person given the caution had admitted.

Enhanced criminal record certificates: police forces

7. For the purposes of section 113B(11)(c) the following departments or bodies are prescribed as police forces—

- (a) the Scottish Crime and Drug Enforcement Agency; and
- (b) the Child Exploitation and Online Protection Centre.

Enhanced criminal record certificates: relevant police forces

8.—(1) For the purposes of an application for an enhanced criminal record certificate under section 113B, “relevant police force” means—

- (a) the police force maintained for any police area in Great Britain—
 - (i) within which the applicant resides or has resided within the period of 5 years preceding the date of the application;
 - (ii) in which the applicant was born;
 - (iii) in which the applicant was convicted at any time; or
 - (iv) which has indicated on central records(b) or the Interim Police Local Cross Reference Database that it holds non-conviction information relating to the applicant;
- (b) the Police Service of Northern Ireland if—
 - (i) the applicant resides or has resided within the period of 5 years preceding the date of the application within Northern Ireland;
 - (ii) the applicant was born in Northern Ireland;
 - (iii) the applicant was convicted in Northern Ireland at any time;
 - (iv) that Service has indicated on central records or the Interim Police Local Cross Reference Database that it holds non-conviction information relating to the applicant; or
 - (v) the Scottish Ministers have reason to believe that it holds non-conviction information relating to the applicant;

(a) 1974 c.53.

(b) By virtue of section 113B(9), “central records” has the same meaning as in section 113A.

- (c) the Royal Navy Police, the Royal Military Police or the Royal Air Force Police (together known as “the Service Police”), as the case may be, if—
 - (i) the applicant is serving or has served in any of the naval, military or air forces of the Crown, including reserve forces, over which the Service Police exercise jurisdiction;
 - (ii) the applicant resides or has resided in an establishment operated by any of those forces; or
 - (iii) any one of the Service Police has indicated on central records or the Interim Police Local Cross Reference Database that it holds non-conviction information relating to the applicant;
- (d) the Ministry of Defence Police, the British Transport Police or the Civil Nuclear Constabulary (together known as “the specialist police forces”) if any one of the specialist police forces has indicated on central records or the Interim Police Local Cross Reference Database that it holds non-conviction information relating to the applicant;
- (e) the States of Jersey Police Force if—
 - (i) the applicant resides or has resided within the period of 5 years preceding the date of the application on the Island of Jersey;
 - (ii) the applicant was born on the Island of Jersey;
 - (iii) the applicant was convicted on the Island of Jersey at any time; or
 - (iv) that Force has indicated on central records or the Interim Police Local Cross Reference Database that it holds non-conviction information relating to the applicant;
- (f) the salaried police force of the Island of Guernsey if—
 - (i) the applicant resides or has resided within the period of 5 years preceding the date of the application on the Island of Guernsey;
 - (ii) the applicant was born on the Island of Guernsey;
 - (iii) the applicant was convicted on the Island of Guernsey at any time; or
 - (iv) that force has indicated on central records or the Interim Police Local Cross Reference Database that it holds non-conviction information relating to the applicant;
- (g) the Isle of Man Constabulary if—
 - (i) the applicant resides or has resided within the period of 5 years preceding the date of the application on the Isle of Man;
 - (ii) the applicant was born on the Isle of Man;
 - (iii) the applicant was convicted on the Isle of Man at any time; or
 - (iv) that Constabulary has indicated on central records or the Interim Police Local Cross Reference Database that it holds non-conviction information relating to the applicant;
- (h) the Serious Organised Crime Agency;
- (i) the Garda Síochána if—
 - (i) the applicant resides or has resided within the period of 5 years preceding the date of the application in the Republic of Ireland; or
 - (ii) the applicant was born in the Republic of Ireland;
- (j) the Scottish Crime and Drug Enforcement Agency if the Agency has indicated on central records that it holds non-conviction information relating to the applicant;
- (k) the Child Exploitation and Online Protection Centre; and
- (l) such other police force as the chief officer of police of a police force identified as a relevant police force by virtue of paragraph (a) to (k) determines.

(2) In paragraph (1)(l), “police force” has the meaning given in section 126(1) as read with section 113B(10) and (11).

Enhanced criminal record certificates – prescribed purpose

9.—(1) For the purposes of section 113B(2)(b), an enhanced criminal record certificate can be required for the purposes of an exempted question asked—

- (a) for a purpose relating to any of the matters set out in paragraph (2); or
- (b) in relation to an individual to whom paragraph (3) relates.

