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2015 CHAPTER 9

PART 5

CRIMINAL RECORDS

Restriction on information provided to certain persons

37.—(1) The following provisions are repealed—

- (a) section 101 of the Justice Act (Northern Ireland) 2011 (which, if commenced, would insert section 112(2A) into the Police Act 1997 requiring copies of certain criminal conviction certificates to be given to employers etc.);
- (b) section 113A(4) of the Police Act 1997 (requirement to send copy of criminal record certificate to registered person); and
- (c) section 113B(5) and (6) of that Act (requirement to give relevant information, and copy of enhanced criminal record certificate to registered person).

(2) After section 120AB of the Police Act 1997 (procedure for certain cancellations or suspensions of registration) insert—

“120AC Registered persons: information on progress of an application

(1) The Department must, in response to a request from a person who is acting as the registered person in relation to an application under section 113A or 113B, inform that person whether or not a certificate has been issued in response to the application.

(2) Subsections (3) and (4) apply if, at the time a request is made under subsection (1), a certificate has been issued.

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(3) In the case of a certificate under section 113A, if it was a certificate stating that there is no relevant matter recorded in central records, the Department may inform the person who made the request that the certificate was such a certificate.

(4) In the case of a certificate under section 113B, if it was a certificate—

(a) stating that there is no relevant matter recorded in central records and no information provided in accordance with subsection (4) of that section, and

(b) if section 113BA(1) or 113BB(1) applies to the certificate, containing no suitability information indicating that the person to whom the certificate is issued—

(i) is barred from regulated activity relating to children or to vulnerable adults, or

(ii) is included in a list kept under Article 70(2)(e)(iii) or 88A(2)(b)(iii) of the Education and Libraries (Northern Ireland) Order 1986,

the Department may inform the person who made the request that the certificate was such a certificate.

(5) If no certificate has been issued, the Department must inform the person who made the request of such other matters relating to the processing of the application as the Department considers appropriate.

(6) Subject to subsections (2) to (4), nothing in this section permits the Department to inform a person who is acting as the registered person in relation to an application under section 113A or 113B of the content of any certificate issued in response to the application.

(7) The Department may refuse a request under subsection (1) if it is made after the end of a prescribed period beginning with the day on which the certificate was issued.

(8) In this section—

“central records” and “relevant matter” have the same meaning as in section 113A;

“suitability information” means information required to be included in a certificate under section 113B by virtue of section 113BA or 113BB.

(9) Expressions in subsection (4)(b) and in the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 have the same meaning in that paragraph as in that Order.

120AD Registered persons: copies of certificates in certain circumstances

(1) Subsection (2) applies if—

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- (a) the Department gives up-date information in relation to a criminal record certificate or enhanced criminal record certificate,
 - (b) the up-date information is advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate, and
 - (c) the person whose certificate it is in respect of which the up-date information is given applies for a new criminal record certificate or (as the case may be) enhanced criminal record certificate.
- (2) The Department must, in response to a request made within the prescribed period by the person who is acting as the registered person in relation to the application, send to that person a copy of any certificate issued in response to the application if the registered person—
- (a) has counter-signed the application or transmitted it to the Department under section 113(2A) or 113B(2A),
 - (b) has informed the Department that the applicant for the new certificate has not, within such period as may be prescribed, sent a copy of it to a person of such description as may be prescribed, and
 - (c) no prescribed circumstances apply.
- (3) The power under subsection (2)(b) to prescribe a description of person may be exercised to describe the registered person or any other person.
- (4) In this section “up-date information” has the same meaning as in section 116A.”.

Commencement Information

I1 S. 37(1) in operation at 2.11.2015 by S.R. 2015/358, art. 2(a)

I2 S. 37(2) in operation at 2.11.2015 for specified purposes by S.R. 2015/358, art. 2(b)

Minimum age for applicants for certificates or to be registered

38.—(1) In sections 113A(1), 113B(1), 114(1) and 116(1) of the Police Act 1997 (applications for certificates), before the word “and” at the end of paragraph (a), insert—

“(aa) except in prescribed circumstances, is aged 16 or over at the time of making the application,”.

