



# Protection of Freedoms Act 2012

## 2012 CHAPTER 9

### PART 5

SAFEGUARDING VULNERABLE GROUPS, CRIMINAL RECORDS ETC.

### CHAPTER 2

CRIMINAL RECORDS

*Safeguards in relation to certificates*

#### 79 Restriction on information provided to certain persons

- (1) Omit section 93 of the Policing and Crime Act 2009 (which, if commenced, would insert section 112(2A) into the Police Act 1997 requiring copies of certain criminal conviction certificates to be given to employers etc.).
- (2) Omit—
  - (a) section 113A(4) of the Police Act 1997 (requirement to send copy of criminal record certificate to registered person), and
  - (b) section 113B(5) and (6) of that Act (requirement to give relevant information, and copy of enhanced criminal record certificate to registered person).
- (3) After section 120AB of the Police Act 1997 (procedure for certain cancellations or suspensions of registration) insert—

#### **“120AC Registered persons: information on progress of an application**

- (1) The Secretary of State must, in response to a request from a person who is acting as the registered person in relation to an application under section 113A or 113B, inform that person whether or not a certificate has been issued in response to the application.

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- (2) Subsections (3) and (4) apply if, at the time a request is made under subsection (1), a certificate has been issued.
- (3) In the case of a certificate under section 113A, if it was a certificate stating that there is no relevant matter recorded in central records, the Secretary of State may inform the person who made the request that the certificate was such a certificate.
- (4) In the case of a certificate under section 113B, if it was a certificate—
- (a) stating that there is no relevant matter recorded in central records and no information provided in accordance with subsection (4) of that section, and
  - (b) if section 113BA(1) or 113BB(1) applies to the certificate, containing no suitability information indicating that the person to whom the certificate is issued—
    - (i) is barred from regulated activity relating to children or to vulnerable adults, or
    - (ii) is subject to a direction under 128 of the Education and Skills Act 2008 or section 167A of the Education Act 2002,
 the Secretary of State may inform the person who made the request that the certificate was such a certificate.
- (5) If no certificate has been issued, the Secretary of State must inform the person who made the request of such other matters relating to the processing of the application as the Secretary of State considers appropriate.
- (6) Subject to subsections (2) to (4), nothing in this section permits the Secretary of State to inform a person who is acting as the registered person in relation to an application under section 113A or 113B of the content of any certificate issued in response to the application.
- (7) The Secretary of State may refuse a request under subsection (1) if it is made after the end of a prescribed period beginning with the day on which the certificate was issued.
- (8) In this section—
- “central records” and “relevant matter” have the same meaning as in section 113A,
  - “suitability information” means information required to be included in a certificate under section 113B by virtue of section 113BA or 113BB.
- (9) Expressions in subsection (4)(b) and in the Safeguarding Vulnerable Groups Act 2006 have the same meaning in that paragraph as in that Act.

#### **120AD Registered persons: copies of certificates in certain circumstances**

- (1) Subsection (2) applies if—
- (a) the Secretary of State gives up-date information in relation to a criminal record certificate or enhanced criminal record certificate,
  - (b) the up-date information is advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate,
- and

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- (c) the person whose certificate it is in respect of which the up-date information is given applies for a new criminal record certificate or (as the case may be) enhanced criminal record certificate.
- (2) The Secretary of State must, in response to a request made within the prescribed period by the person who is acting as the registered person in relation to the application, send to that person a copy of any certificate issued in response to the application if the registered person—
- (a) has counter-signed the application or transmitted it to the Secretary of State under section 113A(2A) or 113B(2A),
  - (b) has informed the Secretary of State that the applicant for the new certificate has not, within such period as may be prescribed, sent a copy of it to a person of such description as may be prescribed, and
  - (c) no prescribed circumstances apply.
- (3) The power under subsection (2)(b) to prescribe a description of person may be exercised to describe the registered person or any other person.
- (4) In this section “up-date information” has the same meaning as in section 116A.”

## **80 Minimum age for applicants for certificates or to be registered**

- (1) In sections 112(1), 113A(1), 113B(1), 114(1) and 116(1) of the Police Act 1997 (applications for certificates), before the word “and” at the end of paragraph (a), insert—
- “(aa) is aged 16 or over at the time of making the application,”.
- (2) In section 120(4) of that Act (registered persons)—
- (a) in paragraph (b)—
    - (i) after “person” insert “who is”, and
    - (ii) after “enactment” insert “and who, in the case of an individual, is aged 18 or over”, and
  - (b) in paragraph (c) after “individual” insert “aged 18 or over”.

