

# STATES OF JERSEY



## **PROTECTION OF FREEDOMS ACT 2012: EXTENSION OF PROVISIONS TO JERSEY BY ORDER IN COUNCIL (P.71/2012) – ADDENDUM**

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**Presented to the States on 6th August 2012  
by the Chief Minister**

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**STATES GREFFE**

## **ADDENDUM**

Paragraph 13 of the Report within P.71/2012 reads as follows –

- “13. As detailed above, Part V of the Police Act 1997 has already been extended to Jersey (see P.121/2009) and has enabled Jersey to apply to the Criminal Records Bureau (“CRB”) for disclosure information for specific individuals (referred to as a “criminal record certificate”). Because the 2012 Act amends the Police Act 1997, various provisions of the 2012 Act need to be extended to Jersey by virtue of Order in Council. A Keeling Schedule, which sets out how Part V of the Police Act 1997 is intended to read, once amended by the 2012 Act, is attached for ease of reference for members.”

The Keeling Schedule referred to in this paragraph was omitted from the material submitted to the States Greffe for publication of this projet, and is therefore now published separately as an addendum.



**POLICE ACT 1997**

**1997 CHAPTER 50**

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\* \* \* \* \*

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**ELIZABETH II**



**POLICE ACT 1997**

1997 CHAPTER 50

**AN ACT** to make provision for the National Criminal Intelligence Service and the National Crime Squad; to make provision about entry on and interference with property and with wireless telegraphy in the course of the prevention or detection of serious crime; to make provision for the Police Information Technology Organisation; to provide for the issue of certificates about criminal records; to make provision about the administration and organisation of the police; to repeal certain enactments about rehabilitation of offenders; and for connected purposes.

[21st March 1997]

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows –

**PARTS I TO IV**

\* \* \* \* \*

**PART V**  
**CERTIFICATES OF CRIMINAL RECORDS, C.**

**112 Criminal conviction certificates**

- (1) The Secretary of State shall issue a criminal conviction certificate to any individual who –
  - (a) makes an application \* \* \*,
  - (aa) is aged 16 or over at the time of the making of the application, and
  - (b) pays any fee that is payable in relation to the application under regulations made by the Secretary of State.
- (2) A criminal conviction certificate is a certificate which –
  - (a) gives the prescribed details of every conviction or conditional caution of the applicant which is recorded in central records, or
  - (b) states that there are no such convictions.
- (3) In this section –

“central records” means such records of convictions [and conditional cautions] held for the use of police forces generally as may be prescribed;

[“conditional caution” means a caution given under section 22 of the Criminal Justice Act 2003 (c. 44) or section 66A of the Crime and Disorder Act (c. 37), other than one that is spent for the purposes of Schedule 2 to the Rehabilitation of Offenders Act 1974 (c. 53);]

“conviction” means a conviction within the meaning of the Rehabilitation of Offenders Act 1974, other than a spent conviction.
- (4) Where an applicant has received a criminal conviction certificate, the Secretary of State may refuse to issue another certificate to that applicant during such period as may be prescribed.

**113** \* \* \* \* \*

**113A Criminal record certificates**

- (1) The Secretary of State must issue a criminal record certificate to any individual who –
  - (a) makes an application \* \* \*,
  - (aa) is aged 16 or over at the time of the making of the application, and
  - (b) pays in the prescribed manner any prescribed fee.

- (2) The application must –
- (a) be countersigned by a registered person, and
  - (b) be accompanied by a statement by the registered person that the certificate is required for the purposes of an exempted question.
- [(2A) But an application for a criminal record certificate need not be countersigned by a registered person if –
- (a) the application is transmitted to the Secretary of State electronically by a registered person who satisfies conditions determined by the Secretary of State, and
  - (b) it is transmitted in accordance with requirements determined by the Secretary of State.]
- (3) A criminal record certificate is a certificate which –
- (a) gives the prescribed details of every relevant matter relating to the applicant which is recorded in central records, or
  - (b) states that there is no such matter.
- (4)
- (5) The Secretary of State may treat an application under this section as an application under section 113B if –
- (a) in his opinion the certificate is required for a purpose prescribed under subsection (2) of that section,
  - (b) the registered person provides him with the statement required by that subsection, and
  - (c) the applicant consents and pays to the Secretary of State the amount (if any) by which the fee payable in relation to an application under that section exceeds the fee paid in relation to the application under this section.
- (6) In this section –
- “central records” means such records of convictions and cautions held for the use of police forces generally as may be prescribed;
- [“exempted question” means a question which –
- (a) so far as it applies to convictions, is a question in relation to which section 4(2)(a) or (b) of the Rehabilitation of Offenders Act 1974 (effect of rehabilitation) has been excluded by an order of the Secretary of State under section 4(4) of that Act; and –
  - (b) so far as it applies to cautions, is a question to which paragraph 3(3) or (4) of Schedule 2 to that Act has been excluded by an order of the Secretary of State under paragraph 4 of that Schedule;]
- [“relevant matter” means –

