POLICY NOTE

THE POLICE ACT 1997 (CRIMINAL RECORDS) (SCOTLAND) AMENDMENT REGULATIONS 2017

SSI 2017/171

1. The above Regulations were made by the Scottish Ministers in exercise of powers conferred by section 113B(2)(b), as read with section 126(3) of the Police Act 1997 ("the 1997 Act"). The Regulations are subject to the negative procedure in the Scottish Parliament.

Background

2. Following changes in administrative arrangements for obtaining enhanced disclosure certificates by the Scottish Government and other bodies involved in recommending judicial appointments, these Regulations have been made to allow such other bodies to make applications to Disclosure Scotland for enhanced disclosure certificates in respect of judicial appointments.

3. The relevant legislation is:

- Section 113B(2) of the 1997 Act provides for applications for enhanced criminal record certificates (more commonly referred to as enhanced disclosure certificates) to be made where the application is countersigned by a registered person and the registered person confirms that such a disclosure is required for the purposes of an "exempted question" asked for a prescribed purpose; an exempted question means a question in relation to which section 4(2)(a) or (b) of the Rehabilitation of Offenders Act 1974 ("the 1974 Act") has been excluded (which in effect means that a question can be asked about certain spent as well as unspent convictions);

- Article 4 (as read with paragraph 3(b) of Schedule 3 and paragraph 1 of Part 2 of Schedule 4) of the Rehabilitation of Offenders Act 1974 (Exclusions and Exception) (Scotland) Order 2013 ("the 2013 Order") excludes section 4(2)(a) or (b) of the 1974 Act in relation to questions asked to assess the suitability of persons for judicial appointment. Article 2 of the 2013 Order defines "judicial appointment" as "an appointment to any office by virtue of which the holder has power (whether alone or with others) under any enactment or rule of law to determine any question affecting the rights, privileges, obligations or liabilities of any person";

- The Police Act 1997 (Criminal Records) (Scotland) Regulations 2010 ("the 2010 Regulations") make detailed provision in relation to applications for criminal conviction certificates, criminal record certificates and enhanced criminal record certificates under the 1997 Act. Regulation 9 provides that an enhanced criminal record certificate can be required for the purposes of an exempted question asked in relation to certain matters and individuals; and

- Section 116 of the 1997 Act currently makes provision to allow certain persons, including the Scottish Ministers and members of the Scottish Administration, to make applications for enhanced criminal record certificates for judicial appointments.

4. The Judicial Appointments Board for Scotland (JABS) is responsible for making recommendations to Scottish Ministers for a variety of judicial appointments (both court judiciary and, since the establishment of the Scottish Tribunals, also for tribunal judiciary). The Justice of the Peace Advisory Committee ("JPAC") for each sheriffdom is responsible for making recommendations to Scottish Ministers for appointment of Justices of the Peace ("JPs"). JPs are judicial appointments in terms of Article 2 of the 2013 Order.

5. An enhanced disclosure certificate will contain details of all unspent convictions, certain spent convictions and whether a person is subject to sex offender notification requirements. It can also include any other information held by UK police forces that the relevant chief constable considers may be relevant to the judicial appointment.

Policy Objectives

6. The purpose of these Regulations is to amend the 2010 Regulations so that enhanced disclosure certificates can be obtained by JABS and JPACs under section 113B of the 1997 Act for the purpose of asking an exempted question in relation to an individual who is going to be recommended to the Scottish Ministers for judicial appointment or reappointment. This is done by making judicial appointments a "prescribed purpose" for the purposes of section 113B(2)(b) of the 1997 Act. Section 116 of the 1997 Act will continue in force and the Scottish Ministers or a member of the Scottish Administration will continue to be able to make an application for an enhanced disclosure certificate for a judicial appointment.

Consultation

7. Discussion has taken place between the Scottish Government, the Scottish Courts and Tribunals Service, JABS and JPACs on the terms of these Regulations. The changes to the law are to allow a change in administrative practices in obtaining enhanced disclosure certificates and, as they affect only those bodies, wider consultation was not needed.

Impact Assessments

8. There are no equality or children's rights issues associated with this Instrument.

Financial Effects

9. The Minister for Childcare and Early Years confirms that no Business and Regulatory Impact Assessment is necessary as the Regulations will have no financial effect on the Scottish Government, local government or business in Scotland.

Scottish Government
May 2017