

PROTECTION OF FREEDOMS ACT 2012

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 5: Safeguarding vulnerable groups, criminal records etc.

Chapter 2 of Part 5: Criminal Records

Section 79: Restriction on information provided to certain persons

329. *Subsection (1)* repeals section 93 of the 2009 Act which, if commenced, would have inserted a new section 112(2A) into the 1997 Act. That section would have required the Secretary of State to send a copy of a criminal conviction certificate (which includes only any unspent convictions) to any named employer in the application. This change is in line with the changes made in *subsection (2)*.
330. *Subsection (2)* repeals sections 113A(4) and 113B(5) and (6) of the 1997 Act. When a person applies for a standard certificate or an enhanced certificate, the Criminal Records Bureau (“CRB”) issues the relevant certificate not only to the applicant but also, by virtue of sections 113A(4) and 113B(6) of the 1997 Act, sends a copy of the certificate to the registered body which countersigned the application. A registered body will normally be the applicant’s employer or prospective employer or other organisation acting on behalf of an employer. The simultaneous issue of the certificate to an applicant and a registered body does not afford the applicant the opportunity to review and, if necessary, challenge the information contained in a certificate before it is released to an employer. The repeal of sections 113A(4) and 113B(6) removes the provisions that require a copy of a certificate to be sent to the registered body so that the certificate is issued to the applicant only, allowing the applicant to make appropriate representations to the CRB regarding the information released without the disputed information already having been seen by the employer.
331. Section 113B(5) of the 1997 Act enables sensitive (non-conviction) information which might be relevant to an employer to be provided to a registered body without it being copied to the applicant. Such a procedure is adopted, for example, where the police are engaged in an ongoing criminal investigation and the premature release of the relevant information to an applicant for an enhanced criminal record certificate might compromise that investigation. The repeal of section 113B(5) removes the statutory obligation to disclose the relevant information to the registered body in these circumstances. However, it would remain open to the police, using their common law powers to prevent crime and protect the public, to pass such information to a potential employer where they considered it justified and proportionate.
332. *Subsection (3)* inserts a new section 120AC into the 1997 Act that will allow registered bodies to continue to be able to track online the progress of an application for a criminal record certificate or an enhanced criminal record certificate, including whether it has been issued and for the registered body to be informed that the certificate does not

*These notes refer to the Protection of Freedoms Act
2012 (c.9) which received Royal Assent on 1 May 2012*

contain any relevant information when that is the case (in effect, that the certificate is 'clear').

333. Subsection (3) also inserts a new section 120AD into the 1997 Act to provide that the CRB must in certain circumstances send a copy of the certificate to the registered body. Those circumstances are when the new updating service has advised that a new certificate should be applied for, such a certificate has been applied for, and the applicant has not, within the prescribed period, sent a copy of it to the relevant person. A copy would be sent to the registered body only if a request is made within the prescribed period and none of the prescribed circumstances apply.