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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Police Act 1997 (Criminal Records) (Guernsey) Order 2009 (S.I. 2009/765) (“the 2009 Order”) by extending provisions of the Protection of Freedoms Act 2012 (c. 9) (“the 2012 Act”) to Guernsey, subject to the modifications specified in Schedules 1 to 5.

The 2009 Order extended Part 5 of the Police Act 1997 (c. 50) (“the 1997 Act”) to Guernsey subject to modifications. It also extended to Guernsey provisions of the Armed Forces Act 2006 (c. 52) and the Safeguarding Vulnerable Groups Act 2006 (c. 47) (“the 2006 Act”) that contained amendments to Part 5, subject to modifications. Part 5 made provision for the Secretary of State to issue three levels of certificate – a criminal conviction certificate (section 112), a criminal record certificate (section 113A) and an enhanced criminal record certificate (section 113B).

Article 3 directly amends the 2009 Order to remove references to the transitional periods and related modifications to the 1997 Act due to the decision of the Home Office not to implement the Vetting and Barring Scheme in England and Wales as originally intended. This Article also permits the coming into force of article 4(2)(d) of the 2009 Order (the extension of the repeal of section 113E of the 1997 Act) by order of the Home Department of the States of Guernsey (“the Home Department”) and amends the definitions of “caution”, “chief officer” and “police force” in section 120 of the 1997 Act as extended to Guernsey.

The 2012 Act amends the 1997 Act in accordance with the recommendations of the Mason Review “A Common Sense Approach” (Home Office, 2011). Article 4 gives effect to the Schedules which contain the amending provisions found in the 2012 Act.

Section 79 modifies sections 113A and 113B to remove the requirement that the Secretary of State, acting through the Criminal Records Bureau (“the CRB”), must send specified information to the registered body in addition to the applicant. This will permit an applicant to make appropriate representations to the CRB regarding any information or the contents of a certificate which the applicant disputes.

A minimum age of 16 is set by section 80 for an applicant requesting a certificate under sections 112, 113A, 113B, 114 and 116 of the 1997 Act.

Additional safeguards are inserted into section 113B by section 82 which substitutes a higher test of disclosure in respect of non-conviction information which should be disclosed in enhanced criminal records certificates and requires the CRB to ask the Chief Officer of Guernsey Police to decide whether information held in Guernsey should be disclosed. Section 117 of the 1997 Act is also amended to allow an applicant for a certificate, or other person, who disputes the accuracy of information contained in that certificate to make written representations to the Secretary of State for a new certificate and section 117A is inserted to permit an applicant to dispute non-conviction information disclosed by a relevant chief officer by way of application to the independent monitor appointed under section 119B.

Section 83 inserts section 116A into the 1997 Act, which introduces a procedure for updating certificates on a continuous basis. Where a person applies for a certificate, that applicant may subscribe to updating arrangements on an annual basis on payment of an annual fee. In response to a request for “up-date information”, the CRB will advise the applicant, or any other person authorised to request an update, either that there is no new information that should be included or that a new certificate should be applied for. The Home Department is also given a power to require an applicant

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to give their fingerprints to verify their identity against the identity of a person in respect of whom the Secretary of State has been provided information.

Section 112 of the 1997 Act is amended by section 84 to provide that a criminal conviction certificate must also include details of any unspent conditional cautions, which were introduced in the Criminal Justice Act 2003 (c.44).

Access to the Disclosure and Barring Service (“the DBS”) is also facilitated by sections 87 to 89 of the 2012 Act, which permit the transfer of functions to the DBS and the dissolution of the Independent Safeguarding Authority.

An informal Keeling Schedule setting out the provisions of the 2012 Act as they extend to Guernsey is published on the Ministry of Justice website to assist the reader at [www.justice.gov.uk](http://www.justice.gov.uk).