(2) After section 120(4) of that Act (registered persons) insert—

“(4A) An individual under the age of 18 applying for registration undersubsection (4)(b) or (c) must satisfy the Department that there is good reason for being registered.”.

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Commencement Information

I3 S. 38 in operation at 2.11.2015 by S.R. 2015/358, art. 2(c)

Additional grounds for refusing an application to be registered

39 After subsection (3) of section 120AA of the Police Act 1997 (refusal, etc. of registration on grounds not related to disclosure) insert—

“(4) Subsection (6) applies if an application is made under section 120 by an individual who—

- (a) has previously been a registered person; and
- (b) has been removed from the register (otherwise than at that individual's own request).

(5) Subsection (6) also applies if an application is made under section 120 by a body corporate or unincorporate which—

- (a) has previously been a registered person; and
- (b) has been removed from the register (otherwise than at its own request).

(6) The Department may refuse the application.”.

Commencement Information

I4 S. 39 in operation at 2.11.2015 by S.R. 2015/358, art. 2(d)

Enhanced criminal record certificates: additional safeguards

40.—(1) In subsection (4) of section 113B of the Police Act 1997 (enhanced criminal record certificates: requests by the Department to chief officers for information)—

- (a) for “the chief officer of every relevant police force” substitute “ any relevant chief officer ”,
- (b) omit “, in the chief officer's opinion”,
- (c) in paragraph (a), for “might” substitute “ the chief officer reasonably believes to ”, and
- (d) in paragraph (b), at the beginning insert “ in the chief officer's opinion, ”.

(2) After subsection (4) of that section of that Act insert—

“(4A) The Department may from time to time publish guidance to chief officers as to the exercise of functions under subsection (4); and in exercising functions under that subsection a relevant chief officer must have regard to any guidance for the time being published under this subsection.”.

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(3) In subsection (9) of that section of that Act—

(a) before the definition of “relevant police force” insert—

“relevant chief officer” means any chief officer of a police force who is identified by the Department for the purposes of making a request under subsection (4);”, and

(b) omit the definition of “relevant police force”.

(4) After section 117(1) of that Act (disputes about accuracy of certificates) insert—

“(1A) Where any person other than the applicant believes that the information contained in a certificate under any of sections 112 to 116 is inaccurate, that person may make an application in writing to the Department for a decision as to whether or not the information is inaccurate.”.

(5) After section 117 of that Act insert—

“117A Other disputes about section 113B(4) information

(1) Subsection (2) applies if a person believes that information provided in accordance with section 113B(4) and included in a certificate under section 113B or 116—

(a) is not relevant for the purpose described in the statement under section 113B(2) or (as the case may be) 116(2), or

(b) ought not to be included in the certificate.

(2) The person may apply in writing to the independent monitor appointed under section 119B for a decision as to whether the information is information which falls within subsection (1)(a) or (b).

(3) The independent monitor, on receiving such an application, must ask such chief officer of a police force as the independent monitor considers appropriate to review whether the information concerned is information which—

(a) the chief officer reasonably believes to be relevant for the purpose described in the statement under section 113B(2) or (as the case may be) 116(2), and

(b) in the chief officer's opinion, ought to be included in the certificate.

(4) In exercising functions under subsection (3), the chief officer concerned must have regard to any guidance for the time being published under section 113B(4A).

(5) If, following a review under subsection (3), the independent monitor considers that any of the information concerned is information which falls within subsection (1)(a) or (b)—

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(a) the independent monitor must inform the Department of that fact, and

(b) on being so informed, the Department must issue a new certificate.

(6) In issuing such a certificate, the Department must proceed as if the information which falls within subsection (1)(a) or (b) had not been provided under section 113B(4).

(7) In deciding for the purposes of this section whether information is information which falls within subsection (1)(a) or (b), the independent monitor must have regard to any guidance for the time being published under section 113B(4A).

