

2010 No. 383

POLICE

**The Police Act 1997 (Criminal Records) (Registration)
(Scotland) Regulations 2010**

Made - - - - *2nd November 2010*

Laid before the Scottish Parliament *4th November 2010*

Coming into force in accordance with regulation 1(1)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 118(2A)(e), 119(7), 120ZB(1), (2)(a) to (e) and (h) to (j), (2A) and (3)(a), 120A(7), 124A(4), 125(5) and 126(1) of the Police Act 1997(a) and all other powers enabling them to do so.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2010 and come into force on the same day as section 78 of the Protection of Vulnerable Groups (Scotland) Act 2007(b).

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the 1997 Act” means the Police Act 1997;

“the 2007 Act” means the Protection of Vulnerable Groups (Scotland) Act 2007;

“the register” means the register maintained by the Scottish Ministers under section 120(1) (registered persons) of the 1997 Act for the purposes of Part 5 (certificates of criminal records) of the 1997 Act;

“countersignatory” means a person for the time being nominated by a body corporate or unincorporate or statutory office-holder as being authorised to act for that body or person in relation to the countersigning of applications under section 113A or 113B of the 1997 Act or the making of declarations in relation to disclosure requests under section 52 or 53 of the 2007 Act;

(a) 1997 c.50. See section 125(1) for a definition of “prescribed”. By virtue of section 126(3) and (4), as inserted by section 166(2) of the Serious Organised Crime and Police Act 2005 (c.15) (“the 2005 Act”), in the application of Part 5 to Scotland, references to the Secretary of State must be construed as references to the Scottish Ministers (except in section 118(2A)(d) or 124A(1) and (2)). Section 118(2A) was inserted by section 164(3) of the 2005 Act. Section 119(7) was inserted by section 165(1)(b) of the 2005 Act. Section 120ZB was inserted by section 81(2) of the Protection of Vulnerable Groups (Scotland) Act 2007, (asp 14) (“the 2007 Act”) and was amended by section 108(4) of the Criminal Justice and Licensing (Scotland) Act 2010, (asp 13) (“the 2010 Act”). Section 120A was inserted by section 70(2) of the Criminal Justice (Scotland) Act 2003, (asp 7) (“the 2003 Act”) and section 120A(7) was inserted by the 2005 Act, section 163(3) and Schedule 14, paragraph 9. Section 124A was inserted by section 70(8) of the 2003 Act.

(b) 2007 asp 14.

“disclosure request” has the same meaning as in section 97(1) (general interpretation) of the 2007 Act;

“exempted question” has the same meaning as in section 113A (criminal record certificates) of the 1997 Act^(a);

“lead signatory” means the person who signs the application for inclusion in the register and acts on behalf of a body corporate or unincorporate; and

“statutory office-holder” means a person appointed to an office by virtue of an enactment.

(2) Any words or expressions used in these Regulations to which meanings are assigned by Part 5 of the 1997 Act shall have the same meanings as in the 1997 Act.

(3) Any reference in these Regulations to a numbered section is, unless otherwise stated, a reference to that numbered section of the 1997 Act.

(4) A requirement in these Regulations that any notification or representations should be “in writing” is satisfied where (apart from the usual meaning of that expression) the text of it—

- (a) is transmitted by electronic means;
- (b) is received in legible form; and
- (c) is capable of being used for subsequent reference.

The register

3.—(1) The information to be included in the register in respect of a registered person is—

- (a) where the person is an individual who employs others in the course of a business—
 - (i) the surname, all forenames and title, any previous surnames and forenames, home address, date, place and country of birth of the person and any current business address, business telephone or facsimile number or electronic mailing address which has been notified by that person to the Scottish Ministers for communication purposes;
 - (ii) the date on which the name of the person was first listed in the register;
 - (iii) the number assigned to the person on being so listed;
 - (iv) the nature and purpose of the exempted questions that the person is likely to ask; and
 - (v) a specimen of the signature of the person;
- (b) where the person is a body corporate or unincorporate—
 - (i) the surname, all forenames and title, any previous surnames and forenames, home address, date, place and country of birth of the lead signatory and any countersignatory and any current business address, business telephone or facsimile number or electronic mailing address which has been notified to the Scottish Ministers for communication purposes;
 - (ii) the date on which the name of the lead signatory and any countersignatory was first listed in the register;
 - (iii) the number assigned to the lead signatory and any countersignatory on being listed;
 - (iv) the nature and purpose of the exempted questions, if any, that the body is likely to ask;
 - (v) a specimen of the signature of the lead signatory and any countersignatory; and
 - (vi) whether the body is likely to countersign applications under section 113A (criminal record certificates) or 113B (enhanced criminal record certificates)^(b) of the 1997 Act or whether the body is likely to make declarations in relation to disclosure

