

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 - Criminal Justice

Section 108 - Amendments of Part 5 of Police Act 1997

529. This section amends Part 5 of the [Police Act 1997 \(c.50\)](#) (“the 1997 Act”). The 1997 Act is the legislation under which criminal record certificates (basic, standard and enhanced disclosures) are issued for recruitment and other purposes. The day to day functions of the Scottish Ministers under Part 5 of the 1997 Act are carried out by Disclosure Scotland, an executive agency of the Scottish Government.
530. [Section 108](#) makes three amendments to the 1997 Act: the first makes provision for sex offender notification requirements to be included on enhanced criminal record certificates; the second provides an order making power to amend 5 definitions used in Part 5 of the 1997 Act; and the third clarifies the power to charge fees in connection with registration in the register of registered persons kept under section 120 of the 1997 Act.
531. [Section 108\(2\)](#) makes provision for the fact that a person is subject to notification requirements under Part 2 of the [Sexual Offences Act 2003 \(c.42\)](#) (“the 2003 Act”) to be included on enhanced criminal record certificates (commonly referred to as “enhanced disclosure”) issued under section 113B of the 1997 Act.
532. Section 112 of the 1997 Act makes provision as to criminal convictions certificates (commonly referred to as “basic disclosure”). Section 113A of the 1997 Act makes provision as to criminal record certificates (commonly referred to as “standard disclosures”). Section 78 of the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”) will, when commenced, amend sections 112 and 113A of the 1997 Act to make provision for notification requirements under Part 2 of the 2003 Act to be included in basic and standard disclosures.
533. Section 49 of the 2007 Act makes provision for notification requirements under Part 2 of the 2003 Act to be included in scheme record disclosures under the 2007 Act.
534. [Section 108\(2\)](#) brings provision for enhanced disclosure into line with that for basic, standard and scheme record disclosures, correcting an anomaly in the 1997 Act and reflecting the long-standing policy intention.
535. [Section 108\(3\)](#) inserts a new section 113BA into Part 5 of the 1997 Act that will enable Scottish Ministers, by order, to amend the definitions of the expressions: “criminal conviction certificate” (basic disclosure) in section 112(2); “central records” in sections 112(3) and 113A(6); “criminal record certificate” (standard disclosure) in section 113A(3); “relevant matter” in section 113A(6); and “enhanced criminal record certificate” (enhanced disclosure) in section 113B(3).

*These notes relate to the Criminal Justice and Licensing (Scotland)
Act 2010 (asp 13) which received Royal Assent on 6 August 2010*

536. Section 113BA(2) restricts the use of the order making power. An order can only be made to enable certificates to include information held outside the United Kingdom, or in connection with enabling that to be done. Section 113BA(3) provides that any order will be a class 1 instrument, i.e. it cannot be made unless it has been laid in draft and approved by resolution of the Scottish Parliament.
537. It is intended that the order making power will be used to enable disclosure certificates to include relevant information from outside the United Kingdom (e.g. information relating to convictions for offences outside the United Kingdom) where that information is provided to the Scottish Ministers on the basis that it may be used for recruitment purposes.
538. The third amendment to the 1997 Act is at section 108(4) and the effect is to insert two new subsections into section 120ZB.
539. An application for either a standard or an enhanced disclosure certificate must be countersigned by a person whose name is listed in the register kept by Scottish Ministers under section 120 of the 1997 Act. Section 120ZB, inserted into the 1997 Act by section 81 of the Protection of Vulnerable Groups (Scotland) Act 2007, allows regulations to be made about this registration.
540. Section 120ZB(2A) clarifies the fee charging power in section 120ZB(2)(a). It provides that, in particular Ministers may charge fees in respect of applications to be listed in the register, this will allow fees for registration itself and for the nomination of counter-signatories. Different fees may be charged in different circumstances, annual or recurring fees may be charged and fees may be charged in advance or arrears.
541. It is intended that the power will be used to provide different fees for different situations. For example, a different charge is likely to be made for inclusion in the register as compared with an application from a registered person to have another counter-signatory added to act on behalf of them.
542. Lastly, section 120ZB(2B) will enable Ministers to disregard an application for inclusion in the register if the fee for that application is not paid.