- (a) a conviction within the meaning of the Rehabilitation of Offenders Act 1974, including a spent conviction; and
  - (b) a caution, including a caution that is spent for the purposes of Schedule 2 to that Act.]
- (7) The Secretary of State may by order amend the definitions of “central records” and “relevant matter” in subsection (6).
- [(8) For the purposes of this Part, a person acts as the registered person in relation to an application for a criminal record certificate if the person –
- (a) countersigns the application, or
  - (b) transmits the application to the Secretary of State under subsection (2A).]

### **113B Enhanced criminal record certificates**

- (1) The Secretary of State must issue an enhanced criminal record certificate to any individual who –
- (a) makes an application \* \* \*,
  - (aa) is aged 16 or over at the time of the making of the application, and
  - (b) pays in the prescribed manner any prescribed fee.
- (2) The application must –
- (a) be countersigned by a registered person, and
  - (b) be accompanied by a statement by the registered person that the certificate is required for the purposes of an exempted question asked for a prescribed purpose.
- [(2A) But an application for an enhanced criminal record certificate need not be countersigned by a registered person if –
- (a) the application is transmitted to the Secretary of State electronically by a registered person who satisfies the conditions determined by the Secretary of State, and
  - (b) it is transmitted in accordance with requirements determined by the Secretary of State.]
- (3) An enhanced criminal record certificate is a certificate which –
- (a) gives the prescribed details of every relevant matter relating to the applicant which is recorded in central records and any information provided in accordance with subsection (4), or
  - (b) states that there is no such matter or information.
- (4) Before issuing an enhanced criminal record certificate the Secretary of State must request any relevant chief officer to provide any information which –



- (a) the chief officer reasonably believes to be relevant for the purpose described in the statement under subsection (2), and
  - (b) in the chief officer's opinion ought to be included in the certificate.
- (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.
- (7) The Secretary of State may treat an application under this section as an application under section 113A if in his opinion the certificate is not required for a purpose prescribed under subsection (2).
- (8) If by virtue of subsection (7) the Secretary of State treats an application under this section as an application under section 113A, he must refund to the applicant the amount (if any) by which the fee paid in relation to the application under this section exceeds the fee payable in relation to an application under section 113A.
- (9) In this section –
- “central records”, “exempted question”, and “relevant matter” have the same meaning as in section 113A;
  - “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 the Chief Officer of the States of Jersey Police;
  - “relevant police force”, in relation to an application under this section, means a police force which is a relevant police force in relation to that application under regulations made by the Secretary of State.
- (10) For the purposes of this section references to a police force include any of the following –
- (a) the Royal Navy Police;
  - (c) the Royal Military Police;
  - (d) the Royal Air Force Police;
  - (e) the Ministry of Defence Police;
  - (f) the National Criminal Intelligence Service;
  - (g) the National Crime Squad;
  - (h) the British Transport Police;
  - (i) the Civil Nuclear Constabulary;
  - (j) the States of Jersey Police Force;
  - (k) the salaried police force of the Island of Guernsey;
  - (l) the Isle of Man Constabulary;

(m) a body with functions in any country or territory outside the British Islands which correspond to those of a police force in any part of the United Kingdom,

and any reference to the chief officer of a police force includes the person responsible for the direction of a body mentioned in this subsection.

(11) For the purposes of this section each of the following must be treated as if it were a police force –

(a) the Commissioners for Her Majesty’s Revenue and Customs (and for this purpose a reference to the chief officer of a police force must be taken to be a reference to any one of the Commissioners);

(b) the Serious Organised Crime Agency (and for this purpose a reference to the chief officer of a police force must be taken to be a reference to the Director General of the Agency);

(c) such other department or body as is prescribed (and regulations may prescribe in relation to the department or body the person to whom a reference to the chief officer is to be taken to be).

[(12) For the purposes of this Part a person acts as the registered person in relation to an application for an enhanced criminal record certificate if the person –

(a) countersigns the application, or

(b) transmits the application to the Secretary of State under subsection (2A).]