(a) Section 113A was inserted into the 1997 Act by section 163(2) of the 2005 Act. Section 113A was amended by section 78(2), 79(1) and schedule 4, paragraph 28 of the 2007 Act.

(b) Section 113B was inserted into the 1997 Act by section 163(2) of the 2005 Act. Section 113B was amended by section 79(1) of the 2007 Act and by section 108(2) of the 2010 Act.

requests under section 52 (disclosure of scheme records) or 53 (disclosure of short scheme records) of the 2007 Act at the request of bodies or individuals asking exempted questions and, if so, the nature and purpose of those questions;

- (c) where the person is a body corporate, the surname, all forenames and title of the chief executive and chairperson (unless either person is the lead signatory).
- (d) where the person is a statutory office-holder—
 - (i) the surname, all forenames and title, any previous surnames and forenames, home address, date, place and country of birth of the person and any countersignatory and any current business address, business telephone or facsimile or electronic mailing address which has been notified to the Scottish Ministers for communications purposes;
 - (ii) the date on which the name of the person and any countersignatory was first listed in the register;
 - (iii) the number assigned to the person and any countersignatory on being listed;
 - (iv) the nature and purpose of the exempted questions that the person is likely to ask; and
 - (v) a specimen of the signature of the person and any countersignatory.

(2) In paragraph (1), any reference to the business address is a reference to the address of the principal place of business of that person, subject to the requirement that where that person's principal place of business is outside Scotland and that person has a place of business in Scotland, the address of that place of business shall also be included in the register.

(3) A registered person must notify the Scottish Ministers in writing, as soon as is reasonably practicable, of the details of any alteration to the information that has been supplied by that person for the purposes of paragraph (1).

(4) A countersignatory must notify the Scottish Ministers in writing, as soon as is reasonably practicable, of the details of any alteration to the information that has been supplied by that countersignatory for the purposes of paragraph (1) and the Scottish Ministers may verify any such alteration with the registered person.

Nomination of countersignatories

4.—(1) A body corporate or unincorporate or statutory office-holder applying for registration under section 120(a) may nominate a countersignatory by submitting with the application the surname, all forenames and title, any previous surnames and forenames, home address, date, place and country of birth, any current business address, business telephone or facsimile or electronic mailing address and a specimen signature of the countersignatory.

(2) A registered person who is a body corporate or unincorporate or a statutory office-holder may nominate a countersignatory by submitting to the Scottish Ministers the surname, all forenames and title, any previous surnames and forenames, home address, date, place and country of birth, any current business address, business telephone or facsimile or electronic mailing address and a specimen signature of any countersignatory nominated after the registration of the body corporate or unincorporate or statutory office-holder, whether or not in substitution for any name previously submitted.

(3) The Scottish Ministers may refuse to accept, or to continue to accept, the nomination of a countersignatory if, in the opinion of the Scottish Ministers, that countersignatory is not a suitable person to have access to information which has become, or is likely to become, available to that countersignatory as a result of the registration of the body corporate or unincorporate or statutory office-holder which nominated that countersignatory.

(a) Section 120 was amended by the 2003 Act, section 70(1) and (6), and by the 2005 Act, section 163(3) and Schedule 14, paragraph 6.

