*Draft Order laid before Parliament under section 113A(8) of the Police Act 1997 for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

# 2013 No.

# POLICE, ENGLAND AND WALES

## The Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2013

*Made - - - -* ***

*Coming into force in accordance with article 1(1)*

The Secretary of State makes the following Order in exercise of the powers conferred by section 113A(7) of the Police Act 1997(**a**).

In accordance with section 113A(8) of that Act, a draft of this instrument has been laid before and approved by a resolution of each House of Parliament.

**Citation, commencement and extent**

**1.**—(1) This Order may be cited as the Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2013 and shall come into force on the seventh day after the day on which it is made.

(2) This Order extends to England and Wales only.

**Amendment to the Police Act 1997**

**2.** The Police Act 1997 is amended as follows.

**3.** In section 113A(6)(**b**), for the definition of "relevant matter", substitute—

""relevant matter", in this section as it has effect in England and Wales, means—

(a) in relation to a person who has one conviction only—

(i) a conviction of an offence within subsection (6D);

(ii) a conviction in respect of which a custodial sentence or a sentence of service detention was imposed; or

(iii) a current conviction;

(b) in relation to any other person, any conviction;

(**a**) 1997 c. 50. Section 113A(7) and (8) have been inserted by paragraph 14(2) of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006 (c. 47).

(**b**) Relevant amendments to section 113A(6) have been made by section 50 of the Criminal Justice and Immigration Act 2008 (c. 4) and paragraph 135 of Schedule 9 to the Protection of Freedoms Act 2012 (c. 9).

(c) a caution given in respect of an offence within subsection (6D);

(d) a current caution."

**4.** In section 113A(**a**), before subsection (7) insert—

"(6D) The offences referred to in paragraphs (a)(i) and (c) of the definition of "relevant matter" in subsection (6), as it has effect in England and Wales, are as follows—

(a) murder;

(b) an offence under section 67(1A) of the Medicines Act 1968(**b**) (prescribing, etc. a medicinal product in contravention of certain conditions);

(c) an offence under any of sections 126 to 129 of the Mental Health Act 1983(**c**);

(d) an offence specified in the Schedule to the Disqualification from Caring for Children (England) Regulations 2002(**d**);

(e) an offence specified in Schedule 15 to the Criminal Justice Act 2003(**e**) (specified offences for the purposes of Chapter 5 of Part 12 of that Act (dangerous offenders));

(f) an offence under the following provisions of the Mental Capacity Act 2005(**f**)—

(i) section 44 (ill-treatment or neglect);

(ii) paragraph 4 of Schedule 1 (applications and procedure for registration);

(iii) paragraph 4 of Schedule 4 (duties of attorney in event of incapacity of donor);

(g) an offence under section 7, 9 or 19 of the Safeguarding Vulnerable Groups Act 2006(**g**) (offences in respect of regulated activity);

(h) an offence specified in section 17(3)(a), (b) or (c) of the Health and Social Care Act 2008(**h**) (cancellation of registration), apart from an offence under section 76 of that Act (disclosure of confidential personal information);

(i) an offence specified in the Schedule to the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009(**i**);

(j) an offence specified in Schedule 2 or 3 to the Childcare (Disqualification) Regulations 2009(**j**);

(k) an offence which has been superseded (directly or indirectly) by an offence within paragraphs (a) to (j);

(l) an offence of—

(i) attempting or conspiring to commit any offence falling within paragraphs (a) to (k), or

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(**a**) Subsections 113A(6A) to (6C) of the Police Act 1997 (c. 50) extend to Scotland only.

(**b**) 1968 c. 67. Section 67(1A) has been inserted by section 63(7) of the Health and Social Care Act 2001 (c. 15).

