STATUTORY INSTRUMENTS

2013 No. 1194

POLICE, ENGLAND AND WALES

The Police Act 1997 (Criminal Records) (Amendment) Regulations 2013

Made - - - -	*20th May 2013*
Laid before Parliament	*23rd May 2013*
Coming into force - -	*17th June 2013*

The Secretary of State, in exercise of the powers conferred by sections 113B(2)(b), 116A(4)(b), 116A(5)(b), 116A(7), 120AD(2) and 125 of the Police Act 1997(**a**), makes the following Regulations.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Police Act 1997 (Criminal Records) (Amendment) Regulations 2013 and shall come into force on 17th June 2013.

(2) These Regulations extend to England and Wales.

Amendment of the Police Act 1997 (Criminal Records) Regulations 2002

2.—(1) The Police Act 1997 (Criminal Records) Regulations 2002(**b**) are amended as follows.

(2) In regulation 2 at the appropriate places insert—

""adult" means a person who has attained the age of 18;"

""area committee" has the same meaning as in section 18 of the Local Government Act 2000(**c**);"

""charity" and "charity trustee" have the same meanings as in the Charities Act 2011(**d**);"

""executive", in relation to a local authority, has the same meaning as in Part 2 of the Local Government Act 2000;"

""local authority" has the same meaning as in the Education Act 1996(**e**);"

(**a**) 1997 c. 50. Section 113B(2) was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15) and amended by section 63(1) of, and paragraph 14(1) and (3) of Schedule 9 to, the Safeguarding Vulnerable Groups Act 2006 (c. 47). Section 116A will be inserted by section 83 of the Protection of Freedoms Act 2012 (c. 9). Section 120AD will be inserted by section 79 of the Protection of Freedoms Act 2012.

(**b**) S.I. 2002/233; regulation 5A was inserted by S.I. 2006/748; relevant amending instruments are S.I. 2006/2181, 2007/1892, 2007/3224, 2008/2143, 2009/1882, 2010/577, 2010/817, 2010/1836, 2012/523, 2012/979, 2012/2114 and 2012/3016.

(**c**) 2000 c. 22.

(**d**) 2011 c. 25.

(**e**) 1996 c. 56.

""social services functions", in relation to a local authority, has the same meaning as in the Local Authority Social Services Act 1970(**a**);"

(3) For regulation 5A(b) substitute the following paragraph—

"(b) considering the applicant's suitability to engage in any activity which is work with adults."

(4) Omit regulation 5A(ba).

(5) After regulation 5A insert the provisions set out in the Schedule to these Regulations.

Home Office
20th May 2013

Taylor of Holbeach
Parliamentary Under-Secretary of State

SCHEDULE

Regulation 2(5)

"Definition of "work with adults"

5B.—(1) For the purposes of regulation 5A(b) "work with adults" means—

(a) any employment or other work which is normally carried out in a hospital used only for the provision of high security psychiatric services within the meaning of section 4(2) of the National Health Service Act 2006(**b**);

(b) the provision to an adult of regulated activity relating to vulnerable adults within the meaning of Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (**c**);

(c) the provision of any activity mentioned in paragraph (6) to an adult who receives a health or social care service within the meaning of paragraph (9) or a specified activity within the meaning of paragraph (10), provided that the person carrying out the activity does so—

(i) at any time on more than three days in any period of 30 days;

(ii) at any time between 2 a.m. and 6 a.m. and the activity gives the person the opportunity to have face-to-face contact with the adult; or

(iii) at least once a week on an ongoing basis;

(d) the regular day to day management or supervision of a person mentioned in paragraph (c) above;

(e) the exercise of any of the functions of the Welsh Ministers relating to the inspection of the following so far as the function gives the person exercising the function the opportunity, in consequence of anything the person is permitted or required to do in exercise of that function, to have contact with an adult who receives a health or social care service within the meaning of paragraph (9) or a specified activity within the meaning of paragraph (10)—

(**a**) 1970 c. 42.
(**b**) 2006 c. 41. Section 4 has been amended by section 16 of the Health and Social Care Act 2012 (c. 7).
(**c**) 2006 c. 47.