(4) In determining for the purposes of this regulation whether a countersignatory is a suitable person to have access to any information, the Scottish Ministers may have regard, in particular, to—

- (a) the matters specified in section 120A(3) (refusal and cancellation of registration: Scotland)(a);
- (b) whether or not the Scottish Ministers have previously refused to accept, or to continue to accept, that countersignatory's nomination; and
- (c) whether or not that countersignatory has previously been a person who has been removed from the register, or has had conditions imposed on them as respects their continued listing in the register, by the Scottish Ministers under section 122(4) (code of practice).

(5) Before the Scottish Ministers refuse to accept, or to continue to accept, the nomination of a countersignatory under this regulation, they must notify in writing—

- (a) the body corporate or unincorporate or the statutory office-holder concerned that they are of the opinion that they should refuse to accept, or to continue to accept, the nomination of that countersignatory, and that body or statutory office-holder may nominate another countersignatory in substitution; and
- (b) the countersignatory nominated that they are of the opinion that they should refuse to accept, or continue to accept, the nomination of that countersignatory and state the reasons for that opinion and must inform that countersignatory of the right to make representations under paragraph (6).

(6) A countersignatory who has been notified in accordance with paragraph (5)(b) may, within 28 days of the receipt of such notice, make representations in writing to the Scottish Ministers as to why the Scottish Ministers should not refuse to accept, or to continue to accept, their nomination and the Scottish Ministers must consider any such representations.

(7) After considering such representations, the Scottish Ministers must notify the countersignatory nominated in writing—

- (a) that they have decided that they should refuse to accept, or to continue to accept, the nomination of that countersignatory, and state the reasons for that opinion; or
- (b) that they do not propose to refuse to accept, or to continue to accept, the nomination of that countersignatory.

(8) If no representations are received within the period specified in paragraph (6), the Scottish Ministers may proceed at the end of that period to refuse to accept, or to continue to accept, that countersignatory's nomination.

(9) If representations are received under paragraph (6) and the Scottish Ministers decide to refuse to accept, or to continue to accept, the nomination of that countersignatory, that decision must be implemented within 28 days from the date of receipt of the notification sent under paragraph (7)(a) to the countersignatory nominated.

(10) No countersignatory may be nominated under this regulation if the Scottish Ministers have, within the period of two years prior to the date on which the nomination is received by them, refused to accept, or to continue to accept, that countersignatory's nomination.

Removal from the register of persons who are no longer likely to act in relation to disclosure applications

5.—(1) Subject to paragraphs (2) to (6), the Scottish Ministers may remove from the register any person who is, in the opinion of the Scottish Ministers, no longer likely to wish to countersign applications under section 113A or 113B of the 1997 Act or make declarations in relation to disclosure requests under section 52 or 53 of the 2007 Act.

(a) Section 120A(3) was inserted by the 2003 Act, section 70(2), and amended by the 2005 Act, section 166(1) and Schedule 14, paragraph 9.

(2) Before removing a person from the register, the Scottish Ministers must notify that person in writing that they are of that opinion and state the reasons for that opinion and must inform that person of the right to make representations under paragraph (3).

(3) A person who has been notified in accordance with paragraph (2) may, within 28 days of the receipt of such notice, make representations in writing to the Scottish Ministers as to why that person should not be removed from the register and the Scottish Ministers must consider any such representations.

(4) After considering such representations, the Scottish Ministers must inform the registered person—

- (a) that they are of the opinion that that person is no longer likely to wish to countersign applications under section 113A or 113B of the 1997 Act or make declarations in relation to disclosure requests under section 52 or 53 of the 2007 Act and state the reasons for that opinion and that that person will be removed from the register at the end of a further period of 28 days; or
- (b) that they do not propose to take any further action under this regulation.

(5) If no representations are received within the period specified in paragraph (3), the Scottish Ministers may remove the person from the register at the end of that period.

(6) Where—

- (a) the Scottish Ministers are satisfied, in the case of a registered person other than a body, that the person has died or is incapable for any other reason of countersigning applications under section 113A or 113B of the 1997 Act or making declarations in relation to disclosure requests under section 52 or 53 of the 2007 Act; or
- (b) the registered person has requested that the Scottish Ministers remove that person from the register,

the requirements of paragraphs (2) to (5) do not apply.

