
STATUTORY INSTRUMENTS

2012 No. 1762

POLICE

**The Police Act 1997 (Criminal Records)
(Guernsey) (Amendment) Order 2012**

*Made - - - - 10th July 2012
Coming into force in accordance with Article 1(2) to
(3)(b)*

Her Majesty, in exercise of the powers conferred upon Her by section 168 of the Serious Organised Crime and Police Act 2005⁽¹⁾, section 66(4) of the Safeguarding Vulnerable Groups Act 2006⁽²⁾ and section 118 of the Protection of Freedoms Act 2012⁽³⁾, by and with the advice 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) (Guernsey) (Amendment) Order 2012.

(2) This Order comes into force on the day after the day on which it is made.

(3) Notwithstanding paragraph (2) —

- (a) any provision extended as specified in paragraph (2) of article 4 and any provision in any Part extended as specified in paragraphs (3) to (6) of article 4 (subject to the modifications specified in Schedules 1 to 5 of this Order) does not have effect in Guernsey until the day that provision comes into force in England and Wales;
- (b) paragraph (4) of Schedule 1 shall have effect in Guernsey when the extensions and modifications specified in paragraphs (3) to (6) of article 4 have effect in Guernsey.

Interpretation

2. In this Order—

“the 2009 Order” means the Police Act 1997 (Criminal Records) (Guernsey) Order 2009⁽⁴⁾;

“the 2012 Act” means the Protection of Freedoms Act 2012;

“Guernsey” means the Bailiwick of Guernsey and its adjacent territorial sea.

(1) 2005 c. 15.
(2) 2006 c. 47.
(3) 2012 c. 9.
(4) S.I. 2009/3215.

Amendment of the 2009 Order

3.—(1) The 2009 Order is amended as follows.

(2) In article 1(4) for “upon the ending of the second transitional period” substitute “on such day as the Home Department of the States of Guernsey may by Order appoint”.

(3) Article 2(c) and (e) are omitted.

(4) Articles 6, 7 and 8 are revoked.

(5) In paragraph 15(a)(i) of Schedule 1 for “in England and Wales, Northern Ireland or Guernsey” substitute “in England and Wales, Northern Ireland, the Isle of Man, Jersey or Guernsey”.

(6) In paragraph 15(a)(ii) of Schedule 1 for—

“, 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;”

substitute—

“, 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;”.

(7) In paragraph 15(a)(v) of Schedule 1 for—

“and

(iii) the salaried Police Force of the Island of Guernsey, and

(iv) the State of Jersey Police Force;”

substitute—

“and

(iii) the salaried Police Force of the Island of Guernsey, and

(iv) the States of Jersey Police Force, and

(vi) the Isle of Man Constabulary;”.

(8) Schedule 3 is revoked.

Extension of Part 5 of, and Schedules 9 and 10 to, the Protection of Freedoms Act 2012 to Guernsey

4.—(1) The following provisions of Part 5 (Safeguarding of vulnerable groups, criminal records, etc.) of the 2012 Act extend to Guernsey subject to the modifications specified in Schedule 1.

(2) The provisions are—

(a) section 79 (restriction on information provided to certain persons);

(b) section 80 (minimum age for applicants for certificates or to be registered);

(c) section 82 (enhanced criminal record certificates: additional safeguards);

(d) section 83 (up-dating certificates);

(e) section 84 (criminal conviction certificates: conditional cautions);

(f) section 87 (formation and constitution of DBS);

(g) section 88 (transfer of functions to DBS and dissolution of ISA);

(h) section 89 (orders under section 88).

(3) Part 6 of Schedule 9 (Safeguarding of vulnerable groups) to the 2012 Act extends to Guernsey subject to the modifications specified in Schedule 2.

(4) Part 7 of Schedule 9 (Criminal records) to the 2012 Act extends to Guernsey subject to the modifications specified in Schedule 3.

(5) Part 5 of Schedule 10 (Safeguarding of vulnerable groups) to the 2012 Act extends to Guernsey subject to the modifications specified in Schedule 4.

(6) Part 6 of Schedule 10 (Criminal records) to the 2012 Act extends to Guernsey subject to the modifications specified in Schedule 5.