<b>113BA</b>	*	*	*	*	*	*	*
<b>113BB</b>	*	*	*	*	*	*	*
<b>113BC</b>	*	*	*	*	*	*	*
<b>113C</b>	*	*	*	*	*	*	*
<b>113CA</b>	*	*	*	*	*	*	*
<b>113CB</b>	*	*	*	*	*	*	*
<b>113CC</b>	*	*	*	*	*	*	*
<b>113CD</b>	*	*	*	*	*	*	*

**113D** \* \* \* \* \*

**113E Criminal record certificates: specified \* \* adults' lists: urgent cases**

- (1) \* \* \* \*
- (2) \* \* \* \*
- (3) Subsection (4) applies to an application under section \* \* 113B if –
  - [(a) it is made in a case prescribed under section 113BB(1),]
  - (b) the registered person requests an urgent preliminary response, and
  - (c) the applicant pays in the prescribed manner such additional fee as is prescribed in respect of the application.
- (4) The Secretary of State must notify the registered person either –
  - (a) that the applicant is not included in a specified adults' list, or
  - (b) that a criminal record certificate or enhanced criminal record certificate will be issued in due course.
- (5) In this section –
  - “criminal record certificate” has the same meaning as in section 113A;
  - “enhanced criminal record certificate” has the same meaning as in section 113B;
  - \* \* \* \*
  - \* \* \* \*
  - \* \* \* \*
  - \* \* \* \*
  - \* \* \* \*

- [(5A) For the purposes of this section each of the following is a specified adults' list –
  - (a) the list kept under section 81 of the Care Standards Act 2000 (c. 14);
  - (b) the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006 (c. 47);
  - (c) the adults' barred list maintained under article 6 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (S.I. 2007/1351 (N.I. 11)).]

**114 Criminal record certificates: Crown employment**

- (1) The Secretary of State shall issue a criminal record certificate to any individual who –

- (a) makes an application under this section \* \* \*,
  - (aa) is aged 16 or over at the time of the making of the application, and
  - (b) pays any fee that is payable in relation to the application under regulations made by the Secretary of State.
- (2) An application under this section must be accompanied by a statement by a Minister of the Crown that the certificate is required for the purposes of an exempted question asked in the course of considering the applicant's suitability for an appointment by or under the Crown.
- (3) Sections 113A(3) to (6), 120AC and 120AD shall apply in relation to this section with any necessary modifications.

**115** \* \* \* \* \*

**116 Enhanced criminal record certificates: judicial appointments and Crown employment**

- (1) The Secretary of State shall issue an enhanced criminal record certificate to any individual who
- (a) makes an application under this section \* \* \*,
  - (aa) is aged 16 or over at the time of the making of the application, and
  - (b) pays any fee that is payable in relation to the application under regulations made by the Secretary of State.
- (2) An application under this section must be accompanied by a statement by a Minister of the Crown or a person nominated by a Minister of the Crown, that the certificate is required for the purposes of an exempted question asked in the course of considering the applicant's suitability for
- (a) a judicial appointment, or
  - (b) an appointment by or under the Crown to a position of such description as may be prescribed.
- (3) Sections 113B(3) to (11), 113BA to 113BC, 120AC and 120AD shall apply in relation to this section with any necessary modifications.

**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—
  - (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—
    - (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).”

## **117 Disputes about certificates and up-date information**

- (1) Where an applicant for a certificate under any of sections 112 to 116 believes that the information contained in the certificate is inaccurate he may make an application in writing to the Secretary of State for a new certificate.
- (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.
- (1B) Where a person believes that the wrong up-date information may have been given under section 116A in relation to the person's certificate, the person may make an application in writing to the Secretary of State for corrected up-date information.
- (2) The Secretary of State shall consider any application under this section; and where he is of the opinion that the information in the certificate is inaccurate, or that the wrong up-date information has been given, he shall issue a new certificate or (as the case may be) corrected up-date information.

## **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.



- (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.

## **118 Evidence of identity**

- (1) The Secretary of State may refuse to issue a certificate under this Part, or to consider an application as mentioned in section 116A(4)(a) or (5)(a) or an application under section 117 or 117A\* \*, unless the application is supported by such evidence of identity as he may require.
  - (2) In particular, the Secretary of State may refuse to issue a certificate or consider an application unless the applicant
    - (a) has his fingerprints taken at such place and in such manner as may be prescribed, and
    - (b) pays the prescribed fee to such person as may be prescribed.
- [(2ZA) For the purpose of applications from persons resident in Jersey, “prescribed” in subsection 2(a) and (b) means prescribed by Order made by the Minister for Home Affairs.]
- (2A) For the purpose of verifying evidence of identity supplied in pursuance of subsection (1) the Secretary of State may obtain such information as he thinks is appropriate from data held –

