

## **EXECUTIVE NOTE**

### **THE POLICE ACT 1997 (CRIMINAL RECORDS) (SCOTLAND) AMENDMENT REGULATIONS 2009 SSI/2009/40**

#### **Powers under which Instrument is made**

1. The Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2009 (“the Amendment Regulations”) are made by the Scottish Ministers in exercise of the powers conferred by sections 112(3) 113A(6), and 113B(9) of Part 5 of the Police Act 1997 (“the 1997 Act”). Sections 113A and 113B were inserted by the Serious Organised Crime and Police Act 2005.

#### **Parliamentary procedure**

2. This Scottish Statutory Instrument is a class 5 instrument subject to the negative resolution procedure at the Scottish Parliament.

#### **Summary of policy proposals**

3. Under Part 5 of the 1997 Act, the Scottish Ministers may carry out criminal record checks. The day-to-day business under the 1997 Act is carried out by Disclosure Scotland. There are currently three levels of checks: the criminal conviction certificate (basic disclosure); the criminal record certificate (standard disclosure); and the enhanced criminal record certificate (enhanced disclosure). The basic disclosure is available to anyone for any purpose. Standard and enhanced checks are carried out mainly for the purpose of assessing the suitability of a person for certain types of employment or volunteering.
4. The Amendment Regulations make changes to regulations 7 and 8 of the Police Act 1997 (Criminal Records) (Scotland) Regulations 2006 (S.S.I. 2006/96) (“the 2006 Regulations”) to expand the definition of central records for the purposes of all disclosures and expand the conditions for approaching the Police Service of Northern Ireland (PSNI) for information for enhanced disclosures.
5. Regulation 7 of the 2006 Regulations is expanded to include the criminal records database of the Criminal Justice System Northern Ireland as a central record for basic, standard and enhanced disclosure applications. By doing this, Disclosure Scotland will have access to the record of convictions in the courts of Northern Ireland and be able to include them on the face of certificates. This closes an information gap whereby at present, Disclosure Scotland can only access convictions from Northern Ireland for those cases where the information has been transferred to the Police National Computer (provided by the National Policing Improvement Agency).
6. Regulation 8 of the 2006 Regulations is amended to add another condition to those that allow Disclosure Scotland to approach PSNI in connection with enhanced disclosure applications. Enhanced disclosures include information from “relevant police forces” as prescribed in regulation 8 of the 2006 Regulations, subject to certain conditions being met. At present, Disclosure Scotland can approach PSNI if the

applicant was born in Northern Ireland, has resided there in the 5 years prior to the date of the application or has been convicted there at any time. The changes will mean that PSNI can also be approached if they have indicated on central records or the Interim Police Local Cross Reference Database (IPLX) (provided by the Criminal Records Bureau, an executive agency of the Home Office) that they hold non conviction information about the applicant, or the Scottish Ministers have reason to believe that the PSNI hold non conviction information about the applicant. The changes to regulation 8 will improve the ability of Disclosure Scotland to find out if relevant information exists about applicants for work with children and adults at risk.

### **Consultation**

7. The Amendment Regulations make modest changes to the 2006 Regulations which are required to improve the conviction and non-conviction information from Northern Ireland provided by Disclosure Scotland on disclosure certificates and, therefore, improve the protection afforded to vulnerable groups in Scotland. PSNI and Disclosure Scotland are content with these changes. Wider consultation is not appropriate as this represents an improvement for users of the Disclosure Scotland without adverse impact.

### **Financial effects**

8. There will not be a financial impact on users of Disclosure Scotland. Disclosure Scotland has incurred development costs (of less than 1% annual turnover) for establishing the IT link between Disclosure Scotland and the Northern Ireland criminal justice system. There will be very modest annual recurring costs. In connection with enhanced disclosure applications only, there will be an increase in the number of applications referred to PSNI as a result of Disclosure Scotland making use of the Northern Ireland criminal justice system and PSNI indicators on IPLX. Even after any increase, less than 2% of enhanced disclosure applications are expected to be referred to PSNI.

### **Regulatory Impact Assessment**

9. No Regulatory Impact Assessment has been prepared for this instrument because it does not have any financial effects or impose new burdens on any individual or organisation outside of Disclosure Scotland and PSNI.

The Scottish Government  
Children, Young People and Social Care Directorate

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