Subordinate legislation made under extended provisions

5. Any order or regulations made by the Secretary of State under the provisions extended to Guernsey by this Order shall not have effect in Guernsey until the order or regulations have been registered on the Records of the Island of Guernsey.

Richard Tilbrook
Clerk of the Privy Council

SCHEDULE 1

Article 4(1)

Modifications to provisions of Part 5 of the 2012 Act

1. In section 79 (restriction on information provided to certain persons)—
 - (a) omit subsection (1);
 - (b) in subsection (3) for “120AB” substitute “120ZA”.
2. In section 80 (minimum age for applicants for certificates or to be registered)—
 - (a) in the heading omit “or to be registered”;
 - (b) omit subsection (2).
3. In section 82 (enhanced criminal record certificates: additional safeguards) in subsection (3) (a) at the end of the inserted definition of “relevant chief officer” add “and the Chief Officer of the salaried Police Force of the Island of Guernsey”.
4. After section 84 insert the following section—

“Consequential amendments, repeals and revocations

84A.—(1) Schedule 9 (consequential amendments) has effect.

(2) The provisions listed in Schedule 10 are repealed or (as the case may be) revoked to the extent specified.”

5. In section 87 (formation and constitution of DBS) omit subsection (3).
6. In section 88 (transfer of functions to DBS and dissolution of ISA) for subsection (2) substitute

—
“(2) The Secretary of State may by order transfer to DBS any function of the Secretary of State under, or in connection with, Part 5 of the Police Act 1997 (criminal records).”

7. In section 89 (orders under section 88)—
 - (a) omit subsections (2) to (4);
 - (b) for subsection (5) substitute—

“(5) In this section “enactment” does not—

 - (a) include—
 - (i) a Law enacted, or
 - (ii) an Ordinance made,by the States of Guernsey, the States of Alderney or the Chief Pleas of Sark,
 - (b) include a statutory instrument made under any such Law or Ordinance.”

SCHEDULE 2

Article 4(3)

Modifications to Part 6 of Schedule 9 to the 2012 Act

1. Omit paragraphs 36 and 37.
2. Omit paragraphs 40 to 42.
3. Omit paragraphs 43 to 103.

SCHEDULE 3

Article 4(4)

Modifications to Part 7 of Schedule 9 to the 2012 Act

1. In paragraph 109—
 - (a) in sub-paragraph (2)(b) for “, 117A” substitute “or 117A”;
 - (b) in sub-paragraph (3), in the inserted subsection (3A)—
 - (i) for the first reference to the “Secretary of State” substitute “Home Department of the States of Guernsey”;
 - (ii) after “fingerprints” insert “for transmission to the Secretary of State”.
2. In paragraph 110—
 - (a) for sub-paragraph (2) substitute—

“(2) In subsection (1A) after ‘certificate’ insert ‘, or the provision of up-date information under section 116A’.”;
 - (b) for sub-paragraph (5) substitute—

“(5) In subsection (4) after ‘certificate’ insert ‘, or the provision of up-date information under section 116A’.”;
 - (c) for sub-paragraph (6) substitute—

“(6) In subsection (8) after ‘certificate’ insert ‘, or the provision of up-date information under section 116A’.”.
3. For paragraph 112 substitute—

“**112.**—(1) Section 120 (registered persons) is amended as follows.
(2) In subsection 2, after paragraph (a) insert “and”.”
4. Omit paragraphs 113 and 114.
5. Omit paragraph 117.
6. Omit paragraphs 119 to 129.

SCHEDULE 4

Article 4(5)

Modifications to Part 5 of Schedule 10 to the 2012 Act

For Part 5 substitute—

“PART 5

SAFEGUARDING OF VULNERABLE GROUPS

Short title

Extent of repeal or revocation

Police Act 1997(5)

Section 113BA(2)(b) to (d)

Section 113BB(2)(b) to (d)”

SCHEDULE 5

Article 4(6)

Modifications to Part 6 of Schedule 10 to the 2012 Act

For Part 6 substitute—

“PART 6
CRIMINAL RECORDS

Short title

Extent of repeal

Police Act 1997

Section 113A(4).

