

2010 No. 764

POLICE

**The Police Act 1997 (Criminal Records) (Isle of Man) Order
2010**

Made - - - - - *17th March 2010*

Coming into force in accordance with Article 1(2) to (5)

At the Court at Buckingham Palace, the 17th day of March 2010

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 168 of the Serious Organised Crime and Police Act 2005(a), section 66(4) of the Safeguarding Vulnerable Groups Act 2006(b) and section 384(1) of the Armed Forces Act 2006(c), by and with the advice and consent of Her Privy Council, makes the following Order:

Citation and commencement

1.—(1) This Order may be cited as the Police Act 1997 (Criminal Records) (Isle of Man) Order 2010.

(2) Subject to paragraphs (3) to (5) this Order comes into force on the day after the day on which it is made.

(3) Article 3(2)(a) (the extension of section 112 of the 1997 Act) and the modifications specified in paragraph 1 of Schedule 1 come into force on the day on which section 112 of the 1997 Act comes into force in England and Wales.

(4) Article 4(2)(d) (the extension of the repeal of section 113E of the 1997 Act) comes into force upon the ending of the second transitional period.

(5) The modifications specified in paragraph 2(b)(ii) of Schedule 2 come into force on the day on which section 170(2) of the Education and Inspections Act 2006(d) (prohibition on participation in management: supplementary) comes into force in England and Wales.

Interpretation

2. In this Order—

“the 1997 Act” means the Police Act 1997(e);

(a) 2005 c. 15.
(b) 2006 c. 47.
(c) 2006 c. 52.
(d) 2006 c. 40.
(e) 1997 c. 50.

“the 2006 Act” means the Safeguarding Vulnerable Groups Act 2006;

“the first transitional period” has the same meaning as in article 1(2) of the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No. 5) Order 2009(a);

“the second transitional period” has the same meaning as in article 1(2) of the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No. 5) Order 2009.

Extension of Part 5 of the Police Act 1997 to the Isle of Man

3.—(1) The following provisions of Part 5 (Certificates of criminal records, &c) of the 1997 Act, as amended by the Greater London Authority Act 1999(b), the Police (Northern Ireland) Act 2000(c), the Criminal Justice and Police Act 2001(d), the Criminal Justice Act 2003(e) and the Serious Organised Crime and Police Act 2005, extend to the Isle of Man subject to the modifications specified in Schedules 1 and 3(f).

(2) The provisions are—

- (a) section 112(g) (criminal conviction certificates);
- (b) section 113A(h) (criminal record certificates);
- (c) section 113B(i) (enhanced criminal record certificates);
- (d) section 113E(j) (criminal record certificates: specified children’s and adults’ lists: urgent cases);
- (e) section 114(k) (criminal record certificates: Crown employment);
- (f) section 116(l) (enhanced criminal record certificates: judicial appointments and Crown employment);
- (g) section 117 (disputes about accuracy of certificates);
- (h) section 118(m) (evidence of identity);

(a) S.I. 2009/2610.

(b) 1999 c. 29.

(c) 2000 c. 32.

(d) 2001 c. 16.

(e) 2003 c. 44.

(f) There have been other amendments to Part 5 of the 1997 Act but these are not extended to the Isle of Man by this article.

(g) As amended by section 328 of and paragraphs 1 and 2 of Schedule 35 to the Criminal Justice Act 2003.

(h) As inserted by section 163(2) of the Serious Organised Crime and Police Act 2005.

(i) As inserted by section 163(2) of the Serious Organised Crime and Police Act 2005.

(j) As inserted by section 163(2) of the Serious Organised Crime and Police Act 2005.

(k) As amended by section 163(3) of and paragraphs 1 and 2 of Schedule 14 to the Serious Organised Crime and Police Act 2005.

(l) As amended by section 328 of and paragraphs 1 and 5 of Schedule 35 to the Criminal Justice Act 2003 and section 163(3) of and paragraphs 1 and 3(b) of Schedule 14 to the Serious Organised Crime and Police Act 2005.

(m) As amended by section 164 of the Serious Organised Crime and Police Act 2005.

- (i) section 119(a) (sources of information);
- (j) section 120(b) (registered persons);
- (k) section 120ZA(c) (regulations about registration);
- (l) section 122A(d) (delegation of functions of Secretary of State);
- (m) section 123 (offences: falsification, &c);
- (n) section 124(e) (offences: disclosure);
- (o) section 124A(f) (further offences: disclosure of information obtained in connection with delegated function);
- (p) section 125(g) (regulations);
- (q) section 126(h) (interpretation of Part 5);
- (r) section 127 (saving: disclosure of information and records).

