



# Criminal Justice (Scotland) Act 2003

## 2003 asp 7

### PART 10

#### CRIMINAL RECORDS

#### **70 Registration for criminal records purposes**

- (1) The Police Act 1997 (c. 50) is amended as follows.
- (2) After section 120 there is inserted—

#### **“120B Refusal and cancellation of registration: Scotland**

- (1) The Scottish Ministers may refuse to include a person in, or may remove a person from, a register maintained under section 120 for the purposes of this Part if it appears to them that the registration of that person is likely to make it possible for information to become available to an individual who, in their opinion, is not a suitable person to have access to that information.
- (2) The Scottish Ministers may also remove a person from any such register if it appears to them that the registration of that person has resulted in information becoming known to such an individual.
- (3) In determining, for the purposes of this section, whether an individual is a suitable person to have access to information, the Scottish Ministers may have regard, in particular, to—
  - (a) any information relating to the individual which concerns a relevant matter (“relevant matter” having the same meaning as in section 113);
  - (b) whether that person is included in any list mentioned in section 113(3C);
  - (c) any information provided to them under subsection (4);
  - (d) any information provided to them by the chief officer of a police force in England and Wales or Northern Ireland in response to a request by them for such information as is available to that officer, relates to any such matter as is mentioned in paragraph (b) of subsection (4) and concerns such matter as is mentioned in paragraph (c) of that subsection;

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- (e) anything which has been done—
  - (i) under subsection (1) or (2) or section 122(3); or
  - (ii) in England and Wales or Northern Ireland under the provisions of this Act which apply in England and Wales or Northern Ireland and correspond to subsection (1) or (2),
 and any information on the basis of which that thing was done.
- (4) A chief constable of a police force in Scotland shall comply, as soon as practicable after receiving it, with any request by the Scottish Ministers to provide them with information which—
  - (a) is available to him;
  - (b) relates to—
    - (i) an applicant for registration under section 120;
    - (ii) a person so registered;
    - (iii) an individual who is likely to have access to information in consequence of the countersigning of applications by a particular applicant for such registration or by a particular person so registered; and
  - (c) concerns a matter which they have notified the chief constable is a matter which in their opinion is relevant to the determination of the suitability of individuals for having access to information which may be provided by virtue of this Part.
- (5) The Scottish Ministers shall pay to a police authority the prescribed fee for information which the authority provide—
  - (a) as mentioned in subsection (3)(d); or
  - (b) in accordance with subsection (4).”.
- (3) In section 115 (enhanced criminal record certificates)—
  - (a) in subsection (2)—
    - (i) the word “or”, which immediately follows paragraph (a), is omitted; and
    - (ii) at the end of paragraph (b) there is added “or
      - (c) in relation to an individual to whom any of subsections (6C) to (6G) applies.”;
  - (b) in subsection (5), after paragraph (h) there is added—
    - “(i) an assessment, investigation or review by an adoption agency or local authority as to the suitability of a person, whether or not the person in respect of whom the certificate is sought, to adopt a child (this paragraph being construed in accordance with sections 1(3A) and (4) and 65(1) of the Adoption (Scotland) Act 1978 (c. 28) and as if it were one of the provisions of that Act listed in the definition of “adoption agency” in the said section 65(1))”;
  - (c) after subsection (6B) there is inserted—
    - “(6C) This subsection applies to an individual included or seeking inclusion in any list prepared for the purposes of Part II of the National Health Service (Scotland) Act 1978 (c. 29) of—
      - (a) medical practitioners undertaking to provide general medical services;