- (a) by the United Kingdom Passport Agency;
  - (b) by the Driver and Vehicle Licensing Agency;
  - (c) by Driver and Vehicle Licensing Northern Ireland;
  - (d) by the Secretary of State in connection with keeping records of national insurance numbers;
  - [(da) by the Jersey Passport Office;
  - (db) by a Parish authority or the States of Jersey for the purposes of licensing and registration of motorists and motor vehicles;
  - (dc) by the Social Security Department of the States of Jersey in connection with keeping records of social security numbers;]
  - (e) by such other persons or for such purposes as is prescribed.
- (3) [An Order] dealing with the taking of fingerprints may make provision requiring their destruction in specified circumstances and by specified persons.(3A) The Minister for Home Affairs by notice given in writing may require a person who has a certificate which is subject to up-date arrangements under section 116A to attend at a place and time specified in the notice to provide fingerprints for the sole purpose of enabling the Secretary of State to verify whether information in the possession of the Secretary of State that the Secretary of State considers may be relevant to the person’s certificate does relate to that person.
- (3B) If a person fails to comply with a requirement imposed under subsection (3A), the Secretary of State by notice given in writing may inform that person that, from a date specified in the notice, the person’s certificate is to cease to be subject to up-date arrangements.
- (4) [An Order] prescribing a fee for the purposes of subsection (2)(b) shall make provision for a refund in cases of an application under section 117 where a new certificate is issued.

## **119 Sources of information**

- (1) Any person who holds records of convictions or cautions for the use of police forces generally shall make those records available to the Secretary of State for the purpose of enabling him to carry out a relevant function.
- [(1A)(a) The Secretary of State may require the Independent Safeguarding Authority to make available specified information for the purpose of enabling the Secretary of State to carry out functions under this Part in relation to any application for a certificate, or the provision of up-date information under section 116A.
- (b) In this section “Independent Safeguarding Authority” has the same meaning as in the Safeguarding Vulnerable Groups Act 2006.]

***Sub-paragraph (1A): modified text applicable from 18 March 2010 to the end of the first transitional period<sup>41</sup>***

- [(1A) Any person who keeps the list under section 1 of the Protection of Children Act 1999 or under section 81 of the Care Standards Act 2000 or maintains a list under section 2 of the Safeguarding Vulnerable Groups Act 2006 shall make the contents of that list available to the Secretary of State for the purpose of enabling him to carry out his functions under this Part in relation to any application for a certificate.]*
- (1B) The Secretary of State may require the chief officer of a police force to make available such information as he may specify for the purpose of deciding whether to make a request to that chief officer under section 113B(4).
- (2) Where the chief officer of a police force receives a request under section 113B or 116 he shall comply with it as soon as practicable.
- (2A) Where, in connection with the provision of up-date information under section 116A, the chief officer of a police force receives a request for information of the kind mentioned in section 113B(4), the chief officer of police must comply with it as soon as practicable.
- (3) The Secretary of State shall pay to the appropriate police authority such fee as he thinks appropriate for information provided in accordance with \* \* \* subsection (2) of this section.
- (4) Any person who holds records of fingerprints for the use of police forces generally shall make those records available to the Secretary of State for the purpose of enabling him to carry out his functions under this Part in relation to any application for a certificate, or the provision of up-date information under section 116A.
- (5) No proceedings shall lie against the Secretary of State by reason of an inaccuracy in the information made available or provided to him in accordance with this section.
- (6) For the purposes of this section references to a police force include any body mentioned in subsections (10)(a) to [(1)] and (11) of section 113B and references to a chief officer must be construed accordingly.
- (7) In the case of such a body the reference in subsection (3) to the appropriate police authority must be construed as a reference to such body as is prescribed.
- (8) In this section a relevant function is a function of the Secretary of State under this Part in relation to any application for a certificate, or the provision of up-date information under section 116A.

119A \* \* \* \* \*

119B \* \* \* \* \*

## 120 Registered persons

- (1) For the purposes of this Part a registered person is a person who is listed in a register to be maintained by the Secretary of State for the purposes of this Part.
- (2) Subject to regulations under section 120ZA \* \* \* the Secretary of State shall include in the register any person who –
  - (a) applies to him in writing to be registered, and
  - (b) satisfies the conditions in [subsections (4) and (5)].
  - (c) \* \* \* \*
- [(4) The only person that may apply for registration under this section is the Minister for Home Affairs.]
- (5) [The Minister for Home Affairs when] applying for registration under this section must satisfy the Secretary of State that [he] –
  - (a) is likely to ask exempted questions, or
  - [(b) is likely to act as the registered person in relation to applications under section 113A or 113B at the request of bodies or individuals asking exempted questions.]
- (6) \* \* \* \*
- (7) In this section “exempted question” has the same meaning as in section 113A.