Extension of the Safeguarding Vulnerable Groups Act 2006 to the Isle of Man

4.—(1) The following provisions of the 2006 Act extend to the Isle of Man subject to the modifications specified in Schedules 2 and 3.

(2) The provisions are—

- (a) section 28(i) (independent monitor);
- (b) section 63 (amendments and repeals);
- (c) Schedule 9 (amendments), paragraph 14(j) (Police Act 1997 (c. 50));
- (d) Schedule 10 (repeals), entry in relation to section 113E of the 1997 Act(k).

Extension of the Armed Forces Act 2006 to the Isle of Man

5.—(1) The following provisions of the Armed Forces Act 2006 extend to the Isle of Man.

(2) The provisions are—

- (a) section 378(1) (minor and consequential amendments and repeals);
- (b) Schedule 16 (minor and consequential amendments), paragraph 149(l) (Police Act 1997 (c. 50)).

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- (a) As amended by sections 325 and 423 of and paragraph 112 of Schedule 27 and Part 7 of Schedule 34 to the Greater London Authority Act 1999, section 134(2) of the Criminal Justice and Police Act 2001, and sections 163(3) and 165(1) of and paragraphs 1 and 4 of Schedule 14 to the Serious Organised Crime and Police Act 2005.
 - (b) As amended by section 134(3) and (4) of the Criminal Justice and Police Act 2001, sections 328 and 332 of and paragraphs 1 and 6 of Schedule 35 and Part 11 of Schedule 37 to the Criminal Justice Act 2003, and section 163(3) and paragraphs 1 and 6 of Schedule 14 to the Serious Organised Crime and Police Act 2005.
 - (c) As inserted by section 328 of and paragraphs 1 and 7 of Schedule 35 to the Criminal Justice Act 2003 and amended by section 163(3) of and paragraphs 1 and 7 of Schedule 14 to the Serious Organised Crime and Police Act 2005.
 - (d) As inserted by section 328 of and paragraphs 1 and 10 of Schedule 35 to the Criminal Justice Act 2003.
 - (e) As amended by section 163(3) of and paragraphs 1 and 12 of Schedule 14 to the Serious Organised Crime and Police Act 2005.
 - (f) As inserted by section 328 of and paragraphs 1 and 11 of Schedule 35 to the Criminal Justice Act 2003 and amended by section 165(3) of the Serious Organised Crime and Police Act 2005.
 - (g) As amended by sections 328 and 332 of and paragraphs 1 and 12 of Schedule 35 and Part 11 of Schedule 37 to the Criminal Justice Act 2003 and paragraphs 1 and 14 of Schedule 14 to the Serious Organised Crime and Police Act 2005.
 - (h) As amended by section 78(1) of and paragraph 20(1), (2) and (3) of Schedule 6 to the Police (Northern Ireland) Act 2000 and section 166(2) of the Serious Organised Crime and Police Act 2005.
 - (i) Section 28 inserted new section 119B (independent monitor) into the 1997 Act.
 - (j) Paragraph 14 of Schedule 9 amended the 1997 Act. Sub-paragraph (2) amended section 113A; sub-paragraph (3) amended section 113B; sub-paragraph (4) inserted new sections 113BA (suitability information relating to children), 113BB (suitability information relating to vulnerable adults) and 113BC (suitability information: power to amend); sub-paragraph (5) amended section 114(3); sub-paragraph (6) amended section 116(3); sub-paragraph (7) amended section 119.
 - (k) Schedule 10 also repealed other provisions in the 1997 Act and in other enactments but none are relevant to this Order.
 - (l) Paragraph 149 of Schedule 16 amended section 113B(10) of the 1997 Act.

Modifications that have effect for a limited period

6.—(1) Part 1 of Schedule 3 specifies modifications that have effect from the date referred to in article 1(2) until the end of the first transitional period.

(2) The modification to section 119(1A) of the 1997 Act specified in paragraph 1 of Schedule 3 has effect instead of the modification specified in paragraph 8(a) of Schedule 1.

(3) The modifications to paragraph 14(4) of Schedule 9 to the 2006 Act specified in paragraph 2(a) of Schedule 3 have effect instead of the modifications specified in paragraph 2(b)(ii) of Schedule 2.

(4) The modifications to paragraph 14(4) of Schedule 9 to the 2006 Act specified in paragraph 2(b) of Schedule 3 have effect in addition to the modifications specified in paragraph 2(b) of Schedule 2.