(i) a local authority (within the meaning of section 1 of the Local Authority Social Services Act 1970(**a**)) in the exercise of its social services functions (within the meaning of that Act);

(ii) an establishment in relation to which a requirement to register arises under section 11 of the Care Standards Act 2000(**b**);

(iii) an agency in relation to which such a requirement arises;

(iv) a person to whom Part 2 of that Act applies in pursuance of regulations under section 42 of that Act(**c**);

(v) an NHS body within the meaning of section 148 of the Health and Social Care (Community Health and Standards) Act 2003(**d**); or

(vi) any person, other than a local authority, providing Welsh local authority social services within the meaning of that section,

in so far as the inspection relates to social services, care, treatment or therapy provided for adults who receive a health or social care service within the meaning of paragraph (9) or a specified activity within the meaning of paragraph (10);

(f) the exercise of a function of the Care Quality Commission in so far as the function—

(i) relates to the inspection of anything which is listed in section 60(1) of the Health and Social Care Act 2008(**e**) and involves the provision of social services, care, treatment or therapy for adults who receive a health or social care service within the meaning of paragraph (9) or a specified activity within the meaning of paragraph (10); and

(ii) gives the person exercising the function the opportunity, in consequence of anything the person is permitted or required to do in exercise of that function, to have contact with an adult who receives a health or social care service within the meaning of paragraph (9) or a specified activity within the meaning of paragraph (10);

(g) the exercise of a function of a person who is—

(i) a member of a local authority and discharges any social services functions of a local authority which relate wholly or mainly to adults who receive a health or social care service within the meaning of paragraph (9) or a specified activity within the meaning of paragraph (10);

(ii) a member of an executive of a local authority which discharges any such functions;

(iii) a member of a committee of an executive of a local authority which discharges any such functions; or

(iv) a member of an area committee, or any other committee, of a local authority which discharges any such functions;

(v) a chief executive of a local authority that has any social services functions;

(vi) a director of adult social services of a local authority in England;

(**a**) 1970 c. 42. Section 1 has been amended by section 195 of the Local Government Act 1972 (c. 70) and paragraph 7 of Schedule 10 to the Local Government (Wales) Act 1994 (c. 19).

(**b**) 2000 c. 14. Section 11 has been amended by paragraph 106 of Schedule 3 to the Adoption and Children Act 2002 (c. 38), paragraph 20 of Schedule 9 to the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), paragraph 42 of Schedule 14 to the Education and Inspections Act 2006 (c. 40), paragraph 1 of Schedule 15(1) to the Health and Social Care Act 2008 (c. 14) and paragraph 10(b) of Schedule 5(1) of the Health and Social Care Act 2008 (c. 14).

(**c**) Section 42 has been amended by paragraph 28 of Schedule 5(1) to the Health and Social Care Act 2008 (c. 14) and paragraph 1 of Schedule 15(1) to the 2008 Act.

(**d**) 2003 c. 43. Section 148 has been amended by paragraph 246 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c. 43), paragraph 1 of Schedule 18(9) to the Local Government and Public Involvement in Health Act 2007 (c. 28), paragraph 93 of Schedule 14 to the Education and Inspections Act 2006 (c. 40), paragraph 1 of Schedule 15(1) to the Health and Social Care Act 2008 (c. 14) and S.I. 2012/961.

(**e**) 2008 c. 14.

(vii) a director of social services of a local authority in Wales;

(viii) a Commissioner for older people in Wales or deputy Commissioner for older people in Wales;

(ix) a charity trustee of a charity whose workers normally engage in any activity which is work with adults;

(x) a person who is required to register to carry out a regulated activity within the meaning of the Health and Social Care Act 2008 where that activity will be carried out in relation to an adult who receives a health or social care service within the meaning of paragraph (9).

(2) In paragraph (1)(e) the reference to an NHS body includes a reference to any person who provides, or is to provide, health care for the body (wherever the health care is or is to be provided).

(3) In paragraph (1)(g) any reference to a committee includes a reference to any sub-committee which discharges any functions of that committee.

