

Executive Note
The Police Act 1997 (Criminal Records) (Scotland)
Regulations 2006 (SSI 2006/ 96)

The Regulations are made by Scottish Ministers in exercise of the powers conferred by those sections of Part 5 of the Police Act 1997 (“the 1997 Act”) that are set out in Schedule 1 of the Regulations.

Part 5 is amended by section 70(2), (5), (6) and (8) of the Criminal Justice (Scotland) Act 2003 (in relation to the maintenance of the register under Part 5 and those persons who may become registered persons) and by sections 163, 165, 166 and 174(2) and Schedules 14 and 17 of the Serious Organised Crime and Police Act 2005 (in relation to the issue of certificates concerning criminal record checks). Two commencement orders will be made shortly by Scottish Ministers to provide that these amendments come into force on 1 April 2006. These Regulations are therefore made and laid using the anticipatory exercise of the Scottish Ministers’ powers under Part 5 of the Police Act 1997 as amended.

The Regulations are subject to negative resolution procedure.

Policy Objectives

The Regulations consolidate and replace 3 existing Scottish Statutory Instruments (SSI), namely SSI 2002/143, SSI 2002/217 and SSI 2004/526. They also exercise new powers inserted into the 1997 Act by the Serious Organised Crime and Police Act 2005 (“the 2005 Act”).

The Regulations will allow Scottish Ministers to achieve a number of policy objectives including responding in part to the recommendations of Sir Michael Bichard. They prescribe the form to be used to make an application for a disclosure certificate, increase the fee for Disclosure Scotland applications from £13.60 to £20, address 2 of the recommendations (21 and 31) made by Sir Michael Bichard in his report into the murders of Jessica Chapman and Holly Wells at Soham and deal with eligibility for an enhanced disclosure, moving this material from the primary legislation (from sections 113 to 115 of the 1997 Act) into secondary legislation.

The main changes are, first, that regulation 4(1) announces that with effect from 1 April 2006 the fee for all types of applications to Disclosure Scotland will be £20. There will be no additional charge for on-line basic applications.

Second, the new SSI addresses 2 recommendations made by Sir Michael as follows:

- Regulations 9 and 10 allow for, and extend the scope of an enhanced disclosure to cover posts that involve work with children as defined in Schedule 2 of the Protection of Children (Scotland) Act 2003 and posts that involve working with adults at risk, as defined by regulation 10(3) to (6). The previous SSI (SSI 2002/217, article 3) contained a test by which a person who had ‘regular contact’ with such an adult could gain an enhanced disclosure. The test for people working with adults at risk has been amended in these Regulations to ensure that contact itself will be enough for the eligibility test to be satisfied. The changes address Bichard recommendation 21.

- Regulation 8 updates regulation 8 of SSI 2002/143, and specifies the circumstances in which, and the organisations that, Ministers can consult as part of an enhanced disclosure check. It includes a number of police forces, for example the Service Police forces, who will be participating in the Part 5 arrangements for the first time as a result of changes brought about by the Serious Organised Crime and Police act 2005. The regulation also allows access to the Interim Police Local Cross Reference Database (IPLX). These changes address Bichard recommendation 31.
- Disclosure Scotland will be given the ability to search IPLX. There is already an advanced flagging system in operation on the Scottish Criminal Record Office criminal history system of which Disclosure Scotland makes use. However, IPLX is a name-based or nominal database index developed by the Association of Chief Police Officers and the Criminal Records Bureau (CRB). IPLX will store nominal information about locally-held police records (“central records” in terms of regulation 7 of the Regulations) in England, Wales and Scotland. It can be regarded as an index of information which is held on “central records”. The Association of Chief Police Officers in Scotland has authorised the transfer of nominal information held in Scotland to IPLX.
- The aim of IPLX is to improve the flagging of locally-held information in England and Wales. This means that whereas now Disclosure Scotland rely on the address history on the application form to ask a force in England and Wales if they hold information about an applicant, IPLX will offer another way into local records and will help to reduce the possibility of an unsuitable person avoiding a full check of his or her history.

Third, using powers under section 113B(2)(b) of the 1997 Act as inserted by the 2005 Act, regulations 11 and 12 contain the further cases (other than those working in “child care positions” or with adults at risk) where an enhanced disclosure will be available to assist in assessing a person’s suitability for a range of licensing, registration and appointment matters. This list was previously included in sections 113 to 115 of the 1997 Act. Inclusion in the SSI will grant the Scottish Ministers greater flexibility to add or remove categories. For example, the Gaming Act 1968 is to be repealed in due course, and the provisions appearing in regulation 11(a), (b) and (c) can be amended once the relevant provisions of the Gambling Act 2005 are commenced.