## 120ZA Regulations about registration

- (1) The Secretary of State may by regulations make further provision about registration.
- (2) Regulations under this section may in particular make provision for –
  - (a) the payment of fees,
  - (b) the information to be included in the register,
  - (c) the registration of any person to be subject to conditions,
  - (d) the nomination by [the Minister for Home Affairs] of the individuals authorised to act for \* \* \* him in relation to the countersigning of applications under this Part [or the transmitting of applications under section 113A(2A) or 113B(2A)], and

- (e) the refusal by the Secretary of State, on such grounds as may be specified in or determined under the regulations, to accept or to continue to accept the nomination of a person as so authorised.
- (3) The provision which may be made by virtue of subsection (2)(c) includes provision –
  - (a) for the registration \* \* \* of any person to be subject to prescribed conditions or, if the regulations so provide, such conditions as the Secretary of State thinks fit, and
  - (b) for the Secretary of State to vary or revoke those conditions.
- (4) The conditions imposed by virtue of subsection (2)(c) may in particular include conditions –
  - (a) requiring a registered person, before [acting as the registered person in relation to] an application at an individual’s request, to verify the identity of that individual in the prescribed manner,
  - (b) requiring an application under section 113A or 113B to be transmitted by electronic means to the Secretary of State by the [person who acts as the registered person in relation to the application]. \* \*
  - (c) \* \* \* \* \*

<b>120ZB</b>	*	*	*	*	*	*	*
<b>120A</b>	*	*	*	*	*	*	*
<b>120AA</b>	*	*	*	*	*	*	*
<b>120AB</b>	*	*	*	*	*	*	*

**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.
- (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 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
  - (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.

**120B** \* \* \* \* \*

**121** \* \* \* \* \*

**122** \* \* \* \* \*

**122A Delegation of functions of Secretary of State**

- (1) The Secretary of State may, to such extent and subject to such conditions as he thinks fit, delegate any relevant function of his under this Part to such person as he may determine.
- (2) A function is relevant for the purposes of subsection (1) if it does not consist of a power [to make regulations].
- (3) A delegation under subsection (1) may be varied or revoked at any time.

**122B** \* \* \* \* \*

### **123 Offences: falsification, &c.**

- (1) A person commits an offence if, with intent to deceive, he –
  - (a) makes a false certificate under this Part,
  - (b) alters a certificate under this Part,
  - (c) uses a certificate under this Part which relates to another person in a way which suggests that it relates to himself, or
  - (d) allows a certificate under this Part which relates to him to be used by another person in a way which suggests that it relates to that other person.
- (2) A person commits an offence if he knowingly makes a false statement for the purpose of obtaining, or enabling another person to obtain, a certificate under this Part.
- (3) A person who is guilty of an offence under this section shall be liable on \*  
\* conviction to imprisonment for a term not exceeding six months or to a fine not exceeding [level 4] on the standard scale, or to both.

### **124 Offences: disclosure**

- (1) A member, officer or employee of a body registered under section 120 commits an offence if he discloses information provided following an application under section 113A or 113B unless he discloses it, in the course of his duties –
  - (a) to another member, officer or employee of the registered body,
  - (b) to a member, officer or employee of a body at the request of which the registered body [acted as the registered person in relation to] the application, or
  - (c) to an individual at whose request the registered body acted as the registered person in relation to the relevant application.
- (2) Where information is provided under section 113A or 113B following an application [in relation to which the person who acted as the registered person did so] at the request of a body which is not registered under section 120, a member, officer or employee of the body commits an offence if he discloses the information unless he discloses it, in the course of his duties, to another member, officer or employee of that body.
- (3) Where information is provided under section 113A or 113B following an application [in relation to which the person who acted as the registered person did so at the request of an individual] –
  - (a) the individual commits an offence if he discloses the information unless he discloses it to an employee of his for the purpose of the employee's duties, and



- (b) an employee of the individual commits an offence if he discloses the information unless he discloses it, in the course of his duties, to another employee of the individual.
- (4) Where information provided under section 113A or 113B is disclosed to a person and the disclosure –
- (a) is an offence under this section, or
  - (b) would be an offence under this section but for subsection (6)(a), (d), (e) or (f),
- the person to whom the information is disclosed commits an offence (subject to subsection (6)) if he discloses it to any other person.
- (6) Subsections (1) to (4) do not apply to a disclosure of information contained in a certificate under section 113A or 113B which is made –
- (a) with the written consent of the applicant for the certificate, or
  - (b) to a government department, or
  - (c) to a person appointed to an office by virtue of any enactment, or
  - (d) in accordance with an obligation to provide information under or by virtue of any enactment, or
  - (e) for the purposes of answering an exempted question (within the meaning of section 113A) of a kind specified in regulations made by the Secretary of State, or
  - (f) for some other purpose specified in regulations made by the Secretary of State.
- (7) A person who is guilty of an offence under this section shall be liable on \*  
 \* conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 3 on the standard scale, or to both.