Refusal of inclusion in and removal from register – further provision

6.—(1) Where the Scottish Ministers decide to refuse to include a person in the register or, other than under regulation 5, to remove a person from the register, in addition to including information as to the period specified in regulation 11, the Scottish Ministers must include with the notification of that decision and the reasons for the decision—

- (a) details of the period within which the decision will be implemented; and
- (b) details of the right of the person concerned to require the Scottish Ministers to review their decision under section 124A(2) (review of certain decisions as to registration) and of the period within which the person may require such a review.

(2) A person may require the Scottish Ministers under section 124A(2) to review their decision within 28 days of the receipt of the notification of the decision sent under section 124A(1).

(3) Where a decision notified under section 124A(1) has been reviewed by the Scottish Ministers in accordance with section 124A(2), the notification of the results of the review and any consequential change in the decision must—

- (a) state the period within which the decision will be implemented; or
- (b) inform the person concerned that the Scottish Ministers do not propose to take any further action under or by virtue of section 124A.

(4) The period within which a decision to refuse to include a person in the register or, other than under regulation 5, to remove that person from the register must be implemented is—

- (a) where the person has not required a review under section 124A(2), the end of the period mentioned in paragraph (2); or
- (b) where the person has required a review under section 124A(2), the end of a period of 28 days from the date of the receipt of the notification of the results of the review.

Prescribed bodies

7. The following bodies are prescribed under section 120A(7)—
- (a) the Provost Marshal for the Royal Navy Police;
 - (b) the Provost Marshal for the Royal Military Police;
 - (c) the Provost Marshal for the Royal Air Force Police;
 - (d) the Ministry of Defence Police Committee for the Ministry of Defence Police;
 - (e) the British Transport Police Authority for the British Transport Police;
 - (f) the Civil Nuclear Police Authority for the Civil Nuclear Constabulary;
 - (g) the Serious Organised Crime Agency;
 - (h) the Scottish Police Services Authority for the Scottish Crime and Drug Enforcement Agency;
 - (i) the Home Affairs Committee for the States of Jersey Police Force;
 - (j) the Home Department for the salaried police force of the Island of Guernsey;
 - (k) the Department of Home Affairs for the Isle of Man Constabulary; and
 - (l) the Department of Justice, Equality and Law Reform of the Government of Ireland for the Garda Síochána.

Fees until 31st March 2011 for applications for registration and for nomination of countersignatories

8.—(1) Until 31st March 2011 the fee in respect of an application for inclusion in the register is £150.

(2) Until 31st March 2011 the fee payable by an applicant which is a body corporate or unincorporate or a statutory office-holder in respect of each countersignatory entered in the register is £10.

(3) The fee payable under paragraphs (1) and (2) is payable upon application for inclusion in the register.

(4) Until 31st March 2011 the fee payable by a registered person which is a body corporate or unincorporate or a statutory office-holder in respect of each subsequent countersignatory entered in the register is £10.

Fees from 1st April 2011 for applications for registration and for nomination of countersignatories

9.—(1) From 1st April 2011 the fee in respect of an application for inclusion in the register is £75.

(2) Where the applicant is a body corporate or unincorporate or a statutory office-holder the fee in paragraph (1) includes up to 4 countersignatories entered in the register.

(3) From 1st April 2011 the fee payable by an applicant which is a body corporate or unincorporate or a statutory office-holder in respect of the fifth and each subsequent countersignatory entered in the register is £15.

(4) The fee payable under paragraphs (1) and (3) is payable upon application for inclusion in the register.

(5) From 1st April 2011 the fee payable by a registered person which is a body corporate or unincorporate or a statutory office-holder in respect of each subsequent countersignatory entered in the register after the date on which the name of the registered person was first listed in the register is £15.

(6) From 1st April 2011 the fee payable to change the lead signatory to a person other than an existing countersignatory is £15.

Annual fees for continued registration

10. From 1st April 2011 the annual fee is payable on the first anniversary and on each subsequent anniversary of the date of registration and is—

- (a) £75 for continued inclusion in the register with up to 4 countersignatories; and
- (b) where applicable, an additional £15 in respect of the fifth and each subsequent countersignatory.