(4) In paragraph (1)(g)(vi) in relation to a local authority which has not appointed a director of children's services under section 18 of the Children Act 2004(**a**) the word "adult" must be ignored.

(5) In paragraph (1)(g)(ix) an individual is a worker for a charity if he does work under arrangements made by the charity; but the arrangements referred to in this paragraph do not include any arrangements made for purposes which are merely incidental to the purposes for which the charity is established.

(6) For the purposes of this regulation "activity" means—

(a) any form of care or supervision;

(b) any form of treatment or therapy;

(c) any form of training, teaching, instruction, assistance, advice or guidance provided wholly or mainly for adults who receive a health or social care service within the meaning of paragraph (9) or a specified activity within the meaning of paragraph (10);

(d) moderating a public electronic interactive communication service which is likely to be used wholly or mainly by adults who receive a health or social care service within the meaning of paragraph (9) or a specified activity within the meaning of paragraph (10);

(e) any form of work carried out in a care home (for the purposes of the Care Standards Act 2000) which is exclusively or mainly for adults, whether or not for gain, that gives the person carrying out the work the opportunity to have contact with the adults resident at that care home;

(f) representation of, or advocacy services for, adults who receive a health or social care service within the meaning of paragraph (9) or a specified activity within the meaning of paragraph (10), by a service which has been approved by the Secretary of State or created by any enactment, and which is of such a kind as to enable the person to have access to such adults in the course of his normal duties in providing such services;

(g) the conveying of an adult who receives a health or social care service within the meaning of paragraph (9) or a specified activity within the meaning of paragraph (10) (whether or not the adult is accompanied by a person caring for them).

(7) (a) For the purposes of paragraph (6)(d) a person moderates a public electronic interactive communication service if, for the purposes of protecting the adults mentioned in that sub-paragraph, he has any function relating to—

(i) monitoring the content of matter which forms any part of the service;

(**a**) 2004 c. 31. There are amendments to section 18 which are not relevant to these Regulations.

(ii) removing matter from, or preventing the addition of matter to, the service; or

(iii) controlling access to, or use of, the service.

(b) But a person does not moderate a public electronic interactive communication service as mentioned in sub-paragraph (7)(a)(ii) or (iii) unless he has—

(i) access to the content of the matter;

(ii) contact with users of the service.

(8) (a) For the purposes of paragraph (6) "activity" does not include any activity carried out in the course of a family relationship, or carried out in the course of a personal relationship for no commercial consideration.

(b) For the purposes of paragraph 8(a) "family relationship" includes a relationship between two persons who live in the same household and treat each other as though they were members of the same family.

(c) For the purposes of paragraph 8(a) a "personal relationship" is a relationship between or among friends, where a "friend" of a person includes a person who is a friend of a member of that person's family.

(9) For the purposes of this regulation "health or social care service" means—

(a) residential accommodation provided for an adult in connection with any care or nursing he requires;

(b) accommodation provided for an adult who is or has been a pupil attending a residential special school, where that school is—

(i) a special school within the meaning of section 337 of the Education Act 1996 (**a**);

(ii) an independent school within the meaning of section 463 of that Act(**b**) which is in England and is specially organised to make special educational provision for pupils with special educational needs (within the meaning of section 312 of that Act(**c**)) or is in Wales and is approved by the Welsh Ministers under section 347 of that Act(**d**);

(iii) an independent school within the meaning of section 463 of that Act not falling within sub-paragraph (b)(ii) which, with the consent of the Welsh Ministers, given under section 347(5)(b) of that Act, provides places for children with special educational needs (within the meaning of section 312 of that Act);

(iv) an institution within the further education section (within the meaning of section 91 of the Further and Higher Education Act 1992(**e**)) which provides accommodation for children; or

(v) a 16 to 19 Academy, within the meaning of section 1B of the Academies Act 2010(**f**), which provides accommodation for children;

(c) sheltered housing;

(d) care of any description or assistance provided to an adult by reason of his age, health or any disability he has, which is provided to the adult in the place where he is, for the time being, living, whether provided continuously or not;

(**a**) 1996 c. 56. Section 337 was substituted by section 142 of the Education and Skills Act 2008 (c. 25). It has been amended by paragraph 7(2) of Schedule 2(1) to the Local Education Authorities and Children's Service Authorities (Integration of Functions) Order 2010/1158, paragraph 2 of Schedule 2 to the Academies Act 2010 (c. 32) and paragraph 9(6) of Schedule 13 to the Education Act 2011 (c. 21).