7.—(1) Part 2 of Schedule 3 specifies modifications that have effect from the date referred to in article 1(2) until the end of the second transitional period.

(2) Those modifications have effect in addition to the modifications specified in paragraph 2 of Schedule 2.

8.—(1) Part 3 of Schedule 3 specifies modifications that have effect for the second transitional period.

(2) The modifications to paragraph 14(4) of Schedule 9 to the 2006 Act specified in paragraph 4(a) of Schedule 3 have effect instead of the modifications specified in paragraph 2(b)(ii) of Schedule 2.

(3) The modifications to paragraph 14(4) of Schedule 9 specified in paragraph 4(b) of Schedule 3 have effect in addition to the modifications specified in paragraph 2(b) of Schedule 2.

Subordinate legislation made under extended provisions

9. Any order or regulations made by the Secretary of State under the provisions extended to the Isle of Man by this Order shall not have effect in the Isle of Man unless, before making the order or regulations, the Secretary of State has consulted the Department of Home Affairs of the Isle of Man.

Judith Simpson
Clerk of the Privy Council

SCHEDULE 1

Article 3

Modifications to provisions of Part 5 of the Police Act 1997

1.—(1) In section 112 (criminal conviction certificates)—

(a) in subsection (1)(a) omit “in the prescribed manner and form”;

(b) in subsection (3)—

(i) in the definition of “central records”, after “records of convictions” insert “and conditional cautions”;

(ii) in the appropriate place insert—

““conditional caution” means a caution given under section 22 of the Criminal Justice Act 2003 (c. 44) or section 66A of the Crime and Disorder Act 1998 (c. 37), other than one that is spent for the purposes of Schedule 2 to the Rehabilitation of Offenders Act 1974 (c. 53);”.

2. In section 113A (criminal record certificates)—

- (a) in subsection (1)(a) omit “in the prescribed manner and form”;
- (b) after subsection (2) insert—
 - “(2A) But an application for a criminal record certificate need not be countersigned by a registered person if—
 - (a) the application is transmitted to the Secretary of State electronically by a registered person who satisfies conditions determined by the Secretary of State, and
 - (b) it is transmitted in accordance with requirements determined by the Secretary of State.”;
- (c) in subsection (4) for “the registered person who countersigned” substitute “whoever acted as the registered person in relation to”;
- (d) in subsection (6)—
 - (i) for the definition of “exempted question” substitute—
 - ““exempted question” means a question which—
 - (a) so far as it applies to convictions, is a question in relation to which section 4(2)(a) or (b) of the Rehabilitation of Offenders Act 1974 (effect of rehabilitation) has been excluded by an order of the Secretary of State under section 4(4) of that Act; and—
 - (b) so far as it applies to cautions, is a question to which paragraph 3(3) or (4) of Schedule 2 to that Act has been excluded by an order of the Secretary of State under paragraph 4 of that Schedule;”;
 - (ii) for the definition of “relevant matter” substitute—
 - ““relevant matter” means—
 - (a) a conviction within the meaning of the Rehabilitation of Offenders Act 1974, including a spent conviction, and
 - (b) a caution, including a caution that is spent for the purposes of Schedule 2 to that Act.”;
- (e) after subsection (7)(a) insert—
 - “(8) For the purposes of this Part a person acts as the registered person in relation to an application for a criminal record certificate if the person—
 - (a) countersigns the application, or
 - (b) transmits the application to the Secretary of State under subsection (2A).”.

3. In section 113B (enhanced criminal record certificates)—

- (a) in subsection (1)(a) omit “in the prescribed manner and form”;
- (b) after subsection (2) insert—
 - “(2A) But an application for an enhanced criminal record certificate need not be countersigned by a registered person if—
 - (a) the application is transmitted to the Secretary of State electronically by a registered person who satisfies conditions determined by the Secretary of State, and
 - (b) it is transmitted in accordance with requirements determined by the Secretary of State.”;
- (c) in subsection (6) for “the registered person who countersigned” substitute “whoever acted as the registered person in relation to”;
- (d) after subsection (11) insert—

(a) Paragraph 14(1) and (2) of Schedule 9 to the 2006 Act, which is extended to the Isle of Man by Article 4, inserted new subsections (7) and (8) into section 113A but new subsection (8) is omitted by paragraph 2(a) of Schedule 2 to this Order.