Persons who re-apply for inclusion in the register

11.—(1) Where a person has been removed from the register under regulation 5, a period of 28 days must elapse before the person can apply to be included in the register.

(2) Where a person has been refused registration or removed from the register, as the case may be, under section 120A(1) or (2), or 122(4) of the 1997 Act, a period of two years must elapse before the person may apply to be included in the register.

Conditions of registration

12.—(1) The following are prescribed conditions for the registration or continued registration of any person—

- (a) a registered person which is a body corporate or unincorporate must have a lead signatory listed in the register; and
- (b) fees payable under these Regulations must be paid within 14 days of the Scottish Ministers requiring payment.

(2) If the conditions in paragraph (1) are not met registration may be suspended and no further applications under section 113A or 113B of the 1997 Act or declarations in relation to disclosure requests under section 52 or 53 of the 2007 Act will be processed.

Amendment of the Police Act 1997 (Criminal Records) (Scotland) Regulations 2010

13. The Police Act 1997 (Criminal Records) (Scotland) Regulations 2010(a) are amended as follows—

- (a) in regulation 15 (evidence of identity: obtaining data), after “the General Register Office for Scotland” insert “in connection with keeping records of births, marriages, deaths and adoptions”; and
- (b) in regulation 16(2)(g) (appropriate bodies to pay fee for information provided to the Scottish Ministers), omit “the Board of”.

Revocation

14. The Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2006(b) are revoked.

ADAM INGRAM

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
2nd November 2010

(a) S.S.I. 2010/168.

(b) S.S.I. 2006/97.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with the register maintained under Part 5 of the Police Act 1997 (“the 1997 Act”). They come into force on the same day as section 78 of the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”).

Regulation 3 sets out the information to be included in the register maintained by the Scottish Ministers under section 120 of the 1997 Act.

Regulation 4 sets out the procedure for the nomination of individuals to act in relation to the countersigning of applications under Part 5 of the 1997 Act or the making of declarations in relation to disclosure requests under the 2007 Act. A body or statutory office-holder which has registered person status may nominate any countersignatories by submitting the names, addresses, dates of birth and specimen signatures of the countersignatories.

Regulation 5 makes provision in terms of section 120ZB(2)(h) of the 1997 Act and details the procedure for the removal from the register of persons who are, in the opinion of the Scottish Ministers, no longer likely to wish to countersign applications under section 113A or 113B of the 1997 Act or to make declarations in relation to disclosure requests under sections 52 or 53 of the 2007 Act. Such persons may be bodies corporate or unincorporate, statutory office-holders or individuals employing others in the course of a business.

Regulation 6 concerns the procedure to be followed where the Scottish Ministers decide under section 120A(1) or (2) or 122(4) to refuse to include a person in the register or to remove a person from the register.

Regulation 7 prescribes the bodies that are to receive payment in respect of information relating to registration sought from them by the Scottish Ministers.

Regulation 8 sets out the fees payable for applications for registration and for nomination of countersignatories until 31st March 2011.

Regulation 9 sets out the fees payable for applications for registration and for nomination of countersignatories from 1st April 2011.

Regulation 10 makes provision for the payment of an annual fee for continued inclusion in the register.

Regulation 11 makes provision as to the periods which must elapse before a person refused registration or removed from the register can apply again to be included in the register.

Regulation 12 makes provision as to conditions of registration.

These Regulations also make minor amendments to the Police Act 1997 (Criminal Records) (Scotland) Regulations 2010 (SSI 2010/168) (“the 2010 Regulations”) which make detailed provision in relation to applications for criminal conviction certificates, criminal record certificates and enhanced criminal record certificates under Part 5 of the 1997 Act.

Regulation 13(a) amends regulation 15 of the 2010 Regulations to provide that the General Register Office for Scotland is prescribed as a person for the purposes of section 118(2A)(e) of the 1997 Act only in connection with the records which it keeps for births, marriages, deaths and adoptions.

Regulation 13(b) amends regulation 16(2) of the 2010 Regulations to remove the reference to the Board of the Serious Organised Crime Agency

Regulation 14 revokes the Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2006 (S.S.I. 2006/97).