(**b**) Section 463 has been amended by paragraph 7(2) of Schedule 2(1) of the Local Education Authorities and Children's Service Authorities (Integration of Functions) Order 2010/1158.

(**c**) There are amendments to section 312 which are not relevant to these Regulations.

(**d**) There are amendments to section 347 which are not relevant to these Regulations.

(**e**) 1992 c. 13. Section 91 has been amended by paragraph 1 of Schedule 11 to the Learning and Skills Act 2000 (c. 21) and paragraph 13 of Schedule 8 to the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22).

(**f**) 2010 c. 32. Section 1B was inserted by section 53(7) of the Education Act 2011 (c. 21).

(e) any form of health care, including treatment, therapy or palliative care of any description;

(f) support, assistance or advice for the purpose of developing an adult's capacity to live independently in accommodation, or sustaining their capacity to do so;

(g) any service provided specifically for adults because of their age, any disability, physical or mental illness, excluding a service provided specifically for an adult, with one or more of the following disabilities (unless that person has another disability)—

(i) dyslexia;

(ii) dyscalculia;

(iii) dyspraxia;

(iv) Irlen syndrome;

(v) alexia;

(vi) auditory processing disorder;

(vii) dysgraphia;

(h) any service provided specifically to an expectant or nursing mother in receipt of residential accommodation pursuant to arrangements made under section 21(1)(aa) of the National Assistance Act 1948(**a**) or care pursuant to paragraph 1 of Schedule 20 to the National Health Service Act 2006(**b**).

(10) For the purposes of this regulation "specified activity" means—

(a) the detention of an adult in lawful custody in a prison (within the meaning of the Prison Act 1952), a remand centre, young offender institution or a secure training centre (as mentioned in section 43 of that Act) or an attendance centre (within the meaning of section 53(1) of that Act(**c**));

(b) the detention of a detained person (within the meaning of Part 8 of the Immigration and Asylum Act 1999(**d**)) who is detained in a removal centre or short-term holding facility (within the meaning of that Part) or in pursuance of escort arrangements made under section 156 of that Act(**e**);

(c) the supervision of an adult by virtue of an order of a court by a person exercising functions for the purposes of Part 1 of the Criminal Justice and Court Services Act 2000(**f**);

(d) the supervision of an adult by a person acting for the purposes mentioned in section 1(1) of the Offender Management Act 2007(**g**);

(e) the provision to an adult of assistance with the conduct of their affairs in situations where—

(i) a lasting power of attorney is created in respect of the adult in accordance with section 9 of the Mental Capacity Act 2005(**h**) or an application is made under paragraph 4 of Schedule 1 to that Act for the registration of an instrument intended to create a lasting power of attorney in respect of the adult;

(ii) an enduring power of attorney (within the meaning of Schedule 4 to that Act) in respect of the adult is registered in accordance with that Schedule or an

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(**a**) 1948 c. 29. Section 21(1)(aa) was inserted by section 42 of the National Health Service and Community Care Act 1990 (c. 19).
(**b**) 2006 c. 41.
(**c**) 1952 c. 52. There are amendments to sections 43 and 53(1) which are not relevant to these Regulations.
(**d**) 1999 c. 33.
(**e**) There are amendments to section 156 of the Immigration and Asylum Act 1999 (c. 33) which are not relevant to these Regulations.
(**f**) 2000 c. 43.
(**g**) 2007 c. 21.
(**h**) 2005 c. 9.

application is made under that Schedule for the registration of an enduring power of attorney in respect of the adult;

(iii) an order under section 16 of that Act has been made by the Court of Protection in relation to the making of decisions on the adult's behalf, or such an order has been applied for;