“(12) For the purposes of this Part a person acts as the registered person in relation to an application for an enhanced criminal record certificate if the person—

- (a) countersigns the application, or
- (b) transmits the application to the Secretary of State under subsection (2A).”.

4.—(1) In the heading to section 113E (criminal records certificates: specified children’s and adults’ lists: urgent cases) omit “children’s and”.

(2) In section 113E (criminal records certificates: specified adults’ lists: urgent cases)—

- (a) omit subsections (1) and (2);
- (b) in subsection (3)—
 - (i) omit “113A or”,
 - (ii) for paragraph (a) substitute—

“(a) it is made in a case prescribed under section 113BB(1)”(a);
- (c) in subsection (5) omit the definitions of “children’s suitability statement”, “specified children’s direction”, “specified children’s list”, “adults’ suitability statement” and “specified adults’ list”;

(d) after subsection (5) insert—

“(5A) For the purposes of this section each of the following is a specified adults’ list—

- (a) the list kept under section 81 of the Care Standards Act 2000 (c. 14);
- (b) the adults’ barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006 (c. 47);
- (c) the adults’ barred list maintained under article 6 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (S.I. 2007/1351 (N.I. 11)).”.

5. In subsection 114(1)(a) (criminal record certificates: Crown employment) omit “in the prescribed form”.

6. In section 116 (enhanced criminal record certificates: judicial appointments and Crown employment)—

- (a) in subsection (1)(a) omit “in the prescribed form”;
- (b) for subsection (2) substitute—

“(2) An application under this section in respect of a judicial appointment must be accompanied by a statement by a Minister of the Crown or the Chief Secretary of the Isle of Man, or a person nominated by a Minister of the Crown or the Chief Secretary of the Isle of Man, that the certificate is required for the purposes of an exempted question asked in the course of considering the applicant’s suitability for such appointment.

(2A) An application under this section in respect of an appointment by or under the Crown to a position of such description as may be prescribed must be accompanied by a statement by a Minister of the Crown, or a person nominated by a Minister of the Crown, that the certificate is required for the purposes of an exempted question asked in the course of considering the applicant’s suitability for such appointment.”.

7. In section 118 (evidence of identity)—

- (a) in subsection (1) omit “or 120”;
- (b) after subsection (2) insert—

“(2ZA) For the purpose of applications from persons resident in the Isle of Man, “prescribed” in subsection (2)(a) and (b) means prescribed by regulations made by the Department of Home Affairs.”;

(a) Section 113BB was inserted by paragraph 14(1) and (4) of Schedule 9 to the 2006 Act, which is extended to the Isle of Man by Article 4 subject to the modifications specified in Schedules 2 and 3 to this Order.

- (c) after subsection (2A)(d) insert—
 - “(da) by the Isle of Man Passport Office;
 - (db) by the Department of Transport of the Isle of Man for the purposes of the licensing and registration of motorists and motor vehicles;
 - (dc) by the Department of Health and Social Security of the Isle of Man in connection with keeping records of national insurance numbers;”;
- (d) after subsection (4) insert—
 - “(5) Regulations made by the Department of Home Affairs under this section—
 - (a) may contain such consequential, incidental, supplemental and transitional provision as may appear to the Department of Home Affairs to be necessary or expedient;
 - (b) shall not have effect unless they are approved by Tynwald.
 - (6) The power conferred on the Department of Home Affairs by this section to make regulations may be exercised—
 - (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases;
 - (b) so as to make, as respects the cases in relation to which it is exercised—
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
 - (iii) any such provision either unconditionally or subject to any prescribed conditions.”.

8. In section 119 (sources of information)—

- (a) for subsection (1A) substitute—
 - “(1A)(a) The Secretary of State may require the Independent Safeguarding Authority to make available specified information for the purpose of enabling the Secretary of State to carry out functions under this Part in relation to any application for a certificate.
 - (b) In this section “Independent Safeguarding Authority” has the same meaning as in the Safeguarding Vulnerable Groups Act 2006.”(a);
- (b) in subsection (3) omit “section 120A(4) or”;
- (c) in subsection (4) for paragraphs (a) and (b) substitute “any application for a certificate”;
- (d) in subsection (6) for (i) substitute (l).

9. In section 120 (registered persons)—

- (a) in subsection (2)—
 - (i) omit “and 120AA and to section 120A”;
 - (ii) in paragraph (b) for “subsections (4) to (6), and” substitute “subsections (4) and (5).”;
 - (iii) omit paragraph (c);
- (b) for subsection (4) substitute—
 - “(4) The only person that may apply for registration under this section is the Department of Home Affairs.”;

(a) Section 81 of the Policing and Crime Act 2009 (c. 26) amended the 2006 Act to rename the Independent Barring Board as the Independent Safeguarding Authority.

