

PROTECTION OF FREEDOMS ACT 2012

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 5: Safeguarding vulnerable groups, criminal records etc.

Chapter 2 of Part 5: Criminal Records

Section 82: Enhanced criminal record certificates: additional safeguards

337. Under section 113B(4) of the 1997 Act an enhanced criminal record certificate may include, in addition to details of any convictions or cautions, other information which, in the opinion of a relevant chief officer of police might be relevant to an employer's decision on whether the applicant is suitable for the role concerned. *Subsection (1)* of section 82 (taken together with *subsection (3)*) makes two material changes to section 113B(4). First, it amends the test to be applied by a chief officer when determining whether additional, non-conviction information should be included in an enhanced criminal record certificate. In place of the current test of information which, in the opinion of the chief officer 'might be relevant' and ought to be included in the certificate, subsection (1) substitutes a higher test of information which the chief officer 'reasonably believes to be relevant' and which in the chief officer's opinion ought to be included in the certificate.
338. The second change to section 113B(4) affected by subsection (3) relates to the chief officer of police whom the Secretary of State is required to approach to ascertain whether he or she holds any relevant non-conviction information on the applicant for a certificate. At present, such an approach must be made to the chief officer of every relevant police force. A 'relevant police force' is defined in Regulation 10 of the Police Act 1997 (Criminal Records) Regulations 2002 ([SI 2002 233](#) as amended) as any police force which holds information about the applicant (whether conviction or non-conviction information); there may be two or more such police forces which will independently come to a decision about what, if any, non-conviction information about the applicant might be relevant and ought to be included in the enhanced criminal records certificate. By virtue of the amendments to section 113B(4) and (9) made by *subsection (1)(a)* and subsection (3) the Secretary of State will be able to approach any 'relevant chief officer'; in this way one chief officer can be assigned to take a decision on the disclosure of non-conviction information held by any number of police forces. It would be open to the Secretary of State to appoint one chief officer to act as the relevant chief officer in respect of all applications for enhanced criminal record certificates or to appoint a small number of chief officers, for example, one per region, to undertake the role on behalf of all forces.
339. *Subsection (2)* inserts a new subsection (4A) into section 113B of the 1997 Act. New section 113B(4A) enables the Secretary of State to issue guidance to relevant chief officers about the discharge of their functions under section 113B(4) to provide

*These notes refer to the Protection of Freedoms Act
2012 (c.9) which received Royal Assent on 1 May 2012*

relevant non-conviction information about an applicant for an enhanced criminal record certificate; a relevant chief officer is required to have regard to any such guidance.

340. Under section 117 of the 1997 Act, an applicant in receipt of a criminal conviction certificate, criminal record certificate or enhanced criminal record certificate who disputes the accuracy of the information contained in such a certificate may make an application in writing to the Secretary of State for a new certificate. The Secretary of State may consider the application and, if of the opinion that the information is inaccurate, will issue a new certificate. *Subsection (4)* of section 82 inserts new subsection (1A) into section 117, which allows parties other than the applicant to make such an application, which must also be in writing.
341. *Subsection (5)* inserts new section 117A into the 1997 Act, which provides that a dispute can be raised in relation to an enhanced criminal record certificate in relation to the non-conviction information supplied by a relevant chief officer. The person may apply to the independent monitor (appointed under section 119B of the 1997 Act) to determine whether that information is relevant or ought to be included in the certificate. The independent monitor must ask an appropriate chief officer of police to review whether the information concerned is relevant and ought to be included on the certificate. If, following that review, the independent monitor decides that the information either is not relevant or should not be included in the certificate, the independent monitor must inform the Secretary of State, who must issue a new certificate which excludes that information. In exercising their review functions, both the chief officer and the independent monitor must have regard to the guidance published by the Secretary of State under section 113B(4A) of the 1997 Act.