(iv) an independent mental capacity advocate is or is to be appointed in respect of the adult in pursuance of arrangements under section 35 of that Act;

(v) independent advocacy services (within the meaning of section 248 of the National Health Service Act 2006(**a**) or section 187 of the National Health Service (Wales) Act 2006(**b**) are or are to be provided in respect of the adult; or

(vi) a representative is or is to be appointed to receive payments on the adult's behalf in pursuance of regulations made under the Social Security Administration Act 1992(**c**);

(f) payments are made to the adult or to another person on the adult's behalf under arrangements made under section 57 of the Health and Social Care Act 2001(**d**);

(g) payments are made to the adult or to another person on the adult's behalf under section 12A(1) or under regulations made under section 12A(a) of the National Health Service Act 2006(**e**) or under regulations made under section 12A(4) of that Act.

Fees for requesting up-date information under section 116A of the Act

6.—(1) Subject to paragraph (2) below, the fees payable in relation to an application for a certificate to be subject to up-date arrangements under section 116A of the Act are prescribed as—

(a) £13 in the case of a fee as mentioned in section 116A(4)(b) of the Act;

(b) £13 in the case of a fee as mentioned in section 116A(5)(b) of the Act.

(2) No fee is payable in relation to—

(a) an application made by a volunteer;

(b) an application for a criminal conviction certificate, a criminal record certificate or an enhanced criminal record certificate to be subject to up-date arrangements where the person making the request already holds any such a certificate that is subject to up-date arrangements.

Registered persons: copies of certificates

7. A person acting as a registered person in relation to an application of a type described in section 120AD(1)(c)(**f**) of the Act may only be issued with a copy of a criminal record certificate or (as the case may be) enhanced criminal record certificate issued further to that application where—

(a) a request is made not less than 28 days from the date of issue of the certificate;

(**a**) 2006 c. 41.
(**b**) 2006 c. 42.
(**c**) 1992 c. 5.
(**d**) 2001 c. 15. There are amendments to section 57 which are not relevant to these Regulations.
(**e**) Section 12A was inserted by section 11 of the Health Act 2009 (c. 21). It has been amended by paragraph 10 of Schedule 4 to the Health and Social Care Act 2012 (c. 7).
(**f**) Section 120AD will be inserted by section 79 of the Protection of Freedoms Act 2012 (c. 9).

(b) a request is made not more than 3 months from the date of issue of the certificate or, where a dispute is raised under section 117 or section 117A of the Act(**a**) in respect of that certificate, the conclusion of that dispute;

(c) the certificate is not the subject of a pending review under section 117 of the Act (disputes about accuracy of certificates);

(d) the certificate is not the subject of a pending review under section 117A of the Act (other disputes about section 113B(4)(**b**) information);

(e) any statement made by the registered person in respect of the application for the certificate described in section 120AD(1)(a) continues to apply."

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Police Act 1997 (Criminal Records) Regulations 2002 to substitute new prescribed purposes for which an enhanced criminal record certificate may be required in accordance with a statement made by a registered person under section 113B(2)(b) of the Police Act 1997. In particular, the new prescribed purposes include the consideration of a person's suitability to "work with adults", which is defined in new regulation 5B.

These Regulations also insert a new regulation 6 into the 2002 Regulations which prescribes the fees for requesting up-date information about a person's criminal conviction certificate, criminal record certificate or enhanced criminal record certificate under section 116A of the Police Act 1997.

A new regulation 7 is also inserted by these Regulations. Regulation 7 sets out certain conditions which must be satisfied before a copy of a criminal record certificate or an enhanced criminal record certificate can be provided to a registered person in response to a request for such a copy.

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(**a**) Section 117A was inserted by section 82(5) of the Protection of Freedoms Act 2012 (c. 9) and has been amended by S.I. 2012/3006.

(**b**) Section 113B(4) was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15). It has been amended by section 82 of the Protection of Freedoms Act 2012 (c. 9) and S.I. 2012/3006.

ISBN 978-0-11-153956-9

£5.75

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