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- (b) dental practitioners undertaking to provide general dental services;
  - (c) medical practitioners and ophthalmic opticians undertaking to provide general ophthalmic services; or
  - (d) persons undertaking to provide pharmaceutical services.
- (6D) This subsection applies to an individual who is—
- (a) a director of a body corporate included or seeking inclusion in a list referred to in subsection (6C)(c) or (d); or
  - (b) a partner of a partnership included or seeking inclusion in a list so referred to.
- (6E) This subsection applies to an individual included or seeking inclusion in any list prepared by virtue of—
- (a) section 17EA of the National Health Service (Scotland) Act 1978 (services lists); or
  - (b) section 24B of that Act (supplementary lists),
- and to an individual included or seeking inclusion in such other list prepared for the purposes of Part I or Part II of that Act as may be prescribed.
- (6F) This subsection applies to an individual appointed or seeking appointment—
- (a) as one of Her Majesty’s inspectors (as defined by section 135(1) of the Education (Scotland) Act 1980 (c. 44)); or
  - (b) by the Scottish Ministers, for the purposes of section 66 of that Act of 1980 (inspection of educational establishments) or of section 9 of the Standards in Scotland’s Schools etc. Act 2000 (asp 6) (inspection of education authority).
- (6G) This subsection applies to an individual appointed or seeking appointment—
- (a) under section 39(2) of the Children (Scotland) Act 1995 (c. 36) (formation of children’s panel etc.) as a member of—
    - (i) a children’s panel;
    - (ii) the Children’s Panel Advisory Committee other than as chairman of that committee; or
    - (iii) a joint advisory committee other than as chairman of such a committee;
  - (b) by virtue of paragraph 7(b) of Schedule 1 to that Act of 1995 (appointment to sub-committee of Children’s Panel Advisory Committee of person who is not a member of that Committee);
  - (c) as the Principal Reporter or under section 128(4) of the Local Government etc. (Scotland) Act 1994 (c. 39) as an officer to assist that officer;
  - (d) as a prosecutor, as defined by section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46), or as an officer to assist a prosecutor or to assist in the work of the Crown Office; or

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- (e) in a panel established by virtue of section 101(1) of the Children (Scotland) Act 1995 (panels for curators ad litem, reporting officers and safeguarders).

(6H) Subsection (2) applies in relation to an exempted question asked in relation to an individual appointed or seeking appointment as mentioned in subsection (6G)(a) as it applies in relation to such a question asked in relation to an individual mentioned in paragraph (c) of subsection (2) except that, for the purposes of this subsection, the reference in that subsection to the registered person shall be construed as a reference to the Scottish Ministers or to a person nominated by them.”.

- (4) In section 119(1) (sources of information), after the word “application” there is inserted “(whether for a certificate or for registration)”.
- (5) After section 119 there is inserted—

**“119A Further sources of information: Scotland**

- (1) Any person who holds, in Scotland, records of convictions for the use of police forces generally shall make those records available to the Scottish Ministers for the purpose of enabling them to carry out their functions under this Part in relation to the determination of whether a person should continue to be a person registered under section 120.
- (2) Where a person holds records of convictions or cautions for the use of police forces generally (but is not required by subsection (1) or section 119(1) to make those records available to the Scottish Ministers) the Scottish Ministers may request that person to make those records available to them; and they may also request that information kept under section 81(1) of the Care Standards Act 2000 (c. 14) (duty of Secretary of State to keep list of individuals who are considered unsuitable to work with vulnerable adults) be made so available.
- (3) In subsection (1), “person” does not include—
  - (a) a public body; or
  - (b) a holder of a public office,
 unless that person is a Scottish public authority (as defined in section 126(1) of the Scotland Act 1998 (c. 46)).
- (4) This section is without prejudice to section 119; and subsection (5) of that section shall apply in relation to records made available in accordance with this section as it does in relation to information made available in accordance with that section.”.
- (6) In section 120 (registered persons)—
  - (a) in subsection (2), after the words “Subject to” there is inserted “section 120A and”; and
  - (b) in subsection (3), after paragraph (a) there is inserted—
    - “(aa) the nomination by—
      - (i) a body corporate or unincorporate; or
      - (ii) a person appointed to an office by virtue of an enactment,

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whether that body or person is registered or applying to be registered, of an individual to act for it or, as the case may be, him in relation to the countersigning of applications under this Part;

- (ab) the refusal by the Scottish Ministers, on such grounds as may be specified in or determined under the regulations, to accept or to continue to accept any nomination made by virtue of this subsection;
- (ac) as to the period which must elapse before any person refused registration or removed from the register may apply to be included in the register;”.

