SCOTTISH STATUTORY INSTRUMENTS

2002 No. 143

POLICE

The Police Act 1997 (Criminal Records) (Scotland) Regulations 2002

Made - - - - 22nd March 2002
Laid before the Scottish Parliament - - - - 22nd March 2002
Coming into force in accordance with regulation 1(2)

The Scottish Ministers, in exercise of the powers conferred by the provisions of the Police Act 1997(**1**) which are specified in Schedule 1 to these Regulations and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Police Act 1997 (Criminal Records) (Scotland) Regulations 2002 and shall come into force in accordance with paragraph (2).

(2) These Regulations shall come into force –

(a) in so far as they make provision for the purposes of section 112 of the Police Act 1997, on 29th July 2002; and

(b) for all other purposes, on 28th April 2002.

(3) These Regulations extend to Scotland and, in so far as regulations 7 and 8 extend beyond Scotland, they do so only as a matter of Scots law.

Interpretation

2. In these Regulations "the Act" means the Police Act 1997.

Application form

3. The form set out in Schedule 2 to these Regulations, or a form to the like effect, is the prescribed form for the purposes of an application under sections 112 (criminal conviction certificate), 113 (criminal record certificate), 114 (criminal record certificate: Crown employment), 115 (enhanced

(**1**) 1997 c. 50. The powers conferred by the provisions in Schedule 1 transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

criminal record certificate) and 116 (enhanced criminal record certificate: judicial appointment and Crown employment) of the Act.

Fees for criminal conviction certificates, criminal record certificates and enhanced criminal record certificates

4. The fee payable in relation to an application for the issue of a criminal conviction certificate, a criminal record certificate or an enhanced criminal record certificate is £13.60.

Criminal conviction certificates: prescribed details

5. The following details of a conviction for the purposes of section 112(2)(a) of the Act are hereby prescribed:–

(a) the date of the conviction;

(b) the convicting court;

(c) the offence; and

(d) the method of disposal for the offence.

Relevant matters: prescribed details

6. The following details of a relevant matter for the purposes of sections 113(3)(a) and 115(6)(a)(i) of the Act (including those provisions as applied by sections 114(3) and 116(3), respectively) are hereby prescribed:–

(a) in the case of a conviction within the meaning of the Rehabilitation of Offenders Act 1974(**2**), including a spent conviction–

(i) the date of the conviction;

(ii) the convicting court;

(iii) the offence; and

(iv) the method of disposal for the offence;

(b) in the case of a caution–

(i) the date of the caution;

(ii) the place where the caution was given; and

(iii) the offence which the person given the caution had admitted.

Central records: prescribed details

7.—(1) Information in any form relating to convictions–

(a) held in the criminal history database of the Scottish Criminal Record Office for the use of police forces generally; and

(b) on a names index held by the Police Information Technology Organisation for the use of police forces generally,

is hereby prescribed as "central records" for the purposes of section 112(3) of the Act.

(2) Information in any form relating to–

(a) convictions held in the criminal history database of the Scottish Criminal Record Office for the use of police forces generally; and

(**2**) 1974 c. 53.

(b) convictions and cautions on a names index held by the Police Information Technology Organisation for the use of police forces generally,

is hereby prescribed as "central records" for the purposes of section 113(5) of the Act (including that provision as applied by sections 114(3), 115(6) and 116(3)).

Enhanced criminal record certificates: relevant police forces

8. For the purposes of an application for an enhanced criminal record certificate, "relevant police force" means–

(a) the police force maintained for any police area in Great Britain–

(i) within which the applicant resides or has resided within the period of 10 years preceding the date of the application;

(ii) in which the applicant was born; or

(iii) in which the applicant was convicted at any time;

(b) the Police Service of Northern Ireland if–

(i) the applicant resides or has resided within the period of 10 years preceding the date of the application within Northern Ireland;

(ii) the applicant was born in Northern Ireland; and

(iii) the applicant was convicted in Northern Ireland at any time;

(c) such other police force as the chief officer of police of a police force identified as a relevant police force by virtue of paragraph (a) or (b) determines;

(d) any police force that the Scottish Ministers determine to be relevant to the application.