(2) The matters referred to in paragraph (1)(a) are—

- (a) obtaining or holding an operating licence under Part 5 of the Gambling Act 2005(a) for the purposes of that Act;
- (b) obtaining or holding a personal licence under Part 6 of the Gambling Act 2005 for the purposes of that Act;
- (c) a licence under section 5 or 6 of the National Lottery etc. Act 1993(b) (running or promoting lotteries);
- (d) a licence under the Private Security Industry Act 2001(c) to engage in any such licensable conduct (within the meaning of that Act) as will or may involve, or relate to, activities to which paragraph 8 of Schedule 2 to that Act applies (door supervisors etc. for public houses and clubs and compatible venues).

(3) The individuals referred to in paragraph (1)(b) are—

- (a) an individual who is a director of a body corporate, or a partner of a partnership, included or seeking inclusion in any list, prepared for the purposes of Part II of the National Health Service (Scotland) Act 1978(d);
- (b) an individual appointed or seeking appointment as a prosecutor, as defined by section 307(1) of the Criminal Procedure (Scotland) Act 1995(e), or as an officer to assist a prosecutor or to assist in the work of the Crown Office;
- (c) an individual appointed or seeking appointment—
 - (i) to any office, employment or work which is concerned with the administration of, or is otherwise normally carried out wholly or partly within the precincts of a prison, remand centre, young offenders institution, detention centre or removal centre;
 - (ii) as a member of a visiting committee for prisons appointed under rules made under section 39 of the Prisons (Scotland) Act 1989(f); or
 - (iii) as a member of a visiting committee for remand centres and young offenders institutions appointed under section 19(3) of the Prisons (Scotland) Act 1989.

Enhanced criminal record certificates – prescribed purpose and suitability information relating to children

10.—(1) For the purposes of section 113B(2)(b) an enhanced criminal record certificate can be required for the purposes of an exempted question asked in relation to a matter or an individual to which paragraph (2) relates and those matters and individuals to which paragraph (2) relates are also prescribed cases for the purposes of section 113CA(1).

(a) 2005 c.19.
(b) 1993 c.39.
(c) 2001 c.12.
(d) 1978 c.29.
(e) 1995 c.46.
(f) 1989 c. 45.

- (2) The individuals referred to in paragraph (1) are—
- (a) an individual seeking appointment as a member of an adoption panel or joint adoption panel under regulation 3 or 5 of the Adoption Agencies (Scotland) Regulations 2009(a);
 - (b) an individual seeking appointment as a member of a fostering panel or joint fostering panel under regulation 17 or 19 of the Looked After Children (Scotland) Regulations 2009(b);
 - (c) an individual appointed or seeking appointment as the Principal Reporter under section 128(4) of the Local Government etc. (Scotland) Act 1994(c) or under section 128(5) of that Act of 2004 as an officer to assist the Principal Reporter;
 - (d) an individual appointed or seeking appointment to a panel established by virtue of section 101(1) of the Children (Scotland) Act 1995(d) (panels for curators ad litem, reporting officers and safeguarders);
 - (e) an individual being assessed by an adoption agency as to their suitability to adopt a child (this sub-paragraph and sub-paragraph (f) being construed in accordance with sections 1 and 119(1) and (2) of the Adoption and Children (Scotland) Act 2007(e));
 - (f) an individual over the age of 16 residing in the same household as an individual being assessed by an adoption agency as to their suitability to adopt a child;
 - (g) proceedings before the Court of Session or the sheriff in respect of a guardianship order made under section 11 of the Children (Scotland) Act 1995;
 - (h) an individual over the age of 16 who—
 - (i) resides on the same premises as an individual being assessed as to their suitability to be a childminder within the meaning of section 2(17) of the Regulation of Care (Scotland) Act 2001(f) where the child minding normally takes place on those premises; or
 - (ii) regularly works on those premises at a time when the child minding takes place;
 - (i) an individual over the age of 16 residing in the same household as an individual being assessed as to their suitability to be a foster carer within the meaning of section 96 of the Protection of Vulnerable Groups (Scotland) Act 2007(g);
 - (j) an individual over the age of 16 residing in the same household as an individual being assessed as to their suitability to be a host parent within the meaning of paragraph 11A of schedule 2 to the Protection of Vulnerable Groups (Scotland) Act 2007.

Suitability information relating to children: prescribed details

11. For the purposes of section 113CA(2)(b) the prescribed details of the circumstances in which the applicant became barred are the details of the list under which the applicant is barred from regulated work with children.

Enhanced criminal record certificates – prescribed purpose and suitability information relating to protected adults

12.—(1) For the purposes of section 113B(2)(b) an enhanced criminal record certificate can be required for the purposes of an exempted question asked in relation to a matter or an individual to which paragraph (2) relates and those matters and individuals to which paragraph (2) relates are also prescribed cases for the purposes of section 113CB(1).

