Executive Note
The Police Act 1997 (Criminal Records) (Registration)(Scotland) Regulations 2006 (SSI 2006/97)

The above Regulations are made by Scottish Ministers in exercise of the powers conferred by sections 120(3), 120A(7), 124A(4) and 125(5) of Part 5 of the Police Act 1997.

Part 5 is amended by section 70(2), (5), (6) and (8) of the Criminal Justice (Scotland) Act 2003 (in relation to the maintenance of the register under Part 5 and those persons who may become registered persons) and by sections 163, 165, 166 and 174(2) and Schedules 14 and 17 of the Serious Organised Crime and Police Act 2005 (in relation to the issue of certificates concerning criminal record checks). Two commencement orders will be made shortly by Scottish Ministers to provide that these amendments come into force on 1 April 2006. These Regulations are therefore made and laid using the anticipatory exercise of the Scottish Ministers' powers under Part 5 of the Police Act 1997 as amended.

The Regulations are subject to negative resolution procedure.

Policy Objectives

The Scottish Ministers do not currently have powers to check the background of persons, bodies corporate or unincorporate, or statutory office-holders applying to be included in the register held by Ministers under section 120 of the Police Act 1997. Nor can Ministers check the background of persons nominated by bodies corporate or unincorporate or statutory office-holders to countersign applications for criminal record checks on their behalf. This means that an unsuitable person cannot be prevented from having his or her name added to the register. In addition, Ministers cannot remove a registered person or an individual nominated by such a person if they become unsuitable.

The Scottish Ministers currently have powers to remove a registered person from the register, first if that person is not countersigning applications or second if that person has failed to comply with the Code of Practice issued by Ministers. Neither power deals with the question of whether or not the person is a suitable person to be included in the register. The police and others have expressed concern that this could mean that an unsuitable person could remain on the register even following conviction for an offence against a child. This is unsatisfactory.

As explained above, the primary legislation containing the enabling powers is Part 5 of the 1997 Act as amended by the Criminal Justice (Scotland) Act 2003 sections 70(2), (5), (6), and (8). (In relation to section 70(8), only that part relating to the insertion of section 124A is to be commenced on 1 April 2006.) These Regulations make provision as to how the powers to prevent unsuitable persons gaining access to criminal record information will be exercised.

The policy objectives of these changes are to give the Scottish Ministers powers:

- to check the background of persons applying to be registered persons for the purpose of countersigning applications to Disclosure Scotland;

- to refuse to include in the register held under section 120 people deemed unsuitable to be registered persons, and to specify a period which must elapse before they can reapply for inclusion in the register;

- to refuse to accept as a nominated individual a person who is not a suitable person in accordance with matters specified in the Regulations; and

- to cancel the registration of persons who become unsuitable, and the nomination of individuals who become unsuitable, and to specify a period which must elapse before they can reapply (or be renominated) for inclusion in the register held under section 120.

The main changes made to the existing Regulations (SSI 2002/23) are:

- Regulation 3(1)(a) is extended to allow the Scottish Ministers to gather date of birth information about a person applying for inclusion in the register;

- Regulation 3(1)(e) is extended to allow the Scottish Ministers to gather address and date of birth information about a person nominated by a body corporate or unincorporate for inclusion in the register;

- Regulation 3(1)(f) is new. It allows the Scottish Ministers to gather name, address, date of birth information and a specimen signature about a person nominated by a statutory office-holder for inclusion in the register;

- Regulation 4 is new. It sets out the process to be followed by bodies corporate or unincorporate or a statutory office-holder nominating a person for inclusion in the register held under section 120. It also specifies the matters to which Scottish Ministers must have regard to when assessing a nominated person's suitability. First, they may have regard to whether or not the person has convictions or cautions, whether he or she is included in a list of those disqualified from working with children or with adults at risk, second, they may have regard to whether Scottish Ministers have previously had reason to refuse to accept or to cancel their nomination, and third, they may have regard to the fact that a person has been a registered person on whom sanctions or conditions have been imposed for failure to comply with the Code of Practice issued by them under section 122 of the 1997 Act.

- Regulation 6 is new. This describes the process to be followed by the Scottish Ministers should they decide to refuse to include a person in the register or decide to remove a person from the register held under section 120 because that person is unsuitable, or has become unsuitable, or has failed to comply with the Code of Practice.

- Regulation 7 is new. It allows Ministers to make payment to police forces or organisations to be treated as if they were police forces for information provided by them in connection with the assessment of a person's suitability to be included in or to remain on the register held under section 120. These changes bring some police forces within the scope of Part 5 of the 1997 Act for the first time.

- Regulations 8 and 9 are similar to the existing provision made as regards fees, and fee levels remain the same, but regulation 9(2) now covers individuals nominated by statutory office-holders.

- Regulation 10 is new. It specifies the period that must elapse before a person can apply again to be included in the register if the person:

    a) has been removed from the register under regulations made under section 120(3)(b); or

    b) has been removed from the register or refused registration under sections 120A(1) or (2), or 122(4).

Consultation

There has been no formal consultation on the draft regulations. There was consultation during the passage of the Criminal Justice (Scotland) Bill which inserted the new powers into the 1997 Act. It was recognised that the additional powers were necessary.

In December 2005, the Head of Disclosure Scotland wrote to existing participants and the organisations who will be participating in the scheme for the first time about the changes to Part 5. He has, or will be, meeting them to discuss the practical aspects of participation.

Financial Effects

These Regulations will not have a direct financial impact on users of Disclosure Scotland because there is no change to the registration fee or to the fee for additional registered persons.

There will be some additional cost to Scottish Ministers arising from the need to gather information from police forces mentioned at regulation 7 as Disclosure Scotland bear the cost of approaches that are made to police forces for this information

In 2005 just under 1,700 new registrations were made. At the current fee for non-conviction information requests, this would amount £53,414 if all applicants had to be checked with Scottish police forces. In practice not all will be checked with forces because Disclosure Scotland will use the results of initial criminal record check to determine if local records need to be checked. In many cases, the result of that check will be that no local record is held about an applicant and that will mean that an approach to a force is not necessary.

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