Evidence of identity: fingerprinting

9.—(1) Where the Scottish Ministers require an application under Part V of the Act to be supported by evidence of identity in the form of fingerprints they shall notify the applicant of this requirement and of the procedures set out in paragraphs (2) to (8) of this regulation.

(2) An applicant in receipt of notification in accordance with paragraph (1) who wishes to proceed with the application shall notify in writing the Scottish Ministers within the period specified in paragraph (3)–

(a) that the applicant consents to the taking of his or her fingerprints; and

(b) of the police station in Scotland ("the nominated police station") that the applicant proposes to attend at for the purpose of having the fingerprints taken.

(3) Where notice in accordance with paragraph (2) is not received by the Scottish Ministers within the period of 28 days from the date of the notification under paragraph (1) the application shall be considered to have been withdrawn.

(4) The Scottish Ministers may require the police officer in charge of the nominated police station, or such other police station as they may reasonably specify ("the specified police station"), to take the applicant's fingerprints at the nominated police station on such reasonable date and at such reasonable time as that officer shall direct and notify to the applicant.

(5) Fingerprints taken in connection with an application under Part V of the Act must be destroyed by the police officer in charge of the nominated police station or, as the case may be, specified police station as soon as is practicable after the identity of the applicant is established to the satisfaction of the Scottish Ministers.

(6) If fingerprints are destroyed–

(a) any copies of the fingerprints shall also be destroyed; and

(b) any chief officer of police controlling access to computer data relating to the fingerprints shall make access to the data impossible, as soon as it is practicable to do so.

(7) Any applicant whose fingerprints have been taken in connection with an application under Part V of the Act shall, on request made in writing to the police officer in charge of the nominated police station or, as the case may be, specified police station at any time prior to destruction of the fingerprints or any copies of them, be allowed to witness the destruction of those fingerprints and any copies.

(8) If–

(a) paragraph (6)(b) above falls to be complied with; and

(b) the applicant to whose fingerprints the data relates asks for a certificate that it has been complied with,

such a certificate shall be issued to the applicant, not later than the end of the period of three months beginning with the day on which the certificate is asked for, by the responsible chief officer of police or by a person authorised by the chief officer or on behalf of the chief officer for the purposes of this regulation.

(9) In the case of an applicant under the age of 18 years the consent of the applicant's parent or guardian to the taking of the applicant's fingerprints is also required.

(10) In this regulation–

(a) "responsible chief officer of police" means the chief officer of police in whose area the computer data was put on to the computer; and

(b) a reference to notifying in writing or making a request in writing includes a reference to an electronic communication (within the meaning of the Electronic Communications Act 2000(**3**)) which has been recorded and is subsequently capable of being produced.

Fees payable to police authorities for information provided to the Scottish Ministers

10. The Scottish Ministers shall pay to the appropriate police authority a fee of £31.42 in respect of each request they make to the chief officer of a police force for the provision of information under section 115 or 116 of the Act.

St Andrew's House,Edinburgh
22nd March 2002

IAIN GRAY
A member of the Scottish Executive

(**3**) 2000 c. 7.

SCHEDULE 1

Recital

Enabling Powers

These Regulations are made under the following provisions of the Police Act 1997–

(a) sections 112(1)(b), 113(1)(b), 114(1)(b), 115(1)(b) and (10), 116(1)(b), 118(3) and 125(5); and

(b) having regard to the meaning of "prescribed" in section 125(1), in sections 112(1)(a), (2)(a) and (3), 113(1)(a), (3)(a) and (5), 114(1)(a), 115(1)(a) and (6)(a)(i), 116(1)(a), 118(2)(a) and 119(3).