(a) S.S.I. 2009/154.
 (b) S.S.I. 2009/210.
 (c) 1994 c.39.
 (d) 1995 c.36.
 (e) 2007 asp 4.
 (f) 2001 asp 8.
 (g) 2007 asp 14.

- (2) The matters or individuals referred to in paragraph (1) are—
- (a) proceedings before the sheriff under section 20 of Adults with Incapacity (Scotland) Act 2000(a);
 - (b) proceedings before the Public Guardian or the sheriff under Part 3 of that Act; or
 - (c) proceedings before the sheriff in respect of intervention orders or guardianship orders within the meaning of that Act.

Suitability information relating to protected adults: prescribed details

13. For the purposes of section 113CB(2)(b) the prescribed details of the circumstances in which the applicant became barred are the details of the list under which the applicant is barred from regulated work with adults.

Evidence of identity: fingerprinting

14.—(1) All police stations in the United Kingdom are prescribed as places at which fingerprints may be taken for the purposes of section 118(2)(a).

(2) Where the Scottish Ministers under section 118(2B)(b) require an application under Part 5 to be supported by evidence of identity in the form of fingerprints, they must notify the applicant of this requirement and of the procedures set out in paragraphs (3) to (7) which are prescribed as the manner in which fingerprints may be taken for the purposes of section 118(2)(a).

(3) An applicant in receipt of notification in accordance with paragraph (2) who wishes to proceed with the application must inform the Scottish Ministers in writing within the period specified in paragraph (4)—

- (a) where the applicant is—
 - (i) aged 16 years or over, that the applicant consents to the taking of their fingerprints; or
 - (ii) under the age of 16 years, that the applicant and the responsible person consents to the taking of the applicant's fingerprints; and
- (b) of the police station in the United Kingdom (“the nominated police station”) at which the applicant proposes to attend for the purpose of having their fingerprints taken.

(4) Where the information required under paragraph (3) is not received by the Scottish Ministers within the period of 28 days from the date of the notification under paragraph (2), the application will be considered to have been withdrawn.

(5) The Scottish Ministers may, in such circumstances as they consider appropriate, specify another police station (“the specified police station”) in place of the nominated police station.

(6) Any constable of the nominated police station, or of the specified police station, may take the applicant's fingerprints at the nominated police station, or at the specified police station, on such reasonable date and at such reasonable time notified to the applicant.

(7) In this regulation “responsible person” means—

- (a) a person having, in relation to the applicant, parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995(c)) or parental rights (within the meaning of section 2(4) of that Act);
- (b) in England and Wales the applicant's parent, guardian or other person having parental responsibility for the applicant within the meaning of section 3 of the Children Act 1989(d); or

(a) 2000 asp 4.

(b) Section 118(2B) was inserted into the Act by paragraph 34 of schedule 4 to the 2007 Act.

(c) 1995 c.36.

(d) 1989 c.41.

- (c) in Northern Ireland, a person having, in relation to the applicant, parental responsibilities (within the meaning of article 6 of the Children (Northern Ireland) Order 1995(a)).

Evidence of identity: obtaining data

15. The following persons are prescribed for the purposes of section 118(2A)(e)—

- (a) the General Register Office for Scotland; and
- (b) the UK Border Agency.

Appropriate bodies to pay fee for information provided to the Scottish Ministers

16.—(1) For the purposes of section 113B(5A), the following bodies are prescribed as bodies to whom Scottish Ministers must pay such fee as is appropriate—

- (a) the Home Affairs Committee for the States of Jersey Police Force;
- (b) the Home Department for the salaried police force of the Island of Guernsey;
- (c) the Department of Home Affairs for the Isle of Man Constabulary; and
- (d) the Department of Justice, Equality and Law Reform of the Government of Ireland for the Garda Síochána.

(2) For the purposes of section 119(7)(b) the reference to the appropriate police authority in section 119(3) must be construed as a reference to the following—

- (a) the Provost Marshal for the Royal Navy Police;
- (b) the Provost Marshal for the Royal Military Police;
- (c) the Provost Marshal for the Royal Air Force Police;
- (d) the Ministry of Defence Police Committee for the Ministry of Defence Police;
- (e) the British Transport Police Authority for the British Transport Police;
- (f) the Civil Nuclear Police Authority for the Civil Nuclear Constabulary;
- (g) the Board of the Serious Organised Crime Agency; and
- (h) the Scottish Police Services Authority for the Scottish Crime and Drug Enforcement Agency.