(**c**) 1983 c. 20. Section 126 has been amended by paragraph 17 of Schedule 1 to the Mental Health (Patients in the Community) Act 1995 (c. 52). Section 127 has been amended by paragraph 9(8) of Schedule 4 to the Care Standards Act 2000 (c. 14) and section 42 of, Part 5 of Schedule 11 to, the Mental Health Act 2007 (c. 12). Section 128 has been amended by paragraph 28 of Schedule 3 to the Mental Health Act 2007. Section 129 has been amended by paragraph 19 of Schedule 1 to the Mental Health (Patients in the Community) Act 1995 and paragraph 10 of Schedule 3 to the Health and Social Care Act 2008 (c. 14).

(**d**) S.I. 2002/635. A relevant amendment has been made by S.I. 2011/2581.

(**e**) 2003 c. 44. Schedule 15 has been amended by paragraph 65 of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 63 of, and paragraph 48 of Schedule 6 to, the Serious Crime Act 2007 (c. 27), section 138 of the Coroners and Justice Act 2009 (c. 25), paragraph 6 of Schedule 1 to the Domestic Violence, Crime and Victims (Amendment) Act 2012 (c. 4), paragraph 147 of Schedule 9 to the Protection of Freedoms Act 2012 (c. 9) and paragraph 139 of Schedule 9 to the Protection of Freedoms Act 2012 (c.19).

(**f**) 2005 c. 9.

(**g**) 2006 c. 47. Sections 7, 9 and 19 have been amended respectively by paragraphs 47, 49 and 59 of Schedule 9, and by Schedule 10 to, the Protection of Freedoms Act 2012 (c. 9).

(**h**) 2008 c. 14.

(**i**) S.I. 2009/37. The Schedule has been amended by S.I. 2009/2610, 2010/1146 and 2012/2160.

(**j**) S.I. 2009/1547, amended by S.I. 2011/2581.

(ii) inciting or aiding, abetting, counselling or procuring the commission of any such offence,

or an offence under Part 2 of the Serious Crime Act 2007(**a**) (encouraging or assisting crime) committed in relation to any such offence;

(m) an offence under the law of Scotland or Northern Ireland or any territory outside the United Kingdom which corresponds to an offence under the law of England and Wales within any of paragraphs (a) to (l);

(n) any offence under section 42 of the Armed Forces Act 2006(**b**) in relation to which the corresponding offence under the law of England and Wales (within the meaning of that section) is an offence within any of paragraphs (a) to (l);

(o) an offence under section 70 of the Army Act 1955(**c**), section 70 of the Air Force Act 1955(**d**) or section 42 of the Naval Discipline Act 1957(**e**) of which the corresponding civil offence (within the meaning of that Act) is an offence within any of paragraphs (a) to (l).

(6E) For the purposes of the definition of "relevant matter" as it has effect in England and Wales—

(a) "conviction" has the same meaning as in the Rehabilitation of Offenders Act 1974(**f**), and includes a spent conviction within the meaning of that Act;

(b) "caution" includes a caution which is spent for the purposes of Schedule 2 to that Act but excludes a disregarded caution within the meaning of Chapter 4 of Part 5 of the Protection of Freedoms Act 2012;

(c) a person's conviction is a current conviction if—

(i) the person was aged 18 or over on the date of the conviction and that date fell within the 11 year period ending with the day on which the certificate is issued, or

(ii) the person was aged under 18 on the date of conviction and that date fell within the period of 5 years and 6 months ending with the day on which the certificate is issued;

(d) a caution given to a person is a current caution if—

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(**a**) 2007 c. 27. Part 2 has been amended by paragraph 61(1) of Schedule 21 to the Coroners and Justice Act 2009 (c. 25) and S.I. 2010/976.

(**b**) 2006 c. 52.