(8) Subsections (10) and (11) of section 113B apply for the purposes of this section as they apply for the purposes of that section.”.

Commencement Information

I5 S. 40 in operation at 2.11.2015 by S.R. 2015/358, art. 2(e)

VALID FROM 01/03/2016

Review of criminal record certificates

41.—(1) The Police Act 1997 is amended as follows.

(2) After section 117A (inserted by section 40(5)) insert—

“117B Review of criminal record certificates

117B Schedule 8A (which provides for an independent review of certain criminal record certificates) has effect”.

(3) After Schedule 8 insert as Schedule 8A the Schedule set out in Schedule 4 to this Act.

PROSPECTIVE

Up-dating certificates

42 After section 116 of the Police Act 1997 (enhanced criminal record certificates: judicial appointments and Crown employment) insert—

“116A Up-dating certificates

(1) The Department must, on the request of a relevant person and subject to subsection (2), give up-date information to that person about—

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- (a) a criminal conviction certificate,
 - (b) a criminal record certificate, or
 - (c) an enhanced criminal record certificate,
- which is subject to up-date arrangements.
- (2) The Department may impose conditions about—
- (a) the information to be supplied in connection with such a request for the purpose of enabling the Department to decide whether the person is a relevant person,
 - (b) any other information to be supplied in connection with such a request.
- (3) For the purposes of subsection (1) a certificate is subject to up-date arrangements if condition A, B or C is met and the arrangements have not ceased to have effect in accordance with a notice given under section 118(3B).
- (4) Condition A is that—
- (a) the individual who applied for the certificate made an application at the same time, or within such period after making the application as may be prescribed, to the Department for the certificate to be subject to up-date arrangements,
 - (b) the individual has paid in the prescribed manner any prescribed fee,
 - (c) the Department has granted the application for the certificate to be subject to up-date arrangements, and
 - (d) the period of 12 months beginning with the date on which the grant comes into force has not expired.
- (5) Condition B is that—
- (a) the individual whose certificate it is has made an application to the Department to renew or (as the case may be) further renew unexpired up-date arrangements in relation to the certificate,
 - (b) the individual has paid in the prescribed manner any prescribed fee,
 - (c) the Department has granted the application,
 - (d) the grant has come into force on the expiry of the previous up-date arrangements, and
 - (e) the period of 12 months beginning with the date on which the grant has come into force has not expired.
- (6) Condition C is that—
- (a) the certificate was issued under section 117(2) or 117A(5)(b), and

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(b) the certificate which it superseded—

- (i) was subject to up-date arrangements immediately before it was superseded, and
- (ii) would still be subject to those arrangements had it not been superseded.

(7) The Department must not grant an application as mentioned in subsection (4)(c) or (5)(c) unless any fee prescribed under subsection (4)(b) or (as the case may be) (5)(b) has been paid in the manner so prescribed.

(8) The Department must not grant an application as mentioned in subsection (4)(c) or (5)(c) if—

- (a) the certificate in question is an enhanced criminal record certificate; and
- (b) the certificate contains (or would contain) information which relates to an individual other than the individual whose certificate it is.

(9) In this section “up-date information” means—

- (a) in relation to a criminal conviction certificate or a criminal record certificate—
 - (i) information that there is no information recorded in central records which would be included in a new certificate but is not included in the current certificate, or
 - (ii) advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate,
- (b) in relation to an enhanced criminal record certificate which includes suitability information relating to children or vulnerable adults—
 - (i) information that there is no information recorded in central records, no information of the kind mentioned in section 113B(4), and no information of the kind mentioned in section 113BA(2) or (as the case may be) 113BB(2), which would be included in a new certificate but is not included in the current certificate, or
 - (ii) advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate, and
- (c) in relation to any other enhanced criminal record certificate—
 - (i) information that there is no information recorded in central records, nor any information of the kind mentioned in section 113B(4), which would be included in a new certificate but is not included in the current certificate, or

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(ii) advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate.