Revocation

17. The following Regulations are revoked—

- (a) the Police Act 1997 (Criminal Records) (Scotland) Regulations 2006(c);
- (b) the Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2007(d);
- (c) the Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2008(e);
- (d) the Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2009(f); and

(a) S.I. 1995/755 (N.I. 2)

(b) Section 119(7) is inserted by the Serious Organised Crime and Police Act 2005, section 165(1)(b).

(c) S.S.I. 2006/96.

(d) S.S.I. 2007/112.

(e) S.S.I. 2008/6. S.S.I. 2006/96 was also amended by S.S.I. 2006/521 which was made in exercise of the powers conferred by section 112(1)(a), 113A(1)(a), 113B(1)(a), 114(1)(a) and 116(1)(a) of the 1997 Act. All these powers were repealed by section 79(1) of the 2007 Act, commenced on 11th January 2008 by S.S.I. 2007/564.

(f) S.S.I. 2009/40.

(e) the Police Act 1997 (Criminal Records) (Scotland) Amendment (No. 2) Regulations 2009^(a).

St Andrew's House,
Edinburgh
28th April 2010

ADAM INGRAM
Authorised to sign by the Scottish Ministers

^(a) S.S.I. 2009/216.

SCHEDULE

Preamble

Enabling Powers

These Regulations are made under the following provisions of the Police Act 1997 as read with section 126(3)(a) of that Act—

- (a) sections 113B(9) and 125(5); and
- (b) having regard to the meaning of “prescribed” in section 125(1) and section 126(1), sections 112(1)(b), 112(2)(a), 112(3), 113A(1)(b), 113A(3)(a), 113A(6), 113A(6)(c), 113B(1)(b), 113B(2)(b), 113B(3)(a), 113B(5A), 113B(9), 113B(11)(c), 113CA(1), 113CA(2)(b), 113CB(1), 113CB(2)(b), 114(1)(b), 116(1)(b), 118(2)(a), 118(2A)(e) and 119(7).

(a) By virtue of section 126(3) and (4) of the 1997 Act, as inserted by section 166(2) of the Serious Organised Crime and Police Act 2005 (c.15), in the application of Part 5 of the 1997 Act to Scotland references to the Secretary of State must be construed as references to the Scottish Ministers (except in section 118(2A)(d) or 124A(1) and (2) of the 1997 Act).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make detailed provision in relation to applications for criminal conviction certificates, criminal record certificates and enhanced criminal record certificates under Part 5 of the Police Act 1997 (“the 1997 Act”).

Regulation 3 prescribes that the fee for an application for a criminal conviction certificate, a criminal record certificate or an enhanced criminal record certificate is £25, and prescribes the manner in which payment of the fee may be made. (The fee is increased from £23 prescribed under Regulations which are revoked by regulation 11.)

Regulation 4 prescribes the details of convictions which appear on criminal conviction certificates.

Regulation 5 prescribes the sources of information comprising central records for the purposes of certificates under Part 5 of the 1997 Act.

Regulation 6 prescribes the details of convictions and cautions which appear on criminal record certificates and enhanced criminal record certificates.

Regulation 7 prescribes the Scottish Crime and Drug Enforcement Agency and the Child Exploitation and Online Protection Centre as police forces for the purposes of section 113B(1)(c) of the 1997 Act, which concerns enhanced criminal record certificates.

Regulation 8 defines “relevant police force” for the purposes of applications for enhanced criminal record certificates.

Regulation 9 prescribes the purposes for which an enhanced criminal record certificate can be required.

Regulation 10 prescribes the purposes for which an enhanced criminal record certificate can be required including suitability information relating to children.

Regulation 11 prescribes the details of suitability information relating to children.

Regulation 12 prescribes the purposes for which an enhanced criminal record certificate can be required including suitability information relating to protected adults.

Regulation 13 prescribes the details of suitability information relating to protected adults.

Regulation 14 makes provision in relation to the taking of fingerprints from applicants where the Scottish Ministers require them for the purposes of ascertaining the identity of an applicant.

Regulation 15 prescribes persons for the purposes of section 118(2A)(e) of the 1997 Act, which ensures that for the purpose of verifying identity the Scottish Ministers may obtain information from those persons.

Regulation 16 prescribes the bodies to which fees payable under section 113B(5A) or section 119(3) of the 1997 Act may be paid.

Regulation 17 revokes the Police Act 1997 (Criminal Records) (Scotland) Regulations 2006, the Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2007, the Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2008, the Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2009 and the Police Act 1997 (Criminal Records) (Scotland) Amendment (No. 2) Regulations 2009.

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