PROTECTION OF VULNERABLE GROUPS (SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Purpose

1. This Memorandum has been prepared by the Scottish Executive in accordance with Rule 9.7.10 of the Parliament’s Standing Orders to assist the Subordinate Legislation Committee in its consideration of the Protection of Vulnerable Groups (Scotland) Bill. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced. It describes the purpose of each of the changes to subordinate legislation provisions made to the Bill at Stage 2 of the Parliamentary process. Some new subordinate legislation powers have been introduced and some existing powers have been modified or removed. This memorandum outlines the reasons for seeking the new powers and explains why other powers, present in the Bill on introduced, have been modified or removed. The memorandum should be read in conjunction with the revised Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this memorandum are entirely the responsibility of the Scottish Executive and have not been endorsed by the Scottish Parliament.

AMENDMENTS TO DELEGATED POWERS

3. The Bill was introduced on 25 September 2006 with Stage 1 completed on 17 January 2007. The Education Committee considered amendments to the Bill as part of Stage 2 consideration on 13 and 20 February 2007. During the Stage 2 proceedings, 11 new subordinate legislation powers were introduced to the Bill, 6 powers were modified and 6 powers were removed. Below are descriptions of the relevant powers, explanations as to why a new power is needed, or why an existing power has been amended or removed. Where a new power has been introduced, an explanation for the choice of Parliamentary procedure is also provided.
PART 1: THE LISTS

Section 7: Reference by court

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

4. Section 7(A1) requires the courts to give Ministers any prescribed information they hold in relation to an individual who has been convicted of a schedule 1 offence (known as a ‘relevant offence’). This will allow Ministers (in the form of the Central Barring Unit) to assess all available information before coming to a decision as regards whether to list the individual. This power, like the references to ‘prescribed information’ in sections 3, 4 and 5, gives Ministers the power to prescribe in regulations the information which constitutes a reference.

Reason for taking this power

5. As with the power in section 7(2), Ministers intend to use their power in section 7(A1) to prescribe the information to be provided by the court so that it is as similar as possible to that prescribed in sections 3 to 5. Obviously, there will possibly be some differences to take account of the seriousness of relevant offences and also because the individual convicted of such an offence may not be currently undertaking regulated work. The power will be used to include certain types of evidence and findings which led the court to convict the individual. Subordinate legislation is considered appropriate in view of: the level of detail required, which is excessive for the face of the Bill; and the need for prescribed information to be able to evolve, in conjunction with regulations made under sections 3 to 5, as well as section 7(2).

Choice of procedure

6. Regulations made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The negative resolution procedure is considered appropriate given that the regulations in question will relate to the detailed information that will be required to be passed from the courts to Ministers, following a conviction, to enable a listing determination to be conducted. The regulations will be technical in nature and will implement detailed policy and procedure within the framework of the Bill. The information that will be prescribed is factual and will already be known to the convicted individual to which it relates.

Section 14: Automatic listing

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative Procedure

Provision

7. Section 14(3) allows the Scottish Ministers to specify criteria which can lead to automatic inclusion on the children’s or adults’ list. Section 14(4) provides that the criteria which may be so specified include convictions and cautions in relation to specified offences or civil orders in
relation to an individual’s conduct. Section 14(4)(a) has now been amended to allow Ministers to include offences under section 42 of the Armed Forces Act 2006.

Reason for amending the power

8. Including section 42 of the Armed Forces Act 2006 in section 14(4)(a) is necessary to put beyond doubt that Ministers can include those offences committed under it when developing criteria that results in automatic listing. Similar provision is made in the Safeguarding Vulnerable Groups Act 2006 for England and Wales and Northern Ireland. The parliamentary procedure for orders under section 14 is unchanged – affirmative procedure.

Section 19: Information held by public bodies etc.

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

9. Section 19 gives the Scottish Ministers the power to obtain information from other public bodies and persons when deciding whether to list an individual. Subsection (3) gives the Scottish Ministers the power to expand the list of persons from whom they can require such information by specifying any other person in an order.

Reason for amending the power

10. This power has been slightly amended through the introduction of section 25A, Determination of application for removal from list. As (under section 25A(3)) sections 18 to 20 apply to Ministers’ determination of an application for removal from the list as they apply to a decision whether to list an individual, it should be noted that the power in section 19(3) is now wider than when introduced. If exercised, information held by a public body included in an order under section 19(3) will be used in assessing an application for removal from the list, as well as when deciding whether to list. Orders under section 19(3) will continue to be subject to negative resolution procedure.