- (c) in subsection (5)—
 - (i) for “A body applying for registration” substitute “The Department of Home Affairs when applying for registration”,
 - (ii) for paragraph (b) substitute—
 - “(b) is likely to act as the registered person in relation to applications under section 113A or 113B at the request of bodies or individuals asking exempted questions.”;
 - (d) omit subsection (6).
- 10.** In section 120ZA (regulations about registration)—
- (a) in subsection (2) for paragraph (d) substitute—
 - “(d) the nomination by the Department of Home Affairs of the individuals authorised to act for it in relation to the countersigning of applications under this Part or the transmitting of applications under section 113A(2A) or 113B(2A)”;
 - (b) in subsection (3)(a) omit “or continued registration”;
 - (c) in subsection (4)—
 - (i) in paragraph (a) for “he countersigns” substitute “acting as the registered person in relation to”,
 - (ii) in paragraph (b) for “registered person who countersigns it” substitute “person who acts as the registered person in relation to the application.”,
 - (iii) omit paragraph (c) and the word “and” immediately preceding it.
- 11.** In section 122A(2) (delegation of functions of Secretary of State) for paragraphs (a) and (b) substitute “to make regulations”.
- 12.** In section 123 (offences: falsification. &c), in subsection (3)—
- (a) for “imprisonment” substitute “custody”;
 - (b) for “level 5 on the standard scale” substitute “£5000”.
- 13.** In section 124 (offences: disclosure)—
- (a) in subsection (1)(b) and (c) for “countersigned” substitute “acted as the registered person in relation to”;
 - (b) in subsection (2) for “countersigned” substitute “in relation to which the person who acted as the registered person did so”;
 - (c) in subsection (3) for “countersigned by or at the request of an individual” substitute “in relation to which the person who acted as the registered person did so at the request of an individual”;
 - (d) in subsection (7)—
 - (i) for “imprisonment” substitute “custody”;
 - (ii) for “level 3 on the standard scale” substitute “£1000”.
- 14.** In section 124A (further offences: disclosure of information obtained in connection with delegated functions)—
- (a) in subsection (4)—
 - (i) for “imprisonment” substitute “custody”,
 - (ii) for “51 weeks” substitute “12 months”,
 - (iii) for “level 3 on the standard scale” substitute “£1000”;
 - (b) in subsection (5) —
 - (i) after “Criminal Justice Act 2003” insert “in England and Wales”,
 - (ii) for “51 weeks” substitute “12 months”;
 - (c) in subsection (6) for “(i)” substitute “(l)”.

15. For section 125 (regulations) substitute—

“**125.**—(1) Subject to section 118(2ZA), anything authorised or required by any provision of this Part to be prescribed shall be prescribed by regulations made by the Secretary of State.

(2) Regulations under this Part may make different provision for different cases.”.

16. Before section 126 insert—

“**Form of Applications**

125B.—(1) The Secretary of State may determine the form, manner and contents of an application for the purposes of any provision of this Part.

(2) A determination may, in particular, impose requirements about the form or manner in which an electronic application is to be signed or countersigned.”.

17. In section 126 (interpretation of Part 5)—

(a) in subsection (1)—

(i) before the definition of “caution”, insert—

““an appointment by or under the Crown” shall not include—

(i) the appointment of a member of the Isle of Man Civil Service for service with any department within the meaning of the Government Departments Act 1987 (an Act of Tynwald (c. 13)) or any statutory board within the meaning of the Statutory Boards Act 1987 (an Act of Tynwald (c. 14)) or for service in any other office of the Government of the Isle of Man,

(ii) the employment of any person by any such department, statutory board or other office,

(iii) the appointment of a member of the Isle of Man Civil Service for service with the Manx Museum and National Trust or the employment of any person by the Manx Museum and National Trust, or

(iv) the appointment of any person to any statutory office, other than judicial office, under the law of the Isle of Man;”,

(ii) in the definition of “caution”, for “in England and Wales or Northern Ireland” substitute “in England and Wales, Northern Ireland, Guernsey or the Isle of Man”,

(iii) in the definition of “chief officer”, at the end of sub-paragraph (iii) insert—

“, and

(iv) the chief officer of the salaried Police Force of the Island of Guernsey, and