**124A Further offences: disclosure of information obtained in connection with delegated function**

- (1) Any person who is engaged in the discharge of functions conferred by this Part on the Secretary of State commits an offence if he discloses information which has been obtained by him in connection with those functions and which relates to a particular person unless he discloses the information, in the course of his duties –
- (a) to another person engaged in the discharge of those functions,
  - (b) to the chief officer of a police force in connection with a request under this Part to provide information to the Secretary of State, or
  - (c) to an applicant who is entitled under this Part to the information disclosed to him.

- (2) Where information is disclosed to a person and the disclosure –
- (a) is an offence under subsection (1), or
  - (b) would be an offence under subsection (1) but for subsection (3)(a), (d) or (e),
- the person to whom the information is disclosed commits an offence if he discloses it to any other person.
- (3) Subsection (1) does not apply to a disclosure of information which is made –
- (a) with the written consent of the person to whom the information relates,
  - (b) to a government department,
  - (c) to a person appointed to an office by virtue of any enactment,
  - (d) in accordance with an obligation to provide information under or by virtue of any enactment, or
  - (e) for some other purpose specified in regulations made by the Secretary of State.
- (4) A person who is guilty of an offence under this section shall be liable on \*  
 \* conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 3 on the standard scale, or to both.
- (5) \* \* \* \* \*
- (6) For the purposes of this section the reference to a police force includes any body mentioned in subsections (10)(a) to [(1)] and (11) of section 113B and the reference to a chief officer must be construed accordingly.
- (6A) For the purposes of this section the reference to an applicant includes a person who makes a request under section 116A(1), 120AC(1) or 120AD(2).

**124B** \* \* \* \* \*

**[125 Regulations and orders**

- (1) Subject to section 118(2ZA), anything authorised or required by any provision of this Part to be prescribed shall be prescribed by regulations made by the Secretary of State.
- (2) Regulations under this Part may make different provision for different cases.]

**125A** \* \* \* \* \*

## **[125B Form of Applications**

- (1) The Secretary of State may determine the form, manner and contents of an application for the purposes of any provision of this Part.
- (2) A determination may, in particular, impose requirements about the form or manner in which an electronic application is to be signed or countersigned.
- (3) In this section “application” includes a request under section 116A(1), 120AC(1) or 120AD(2).]

## **126 Interpretation of Part V**

- (1) In this Part

“caution” means a caution given to a person [ in England and Wales, Northern Ireland, the Isle of Man, Guernsey or Jersey] in respect of an offence which, at the time when the caution is given, he has admitted;

“certificate” means any one or more documents issued in response to a particular application but does not include any documents issued in response to –

- (a) a request under section 116A(1),
- (b) an application as mentioned in section 116A(4)(a) or (5)(a), or
- (c) a request under section 120AC or 120AD;

“chief officer” means –

- (i) a chief officer of police of a police force in England and Wales,
- (ii) a chief constable of a police force in Scotland, and
- (iii) the Chief Constable of the Police Service of Northern Ireland, [and
- (iv) the chief officer of the salaried Police Force of the Island of Guernsey, and
- (v) the chief officer of the States of Jersey Police Force, and
- (vi) the Chief Constable of the Isle of Man Constabulary;]

“government department” includes a Northern Ireland department [and any department of the States of Jersey];

[“Minister for Home Affairs” means the Minister for Home Affairs for Jersey;]

\* \* \* \* \*

“police authority” means –

- (i) a police authority for an area in Great Britain or a joint police board (within the meaning of the Police (Scotland) Act 1967), and
- (ii) the Northern Ireland Policing Board;

“police force” means –

- (i) a police force in Great Britain, and
- (ii) the Police Service of Northern Ireland and the Police Service of Northern Ireland Reserve; [and
- (iii) the salaried Police Force of the Island of Guernsey, and
- (iv) the States of Jersey Police Force, and
- (v) the Isle of Man Constabulary;]

“prescribed” shall be construed in accordance with section 125(1);

[“standard scale” means the standard scale for the time being in the Schedule to the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993.]

[(2) Subject to subsection (2A), a reference to an Act, or to a provision of an Act, shall be construed as a reference to that Act or provision, as the case may be, as it has effect in England and Wales from time to time.

(2A) A reference to a provision of this Act extended to Jersey by Order in Council shall be construed as a reference to that provision as it has effect in Jersey.]

[(3) The Subordinate Legislation (Jersey) Law 1960 applies to Orders made by the Minister for Home Affairs under this Part of this Act as if this Act were an enactment for the purposes of that Law.]

## **127 Saving: disclosure of information and records**

Nothing in sections 112 to 119 shall be taken to prejudice any power which exists apart from this Act to disclose information or to make records available.