Section 25: Application for removal from the list

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

11. Section 25 has been amended to provide that the listed individual will apply, in the first instance, to Ministers rather than to the sheriff for removal from the list. On introduction, section 25(3)(a) provided that such an application was competent if the individual had been listed for such period as may be prescribed. This has been amended so that an application for removal is competent only if “it is made after the end of such period as may be prescribed”.


**Reason for amending the power**

12. This amended provision allows Ministers greater flexibility in regulations when specifying the beginning of the minimum time period before an application for removal from the list is competent. The amendment to the power enables the time period to be set by reference to the event which triggers listing (e.g. when an offence was committed), rather than listing itself. This could, for example, enable individuals who are listed because of an event which took place some time ago to make an application for removal earlier than individuals who are listed because of recent events. This amendment is more proportional and operates in the interests of listed individuals. The parliamentary procedure remains negative resolution, in accordance with the definition of “prescribed” in section 96(1) and the attached procedure in section 99(3).

**Section 29: Notice of listing etc.**

13. In paragraph 8 of the original Delegated Powers Memorandum, reference was made to the power at section 29(4) and (5) (in the Bill as introduced) to issue guidance about what steps, if any, an organisation should take to protect children or protected adults if notified that one of their employees was under consideration for listing. The Committee may wish to note that this power was removed from the Bill at stage 2 but that the Executive will bring forward an amendment at stage 3 giving Ministers a general power to issue guidance on any aspect of the Bill and its operation.

**Section 31: Offences against children and protected adults**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Order made by statutory instrument  
**Parliamentary procedure:** Affirmative procedure

**Provision**

14. Given the changes to section 7, section 31 has also been amended to remove the references to “offence against a child” and “offence against a protected adult” which are now otiose. Section 31(1) continues to define “relevant offence” as those offences detailed in schedule 1 and section 31(2) provides the Scottish Ministers with an order-making power to amend that schedule. Therefore the power at section 31(2) has been narrowed somewhat in consequence of the amendments to section 7.

**Reason for amending the power**

15. The power in section 31(2) is now limited to the modification by order of schedule 1. Under section 7, the court no longer needs to identify the victim of an offence as a child or protected adult and the terms "offence against a child" and "offence against a protected adult" are no longer used in the Bill. Therefore, it is no longer necessary for Ministers to be able to adjust the definitions of these terms (by order amending subsections 1(b) or (c)). Despite the narrowing of this order power, and the change of status of the relevant offences in schedule 1, from prompting automatic listing to triggering automatic consideration for listing, the Executive thinks it appropriate to keep affirmative procedure for this power, as provided for in section 99(4).
Section 37: Police access to lists

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

16. In the Bill as introduced, section 37 allowed for prescribed information to be shared with the police for the prevention or detection of crime, or the apprehension or prosecution of offenders. The power to prescribe such information has been removed by amendment.

17. The most sensitive information is the fact that the individual is included on a list. The only other information stored on the lists is information necessary to identify the individual. The police need this additional information in order: to confirm identity if they suspect a barred individual is undertaking regulated work; to investigate other crime unrelated to inclusion on the list, for example, if a listed individual needs to be traced for other purposes (e.g. tax evasion); and to ensure police information is up-to-date, assisting compliance with the Data Protection Act 1998.

Reason for removing this power

18. Given the Bill itself has established the principle that the police should know which individuals are included on the lists, it seems unnecessary and disproportionate for secondary legislation to prescribe what additional information Ministers can provide to the police. Section 37 has, therefore, been amended to remove the requirement for subordinate legislation and replace it with an administrative arrangement. Any such information disclosed by Ministers to the police can only be used for the same purpose as before: for the prevention and detection of crime, or the apprehension or prosecution of offenders.

PART 2: VETING AND DISCLOSURE

Section 43: Statement of scheme membership

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

19. This section defines a statement of scheme membership (formerly statement of barred status until amended at stage 2) and places Ministers under an obligation to disclose it to each scheme member. Section 43(2)(d) adds a regulation-making power so that such additional information about the individual, as may be prescribed, can be included in statements of scheme membership.