(v) the chief officer of the States of Jersey Police Force, and

(vi) the Chief Constable of the Isle of Man Constabulary;”,

(iv) after the definition of “chief officer” insert—

““custody” shall be construed in accordance with section 1 of the Custody Act 1995 (an Act of Tynwald (c. 1));

“Department of Home Affairs” means the Department of Home Affairs of the Isle of Man;”,

(v) in the definition of “government department”, after “a Northern Ireland department” insert “and any department, council or committee (however called or styled) of the States of Guernsey, States of Alderney or the Chief Pleas of Sark including any statutory corporation or authority, and any department of the States of Jersey, and any department within the meaning of the Government Departments Act 1987 (an Act of Tynwald) or any statutory board within the meaning of the Statutory Boards Act 1987 (an Act of Tynwald);”,

(vi) omit the definition of “Minister of the Crown”,

- (vii) in the definition of “police force”, at the end of sub-paragraph (ii) insert—
 - “and
 - (iii) the salaried Police Force of the Island of Guernsey, and
 - (iv) the States of Jersey Police Force, and
 - (v) the Isle of Man Constabulary;”;
- (b) for subsection (2) substitute—
 - “(2) Subject to subsection (2A), a reference to an Act, or to a provision of an Act, shall be construed as a reference to that Act or provision, as the case may be, as it has effect in England and Wales from time to time.
 - (2A) A reference to a provision of this Act extended to the Isle of Man by Order in Council shall be construed as a reference to that provision as it has effect in the Isle of Man.”;
- (c) omit subsections (3) and (4).

SCHEDULE 2

Article 4

Modifications to provisions of the Safeguarding Vulnerable Groups Act 2006

1. In section 28—
 - (a) for “After section 119A of the Police Act 1997 (c. 50) (further sources of information: Scotland)” substitute “After section 119 of the Police Act 1997 (c. 50) (sources of information)”;
 - (b) in the provisions to be inserted as section 119B of the 1997 Act, omit subsection (5)(d) and (e).
2. In paragraph 14 of Schedule 9—
 - (a) in sub-paragraph (2), in the provisions to be inserted after section 113A(6) of the 1997 Act, omit subsection (8);
 - (b) in sub-paragraph (4)—
 - (i) in the provisions to be inserted as sections 113BA(2)(d) and 113BB(2)(d) of the 1997 Act, for “Independent Barring Board” substitute “Independent Safeguarding Authority”;
 - (ii) in the provisions to be inserted as section 113BA of the 1997 Act, after subsection (2)(d) insert—
 - “(e) whether the applicant is subject to a direction under section 128 of the Education and Skills Act 2008 (c. 25) (prohibition on participation in management of independent educational institution in England) or section 167A of the Education Act 2002 (c. 32) (prohibition on participation in management of independent school in Wales).”;
 - (iii) in the provisions to be inserted as section 113BC of the 1997 Act, omit subsection (2);
 - (c) in sub-paragraph (7)—
 - (i) omit paragraph (c),
 - (ii) in paragraph (d), for the provision to be inserted as section 119(8) of the 1997 Act substitute—
 - “(8) In this section a relevant function is a function of the Secretary of State under this Part in relation to any application for a certificate.”.

Modifications that have effect for a limited period

PART 1

Modifications that have effect from the date referred to in article 1(2) until the end of the first transitional period

1. For section 119(1A) of the 1997 Act (sources of information) substitute—

“(1A) Any person who keeps the list under section 1 of the Protection of Children Act 1999 or under section 81 of the Care Standards Act 2000 or maintains a list under section 2 of the Safeguarding Vulnerable Groups Act 2006 shall make the contents of that list available to the Secretary of State for the purpose of enabling him to carry out his functions under this Part in relation to any application for a certificate.”.

2. In paragraph 14(4) of Schedule 9 to the 2006 Act—

(a) for the provision to be inserted as section 113BA(2) of the 1997 Act (suitability information relating to children) substitute—

“(2) Suitability information relating to children is whether the applicant—

- (a) is provisionally included in the list kept under section 1 of the Protection of Children Act 1999 (c. 14);
- (b) is included in the list kept under section 1 of the Protection of Children Act 1999 otherwise than provisionally and disqualified from working with children for the purposes of section 35 of the Criminal Justice and Court Services Act 2000 (c. 43) or is barred from regulated activity relating to children;
- (c) is subject to a direction made under section 142 of the Education Act 2002 (c. 32).