## **PARTS VI TO VII**

\* \* \* \* \*

## **SCHEDULES**

\* \* \* \* \*



## SAFEGUARDING VULNERABLE GROUPS ACT 2006

### 2006 CHAPTER 47

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1–23    \*                    \*                    \*                    \*                    \*                    \*                    \*

#### *Monitoring*

24–27    \*                    \*                    \*                    \*                    \*                    \*                    \*

28        Independent monitor

29        \*                    \*                    \*                    \*                    \*                    \*                    \*

30–56    \*                    \*                    \*                    \*                    \*                    \*                    \*

#### *General*

57–62    \*                    \*                    \*                    \*                    \*                    \*                    \*

63        Amendments and repeals

64–67    \*                    \*                    \*                    \*                    \*                    \*                    \*

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Schedules 1–8    – \*                    \*                    \*                    \*                    \*

Schedule 9        – Amendments

Part 1        –                    \*                    \*                    \*                    \*                    \*

Part 2        –                    Other amendments

Schedule 10    – Repeals

**ELIZABETH II**



**SAFEGUARDING VULNERABLE GROUPS ACT 2006**

2006 CHAPTER 47

**AN ACT** to make provision in connection with the protection of children and vulnerable adults.

[8th November 2006]

**BE IT ENACTED** by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows –

**1–27** \* \* \* \* \*

*Exceptions*

**28 Independent monitor**

[After section 119 of the Police Act 1997 (c. 50) (sources of information)] 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 –
  - (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);
  - (ca) a sample of cases in which the chief officer of a police force has decided that information should be disclosed or not disclosed to the Secretary of State for the purpose of the provision by the Secretary of State of up-date information under section 116.
  - (d) \* \* \* \* \*
  - (e) \* \* \* \* \*
- (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.
- (8A) The Independent Monitor has the functions conferred on the monitor by section 117A.
- (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 or section 117A.”

**29** \* \* \* \* \*

**30–56** \* \* \* \* \*

*General*

**57–62** \* \* \* \* \*

**63 Amendments and repeals**

- (1) Schedule 9 contains amendments.
- (2) Schedule 10 contains repeals.

**64–67** \* \* \* \* \*

**SCHEDULES 18**

\* \* \* \* \*

**SCHEDULE 9**

Section 63

**AMENDMENTS**

**PART 1**

\* \* \* \* \*

**PART 2**

**OTHER AMENDMENTS**

11–13 \* \* \* \* \*

*Police Act 1997 (c. 50)*

- 14(1) The Police Act 1997 is amended as follows.
- (2) In section 113A (criminal record certificates) after subsection (6) insert –
  - “(7) The Secretary of State may by order amend the definitions of “central records” and “relevant matter” in subsection (6).
  - (8) \* \* \* \* \*
- (3) In section 113B (enhanced criminal record certificates), in subsection (2)(b) after “required” insert “for the purposes of an exempted question asked”.
- (4) After section 113B insert –

**“113BA Suitability information relating to children**

- (1) In such cases as are prescribed, an enhanced criminal record certificate must also include suitability information relating to children.
- (2) Suitability information relating to children is –



- (a) whether the applicant is barred from regulated activity relating to children;

[(e) whether the applicant is subject to a direction under section 128 of the Education and Skills Act 2008 (c. 25) (prohibition on participation in management of independent educational institution in England) or section 167A of the Education Act 2002 (c. 32) (prohibition on participation in management of independent school in Wales).]

***Sub-paragraphs (2)–(2C): modified text applicable from 18 March 2010 to the end of the first transitional period<sup>[5]</sup>***

- [(2) *Suitability information relating to children is whether the applicant –*
  - (a) *is provisionally included in the list kept under section 1 of the Protection of Children Act 1999 (c. 14);*
  - (b) *is included in the list kept under section 1 of the Protection of Children Act 1999 otherwise than provisionally and disqualified from working with children for the purposes of section 35 of the Criminal Justice and Court Services Act 2000 (c. 43) or is barred from regulated activity relating to children;*
  - (c) *is subject to a direction made under section 142 of the Education Act 2002 (c. 32).*
- (2A) *If the applicant is provisionally included in the list kept under section 1 of the Protection of Children Act 1999, the suitability information includes the fact that the applicant must not be employed or, as the case may be, must cease to be employed in a child care position with a child care organisation in accordance with section 7 of that Act.*
- (2B) *If the applicant is subject to a direction made under section 142 of the Education Act 2002, the suitability information includes –*
  - (a) *details of any prohibition or restriction on the applicant’s employment;*
  - (b) *the grounds on which the direction was made, and, where the grounds are misconduct, details of the misconduct.*
- (2C) *In subsection (2A), “child care position” and “child care organisation” have the same meanings as in section 12 of the Protection of Children Act 1999.]*
- (3) Expressions used in this section and in the 2006 Act have the same meaning in this section as in that Act, except that “prescribed” must be construed in accordance with section 125 of this Act.
- (4) “The 2006 Act” means the Safeguarding Vulnerable Groups Act 2006.