Reason for taking this power

20. The regulation-making power in section 43 is required so that additional information can be included in statements of scheme membership. It serves two purposes. Firstly, it enables
flexibility to respond to developments in England and Wales and Northern Ireland (a similar power exists in the Safeguarding Vulnerable Groups Act 2006). Secondly, Ministers could prescribe that a statement of scheme membership would include information about whether an individual is under consideration for listing (or equivalent) in another jurisdiction.

**Choice of procedure**

21. Regulations made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The negative resolution procedure is considered appropriate given that the regulations in question will only be used to make administrative changes to the operation of the scheme resulting in the provision of additional information to scheme members and employers.

**Section 46: Vetting information**

22. The Committee will wish to note that at stage 2 the Minister took the opportunity to bring forward an amendment to clarify that there is no distinct power under the Bill to make regulations under section 46(1)(a). This amendment responds to comments made by the Committee (in paragraphs 89 to 94 of Annexe F of the Education Committee stage 1 report). The Committee had previously asked the Executive to explain what is meant by the term “prescribed details” in section 46(1)(a). The amendment to section 46(1)(a) essentially ‘turns round’ the wording and has no effect on the provision’s meaning, but it is hoped that the clarity of the subsection is increased. The meaning should also be clear from the exception to the definition of “prescribed” in section 96(1).

23. The Committee may wish to note an equivalent change has been made to section 18(4)(b), again to clarify that there is no distinct power to make regulations under it.

**Section 60: Power to use fingerprints to check applicant’s identity**

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**Provision**

24. As introduced, section 60(2) of the Bill provided the Scottish Ministers with the power to prescribe who must destroy any fingerprints taken for the purposes of checking evidence of identity and the circumstances in which those fingerprints must be destroyed. The power formerly in section 60(2) has been removed from the Bill and replaced by an explicit statutory duty on Ministers. The power was originally drafted to be consistent with similar provision in section 118 of the Police Act 1997 (where regulations made under that section require fingerprints to be destroyed as soon as is practicable after the identity of the individual is established).

**Reason for removing this power**

25. The regulation-making power did not make it clear that fingerprints taken for the purpose of checking identity should be destroyed as soon as possible after the purpose for which the print
This document relates to the Protection of Vulnerable Groups (Scotland) Bill as amended at Stage 2 (SP Bill 73A)

was taken had been fulfilled. This was the Executive’s intention and it was decided that this should be explicitly stated on the face of the Bill. The removal of this regulation power and substitution with an explicit statutory duty on Ministers at section 60(2A) removes the need for regulations. Section 60, as amended, now imposes a duty on Ministers that they “must arrange the destruction of any such fingerprints as soon as reasonably practicable after they have been used for the purposes mentioned in subsection (1).”

Section 67: Fees

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

26. Section 67(2) has been amended to put beyond doubt that the scope of the regulation-making power extends to Scottish Ministers charging “different fees in different circumstances”.

Reason for amending the power

27. The amended power puts beyond doubt that Ministers can take account of previous fees charged. In a two-tier charging model, this would enable Ministers to charge a level of fee to an individual depending on the previous fees paid by that individual, irrespective of the type of disclosure previously sought. Paragraphs 82 – 84 of the original memorandum detailed the scope of what the Executive accepts is “a very flexible power to charge fees in respect of the scheme.” This amendment does not extend that power much further, and any minor extension is justified in order to eliminate any conceivable doubt over Ministers’ ability to use the fee-making power to set different fees for different circumstances. The parliamentary procedure remains negative resolution.

Section 69A: Consideration of suitability: supplementary

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

28. Section 69A is a new section that makes explicit the persons who are entitled to consider an individual's suitability to do regulated work (i.e. to request, or seek sight of, a disclosure), in terms of Disclosure Condition C in section 52. The section lists a number of persons entitled to request a disclosure under the Bill (e.g. the employer or an employment agency) and puts beyond doubt the position of the Scottish regulatory bodies. Disclosures can already be obtained for these purposes under the Police Act 1997 so this amendment ensures that the Bill replicates that approach. Section 69A(f) is a new power to prescribe other purposes for which an individual's suitability may be considered and scheme disclosures obtained.
Reason for taking this power

29. The power in section 69A(f) gives Ministers the flexibility to expand the scope of disclosure. One possible circumstance might concern, for example, contracted services. For example, consider a council who contract out school bus services. The bus company is the employer of the drivers and should request a scheme record disclosure in respect of those drivers. There is no provision in the Bill enabling the council to require such disclosures (although an amendment to section 64 has put beyond doubt that it would not be an offence for the council to ask to see a disclosure). This power could be used to specify that the council, as well as the bus company, has the right to access scheme disclosure for the purposes of assessing the drivers' suitability to do regulated work. A regulation-making power was considered more appropriate than making provision on the face of the Bill because of the complex and evolving nature of contracted-out services. The power in section 69A(f) could also be used to allow disclosures for purposes other than contracting out.