(**c**) 1955 c. 18. Section 70 has been amended by Schedule 1 to the Suicide Act 1961 (c. 60), sections 34(1) and 78(4) of, and Schedule 4 to, the Armed Forces Act 1971 (c. 33), section 5(1) of the Biological Weapons Act 1974 (c. 6), section 7(1) of the Criminal Attempts Act 1981 (c. 47), section 10(3) of the Armed Forces Act 1976 (c. 52), section 35 of the Chemical Weapons Act 1996 (c. 6), paragraph 1(1) of Schedule 4 to the Crime (Sentences) Act 1997 (c. 43), paragraph 8 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 74 of, and paragraph 1 of Schedule 10 to, the International Criminal Court Act 2001 (c. 17), paragraph 33(2) of Schedule 6 to, and Schedule 7 to, the Armed Forces Act 2001 (c. 19) and paragraph 9(b) of Schedule 6 to, and Schedule 7 to, the Sexual Offences Act 2003 (c. 42).

(**d**) 1955 c. 19. Section 70 has been amended by Schedule 1 to the Suicide Act 1961 (c. 60), sections 34(1) and 78(4) of, and Schedule 4 to, the Armed Forces Act 1971 (c. 33), section 5(1) of the Biological Weapons Act 1974 (c. 6), section 7(1) of the Criminal Attempts Act 1981 (c. 47), section 10(3) of the Armed Forces Act 1976 (c. 52), section 35 of the Chemical Weapons Act 1996 (c. 6), paragraph 2(1) of Schedule 4 to the Crime (Sentences) Act 1997 (c. 43), paragraph 13 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 74 of, and paragraph 1 of Schedule 10 to, the International Criminal Court Act 2001 (c. 17), paragraph 33(2) of Schedule 6 to, and Schedule 7 to, the Armed Forces Act 2001 (c. 19) and paragraph 10(b) of Schedule 6 to, and Schedule 7 to, the Sexual Offences Act 2003 (c. 42).

(**e**) 1957 c. 53. Section 42 has been amended by sections 34(1) and 78(4) of the Armed Forces Act 1971 (c. 33), section 7(1) of the Criminal Attempts Act 1981 (c. 47), section 16 of, paragraph 3 of Schedule 1 to, and Schedule 2 to the Armed Forces Act 1986 (c. 21), paragraph 3(1) of Schedule 4 to the Crime (Sentences) Act 1997 (c. 43), paragraph 18 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraph 34 of Schedule 6 and Parts 4 and 7 of Schedule 7 to the Armed Forces Act 2001 (c. 19).

(**f**) 1974 c. 53. Relevant amendments have been made by section 24(1) of, and paragraph 8 of Schedule 7 to, the Criminal Justice and Licensing (Scotland) Act 2010 asp 13 (Scottish Act), paragraph 1 of Schedule 15 to the Children Act 1989 (c. 41), paragraph 47 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), paragraph 63 of Schedule 16 to the Armed Forces Act 2006, paragraph 1 of Schedule 13 to, and paragraph 20(c) of Schedule 11 to, the Criminal Justice Act 1991 (c. 53) and paragraph 134(3) of Schedule 9(9) to the Protection of Freedoms Act 2012 (c. 9).

(i) the person was aged 18 or over on the date it was given and that date fell within the 6 year period ending with the day on which the certificate is issued, or

(ii) the person was aged under 18 on the date it was given and that date fell within the 2 year period ending with the day on which the certificate is issued;

(e) "custodial sentence" and "sentence of service detention" have the same meaning as in section 5(8) of the Rehabilitation of Offenders Act 1974.

(6F) Section 139(1) and (4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**a**) (which amends section 5(8) of the Rehabilitation of Offenders Act 1974) is to be treated for the purposes of subsection (6E)(e) as being in force when subsection (6E)(e) comes into force."

Home Office
Date

*Name*
Minister of State

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the definition of "relevant matter" in the Police Act 1997. The definition of "relevant matter" sets out what is disclosed by the Disclosure and Barring Service in response to an application for a criminal record certificate or an enhanced criminal record certificate.

No impact assessment has been produced in relation to this Order as no impact on business or the private or voluntary sector is foreseen.

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(**a**) 2012 c. 10.

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