

2012 No. 2114

POLICE, ENGLAND AND WALES

**The Police Act 1997 (Criminal Records) (Amendment No. 2)
Regulations 2012**

<i>Made</i>	- - - -	<i>14th August 2012</i>
<i>Laid before Parliament</i>		<i>16th August 2012</i>
<i>Coming into force</i>	- -	<i>10th September 2012</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 113B(2)(b) and (9), 113BA(1), 113BB(1) and 125(1) and (2) of the Police Act 1997(a).

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Police Act 1997 (Criminal Records) (Amendment No. 2) Regulations 2012 and, subject to paragraph (2) below, shall come into force on 10th September 2012.

(2) Regulations 2 to 10 and 12 to 13 shall come into force on 10th September 2012 at the same time as sections 64 to 66 of the Protection of Freedoms Act 2012(b) come into force.

(3) In these Regulations—

“the 2002 Regulations” mean the Police Act 1997 (Criminal Records) Regulations 2002(c);
and

“the 2009 Regulations” mean the Police Act 1997 (Criminal Records) (No. 2) Regulations 2009(d).

(4) These Regulations extend to England and Wales.

Amendment of regulation 5A of the 2002 Regulations

2. Regulation 5A(e) of the 2002 Regulations (Enhanced criminal record certificates: prescribed purposes) is amended as follows.

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- (a) 1997 c. 50. Section 113B 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 of Schedule 9 to, the Safeguarding Vulnerable Groups Act 2006 (c. 47), S.I. 2009/203, and sections 79(2), 80(1), 82 and 115(1) and (2) of, and paragraphs 35 and 37 of Schedule 9 and Parts 5 and 6 of Schedule 10 to, the Protection of Freedoms Act 2012 (c. 9). Sections 113BA and 113BB were inserted by section 63(1) of, and paragraph 14 of Schedule 9 to, the Safeguarding Vulnerable Groups Act 2006 and were amended by section 82 of the Policing and Crime Act 2009 (c. 26), section 170(2) of the Education and Inspections Act 2006 (c. 40) and section 115(1) and (2) of, and paragraphs 35, 38 and 39 of Schedule 6 and Part 5 of Schedule 10 to, the Protection of Freedoms Act 2012.
- (b) 2012 c. 9.
- (c) S.I. 2002/233.
- (d) S.I. 2009/1882.
- (e) Regulation 5A was inserted by S.I. 2006/748; relevant amending instruments are S.I. 2006/2181, 2007/1892, 2007/ 3224, 2009/1882, 2010/817 and 2010/1836.

3. In paragraph (a)(i) after “2006” insert “as it had effect immediately before the coming into force of section 64 of the Protection of Freedoms Act 2012”.

4. Omit paragraph (aa).

5. In paragraph (b)(i) after “2006” insert “as it had effect immediately before the coming into force of section 66 of the Protection of Freedoms Act 2012”.

6. In paragraphs (b)(ii) and (ba)(ii) after “2006” insert “as it had effect immediately before the coming into force of section 65 of the Protection of Freedoms Act 2012”.

7. Omit paragraph (bb).

8. In paragraph (p) omit—

(a) “or in the Government Offices for the English Regions”; and

(b) “or vulnerable adults”.

9. In paragraph (u) for “vulnerable adults” substitute “adults who need relevant assistance in the conduct of their own affairs within the meaning of paragraph 7(3E) of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006”.

10. After paragraph (zb) insert—

“(zc) obtaining information in respect of any person who is aged 16 or over and who lives in the same household as an individual who is having or who has had their suitability assessed for the purposes of—

(i) engaging in a regulated activity relating to children;

(ii) working in a regulated position (within the meaning of section 36 of the Criminal Justice and Court Services Act 2000^(a));

(iii) working in a further education institution (within the meaning of section 140 of the Education Act 2002^(b)) where the normal duties of that work involve regular contact with children; or

(iv) working in a 16-19 Academy where the normal duties of that work involve regular contact with children

where that individual, and the person who lives in the same household, live on the premises where that activity or that work would normally take place.”

Revocation of regulation 10 of the 2002 Regulations

11. Regulation 10(c) of the 2002 Regulations is revoked.

Amendment of regulation 5 of the 2009 Regulations

12. For regulation 5(d) of the 2009 Regulations substitute—

“Suitability information relating to children

5. Cases in which an application for an enhanced criminal records certificate is made for the purposes of—

(a) considering the applicant’s suitability to engage in any activity which is a regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006^(e);

(a) 2000 c. 43.

(b) 2002 c. 32.

(c) Regulation 10 was amended by S.I. 2006/748, 2006/2181, 2009/460 and 2010/2702.

(d) Regulation 5 was amended by S.I. 2010/817 and 2012/523.

(e) 2006 c. 47.

