

## SCHEDULES

### SCHEDULE 4

Section 41.

SCHEDULE INSERTED AS SCHEDULE 8A TO THE POLICE ACT 1997

#### “SCHEDULE 8A

#### REVIEW OF CRIMINAL RECORD CERTIFICATES

##### *Interpretation*

1. In this Schedule—

“conviction” and “spent conviction” have the same meanings as in the Rehabilitation of Offenders (Northern Ireland) Order 1978;

“the independent reviewer” means the person appointed under paragraph 2;

“other disposal”, in relation to a criminal record certificate or enhanced criminal record certificate issued to any person, means any caution, diversionary youth conference or informed warning relating to that person of which details are given in the certificate.

##### *The independent reviewer*

- (1) There is to be an independent reviewer for the purposes of this Schedule.
- (2) The independent reviewer is a person appointed by the Department—
  - (a) for such period, not exceeding 3 years, as the Department decides; and
  - (b) on such terms as the Department decides.
- (3) A person may be appointed for a further period or periods.
- (4) The Department may terminate the appointment of the independent reviewer before the end of the period mentioned in sub-paragraph (2)(a) by giving the independent reviewer notice of the determination not less than 3 months before it is to take effect.
- (5) The Department may—
  - (a) pay such remuneration or allowances to the independent reviewer as it may determine;
  - (b) make arrangements for the provision of administrative or other assistance to the independent reviewer.

(6) The independent reviewer must, in relation to each financial year and no later than 3 months after the end of that year, make a report to the Department about the exercise of his or her functions under this Schedule in that year.

(7) The independent reviewer may make recommendations to the Department as to—

- (a) any guidance issued by the Department under paragraph 3 or which the independent reviewer thinks it would be appropriate for the Department to issue under that paragraph;
- (b) any changes to any statutory provision which the independent reviewer thinks may be appropriate.

(8) A person may at the same time hold office as the independent reviewer and as the independent monitor under section 119B.

#### *Guidance*

3. The Department may from time to time publish guidance to the independent reviewer as to the exercise of functions under this Schedule; and in exercising functions under this Schedule the independent reviewer must have regard to any guidance for the time being published under this paragraph.

#### *Application for review after issue of certificate*

(1) A person who receives a criminal record certificate or an enhanced criminal record certificate may apply in writing to the Department for a review of the inclusion in that certificate of—

- (a) the details of any spent conviction; or
- (b) the details of any other disposal.

(2) An application under this paragraph must—

- (a) be accompanied by such fee (if any) as may be prescribed; and
- (b) be made within such period after the issue of the certificate as the Department may specify in a notice accompanying the certificate.

(3) The Department must refer any application under this paragraph to the independent reviewer together with—

- (a) any information supplied by the applicant in connection with the application; and
- (b) any other information which appears to the Department to be relevant to the application.

*Review by independent reviewer after issue of certificate*

(1) The independent reviewer, on receiving an application under paragraph 4 in relation to a certificate, must review the inclusion in that certificate of—

- (a) the details of any spent conviction; and
- (b) the details of any other disposal.

(2) If, following that review, the independent reviewer determines that the details of any spent conviction or other disposal included in the certificate should be removed—

- (a) the independent reviewer must inform the Department of that fact; and
- (b) on being so informed the Department must issue a new certificate.

(3) In issuing such a certificate the Department must give effect to the determination of the independent reviewer and must (in the case of an enhanced certificate) again comply with section 113B(4).

(4) If, following that review, the independent reviewer determines that the details of any spent convictions or other disposals included in the certificate should not be removed—

- (a) the independent reviewer must inform the Department of that fact; and
- (b) the Department must inform the applicant that the application is refused.

(5) The independent reviewer must not determine that details of a spent conviction or other disposal should be removed from a certificate unless the independent reviewer is satisfied that the removal of those details would not undermine the safeguarding or protection of children and vulnerable adults or pose a risk of harm to the public.

*Automatic review before issue of certificate containing only details of spent convictions or other disposals of person under 18*

(1) This paragraph applies where—

- (a) the Department proposes to issue (otherwise than under sub-paragraph (4)(b) or (6)(b)) a criminal record certificate or an enhanced criminal record certificate relating to any person; and
- (b) the certificate would—
  - (i) contain details of any spent conviction or other disposal which occurred at a time when the person was under the age of 18; but
  - (ii) not contain details of any conviction (whether spent or not) or other disposal occurring after that time.

(2) The Department must, before issuing the certificate, refer the certificate for review to the independent reviewer together with any information which appears to the Department to be relevant to that review.

(3) The independent reviewer, on receiving a referral under sub-paragraph (2) in relation to a certificate, must review the inclusion in that certificate of—

- (a) the details of any spent conviction; and
- (b) the details of any other disposal.

(4) If, following that review, the independent reviewer determines that the details of any spent conviction or other disposal included in the certificate should be removed—

- (a) the independent reviewer must inform the Department of that fact; and
- (b) on being so informed the Department must amend the certificate and issue the amended certificate.

(5) In issuing such a certificate the Department must give effect to the determination of the independent reviewer and must (in the case of an enhanced certificate) again comply with section 113B(4).

(6) If, following that review, the independent reviewer determines that the details of any spent convictions or other disposals included in the certificate should not be removed—

- (a) the independent reviewer must inform the Department of that fact; and
- (b) the Department must issue the certificate in the form referred to the independent reviewer.

(7) The independent reviewer must not determine that details of a spent conviction or other disposal should be removed from a certificate unless the independent reviewer is satisfied that the removal of those details would not undermine the safeguarding or protection of children and vulnerable adults or pose a risk of harm to the public.

(8) The fact that a review has been carried out under this paragraph before a certificate is issued does not prevent the operation of paragraphs 4 and 5 in relation to the certificate once issued.

#### *Disclosure of information to the independent reviewer*

7. The Chief Constable, the Department and the Probation Board for Northern Ireland must provide to the independent reviewer such information as the independent reviewer reasonably requires in connection with the exercise of his or her functions under this Schedule.”.