Choice of procedure

30. Regulations made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The negative resolution procedure is considered appropriate given that the regulations in question will only set out further circumstances in which scheme disclosures can be made and the principle of such disclosures has already been established in the Bill itself.

PART 3: SHARING CHILD PROTECTION INFORMATION

31. The Committee may wish to note that, following the Education Committee’s stage 1 report, Ministers agreed to support the removal of Part 3 in its entirety at stage 2 and the Bill, as amended, no longer contains that Part. Therefore, particular concerns that the Committee had around sections 76 and 81 of Part 3 are now otiose. Ministers remain committed to the preparation of a non-statutory code of practice on the sharing of child protection information, with the intention being to have this in use by relevant professionals later this year. The wholesale removal of Part 3 means that the following specific subordinate legislation powers have been removed: section 80 – power to specify any other person as a “relevant person”; and section 81 – power to make supplementary, incidental or consequential provision to ensure that relevant persons comply with their duties under Part 3. Further to the removal of section 80, the order-making power in section 96(1), to specify persons who provide a care service has consequentially been removed.

PART 6: SUPPLEMENTARY AND GENERAL

Section 88: Power to give effect to the Safeguarding Vulnerable Groups Act 2006

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution / Affirmative if it amends an Act

Provision

32. Section 88 provides that Ministers may make provision by order to give full effect to the Safeguarding Vulnerable Groups Act 2006 (SVG Act) which establishes a vetting and barring
scheme for England and Wales. Section 88(1A) introduces a similar power in consequence of
any future Northern Ireland legislation which corresponds to, or affects the operation of, this
Bill.

Reason for taking this power

33. It is anticipated that the SVG Act will be extended to Northern Ireland through an Order
in Council (which is the usual method of legislating for Northern Ireland during suspension of
devolved government). However, this provision allows for the possibility that the Northern
Ireland Assembly might wish to make its own distinctive legislation for vetting and barring at
some point in the future. It is as important that this Bill can respond to future developments in
Northern Ireland, as it is re England and Wales, and without requiring recourse to further
primary legislation in Scotland. This power provides the ability to ensure future cross-border
compatibility.

Choice of procedure

34. Any such order will be subject to affirmative procedure if it amends primary legislation
(see section 99(4)). It is appropriate that such an order should be subject to the higher level of
Parliamentary scrutiny provided by affirmative procedure in that case. If the order does not
amend primary legislation, then it will be subject to annulment in pursuance of a resolution of
the Scottish Parliament. The procedure therefore replicates that for orders made in consequence
of the SVG Act under section 88(1).

PART 7: INTERPRETATION

Section 94: Meaning of ‘protected adult’

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

35. Section 94(1)(d) introduces an additional category of “a prescribed welfare service” to
the list of services, receipt of which defines a protected adult. These welfare services will be
prescribed in regulations, bearing in mind the definition of “prescribed” in section 96(1). The
scope of the power is defined by the new provision in section 94(5) which provides that welfare
service “includes any service which provides support, assistance, advice or counselling to
individuals with particular needs.”.

Reason for taking this power

36. During the Stage 1 consideration of the Bill, some voluntary organisations expressed
concern that it would be difficult to determine whether they were providing services to
“protected adults”, and thereby difficult to determine whether their employees/volunteers would
be doing regulated work - and should be asked to join the scheme. The concern stemmed from
the fact that an individual is only a “protected adult” if he is 16 years old or over and receives a
service referred to in section 94 of the Bill. Where a voluntary organisation does not contract
with any health body or council (and is not a care service listed in section 94(1)(a), (b) or (c)),
the organisation would not automatically be providing services to protected adults. Instead, those organisations would require to find out what other services the adults received, in order to work out whether their staff should join the scheme.

37. The amendment introduces an additional category of ‘prescribed welfare service’ to the definition of protected adult at section 94 of the Bill. This means that the provision of a welfare service to an individual will, in itself, make that adult a ‘protected adult’. These services could be provided by voluntary sector organisations. The power will be used to set out the services that will fall under this category. This is likely to include services such as meals on wheels, community transport services or home library services, and will be the subject of full consultation.

