

2009 No. 203

POLICE, ENGLAND AND WALES

The Police Act 1997 (Criminal Records) (Electronic Communications) Order 2009

<i>Made</i> - - - -	<i>5th February 2009</i>
<i>Laid before Parliament</i>	<i>9th February 2009</i>
<i>Coming into force</i> - -	<i>2nd March 2009</i>

The Secretary of State, considering that the authorisation of the use of electronic communications by this Order for any purpose is such that the extent (if any) to which records of things done for that purpose will be available will be no less satisfactory in cases where use is made of electronic communications than in other cases, makes the following Order in exercise of the power conferred by section 8 of the Electronic Communications Act 2000(a).

Citation, commencement and extent

1.—(1) This Order may be cited as the Police Act 1997 (Criminal Records) (Electronic Communications) Order 2009 and shall come into force on 2nd March 2009.

(2) This Order shall extend to England and Wales only.

Amendments to the Police Act 1997

2. The Police Act 1997(b) is amended as follows.

3.—(1) Section 113A (criminal record certificates) is amended as follows.

(2) After subsection (2) insert—

“(2A) But an application for a criminal record certificate need not be countersigned by a registered person if—

- (a) the application is transmitted to the Secretary of State electronically by a registered person who satisfies conditions determined by the Secretary of State, and
- (b) it is transmitted in accordance with requirements determined by the Secretary of State.”

(3) In subsection (4) for “the registered person who countersigned” substitute “whoever acted as the registered person in relation to”.

(4) After subsection (8) insert—

(a) 2000 c. 7.
(b) 1997 c. 50; sections 113A and 113B were inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15); section 113A is prospectively amended by section 63(1) of, and paragraph 14(2) of Schedule 9 to, the Safeguarding Vulnerable Groups Act 2006 (c. 47); section 120A was inserted by section 134(1) of the Criminal Justice and Police Act 2001 (c. 16); sections 120ZA, 120AA and 120AB were inserted by section 328 of, and paragraphs 1, 7 and 9 to, the Criminal Justice Act 2003 (c. 44).

“(9) For the purposes of this Part a person acts as the registered person in relation to an application for a criminal record certificate if the person—

- (a) countersigns the application, or
- (b) transmits the application to the Secretary of State under subsection (2A).”

4.—(1) Section 113B (enhanced criminal record certificates) is amended as follows.

(2) After subsection (2) insert—

“(2A) But an application for an enhanced criminal record certificate need not be countersigned by a registered person if—

- (a) the application is transmitted to the Secretary of State electronically by a registered person who satisfies conditions determined by the Secretary of State, and
- (b) it is transmitted in accordance with requirements determined by the Secretary of State.”

(3) In subsection (6) for “the registered person who countersigned” substitute “whoever acted as the registered person in relation to”.

(4) After subsection (11) insert—

“(12) For the purposes of this Part a person acts as the registered person in relation to an application for an enhanced criminal record certificate if the person—

- (a) countersigns the application, or
- (b) transmits the application to the Secretary of State under subsection (2A).”

5. In section 120(5)(b) (requirements for bodies applying for registration) for “countersign” substitute “act as the registered person in relation to”.

6.—(1) Section 120ZA (regulations about registration) is amended as follows.

(2) In subsection (2)(d) after “this Part” insert “or the transmitting of applications under section 113A(2A) or 113B(2A)”.

(3) In subsection (4)—

- (a) in paragraph (a) for “he countersigns” substitute “acting as the registered person in relation to”, and
- (b) in paragraph (b) for “registered person who countersigns it” substitute “person who acts as the registered person in relation to the application”.

7. In section 120A(4) (provision of information about suitability of registered persons)—

- (a) in paragraph (b)(iii) for “the countersigning of applications by a particular applicant for registration or by a particular registered person” substitute “a particular applicant for registration, or a particular registered person, acting as the registered person in relation to applications under this Part”, and
- (b) in paragraph (c) for “the countersigning of” substitute “a person acting as the registered person in relation to”.

8.—(1) Section 120AA (refusal, cancellation or suspension of registration on other grounds) is amended as follows.

(2) In subsection (1) for “countersign” substitute “act as the registered person in relation to”.

(3) In subsection (2)—

- (a) in paragraph (a) for “countersign” substitute “act as the registered person in relation to”, and
- (b) in paragraph (b) for “countersigned” substitute “acted as the registered person in relation to”.

9. In section 120AB(8) (exception from procedure for cancellation or suspension) for “countersigning” substitute “acting as the registered person in relation to”.

10. In section 122(3) (code of practice)—

- (a) for “registered person who countersigned” (both as enacted and as substituted by the Safeguarding Vulnerable Groups Act 2006) substitute “person who acted as the registered person in relation to”, and
- (b) in paragraph (b) for “countersigned” substitute “acted as the registered person”.