## **81 Additional grounds for refusing an application to be registered**

After subsection (3) of section 120AA of the Police Act 1997 (refusal, etc. of registration on grounds not related to disclosure) insert—

- “(4) Subsection (6) applies if an application is made under section 120 by an individual who—
- (a) has previously been a registered person; and
  - (b) has been removed from the register (otherwise than at that individual’s own request).
- (5) Subsection (6) also applies if an application is made under section 120 by a body corporate or unincorporate which—
- (a) has previously been a registered person; and
  - (b) has been removed from the register (otherwise than at its own request).
- (6) The Secretary of State may refuse the application.”

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*Status: This is the original version (as it was originally enacted).*

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## 82 Enhanced criminal record certificates: additional safeguards

- (1) In subsection (4) of section 113B of the Police Act 1997 (enhanced criminal record certificates: requests by the Secretary of State to chief officers for information)—
  - (a) for “the chief officer of every relevant police force” substitute “any relevant chief officer”,
  - (b) omit “, in the chief officer’s opinion”,
  - (c) in paragraph (a), for “might” substitute “the chief officer reasonably believes to”, and
  - (d) in paragraph (b), at the beginning insert “in the chief officer’s opinion,”.
- (2) After subsection (4) of that section of that Act insert—
 

“(4A) In exercising functions under subsection (4) a relevant chief officer must have regard to any guidance for the time being published by the Secretary of State.”
- (3) In subsection (9) of that section of that Act—
  - (a) before the definition of “relevant police force” insert—
 

““relevant chief officer” means any chief officer of a police force who is identified by the Secretary of State for the purposes of making a request under subsection (4).”, and”
  - (b) omit the definition of “relevant police force”.
- (4) After section 117(1) of that Act (disputes about accuracy of certificates) insert—
 

“(1A) Where any person other than the applicant believes that the information contained in a certificate under any of sections 112 to 116 is inaccurate, that person may make an application in writing to the Secretary of State for a decision as to whether or not the information is inaccurate.”
- (5) After section 117 of that Act insert—

### **“117A Other disputes about section 113B(4) information**

- (1) Subsection (2) applies if a person believes that information provided in accordance with section 113B(4) and included in a certificate under section 113B or 116 —
  - (a) is not relevant for the purpose described in the statement under section 113B(2) or (as the case may be) 116(2), or
  - (b) ought not to be included in the certificate.
- (2) The person may apply in writing to the independent monitor appointed under section 119B for a decision as to whether the information is information which falls within subsection (1)(a) or (b) above.
- (3) The independent monitor, on receiving such an application, must ask such chief officer of a police force as the independent monitor considers appropriate to review whether the information concerned is information which—
  - (a) the chief officer reasonably believes to be relevant for the purpose described in the statement under section 113B(2) or (as the case may be) 116(2), and
  - (b) in the chief officer’s opinion, ought to be included in the certificate.

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- (4) In exercising functions under subsection (3), the chief officer concerned must have regard to any guidance for the time being published under section 113B(4A).
- (5) If, following a review under subsection (3), the independent monitor considers that any of the information concerned is information which falls within subsection (1)(a) or (b)—
  - (a) the independent monitor must inform the Secretary of State of that fact, and
  - (b) on being so informed, the Secretary of State must issue a new certificate.
- (6) In issuing such a certificate, the Secretary of State must proceed as if the information which falls within subsection (1)(a) or (b) had not been provided under section 113B(4).
- (7) In deciding for the purposes of this section whether information is information which falls within subsection (1)(a) or (b), the independent monitor must have regard to any guidance for the time being published under section 113B(4A).
- (8) Subsections (10) and (11) of section 113B apply for the purposes of this section as they apply for the purposes of that section.”

#### *Up-dating and content of certificates*

### **83 Up-dating certificates**

After section 116 of the Police Act 1997 (enhanced criminal record certificates: judicial appointments and Crown employment) insert—

#### **“116A Up-dating certificates**

- (1) The Secretary of State must, on the request of a relevant person and subject to subsection (2), give up-date information to that person about—
  - (a) a criminal conviction certificate,
  - (b) a criminal record certificate, or
  - (c) an enhanced criminal record certificate,which is subject to up-date arrangements.
- (2) The Secretary of State may impose conditions about—
  - (a) the information to be supplied in connection with such a request for the purpose of enabling the Secretary of State to decide whether the person is a relevant person,
  - (b) any other information to be supplied in connection with such a request.
- (3) For the purposes of subsection (1) a certificate is subject to up-date arrangements if condition A, B or C is met and the arrangements have not ceased to have effect in accordance with a notice given under section 118(3B).
- (4) Condition A is that—