(7) In section 122 (code of practice)—

- (a) in subsection (1), after the words “provided to” there is inserted “, or the discharge of any function by;”; and
- (b) after subsection (3) there is added—

“(4) Where the Scottish Ministers have reason to believe that—

- (a) a registered person; or
- (b) a body or individual at whose request a registered person has countersigned or is likely to countersign an application under section 113 or 115,

has failed to comply with the code of practice, they may remove the registered person from the register or impose conditions on him as respects his continuing to be listed in the register”.

(8) After section 124 there is inserted—

**“124A Review of certain decisions as to registration**

- (1) Where the Scottish Ministers decide to refuse to include a person in the register maintained for the purposes of this Part or, other than by virtue of section 120(3)(b), to remove him from that register they shall notify him in writing of that decision and of their reason for so deciding and shall send a copy of that notification to the Secretary of State.
- (2) If the person considers that the information upon which the decision was based may have been inaccurate he may, by written notice to the Scottish Ministers setting out his reason for so considering, require them to review the decision; and they shall notify him in writing of the results of their review and of any consequential change in the decision and shall send a copy of—
  - (a) the notice; and
  - (b) the notification,to the Secretary of State.
- (3) Any notification given by the Scottish Ministers under subsection (1) or (2) shall include information as to the provisions of any regulations made under section 120(3)(ac).
- (4) The Scottish Ministers may, for the purposes of this section, make regulations as to procedure; and such regulations may, in particular, make provision in relation to—

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- (a) information to be included in any notification under subsection (1) or (2); and
- (b) the period within which—
  - (i) a requirement may be made under subsection (2); or
  - (ii) a decision under subsection (1) is to be implemented.

#### **124B Scottish annotated list of certificated persons**

- (1) The Scottish Ministers shall maintain an annotated list for the purposes of this Part and shall include in that list all persons to whom a criminal record certificate, or as the case may be an enhanced criminal record certificate, has been issued under any of sections 113 to 116 of this Act.
- (2) The Scottish Ministers may make regulations about the maintenance of the list; and such regulations may, in particular, provide for—
  - (a) the information to be included in the list;
  - (b) the details to be provided, for the purposes of this section, by persons applying to be issued a criminal record certificate or enhanced criminal record certificate or countersigning any such application;
  - (c) the procedure to be followed as respects the exercise of such discretion as is afforded them by subsection (3).
- (3) The Scottish Ministers may, as respects a person included in the list, if they are satisfied that it is appropriate to do so, notify the registered person who countersigned his application for the certificate in question (or on whose behalf that application was countersigned) or whomever else made the requisite statement which accompanied that application, about any relevant matter relating to the listed person (“relevant matter” having the same meaning as in section 113(5)) of which they become aware after issuing that certificate.
- (4) The Scottish Ministers are not to be satisfied as is mentioned in subsection (3) unless they are satisfied that the exempted question for the purpose of which the certificate was required remains relevant for the person to whom notification would, under that subsection, be given.
- (5) Regulations under paragraph (c) of subsection (2)—
  - (a) shall provide for there to be an opportunity for a listed person to make representations as respects whether the Scottish Ministers should be satisfied as is mentioned in subsection (3) and require them to have regard to those representations before giving notification under that subsection; and
  - (b) may require the person who would receive that notification (not being a person who is a Minister of the Crown) to provide them with such information as is in his possession and to which it would be appropriate for them to have regard as respects the exercise of the discretion mentioned in that paragraph.”.