

## **EXECUTIVE NOTE**

### **THE POLICE ACT 1997 (CRIMINAL RECORDS) (SCOTLAND) AMENDMENT REGULATIONS 2008 SSI/2008/6**

#### **Powers under which Instrument is made**

1. The Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2008 (“the Amendment Regulations”) are made by the Scottish Ministers in exercise of the powers conferred by sections 113B(2)(b), (5A), (9) and (11)(c), 118(2A)(e) and 119(7) of Part 5 of the Police Act 1997 (“the 1997 Act”).
2. Part 5 of the 1997 Act has been amended by: section 70 of the Criminal Justice (Scotland) Act 2003; sections 163, 164, 165, 166 and 174(2) of, and Schedules 14 and 17 to, the Serious Organised Crime and Police Act 2005; and sections 78 to 81 of, and paragraphs 27 to 41 of schedule 4 to, the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”). The Commencement No. 2 Order for the 2007 Act (S.S.I. 2007/564) (“the second Commencement Order”) commenced the powers to make many of the amendments contained in these Amendment Regulations.

#### **Parliamentary procedure**

3. This Scottish Statutory Instrument is a class 5 instrument subject to the negative resolution procedure at the Scottish Parliament.

#### **Summary of policy proposals**

4. Under Part 5 of the 1997 Act, the Scottish Ministers may carry out criminal record checks. The day-to-day business under the 1997 Act is carried out by Disclosure Scotland. There are currently three levels of checks: the criminal conviction certificate (basic disclosure); the criminal record certificate (standard disclosure); and the enhanced criminal record certificate (enhanced disclosure). The basic disclosure is available to anyone for any purpose. Standard and enhanced checks are carried out mainly for the purpose of assessing the suitability of a person for certain types of employment or volunteering. The 2007 Act (when fully commenced) will provide for a new vetting and barring scheme, including new types of disclosure check which will replace most of the enhanced disclosure checks currently carried out under the 1997 Act.
5. The Amendment Regulations amend the Police Act 1997 (Criminal Records) (Scotland) Regulations 2006 (S.S.I. 2006/96) using new powers inserted into the 1997 Act by the 2007 Act as well as some existing powers in the 1997 Act.
6. The Amendment Regulations (and the second Commencement Order) implement a number of policy objectives. These are:
  - To remove the need for the application form that is used for the 1997 Act to be prescribed in regulations and to replace that with a power for Ministers to determine the form administratively. There will be no immediate change to

the current form but the new arrangements will allow Ministers to respond more rapidly to any need to amend it in the future.

- To make it clear that applications under the 1997 Act can be made electronically as well as in writing and that this covers both criminal record check applications per se and also applications in connection with becoming a registered person and in connection with any dispute about the content of the certificate.
- To correct an omission in the existing regulations in relation to paying fees to four police authorities for information provided by their police forces. These forces are: the States of Jersey Police; the Island of Guernsey Police; the Isle of Man Constabulary; and the Garda Síochána in Ireland.
- To prescribe the Scottish Crime and Drug Enforcement Agency and the Child Exploitation and Online Protection Centre as bodies that Scottish Ministers can approach in connection with applications for enhanced disclosures.
- To provide eligibility for the enhanced disclosure, rather than the standard disclosure as is the case now, for: appointment to a post in the Scottish Prison Service; appointment to Her Majesty's Inspectorate of Education as a board member or as a secondee to assist with inspections; appointment to the Social Work Inspection Agency as a board member or as a secondee to assist with inspections; and in relation to proceedings before a sheriff for an intervention or guardianship order under the Adults with Incapacity (Scotland) Act 2000.
- To allow Scottish Ministers to obtain information from the Borders and Immigration Agency for the purpose of verifying the identity of applicants for criminal record checks under the 1997 Act.
- To cater for the establishment of the Gambling Commission by inserting the reference to that body's founding legislation.

## **Consultation**

7. The Amendment Regulations give full effect to policy signalled during the Parliamentary passage of the 2007 Act, make other technical amendments or make other changes which only affect specific bodies. Consequently, there has been not been widespread consultation with users of the service in connection with these changes. However, a number of workshops were held with registered bodies that are responsible for large numbers of annual applications and there was a positive response from them about the possibility of changes to the application form being achieved more quickly and of allowing electronic applications for standard and enhanced checks.
8. The Scottish Prison Service, Her Majesty's Inspectorate of Education and Social Work Inspection Agency are content with the move to enhanced checks and discussions have been held with the three bodies that will be additional sources of information to Disclosure Scotland.

**Financial effects**

9. There will not be a financial impact on users of Disclosure Scotland.

**Regulatory Impact Assessment**

10. No Regulatory Impact Assessment has been prepared for this instrument because it does not have significant financial effects or impose significant new burdens on any individual or organisation. A partial Regulatory Impact Assessment (RIA 2007/40) was published for consultation on 15 November 2007 in respect of secondary legislation required for the vetting and barring scheme established by the 2007 Act.

The Scottish Government  
Children, Young People and Social Care Directorate

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