

POLICING AND CRIME ACT 2009

EXPLANATORY NOTES

TERRITORIAL EXTENT AND APPLICATION

Part 8 – Miscellaneous

Chapter 1 – Safeguarding Vulnerable Groups and Criminal Records

Criminal records etc

Section 93 Criminal conviction certificates to be given to employers

538. Part V of the Police Act 1997 (“the 1997 Act”) sets out the scheme under which the Secretary of State, under the form of the “Criminal Records Bureau” (the “CRB”), must issue criminal conviction certificates (also known as Basic Disclosures) and criminal record or enhanced criminal record certificates (known as Standard and Enhanced Disclosures). Currently, section 112 only provides for Basic Disclosures to be sent to applicants. It is envisaged that when the Basic Disclosure service is introduced by the CRB the majority of applications will be made for the purposes of employment. This section therefore provides for a copy of the Basic Disclosure to be sent to an employer where specifically requested.

Section 94 Certificates of criminal records etc: right to work information

539. **Section 94** inserts a new section 113CD into the 1997 Act to provide for “right to work” information to be recorded on Basic, Standard and Enhanced Disclosures where a request for such information is made. This follows a request from the Home Secretary in early 2008 to explore the possibility of incorporating “right to work” checks within the CRB service following concerns about the employment of illegal workers in sectors required to obtain a CRB disclosure. Currently, CRB certificates do not provide information pertaining to an individual’s immigration status.

540. The amendments will enable an employer to be informed, should they so request, whether prospective or current employees have a “right to work” in the UK based on the UK Border Agency (UKBA) records. This will assist employers in avoiding the employment of illegal workers which under the current legislation makes an employer liable to pay a civil penalty of up to £10,000 per person if found to be employing someone illegally. This civil penalty regime was introduced in February 2008 and is set out under sections 15 and 22 of the Immigration, Asylum and Nationality Act 2006.

541. This will be an optional service offered by the CRB and there will remain other ways for employers to satisfy themselves of an individual’s right to work status.

542. Where a request for a “right to work” check is made, the certificate will state whether the applicant has a right to work or not and any conditions attached to the relevant status will also be disclosed where appropriate. If an individual’s right to work status cannot be determined from UKBA records, employers will be provided with further information on how to identify whether the individual has a right to work.

543. The intention is to charge a fee to recover the development and running costs of this service and this will be in addition to the fee paid for a Disclosure. Prior to any fee being introduced, a public consultation will be carried out.

Section 95 Criminal conviction certificates: verification of identity

544. **Section 95** allows for other methods of identity verification to be prescribed under section 118 of the 1997 Act when making an application for a certificate. The taking of fingerprints is already provided for under section 118 and any method prescribed under this section is likely to be less intrusive than requiring fingerprints. Such requirements may include requiring evidence of identity (such as a passport, driving licence and current utility bills etc).

Section 96 Registered persons

545. **Section 96** enables the CRB, when checking the suitability of individuals to be registered to countersign and receive Standard and Enhanced Disclosures in respect of applicants, to be checked against the new barred lists established under the Safeguarding Vulnerable Groups Act 2006. Such individuals are known as “Registered Persons” under the Police Act 1997. Although the 2006 Act enables suitability information to be disclosed to employers, it does not amend the definition of suitability information the CRB itself should have regard to when assessing whether an individual should be registered. This was an oversight as the current provision enables checks to be undertaken against the old barring lists for this purpose.

Section 97 Criminal Records: applications

546. **Section 97** makes amendments to the 1997 Act so that the Secretary of State may determine the “form, manner and contents” in which applications for such Disclosures are made.
547. Currently regulations are required for any change to such applications and this provision will enable the Secretary of State to determine administratively the way people apply, what applicants are required to disclose on the applications and how people sign and countersign them without having to make regulations each time. This will include providing for electronic or on-line applications.
548. A similar amendment is being made for “monitoring” applications made under the Safeguarding Vulnerable Groups Act 2006 because when the new Vetting and Barring Scheme is live many Enhanced Disclosure applications will be made jointly with applications for monitoring and the initial application will be made via the CRB.