



# Safeguarding Vulnerable Groups Act 2006

## 2006 CHAPTER 47

### *Monitoring*

#### **24 Monitoring**

- (1) An individual is subject to monitoring in relation to regulated activity if—
  - (a) he is not barred from engaging in the activity,
  - (b) he makes a monitoring application,
  - (c) he satisfies the prescribed requirements, and
  - (d) he pays such fee (if any) as is prescribed.
- (2) A monitoring application must specify whether it is in respect of—
  - (a) regulated activity relating to children, or
  - (b) regulated activity relating to vulnerable adults.
- (3) On a monitoring application being made the Secretary of State must—
  - (a) make such enquiries as he thinks appropriate to ascertain whether any relevant information exists in relation to the individual;
  - (b) request the person who holds such information to provide it to him.
- (4) The Secretary of State must—
  - (a) provide the individual with any disclosable information that he has, or
  - (b) notify the individual that he has no disclosable information.
- (5) Disclosable information is information provided to the Secretary of State under subsection (3)(b) in relation to the individual, but does not include information to which subsection (9) applies.
- (6) Subsection (4) does not apply if the individual made an application for an enhanced criminal record certificate (under section 113B of the Police Act 1997 (c. 50)) simultaneously with his monitoring application.
- (7) The Secretary of State must also ensure that—

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*Status: This is the original version (as it was originally enacted).*

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- (a) at such intervals as he thinks appropriate such enquiries are made as he thinks appropriate to ascertain whether any new relevant information exists in relation to the individual;
  - (b) the person who holds such new relevant information is requested to provide it to him.
- (8) Relevant information is—
- (a) the prescribed details of relevant matter (within the meaning of section 113A of the Police Act 1997 (c. 50));
  - (b) information which the chief officer of a relevant police force thinks might be relevant in relation to the regulated activity concerned;
  - (c) such other information as may be prescribed.
- (9) This subsection applies to information mentioned in subsection (8)(b) which the chief officer of a relevant police force thinks it would not be in the interests of the prevention or detection of crime to disclose to an individual subject to monitoring.
- (10) A monitoring application is an application made to the Secretary of State in the prescribed form and manner.
- (11) The prescribed requirements may include requirements as to the manner in which the applicant must prove his identity (identification requirements); and if such requirements include a requirement that the applicant has his fingerprints taken at such place and in such manner as may be prescribed, the regulations may make provision requiring their destruction in specified circumstances and by specified persons.
- (12) For the purpose of verifying evidence of identity supplied in pursuance of the identification requirements the Secretary of State may obtain such information as he thinks is appropriate from data held—
- (a) by the Identity and Passport Service;
  - (b) by the Driver and Vehicle Licensing Agency;
  - (c) by the Secretary of State in connection with keeping records of national insurance numbers;
  - (d) by such other persons or for such purposes as is prescribed.
- (13) Relevant information is new if it was not discovered when any earlier inquiries under this section were carried out.
- (14) References to a relevant police force must be construed in accordance with section 113B of the Police Act 1997 as if an application under this section were an application under that section.

## **25 Monitoring: fees**

- (1) This section has effect in respect of fees which may be prescribed in relation to applications for monitoring under section 24.
- (2) In setting a fee for an application made during the period of five years beginning with the commencement of that section, the Secretary of State may take account of expenditure incurred, or which he thinks will be incurred, by him before the end of that period (taking one financial year with another)—
  - (a) in connection with the operation of IBB (including payments under paragraph 11 of Schedule 1);

- (b) in respect of any other expenditure of the Secretary of State in connection with his functions under this Act.
- (3) In setting a fee for an application made after that period, the Secretary of State may take account of expenditure incurred, or which he thinks will be incurred, by him—
  - (a) in making payments under paragraph 11 of Schedule 1;
  - (b) in respect of any other expenditure of the Secretary of State in connection with his functions under this Act.
- (4) For the purposes of subsection (2), it is immaterial that any expenditure is incurred before the commencement of section 24.
- (5) The power to prescribe fees is exercisable only with the consent of the Treasury.
- (6) Fees received by the Secretary of State by virtue of section 24(1)(d) must be paid into the Consolidated Fund.