(2A) If the applicant is provisionally included in the list kept under section 1 of the Protection of Children Act 1999, the suitability information includes the fact that the applicant must not be employed or, as the case may be, must cease to be employed in a child care position with a child care organisation in accordance with section 7 of that Act.

(2B) If the applicant is subject to a direction made under section 142 of the Education Act 2002, the suitability information includes—

- (a) details of any prohibition or restriction on the applicant’s employment;
- (b) the grounds on which the direction was made, and, where the grounds are misconduct, details of the misconduct.

(2C) In subsection (2A), “child care position” and “child care organisation” have the same meanings as in section 12 of the Protection of Children Act 1999.”;

(b) for the provision to be inserted as section 113BB(2) of the 1997 Act (suitability information relating to vulnerable adults) substitute—

“(2) Suitability information relating to vulnerable adults is whether the applicant—

- (a) is provisionally included in the list kept under section 81 of the Care Standards Act 2000 (c. 14);
- (b) is included in the list kept under section 81 of the Care Standards Act 2000 otherwise than provisionally and prohibited from working in a care position or is barred from regulated activity relating to vulnerable adults.

(2A) If the applicant is provisionally included in the list kept under section 81 of the Care Standards Act 2000, the suitability information includes the fact that the applicant must not be employed or, as the case may be, must cease to be employed in a care position.

(2B) In subsection (2), “care position” has the same meaning as in Part 7 of the Care Standards Act 2000.”.

PART 2

Modifications that have effect from the date referred to in article 1(2) until the end of the second transitional period

3. In paragraph 14(6) of Schedule 9 to the 2006 Act for “113BA to 113BC” substitute “113BA, 113BB and 113E”.

PART 3

Modifications that have effect for the second transitional period

4. In paragraph 14(4) of Schedule 9 to the 2006 Act—

(a) for the provision to be inserted as section 113BA(2) of the 1997 Act (suitability information relating to children) substitute—

“(2) Suitability information relating to children is—

- (a) whether the applicant is included in the list kept under section 1 of the Protection of Children Act 1999 (c. 14);
- (b) whether the applicant is subject to a direction made under section 142 of the Education Act 2002 (c. 32);
- (c) whether the applicant is barred from regulated activity relating to children;
- (d) if the applicant is barred from such regulated activity, such details as are prescribed of the circumstances in which he became barred;
- (e) whether the applicant is subject to monitoring in relation to regulated activity relating to children;
- (f) whether the Independent Safeguarding Authority is considering whether to include the applicant in the children’s barred list in pursuance of paragraph 3 or 5 of Schedule 3 to the 2006 Act.

(2A) If the applicant is included in the list kept under section 1 of the Protection of Children Act 1999, the suitability information includes whether the inclusion is provisional and—

- (a) if it is provisional, the fact that the applicant must not be employed or, as the case may be, must cease to be employed in a child care position with a child care organisation in accordance with section 7 of that Act;
- (b) if it is not provisional, the fact that the applicant is disqualified from working with children for the purposes of section 35 of the Criminal Justice and Court Services Act 2000 (c. 43).

(2B) If the applicant is subject to a direction made under section 142 of the Education Act 2002, the suitability information includes—

- (a) details of any prohibition or restriction on the applicant’s employment;
- (b) the grounds on which the direction was made, and, where the grounds are misconduct, details of the misconduct.

(2C) In subsection (2A), “child care position” and “child care organisation” have the same meanings as in section 12 of the Protection of Children Act 1999.”;

(b) for the provision to be inserted as section 113BB(2) of the 1997 Act (suitability information relating to vulnerable adults) substitute—

“(2) Suitability information relating to vulnerable adults is—

- (a) whether the applicant is included in the list kept under section 81 of the Care Standards Act 2000 (c. 14);
- (b) whether the applicant is barred from regulated activity relating to vulnerable adults;

