
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 12th October 2009, amend the purposes for which an application for an enhanced criminal records certificate can be made under section 113B of the Police Act 1997 (“the Act”). The Regulations also prescribe the cases in which those persons making such an application may receive suitability information in respect of children (under section 113BA of the Act) or vulnerable adults (under section 113BB of the Act).

Regulation 3 amends regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002 (“the 2002 Regulations”) to extend the purposes for which an application under section 113B of the Act can be made. The new purposes firstly facilitate the Vetting and Barring Scheme, established under the Safeguarding Vulnerable Groups Act 2006, in which the Independent Safeguarding Authority⁽¹⁾ takes the decision as to whether any particular individual should be barred from engaging in a regulated activity relating to children and/or vulnerable adults, which in brief involves regular contact with children or vulnerable adults. Therefore any activity which is a regulated activity, relating to either children or vulnerable adults, is prescribed for the purposes of applications under section 113B of the Act.

Regulations 5A(g) and 5A(ga) of the 2002 Regulations are amended in order to clarify that they include persons living or working on premises at which childcare is to be carried out. In a similar manner, regulation 5A(j) is amended to clarify that it includes persons living in the same household as a foster parent and regulation 5A(k) is amended to clarify that it includes persons living in the same households as adoptive parents.

Paragraphs (l), (m), (n), (o), (s), (t) and (w) of regulation 5A of the 2002 Regulations are omitted as the positions that they covered will now fall within the definition of a regulated activity. Regulation 5A(v) is amended to reflect the position that some of those positions will now fall within the definition of a regulated activity.

There are three new purposes for which an application under section 113B can be made – considering the suitability of a person to become a registered immigration advisor, considering the suitability of a person to obtain or retain a drugs licence and considering the suitability of a person to work in the Criminal Records Bureau.

Regulation 4 revokes regulations 5B, 5C, 6, 7, 8, and 8A of the 2002 Regulations. This is because amendments made as a result of the commencement of the Vetting and Barring Scheme mean that regulations 6, 7 and 8 are no longer necessary. Regulations 5B, 5C and 8A are no longer necessary as they were concerned with what now is defined as a regulated activity.

Regulation 5 prescribes the cases in which suitability information in relation to children must be included in an enhanced criminal records certificate. Suitability information includes, as listed in section 113BA of the Act, information as to whether the individual is barred from engaging in regulated activity relating to children or is subject to monitoring in relation to such regulated activity. The cases are prescribed with reference to the purposes prescribed under regulation 5A of the 2002 Regulations and are as follows: regulated activity relating to children, other positions involving regularly caring, training, supervising or being solely in charge of children, childminding and other forms of childcare (including those working or living on the premises), registration under Part II of the Care Standards Act 2000, foster and adoptive parents (including those living in the same

(1) The Independent Barring Board was established by section 1 of the Safeguarding Vulnerable Groups Act 2006, but it is commonly known by the name “Independent Safeguarding Authority”.

Changes to legislation: There are currently no known outstanding effects for the The Police Act 1997 (Criminal Records) (No. 2) Regulations 2009. (See end of Document for details)

household), working in the Department for Children, Schools and Families, the Office for Standards in Education, Children's Services and Skills or in the Government Offices for the English Regions with access to sensitive or personal information about children or vulnerable adults, work involving the establishment or operation of a database under section 12 of the Children Act 2004 and work in the Criminal Records Bureau.

Regulation 6 prescribes the cases in which suitability information in relation to vulnerable adults must be provided on an enhanced criminal records certificate. Suitability information includes, as listed in section 113BB of the Act, information as to whether the individual is barred from engaging in regulated activity in relation to vulnerable adults or is subject to monitoring in relation to such regulated activity. The cases are prescribed with reference to the purposes prescribed under regulation 5A of the 2002 regulations and are as follows: regulated activity relating to vulnerable adults, other positions involving regularly caring, training, supervising or being solely in charge of vulnerable adults, providing advocacy or other representation services for vulnerable adults, registration under Part II of the Care Standards Act, working in the Department for Children, Schools and Families, the Office for Standards in Education, Children's services and Skills or in the Government Offices for the English Regions with access to sensitive or personal information about children or vulnerable adults, working for the Commissioner for Older People in Wales and work in the Criminal Records Bureau.

Regulation 7 revokes the Police Act 1997 (Enhanced Criminal Record Certificates) (Protection of Vulnerable Adults) Regulations 2002 as these are no longer necessary now that the 2002 Regulations are using the definition of vulnerable adults in the Safeguarding Vulnerable Groups Act.

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