In section 113B—

- (a) in subsection (4), the words
“, in the chief officer’s opinion”,
- (b) subsections (5) and (6),
and
- (c) in subsection (9), the definition of
“relevant police force”.

In section 119B—

- (a) subsection (5)(a), and
- (b) in subsection (5)(c), the words
from “or disclosed” to the end.

In section 124—

- (a) in subsection (4)(b), the words “(5) or”, and
- (b) subsection (5).

In section 124A(1)(c), the words
“or registered person”.

Safeguarding Vulnerable Groups Act 2006 In Schedule 9, paragraph 14(5) and (6).”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Police Act 1997 (Criminal Records) (Guernsey) Order 2009 (S.I. 2009/765) (“the 2009 Order”) by extending provisions of the Protection of Freedoms Act 2012 (c. 9) (“the 2012 Act”) to Guernsey, subject to the modifications specified in Schedules 1 to 5.

The 2009 Order extended Part 5 of the Police Act 1997 (c. 50) (“the 1997 Act”) to Guernsey subject to modifications. It also extended to Guernsey provisions of the Armed Forces Act 2006 (c. 52) and the Safeguarding Vulnerable Groups Act 2006 (c. 47) (“the 2006 Act”) that contained amendments to Part 5, subject to modifications. Part 5 made 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).

Article 3 directly amends the 2009 Order to remove references to the transitional periods and related modifications to the 1997 Act due to the decision of the Home Office not to implement the Vetting and Barring Scheme in England and Wales as originally intended. This Article also permits the coming into force of article 4(2)(d) of the 2009 Order (the extension of the repeal of section 113E of the 1997 Act) by order of the Home Department of the States of Guernsey (“the Home Department”) and amends the definitions of “caution”, “chief officer” and “police force” in section 120 of the 1997 Act as extended to Guernsey.

The 2012 Act amends the 1997 Act in accordance with the recommendations of the Mason Review “A Common Sense Approach” (Home Office, 2011). Article 4 gives effect to the Schedules which contain the amending provisions found in the 2012 Act.

Section 79 modifies sections 113A and 113B to remove the requirement that the Secretary of State, acting through the Criminal Records Bureau (“the CRB”), must send specified information to the registered body in addition to the applicant. This will permit an applicant to make appropriate representations to the CRB regarding any information or the contents of a certificate which the applicant disputes.

A minimum age of 16 is set by section 80 for an applicant requesting a certificate under sections 112, 113A, 113B, 114 and 116 of the 1997 Act.

Additional safeguards are inserted into section 113B by section 82 which substitutes a higher test of disclosure in respect of non-conviction information which should be disclosed in enhanced criminal records certificates and requires the CRB to ask the Chief Officer of Guernsey Police to decide whether information held in Guernsey should be disclosed. Section 117 of the 1997 Act is also amended to allow an applicant for a certificate, or other person, who disputes the accuracy of information contained in that certificate to make written representations to the Secretary of State for a new certificate and section 117A is inserted to permit an applicant to dispute non-conviction information disclosed by a relevant chief officer by way of application to the independent monitor appointed under section 119B.

Section 83 inserts section 116A into the 1997 Act, which introduces a procedure for updating certificates on a continuous basis. Where a person applies for a certificate, that applicant may subscribe to updating arrangements on an annual basis on payment of an annual fee. In response to a request for “up-date information”, the CRB will advise the applicant, or any other person authorised to request an update, either that there is no new information that should be included or that a new certificate should be applied for. The Home Department is also given a power to require an applicant to give their fingerprints to verify their identity against the identity of a person in respect of whom the Secretary of State has been provided information.

Section 112 of the 1997 Act is amended by section 84 to provide that a criminal conviction certificate must also include details of any unspent conditional cautions, which were introduced in the Criminal Justice Act 2003 (c.44).

Access to the Disclosure and Barring Service (“the DBS”) is also facilitated by sections 87 to 89 of the 2012 Act, which permit the transfer of functions to the DBS and the dissolution of the Independent Safeguarding Authority.

An informal Keeling Schedule setting out the provisions of the 2012 Act as they extend to Guernsey is published on the Ministry of Justice website to assist the reader at www.justice.gov.uk.