A number of further, minor amendments have been made to provisions in the existing regulations that will be revoked. Regulation 5 is transferred unchanged from SSI 2002/143.

The changes are:

- Regulations 3, 6 and 7 are updated to reflect the new section numbering effected by the 2005 Act.
- Regulation 8, commented upon above, changes the required address history period from “10” to “5” years. The new extended list of relevant police forces includes the following:- the Royal Navy Regulating Branch, the Royal Marines Police, the Royal Military Police, the Royal Air Force Police, the Ministry of Defence Police, the British Transport Police, the Civil Nuclear Constabulary, the Serious Organised Crime Agency, the Isle of Man Constabulary, the salaried police force of the Island of Guernsey, the States of Jersey Police Force and the Garda Síochána.

- Regulations 13 and 14 specify the lists that Disclosure Scotland can check as part of the standard or enhanced check and include access to lists in Northern Ireland.
- Regulation 15 makes equivalent provision to the existing section 116(2)(b) of the 1997 Act (which is being amended by paragraph 3(a) of the 2005 Act) and deals with Crown employment in respect of positions involving adults at risk and children.
- Although regulation 16 is similar to the provision made at regulation 9 of SSI 2002/143, regulation 16(2)(b) enables a police station in the UK and not only Scotland to be used for fingerprinting. Scottish Ministers are prepared, as a matter of Scots law, to accept evidence of an applicant's identity which has been taken at a police force outwith Scotland. Regulation 16(9) is also amended to lower the age below which the consent of a parent (or someone with parental responsibilities or rights) is needed to the taking of the applicant's fingerprints from "18" to "16".
- Regulation 17 is new and describes the police authorities to whom the Scottish Ministers should pay a fee (which is to be set administratively) in response to a request for information under section 119.

Consultation

There has not been formal consultation about the proposals to amend the 1997 Act to give effect to the recommendations of the Bichard Inquiry. When the report was published in June 2004, Scottish Ministers accepted that while it was directed at England and Wales, they would take appropriate action to give effect to the recommendations in Scotland. Scottish Executive officials have worked closely with colleagues in UK departments, CoSLA, the Association of Chief Police Officers in Scotland and Disclosure Scotland to take this forward. The enabling legislation was included in the 2005 Act and the changes proposed were included in a Sewel motion which was agreed by the Scottish Parliament.

There has not been any formal consultation on the proposed fee increase. However, Scottish Executive officials have written to over 450 users of the system to advise them of the plans to increase the fee from April 2006.

Financial Effects

There will be a financial impact on users of Disclosure Scotland. The fee increase (which is the first since Disclosure Scotland began operating in April 2002) is necessary so that Scottish Ministers and BT plc (the Scottish Ministers' partners in Disclosure Scotland) can over the course of the contract cover the cost of the operation and recover their support to date. To date, the number of applications to Disclosure Scotland has been significantly lower than originally projected. The effect of this for both Scottish Ministers and BT has been the need for financial support to an extent that was not anticipated in the Public Private Partnership Agreement.

In September 2005, DTZ Pieda Consulting carried out research into the likely future volume of applications. This research showed that an annual total of around 500,000 applications could be expected for the remaining 8 years of the contract with BT. On that basis, and

because the PPP Agreement requires BT can recover its costs over the lifetime of the Agreement, Scottish Ministers have decided that the fee should rise.

The 1997 Act requires that a fee is paid for each application that is submitted. It falls to the applicant to make this payment though in some cases the employers pays on the applicant's behalf. Based on the percentage of applications from each sector to date, our calculations show that public sector employers, such as, Local Authorities, the NHS, and Universities and Colleges may see a change in their annual expenditure if they choose to pay for all the applications that they countersign.

The table below gives details of what the difference would be.

Annual additional income to Disclosure Scotland at £20 fee based on 485,300 applications which is the DTZ forecast for 2006-07 (£20 - £13.60 = £6.40 x 485,300)	£3,105,920
Main source of new Income	Contribution
Individuals	£1,126,330
Local Authorities (inc Education)	£634,820
NHS	£256,040
Universities and Colleges	£283,000
Other *	£805,730

* Includes private sector employers and regulatory bodies such as the Care Commission.

Ministers have, however, agreed that they will continue to meet the fee for volunteers in the voluntary sector working with adults at risk and children. There will be no impact on that part of the voluntary sector.

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