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- (a) the individual who applied for the certificate made an application at the same time to the Secretary of State for the certificate to be subject to up-date arrangements,
  - (b) the individual has paid in the prescribed manner any prescribed fee,
  - (c) the Secretary of State has granted the application for the certificate to be subject to up-date arrangements, and
  - (d) the period of 12 months beginning with the date on which the grant comes into force has not expired.
- (5) Condition B is that—
- (a) the individual whose certificate it is has made an application to the Secretary of State to renew or (as the case may be) further renew unexpired up-date arrangements in relation to the certificate,
  - (b) the individual has paid in the prescribed manner any prescribed fee,
  - (c) the Secretary of State has granted the application,
  - (d) the grant has come into force on the expiry of the previous up-date arrangements, and
  - (e) the period of 12 months beginning with the date on which the grant has come into force has not expired.
- (6) Condition C is that—
- (a) the certificate was issued under section 117(2) or 117A(5)(b), and
  - (b) the certificate which it superseded—
    - (i) was subject to up-date arrangements immediately before it was superseded, and
    - (ii) would still be subject to those arrangements had it not been superseded.
- (7) The Secretary of State must not grant an application as mentioned in subsection (4)(c) or (5)(c) unless any fee prescribed under subsection (4)(b) or (as the case may be) (5)(b) has been paid in the manner so prescribed.
- (8) In this section “up-date information” means—
- (a) in relation to a criminal conviction certificate or a criminal record certificate—
    - (i) information that there is no information recorded in central records which would be included in a new certificate but is not included in the current certificate, or
    - (ii) advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate,
  - (b) in relation to an enhanced criminal record certificate which includes suitability information relating to children or vulnerable adults—
    - (i) information that there is no information recorded in central records, no information of the kind mentioned in section 113B(4), and no information of the kind mentioned in section 113BA(2) or (as the case may be) 113BB(2), which would be included in a new certificate but is not included in the current certificate, or
    - (ii) advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate, and
  - (c) in relation to any other enhanced criminal record certificate—

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- (i) information that there is no information recorded in central records, nor any information of the kind mentioned in section 113B(4), which would be included in a new certificate but is not included in the current certificate, or
  - (ii) advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate.
- (9) If up-date information is given under subsection (8)(a)(i), (8)(b)(i) or (8)(c)(i) and the certificate to which that information relates is one to which subsection (10) applies, the up-date information must include that fact.
- (10) This subsection applies to a certificate which—
  - (a) in the case of a criminal conviction certificate, states that there are no convictions or conditional cautions of the applicant recorded in central records,
  - (b) in the case of a criminal record certificate, is as described in section 120AC(3), and
  - (c) in the case of an enhanced criminal record certificate, is as described in section 120AC(4).
- (11) In this section—
  - “central records” has the same meaning as in section 113A,
  - “criminal record certificate” includes a certificate under section 114,
  - “enhanced criminal record certificate” includes a certificate under section 116,
  - “exempted question” has the same meaning as in section 113A,
  - “relevant person” means—
    - (a) in relation to a criminal conviction certificate—
      - (i) the individual whose certificate it is, or
      - (ii) any person authorised by the individual,
    - (b) in relation to a criminal record certificate—
      - (i) the individual whose certificate it is, or
      - (ii) any person who is authorised by the individual and is seeking the information for the purposes of an exempted question, and
    - (c) in relation to an enhanced criminal record certificate—
      - (i) the individual whose certificate it is, or
      - (ii) any person who is authorised by the individual and is seeking the information for the purposes of an exempted question asked for a purpose prescribed under section 113B(2)(b).”

## 84 Criminal conviction certificates: conditional cautions

In section 112(2) of the Police Act 1997 (contents of a criminal conviction certificate)

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- (a) in paragraph (a) after “conviction” insert “or conditional caution”, and
  - (b) in paragraph (b) for “is no such conviction” substitute “are no such convictions and conditional cautions”.

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*Status: This is the original version (as it was originally enacted).*

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*Other*

**85 Inclusion of cautions etc. in national police records**

After subsection (4) of section 27 of the Police and Criminal Evidence Act 1984 (recordable offences) insert—

“(4A) In subsection (4) “conviction” includes—

- (a) a caution within the meaning of Part 5 of the Police Act 1997; and
- (b) a reprimand or warning given under section 65 of the Crime and Disorder Act 1998.”

**86 Out of date references to certificates of criminal records**

In section 75(4) of the Data Protection Act 1998 (commencement of section 56 of that Act not to be earlier than the first day on which certain sections of the Police Act 1997 relating to certificates of criminal records are all in force) for “sections 112, 113 and 115” substitute “sections 112, 113A and 113B”.