11.—(1) Section 124 (offences: disclosure) is amended as follows.

(2) In subsection (1)(b) and (c) for “countersigned” substitute “acted as the registered person in relation to”.

(3) In subsection (2) for “countersigned” substitute “in relation to which the person who acted as the registered person did so”.

(4) In subsection (3) for “countersigned by or at the request of an individual” substitute “in relation to which an individual acted as the registered person, or in relation to which the person who acted as the registered person did so at the request of an individual”.

Amendments to the Safeguarding Vulnerable Groups Act 2006

12. The Safeguarding Vulnerable Groups Act 2006(a) is amended as follows.

13.—(1) Section 15 (education establishments and office holders: checks) is amended as follows.

(2) In subsection (3) for paragraph (b) substitute—

“(b) the person who acted as the registered person in relation to the application for the certificate did so on behalf of P.”

(3) In subsection (6) for paragraphs (a) and (b) substitute—

- “(a) P acted as the registered person in relation to the application for the certificate, or
- (b) the person who acted as the registered person in relation to the application did so on behalf of P.”

(4) After subsection (7) insert—

“(8) References in this section to a person acting as the registered person in relation to an application for an enhanced criminal record certificate must be construed in accordance with section 113B(12) of the Police Act 1997.”

14.—(1) Schedule 5 (appropriate verification) is amended as follows.

(2) In paragraph 2(1) for paragraph (b) substitute—

“(b) the person who acted as the registered person in relation to the application for the certificate did so on behalf of the regulated activity provider.”

(3) In paragraph 12 for paragraphs (a) and (b) substitute—

- “(a) the regulated activity provider or personnel supplier acted as the registered person in relation to the application for the certificate, or
- (b) the person who acted as the registered person in relation to the application did so on behalf of the regulated activity provider or personnel supplier.”

(4) After paragraph 12 insert—

“**12A.** References in this Schedule to a person acting as the registered person in relation to an application for an enhanced criminal record certificate must be construed in accordance with section 113B(12) of the Police Act 1997.”

15.—(1) Paragraph 2 of Schedule 6 (employment businesses: failure to check) is amended as follows.

(a) 2006 c. 47.

- (2) In sub-paragraph (3) for paragraphs (a) and (b) substitute—
- “(a) P acted as the registered person in relation to the application for the certificate, or
 - (b) the person who acted as the registered person in relation to the application did so on behalf of P.”
- (3) After sub-paragraph (3) insert—
- “(3A) References in sub-paragraph (3) to a person acting as the registered person in relation to an application for an enhanced criminal record certificate must be construed in accordance with section 113B(12) of the Police Act 1997.”

Amendment to the Police Act 1997 (Criminal Records) (Registration) Regulations 2006

16. The Police Act 1997 (Criminal Records) (Registration) Regulations 2006(a) are amended as follows.

17. In regulation 3(1)—
- (a) in sub-paragraph (e)(i) after “under section 113A or 113B” insert “or transmit applications under section 113A(2A) or 113B(2A)”;
 - (b) in sub-paragraph (f)(i) after “in relation to the countersigning” insert “or the transmission”.
18. In regulation 4(1) after “in relation to the countersigning” insert “or the transmission”.
19. In regulation 7(1) for “countersigned by the registered person” substitute “in relation to which the registered person has acted as a registered person”.
20. In regulation 10(1) after “countersign” insert “or transmit”.

Prescribed form of applications

21.—(1) An application to which the following paragraph applies shall be treated as having been made in the form prescribed for the purposes of section 113A(1)(a) or 113B(1)(a) of the Police Act 1997.

- (2) This paragraph applies to an application if—
- (a) it includes the information required to be included in the form so prescribed; and
 - (b) it is transmitted to the Secretary of State under sections 113A(2A) or 113B(2A) (as the case may be).

Home Office
5th February 2009

Meg Hillier
Parliamentary Under-Secretary of State

(a) S.I. 2006/750.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which comes into force on 2nd March 2009, amends Part V of the Police Act 1997 and makes consequential amendments to the Safeguarding Vulnerable Groups Act 2006 in respect of applications made to the Secretary of State for a criminal records certificate or an enhanced criminal records certificate.

Regulations 3 and 4 insert new provisions into sections 113A and 113B of the Police Act 1997 which have the effect that an application made under those sections need not be countersigned if the application is submitted electronically in accordance with conditions and requirements determined by the Secretary of State. Regulation 21 provides that any application submitted electronically under these new provisions is deemed to have been made in the prescribed form.

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STATUTORY INSTRUMENTS

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£4.00