## **26 Ceasing monitoring**

- (1) The Secretary of State may cease monitoring as mentioned in section 24 in relation to an individual in such circumstances as are prescribed.
- (2) The Secretary of State must cease such monitoring in relation to an individual who—
  - (a) satisfies the Secretary of State that he is not engaged in the regulated activity concerned, and
  - (b) requests the Secretary of State to cease monitoring.

## **27 Prohibition of requirement to produce certain records**

- (1) A person (P) must not, in connection with—
  - (a) the recruitment of another person as an employee, or
  - (b) the continued employment of another person,require that other person or a third party to supply him with a relevant record.
- (2) A person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public must not, as a condition of providing or offering to provide any goods, facilities or services to another person, require that other person or a third party to supply him with a relevant record.
- (3) Subsection (1) does not apply if the duties of the employee include activity of a kind mentioned in paragraph 2(1) or 7(1) of Schedule 4 and the activity is for, or for the benefit, of—
  - (a) P himself;
  - (b) a child, or vulnerable adult, who is a member of P's family;
  - (c) a child, or vulnerable adult, who is a friend of P.
- (4) "Family" and "friend" must be construed in accordance with section 58.
- (5) A person who contravenes subsection (1) or (2) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) A relevant record is the record of information provided by the Secretary of State under section 24(4).

- (7) An employee is an individual who—
- (a) works under a contract of employment, as defined by section 230(2) of the Employment Rights Act 1996 (c. 18),
  - (b) provides any service under a contract for services, or
  - (c) holds any office,
- whether or not he is entitled to remuneration; and “employment” must be construed accordingly.

## 28 Independent monitor

After section 119A of the Police Act 1997 (c. 50) (further sources of information: Scotland) insert—

### “119B Independent monitor

- (1) There is to be an independent monitor for the purposes of this Part.
- (2) The independent monitor is a person appointed by the Secretary of State—
  - (a) for such period, not exceeding three years, as the Secretary of State decides;
  - (b) on such terms as the Secretary of State decides.
- (3) A person may be appointed for a further period or periods.
- (4) The Secretary of State may terminate the appointment of the independent monitor before the end of the period mentioned in subsection (2)(a) by giving the monitor notice of the termination not less than three months before it is to take effect.
- (5) The independent monitor must review—
  - (a) all cases in which information is disclosed to a registered person in pursuance of section 113B(6)(b);
  - (b) a sample of cases in which a certificate issued under section 113B has included information in pursuance of subsection (4)(b) of that section;
  - (c) a sample of cases in which the chief officer of a police force has decided that information must not be included in a certificate or report in pursuance of section 113B(4)(b) or disclosed in pursuance of section 113B(5)(c) and (6)(b);
  - (d) all cases in which information is withheld from an individual because it is information to which section 24(9) of the Safeguarding Vulnerable Groups Act 2006 applies;
  - (e) a sample of cases in which relevant information (within the meaning of section 24(8)(b) of that Act) is provided to an individual in pursuance of section 24(4)(a) of that Act.
- (6) The purpose of a review under subsection (5) is to ensure compliance with Article 8 of the European Convention of Human Rights.
- (7) The independent monitor must in relation to each year make a report to the Secretary of State about the performance of police forces in exercising their functions under this Part.

- (8) The independent monitor may make recommendations to the Secretary of State as to—
  - (a) any guidance issued by the Secretary of State or which the monitor thinks it would be appropriate for the Secretary of State to issue;
  - (b) any changes to any enactment which the monitor thinks may be appropriate.
- (9) The chief officer of a police force must provide to the independent monitor such information as the monitor reasonably requires in connection with the exercise of his functions under this section.”

## **29 Part 5 of the Police Act 1997: code of practice**

- (1) Section 122 of the Police Act 1997 (c. 50) (code of practice) is amended as follows.
- (2) In subsection (1) after “information provided to” insert “, or the discharge of any function by,”.
- (3) In subsection (3) for the words from “The Secretary of State” to “application” substitute “Subsection (3A) applies if the Secretary of State thinks that the registered person who countersigned an application for a certificate under section 113A or 113B”.
- (4) After subsection (3) insert—
  - “(3A) The Secretary of State may—
    - (a) refuse to issue the certificate;
    - (b) suspend the registration of the person;
    - (c) cancel the registration of the person.
  - (3B) Section 120AB applies if the Secretary of State proposes to suspend or cancel a person’s registration under subsection (3A) above as it applies if he proposes to suspend or cancel a person’s registration by virtue of section 120AA.”