**113BB Suitability information relating to vulnerable adults**

- (1) In such cases as are prescribed, an enhanced criminal record certificate must also include suitability information relating to vulnerable adults.
- (2) Suitability information relating to vulnerable adults is –
  - (a) whether the applicant is barred from regulated activity relating to vulnerable adults;
- (3) Expressions used in this section and in the 2006 Act have the same meaning in this section as in that Act, except that “prescribed” must be construed in accordance with section 125 of this Act.
- (4) “The 2006 Act” means the Safeguarding Vulnerable Groups Act 2006.

**113BC Suitability information: power to amend**

- (1) The Secretary of State may by order made by statutory instrument –
  - (a) amend section 113BA for the purpose of altering the meaning of suitability information relating to children;
  - (b) amend section 113BB for the purpose of altering the meaning of suitability information relating to vulnerable adults;
  - (c) amend section 120AC(4)(b) in consequence of an order made under paragraph (a) or (b).
- (2) \* \* \* \* \*
- (7) In section 119 (sources of information) –
  - (a) in subsection (1), for the words from “his functions” to the end substitute “a relevant function”;
  - (b) before subsection (2) insert –

“(1B) The Secretary of State may require the chief officer of a police force to make available such information as he may specify for the purpose of determining, in relation to applications under section 113B, whether the police force is a relevant police force.”;
  - (c) \* \* \* \* \*
  - (d) after subsection (7) insert –

[“(8) In this section a relevant function is a function of the Secretary of State under this Part in relation to any application for a certificate.”]

15–16 \* \* \* \* \*

**SCHEDULE 10**

Section 63

**REPEALS**

<i>Short title and chapter</i>	<i>Extent of repeal</i>
* * * *	* * * * *
Police Act 1997 (c. 50)	Sections 113C to 113F
* * * *	* * * *



**ARMED FORCES ACT 2006**

2006 CHAPTER 52

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**PARTS 1 TO 18**

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\* \* \* \* \*

**CHAPTER 4**

**FINAL PROVISIONS**

378 Minor and consequential amendments and repeals

379–386 \* \* \* \* \*

SCHEDULES 1–15 – \* \* \* \* \*

SCHEDULE 16 – Minor and consequential amendments

SCHEDULE 17 – \* \* \* \* \*



**ARMED FORCES ACT 2006**

2006 CHAPTER 52

**AN ACT** to make provision with respect to the armed forces; and for connected purposes.

[8th November 2006]

**BE IT ENACTED** by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows –

**PARTS 1 TO 18**

\* \* \* \* \*

**PART 19**

**SUPPLEMENTARY**

**CHAPTERS 1 TO 3**

\* \* \* \* \*

**CHAPTER 4**

**FINAL PROVISIONS**

**378 Minor and consequential amendments and repeals**

(1) Schedule 16 (minor and consequential amendments) has effect.

(2) \* \* \* \* \*

**379–386** \* \* \* \* \*

**SCHEDULES 115**

\* \* \* \* \*

**SCHEDULE 16**

**MINOR AND CONSEQUENTIAL AMENDMENTS**

1–145 \* \* \* \* \*

*Police Act 1997 (c. 50)*

146–148 \* \* \* \* \*

149 In section 113B(10) of that Act (enhanced criminal record certificates: meaning of “police force”), for paragraphs (a) and (b) substitute –

“(a) the Royal Navy Police;”.

150–246 \* \* \* \* \*

**SCHEDULE 17**

\* \* \* \* \*

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<sup>[1]</sup> chapter 15.360

<sup>[2]</sup> chapter 08.360

<sup>[3]</sup> chapter 15.720

<sup>[4]</sup> “the first transitional period” has the same meaning as in article 1(2) of the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No. 5) Order 2009 [S.I.2009/2610]

<sup>[5]</sup> “the first transitional period” has the same meaning as in article 1(2) of the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No. 5) Order 2009 [S.I.2009/2610]

<sup>[6]</sup> “the second transitional period” has the same meaning as in article 1(2) of the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No. 5) Order 2009 [S.I.2009/2610]

<sup>[7]</sup> “the first transitional period” has the same meaning as in article 1(2) of the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No. 5) Order 2009 [S.I.2009/2610]

<sup>[8]</sup> “the second transitional period” has the same meaning as in article 1(2) of the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No. 5) Order 2009 [S.I.2009/2610]

<sup>[9]</sup> “the second transitional period” has the same meaning as in article 1(2) of the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No. 5) Order 2009 [S.I.2009/2610]