- (b) assessing the suitability of a person to have regular contact with children who is aged 16 or over and who lives in the same household as an individual who is having or who has had their suitability assessed for the purposes of engaging in a regulated activity relating to children, where that individual, and the person who lives in the same household, live on the premises where that regulated activity would normally take place;
- (c) considering the suitability of a person for the purposes of registration for childcare, including assessing the suitability of a person to have regular contact with children who is—
 - (i) aged 16 or over and living on the premises at which childcare is being or is to be provided;
 - (ii) aged 16 or over and working, or who will be working, on the premises at which childcare is being or is to be provided at times when such childcare is being provided or is to be provided;
 where that childcare is the provision of childminding or day care within the meaning of section 19 of the Children and Families (Wales) Measure 2010(a) or the provision of childcare within the meaning of section 18 of the Childcare Act 2006(b);
- (d) placing children with foster parents in accordance with any provision of, or made by virtue of, the Children Act 1989(c) or the Children (Northern Ireland) Order 1995(d) or the exercise of any duty under or by virtue of section 67 of that Act or Article 108 of that Order (welfare of privately fostered children) including obtaining information in respect of any person who is—
 - (i) aged 16 or over and living in the same household as a person who is, or who wishes to be approved as, a foster parent within the meaning of section 53(7)(a) or (b) of the Safeguarding Vulnerable Groups Act 2006;
 - (ii) aged 16 or over and living in the same household as a person who fosters, or intends to foster, a child privately within the meaning of section 66(1) of the Children Act 1989 or who is otherwise a private foster parent within the meaning of section 53(7)(c) of the Safeguarding Vulnerable Groups Act 2006;
- (e) a decision made by an adoption agency within the meaning of section 2 of the Adoption and Children Act 2002(e) as to a person’s suitability to adopt a child, including obtaining information in respect of any person aged 18 years or over living in the same household as the prospective adopter;
- (f) considering the applicant’s suitability for any office or employment or other work in the Criminal Records Bureau;
- (g) considering the applicant’s suitability to obtain or hold a licence under section 46 of the Town Police Clauses Act 1847(f); section 8 of the Metropolitan Public Carriage Act 1869(g); section 9 of the Plymouth City Council Act 1975(h); section 51 of the Local Government (Miscellaneous Provisions) Act 1976(i); or section 13 of the Private Hire Vehicles (London) Act 1998(j);

are prescribed for the purposes of section 113BA of the Police Act 1997.”

(a) 2010 nawm 1.
 (b) 2006 c. 21.
 (c) 1989 c. 41.
 (d) S.I. 1995/755 (N.I. 2).
 (e) 2002 c. 38.
 (f) 1847 c. 89.
 (g) 1869 c. 115.
 (h) 1975 c. xx.
 (i) 1976 c. 57.
 (j) 1998 c. 34.

Amendment of regulation 6 of the 2009 Regulations

13. For regulation 6(a) of the 2009 Regulations substitute—

“Suitability information relating to vulnerable adults

6. Cases in which an application for an enhanced criminal records certificate is made for the purposes of—

- (a) considering the applicant’s suitability to engage in any activity which is a regulated activity relating to vulnerable adults within the meaning of Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;
- (b) considering the applicant’s suitability for any office or employment or other work in the Criminal Records Bureau;
- (c) considering the applicant’s suitability to obtain or hold a licence under section 46 of the Town Police Clauses Act 1847; section 8 of the Metropolitan Public Carriage Act 1869; section 9 of the Plymouth City Council Act 1975; section 51 of the Local Government (Miscellaneous Provisions) Act 1976; or section 13 of the Private Hire Vehicles (London) Act 1998;

are prescribed for the purposes of section 113BB of the Police Act 1997.”

Home Office
14th August 2012

James Brokenshire
Parliamentary Under-Secretary of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulations 2 to 11 of these Regulations amend the Police Act 1997 (Criminal Records) Regulations 2002 (“the 2002 Regulations”) and regulations 12 and 13 of these Regulations amend the Police Act 1997 (Criminal Records) (No. 2) Regulations 2009 (“the 2009 Regulations”).

Regulations 2 to 10 of these Regulations amend regulation 5A of the 2002 Regulations which provides the list of positions eligible for enhanced criminal record certificates (“enhanced certificates”) under section 113B of the Police Act 1997 (“the 1997 Act”).

Regulations 3 and 5 ensure that those people who were engaging in regulated activity as defined in the Safeguarding Vulnerable Groups Act 2006 (“the 2006 Act”) before that definition was amended by sections 64 and 66 of the Protection of Freedoms Act 2012 (“the 2012 Act”) remain eligible for enhanced certificates.

Regulations 4 and 7 ensure that those people who were entitled to enhanced certificates by virtue of working in controlled activity as defined in the 2006 Act are no longer entitled to enhanced certificates; controlled activity is abolished by section 68 of the 2012 Act.

(a) Regulation 6 was amended by S.I. 2010/817 and 2012/523.

Regulation 6 ensures that the definition of vulnerable adults in the 2002 Regulations which refers back to the definition in the 2006 Act remains the same, even after the definition in the 2006 Act is amended by section 65 of the 2012 Act.

Regulation 8 reflects the abolition of the Government Offices for the English Regions.

Regulation 9 updates eligibility in respect of persons working in the Office of the Public Guardian, who have access to data relating to certain adults, by defining those adults as those receiving relevant assistance within the meaning of the 2006 Act as amended by section 66 of the 2012 Act.

Regulation 10 provides one new category of persons who are eligible for enhanced certificates – those persons who are aged 16 and over and who are members of the household of another person who works closely with children (including persons engaging in regulated activity relating to children) where both of those persons live on the same premises as the work takes place. This might include, for example, the spouse of a boarding school manager when both the boarding school manager and the spouse live on-site at the school.

Regulation 11 revokes regulation 10 of the 2002 Regulations reflecting changes made by section 82 of the 2012 Act to the procedure for requesting police information for enhanced certificates.

Regulation 12 substitutes a new regulation 5 in the 2009 Regulations which prescribes the cases in which suitability information relating to children (children's barred list information) must be included on enhanced certificates.

Regulation 13 substitutes a new regulation 6 in the 2009 Regulations which prescribes the cases in which suitability information relating to vulnerable adults (adults' barred list information) must be included on enhanced certificates.

An impact assessment has not been produced for this instrument as no impact on the private, voluntary or public sector is foreseen.

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STATUTORY INSTRUMENTS

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