(10) If up-date information is given under subsection (9)(a)(i), (9)(b)(i) or (9)(c)(i) and the certificate to which that information relates is one to which subsection (11) applies, the up-date information must include that fact.

(11) This subsection applies to a certificate which—

- (a) in the case of a criminal conviction certificate, states that there are no convictions of the applicant recorded in central records,
- (b) in the case of a criminal record certificate, is as described in section 120AC(3), and
- (c) in the case of an enhanced criminal record certificate, is as described in section 120AC(4).

(12) In this section—

“central records” has the same meaning as in section 113A,

“criminal record certificate” includes a certificate under section 114,

“enhanced criminal record certificate” includes a certificate under section 116,

“exempted question” has the same meaning as in section 113A,

“relevant person” means—

(a) in relation to a criminal conviction certificate—

- (i) the individual whose certificate it is, or
- (ii) any person authorised by the individual,

(b) in relation to a criminal record certificate—

- (i) the individual whose certificate it is, or
- (ii) any person who is authorised by the individual and is seeking the information for the purposes of an exempted question, and

(c) in relation to an enhanced criminal record certificate—

- (i) the individual whose certificate it is, or
- (ii) any person who is authorised by the individual and is seeking the information for the purposes of an exempted question asked for a purpose prescribed under section 113B(2)(b).”.

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PROSPECTIVE

Applications for enhanced criminal record certificates

43 In section 113B of the Police Act 1997 (enhanced criminal record certificates) in subsection (2) for paragraph (b) substitute—

- “(b) be accompanied by—
- (i) a statement by the registered person that the certificate is required for the purposes of an exempted question asked for a prescribed purpose; or
 - (ii) a statement by the applicant that the certificate is required for a prescribed purpose.”.

Electronic transmission of applications

44.—(1) In section 113A of the Police Act 1997 (criminal record certificates) 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 Department electronically by a registered person who satisfies conditions determined by the Department, and
- (b) it is transmitted in accordance with requirements determined by the Department.”.

(2) In section 113B of that Act (enhanced criminal record certificates) 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 Department electronically by a registered person who satisfies conditions determined by the Department, and
- (b) it is transmitted in accordance with requirements determined by the Department.”.

Commencement Information

I6 S. 44 in operation at 2.11.2015 by S.R. 2015/358, art. 2(f)

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Disclosures by Department of Justice to Disclosure and Barring Service

45 In section 119 of the Police Act 1997 (sources of information) after subsection (4) insert—

“(4A) The Department of Justice may provide to the Disclosure and Barring Service any information it holds for the purposes of this Part in order to enable the Disclosure and Barring Service to determine whether, in relation to any person, paragraph 1, 2, 3, 5, 7, 8, 9 or 11 of Schedule 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 applies or appears to apply.”.

Commencement Information

I7 S. 45 in operation at 2.11.2015 by S.R. 2015/358, art. 2(g)

Inclusion of cautions and other diversionary disposals in criminal records

46 In Article 29 of the Police and Criminal Evidence (Northern Ireland) Order 1989 for paragraph (4) substitute—

“(4) The Department of Justice may by regulations make provision for recording—

- (a) convictions for such offences as are specified in the regulations (“recordable offences”);
 - (b) cautions given in respect of recordable offences;
 - (c) informed warnings given in respect of recordable offences;
 - (d) diversionary youth conferences in respect of recordable offences.
- (5) For the purposes of paragraph (4)—
- (a) “caution” means a caution given to a person in respect of an offence which, at the time when the caution is given, the person has admitted;
 - (b) “diversionary youth conference” has the meaning given by Part 3A of the Criminal Justice (Children) (Northern Ireland) Order 1998.”.

Commencement Information

I8 S. 46 in operation at 2.11.2015 by S.R. 2015/358, art. 2(h)

Consequential amendments

47 Schedule 5 (which contains amendments consequential on the preceding provisions of this Part) has effect.

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Commencement Information

I9 S. 47 in operation at 2.11.2015 by S.R. 2015/358, art. 2(i)

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