- (c) if the applicant is barred from such regulated activity, such details as are prescribed of the circumstances in which he became barred;
 - (d) whether the applicant is subject to monitoring in relation to regulated activity relating to vulnerable adults;
 - (e) whether the Independent Safeguarding Authority is considering whether to include the applicant in the adults' barred list in pursuance of paragraph 9 or 11 of Schedule 3 to the 2006 Act.
- (2A) If the applicant is included in the list kept under section 81 of the Care Standards Act 2000, the suitability information includes whether the inclusion is provisional and—
- (a) if it is provisional, the fact that the applicant must not be employed or, as the case may be, must cease to be employed in a care position;
 - (b) if it is not provisional, the fact that the applicant is prohibited from working in a care position.
- (2B) In subsection (2A), “care position” has the same meaning as in Part 7 of the Care Standards Act 2000.”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends Part 5 of the Police Act 1997 (c. 50) (“Part 5”) to the Isle of Man, as amended by the Greater London Authority Act 1999 (c. 29), the Police (Northern Ireland) Act 2000 (c. 32), the Criminal Justice and Police Act 2001 (c. 16), the Criminal Justice Act 2003 (c. 44) and the Serious Organised Crime and Police Act 2005 (c. 15), subject to the modifications specified in Schedules 1 and 3. It also extends to the Isle of Man provisions of the Armed Forces Act 2006 (c. 52) and the Safeguarding Vulnerable Groups Act 2006 (c. 47) that contain amendments to Part 5, subject to the modifications specified in Schedules 2 and 3.

Part 5 makes provision for the Secretary of State to issue three levels of certificate – a criminal conviction certificate (section 112), a criminal record certificate (section 113A) and an enhanced criminal record certificate (section 113B). The Secretary of State’s functions under Part 5 in England and Wales are exercised by the Criminal Records Bureau (“CRB”), an executive agency of the Home Office.

The Order will enable individuals in the Isle of Man to apply to the CRB for the three levels of certificate. It also provides for the Department of Home Affairs of the Isle of Man to register with the Secretary of State as a “registered person” for the purpose of countersigning or transmitting applications for criminal record certificates and enhanced criminal record certificates. This means that individuals in the Isle of Man will be able to apply for these certificates through the Department of Home Affairs of the Isle of Man instead of through a registered body in England and Wales.

The basic level of criminal conviction certificate is not yet available in England and Wales. This is reflected in Article 1(3) of the Order which provides that the extension of section 112 and the modifications to that section specified in Schedule 1 come into force in the Isle of Man on the day on which section 112 comes into force in England and Wales.

Section 113E, which is extended to the Isle of Man in this Order subject to the modifications specified in paragraph 4 of Schedule 1, makes provision for urgent preliminary information as to whether a person is included in a specified adults’ list to be provided in prescribed cases. This section was repealed in the Safeguarding Vulnerable Groups Act 2006 but the repeal is not yet in force in England and Wales. The repeal is extended to the Isle of Man in this Order but article 1(4) provides that the repeal will not come into force in the Isle of Man until the end of the second transitional period. This ensures that applicants in the Isle of Man will continue to have access to the facility provided in section 113E while it is still available in England and Wales.

Modifications to sections 112, 113A, 113B, 114 and 116, and the modification which inserts section 125B, reflect the amendments made by section 97 of the Policing and Crime Act 2009, which provide that Criminal Records Bureau application forms are no longer prescribed.

The Safeguarding Vulnerable Groups Act 2006 made a number of other amendments to Part 5, which are extended to the Isle of Man by this Order. In particular, it introduced new sections 113BA and 113BB into Part 5 which require suitability information to be included on enhanced criminal record certificates in prescribed cases. Suitability information is, in essence, information as to whether a person is barred from working with children (section 113BA) or with vulnerable adults (section 113BB). Paragraph 2(b)(ii) of Schedule 2 to this Order modifies the meaning of suitability information relating to children in section 113BA to include whether the person is subject to a prohibition on participation in management of independent educational institutions; this reflects amendments made to Part 5 in England and Wales by the Education and Inspections Act 2006 (c. 40) and Education and Skills Act 2008 (c. 25), although these are not yet in force. Article 1(5) of this Order provides for the modification to come into force on the same day as the equivalent amendments come into force in England and Wales.

The modifications specified in Schedule 3 have effect for a limited period. They reflect transitional arrangements in England and Wales set out in the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous and Transitional Provisions and Commencement No.5) Order 2009 (S.I. 2009/2610). They are necessary because of the phased implementation of the Vetting and Barring Scheme (VBS) in England and Wales, which will supply suitability information for inclusion on enhanced criminal record certificates. The approach in Schedule 3 ensures that the same suitability information will be made available in response to applications from individuals in the Isle of Man as in England and Wales without the need for amendments to be made to this Order at each stage of the phased implementation of the VBS.

An informal Keeling schedule setting out the provisions of Part 5 as they extend to the Isle of Man is published on the Ministry of Justice website to assist the reader: www.justice.gov.uk.

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STATUTORY INSTRUMENTS

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POLICE

The Police Act 1997 (Criminal Records) (Isle of Man) Order
2010

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