
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to the Police Act 1997 (“the 1997 Act”) and the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”) to remove any incompatibility with the European Convention on Human Rights (“the Convention”) arising from the automatic disclosure of certain criminal convictions under the 1997 Act and the 2007 Act.

Article 3 amends the 1997 Act. Article 3(2) amends section 116ZA of the 1997 Act which sets out the circumstances in which Scottish Ministers must, or, as the case may be, must not, send a copy of a criminal record certificate and enhanced criminal record certificate to a relevant person. Article 3(2) contains a new provision restricting the type of conviction details which section 116ZA(2) requires Scottish Ministers automatically to send to a relevant person. A new subsection (1A) sets out the conviction details to which section 116ZA(2) does not apply. Those details now also include spent convictions which are listed in schedule 8A of the 1997 Act and either, where the person was aged under 18 at the date of conviction, 7 years and 6 months have passed since the date of the conviction, or, where the person was aged 18 or over at the date of conviction, 15 years have passed since the date of the conviction. Article 3(3) amends section 116ZB of the 1997 Act to extend the right to make an application to the sheriff for an order to issue a new disclosure certificate where the disclosure contains the conviction details set out in the new section 116ZA(1A) of the 1997 Act. Article 3(4) amends the title of schedule 8A of the 1997 Act. Article 3(5) corrects minor drafting errors in paragraphs 75 and 81 of schedule 8B of the 1997 Act.

Article 4 amends the 2007 Act. Article 4(2) amends section 52ZA of the 2007 Act which sets out how Scottish Ministers must treat a corrected scheme record where that scheme record includes certain vetting information. Article 4(2) contains a new provision which extends the type of vetting information to which section 52ZA applies so that it now also applies to spent convictions which are listed in schedule 8A of the 1997 Act and either where, the person was aged under 18 at the date of conviction, 7 years and 6 months have passed since the date of the conviction, or, where the person was aged 18 or over at the date of conviction, 15 years have passed since the date of the conviction. Article 4(3) amends section 52 of the 2007 Act which sets out the circumstances in which Scottish Ministers must, or, as the case may be, must not, disclose scheme records. Article 4(3)(b) contains a new provision restricting the type of vetting information which section 52(3) requires Scottish Ministers automatically to disclose. A new subsection (2A) sets out the vetting information to which section 52(3) does not apply. That vetting information now also includes spent convictions which are listed in schedule 8A of the 1997 Act and either, where the person was aged under 18 at the date of conviction, 7 years and 6 months have passed since the date of the conviction, or, where the person was aged 18 or over at the date of conviction, 15 years have passed since the date of the conviction. This means that section 52A(2) of the 2007 Act will now include the right to make an application to the sheriff for an order to remove vetting information from a scheme record where the scheme record contains the vetting information set out in the new section 52(2A) of the 2007 Act.

Articles 5 to 8 make transitional provision. Any applications for criminal record certificates and enhanced criminal record certificates under sections 113A, 113B, 114 and 116 of the 1997 Act (article 5(1) and (2)), applications for new certificates under section 117 of the 1997 Act (article 6), disclosure requests under sections 52 and 53 of the 2007 Act (article 7) and requests for correction of scheme records under section 51 and section 52ZA of the 2007 Act (article 8) which have been received prior to the coming into force of this Order and are not yet completed are to be treated as having been received after the coming into force of this Order. This means that the new

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section 116ZA(1A) of the 1997 Act and the new sections 52ZA(4) and 52(2A) of the 2007 Act will have effect when all of these applications or requests are completed.