

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 10 – Criminal Records

Section 70 – Registration for criminal record purposes

378. **Section 70** amends Part V of the Police Act 1997 (“the 1997 Act”).
379. Part V of the 1997 Act (sections 112 to 127) provides for the issue by the Secretary of State (now the Scottish Ministers) of certificates showing criminal conviction and criminal record information.
380. There are three types of certificates:
- a criminal conviction certificate (section 112);
 - a criminal record certificate (sections 113 and 114); and
 - an enhanced criminal record certificate (sections 115 and 116).
381. The criminal conviction certificate shows unspent convictions (in terms of the Rehabilitation of Offenders Act 1974) or states that there are no such convictions. Both criminal record certificates and enhanced criminal record certificates show any unspent and spent convictions (in terms of the Rehabilitation of Offenders Act 1974) and any cautions. Enhanced criminal record certificates show in addition any information which a chief constable considers relevant to the position for which the individual is being considered and which can be included in the certificate without harming the interests of the prevention or detection of crime. The conviction information disclosed in the certificates relates to information contained in records held in the Scottish Criminal Record Office (SCRO) and in records obtained by SCRO from the Police National Computer.
382. Applications for criminal record certificates under section 113 of the Act and enhanced criminal record certificates under section 115 must be countersigned by a person listed in the register maintained under section 120 of the Act (“a registered person”).
383. Subsection (2) inserts a new section 120A into the 1997 Act. The new section gives the Scottish Ministers power to refuse to include a person in the register maintained under section 120 of the Act, if they consider that the registration of that person is likely to make it possible for an unsuitable person to have access to criminal record information. The Scottish Ministers are also given power to remove a person from the register if they believe that the registration of that person has resulted in such information becoming known to an unsuitable person (subsection (2) of the new section).
384. Subsection (3) of the new section sets out the factors which the Scottish Ministers should have regard to when considering whether a person is suitable to have access to the information. These are:

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2003 (asp 7) which received Royal Assent on 26 March 2003*

- information relating to that person which concerns a conviction within the meaning of the Rehabilitation of Offenders Act 1974, including a spent conviction or a caution;
 - whether that person is included in any list kept under section 81 of the Care Standards Act 2000 - that is, any list held by the Secretary of State for Health of individuals who are considered unsuitable to work with vulnerable adults;
 - any information provided by the chief constable of a police force in Scotland in response to a requirement by the Scottish Ministers to provide information for the purposes of the new discretion;
 - any information provided by the chief constable of a police force in England, Wales or Northern Ireland in response to a request by the Scottish Ministers to provide information for the purposes of the new discretion;
 - any decision of the Scottish Ministers to refuse or withdraw registration or to refuse (because a breach of the Code of Practice on the use of information provided to registered persons) to issue a certificate; and
 - any decision to refuse or withdraw registration under the provisions of Part V as it applies in another part of the UK.
385. Subsection (4) of the new section requires a chief constable of a police force in Scotland to comply with requests for information in relation to the new section. Subsection (5) of the new section provides for fees to be prescribed for the supply of information by chief constables
386. [Section 70\(3\)](#) amends section 115 of the 1997 Act by inserting into section 115(5) of that Act a provision which will add to the range of purposes in relation to which an enhanced criminal record certificate may be obtained. The addition is a purpose relating to 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.
387. [Section 70\(3\)](#) further amends section 115 of the 1997 Act by inserting 5 new subsections which will add to the range individuals in respect of whom an enhanced criminal record certificate may be obtained. The range of such persons is extended to include: -
- individuals included or seeking inclusion in certain lists prepared for the purposes of Part I and Part II of the National Health Service (Scotland) Act 1978;
 - Her Majesty’s Inspectors and other persons appointed or seeking appointment for purposes of carrying out inspections of educational provision;
 - individuals appointed or seeking appointment under section 39(2) of the Children (Scotland) Act 1995 as a member of a children’s panel or a Children’s Panel Advisory committee, or joint advisory committee, or sub-committees thereof;
 - the Principal Reporter and officers to assist the Principal Reporter;
 - prosecutors and officers to assist a prosecutor or to assist in the work of the Crown Office;
 - persons (curators ad litem, reporting officers and “safeguarders”) included or seeking to be included in a panel established by virtue of section 101(1) of the Children (Scotland) Act 1995.
388. [Section 70\(4\)](#) amends section 119(1) of the 1997 Act so as to extend the duty to supply information to cover the supply of information for purposes of considering a person’s suitability to be registered or to continue to be registered under section 120 of the 1997 Act.

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389. **Section 70(5)** inserts a new section 119A into the 1997 Act. This requires any person who holds in Scotland records of criminal convictions to make the records available to the Scottish Ministers in relation to their powers to cancel the inclusion of any person on the register. Ministers may also request information from the list of persons considered unsuitable to work with vulnerable adults. “Person” for this purpose does not include a public body or holder of public office, unless the person is a Scottish public authority.
390. **Section 70(6)** amends section 120 of the Police Act 1997 to provide that the duty to register is qualified by the new provisions conferring on the Scottish Ministers the discretion to refuse to include a person on the register. The section also provides that the Scottish Ministers may make regulations about the maintenance of the register in relation to the nomination of a person to countersign applications, a refusal or cancellation of a nomination, and the period after which a person refused registration or removed from the register may reapply.
391. **Section 70(7)** amends section 122 of the Police Act 1997. Section 122 makes provision for the Scottish Ministers to publish a code of practice, in connection with the use of information by registered persons under the 1997 Act. Section 70(7)(a) amends section 122 to permit the code of practice to be extended to cover, not only the use of information provided to registered persons, but also the discharge of any function of a registered person under the 1997 Act. Subsection (7)(b) amends section 122 of the 1997 Act to permit the Scottish Ministers to remove a registered person from the register, as a result of his or her failure to comply with the code of practice or for countersigning an application at the request of a body that has failed to comply with the code.
392. **Section 70(8)** inserts a new section 124A into the Police Act 1997 to provide that, where the Scottish Ministers have refused a person registration or where the person has been removed from the register because he or she has not complied with the code of practice, the person should be notified in writing of the action and the reason for it. A copy of the notice should also be sent to the Secretary of State. (that is, the Home Secretary).
393. The new section provides the person with a right to request in writing a review of the decision and to be notified of the results of the review. A copy is also to be sent to the Secretary of State. Regulations may be made by negative procedure to deal with procedural matters related to the notification process
394. **Section 70(8)** also inserts a new section 124B, which provides for the Scottish Ministers to maintain a list of all persons in respect of whom a criminal record certificate or an enhanced criminal record certificate has been issued under sections 113 to 116 of the Act. The Scottish Ministers are given power to make regulations about the maintenance of this list. The section also empowers Ministers to notify the person who countersigned the application for the certificate or certain other persons of new convictions or relevant matters of which Ministers become aware after issuing a certificate. It also requires the Scottish Ministers in making regulations under section 124A to allow the listed person an opportunity to make representations regarding notification under subsection (3), and the Scottish Ministers should have regard to any such representations before making notification. The regulations may also require the person who would receive the notification (except a Minister of the Crown) to provide such information as they have which may be relevant to the exercise of the discretion to notify.