Choice of procedure

38. Regulations made under these provisions will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The negative resolution procedure is considered appropriate given that the regulations in question will only add clarity to the coverage of the Bill by listing what the prescribed services are. The broad scope of the kind of services that will be prescribed is already contained within the new provisions. It is also important that the prescribed services can be easily amended to take into account changes in the sector, and the negative resolution process is seen to provide the appropriate level of flexibility combined with the need for appropriate parliamentary scrutiny. The amendments to section 94 do not affect the order making power in section 94(2) which can amend the definition of ‘protected adult’ in section 94(1). That power will remain subject to affirmative procedure.

Section 95: Meaning of ‘work’

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

39. Section 95(9) provides Ministers with a power to prescribe the circumstances in which work, as defined in section 95, is to be treated as being done in the course of a family or personal relationship. Such work is exempted from the meaning of “work” in the Bill by section 95(3) and (4). Broad definitions of family relationship and personal relationship are provided at section 95(5) and (6).

Reason for taking this power

40. This power provides Ministers with the ability to identify situations in which an individual will not be undertaking “regulated work”, in terms of the Bill, because they are undertaking “work”, that may be akin to regulated work, but which is undertaken in the course of a family or personal relationship. The power could be used to ensure that the definitions in section 95 link effectively with definitions in other legislation for specific purposes, for example to apply the same definition of family as applies in fostering law. There is also a need to be able to respond to future developments, given the changing nature of family and personal relationships within society.
Choice of procedure

41. Regulations made under this provision will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The negative resolution procedure is considered appropriate given that the regulations will simply set out additional situations where individuals will not be undertaking regulated work, because the work which they are doing is within the course of a family or personal relationship. Negative resolution procedure strikes the appropriate balance between providing flexibility and ensuring an appropriate level of parliamentary scrutiny.

SCHEDULE 2: REGULATED WORK WITH CHILDREN

Part 3, paragraph 14 - Educational institutions etc.

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Provision

42. Schedule 2, paragraph 14 was amended to clarify the power to identify which “Further education institutions”, as included in schedule 2 to the Further and Higher Education (Scotland) Act 2005, come within the scope of establishments working within which constitutes regulated work with children.

Reason for amending this power

43. The Committee will wish to note that this amendment responds to comments made by the Committee (in paragraphs 126 to 128 of Annexe F of the Education Committee stage 1 report). The Executive had agreed with the Committee that there was some ambiguity in paragraph 14 as introduced which should be corrected. The amendment removes any doubt that this is a discrete order-making power. The parliamentary procedure for such orders remains negative resolution.

SCHEDULE 4: MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

Police Act 1997 (c.50)

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Provision

44. Schedule 4, paragraph 21A inserts three new sections into Part 5 of the Police Act 1997:

- section 113CA (suitability information relating to children)
- section 113CB (suitability information relating to protected adults) and
- section 113CC (Suitability information: supplementary)
45. Two of these new sections contain powers to make regulations and the other contains an order-making power. Section 113CA(1) allows Ministers to prescribe the cases in which enhanced criminal record certificates must also include suitability information relating to children. Section 113CB(1) allows Ministers to prescribe the cases in which enhanced criminal record certificates must also include suitability information relating to protected adults. Sections 113CA(2)(b) and 113CB(2)(b) allow Ministers to prescribe details about the circumstances which led to an individual being barred. There is a similar power now in the Police Act 1997 in relation to directions from England and Wales and prohibitions from Northern Ireland. Section 113CC(1) allows Ministers to amend, by order, sections 113CA and 113CB for the purpose of altering the meaning of suitability information relating to children or protected adults respectively.

Reason for taking power

46. Regulated work with children and protected adults will be covered by the Bill but residual enhanced criminal record certificates (enhanced disclosures) will be required in a limited set of circumstances, for example as part of the approval process for adoption. Regulation-making powers in sections 113CA and 113CB will be used to make provision equivalent to that in (or made by virtue of regulation or order-making powers under) sections 113C to 113F of the Police Act 1997, which are being repealed by paragraph 21B of schedule 4 to the Bill. Regulation-making powers are preferable to specifying such provision on the face of the Bill because it gives the flexibility to respond to developments in Scotland and also to allow Ministers to make provision in line with the Safeguarding Vulnerable Groups Act 2006, should this be desirable in future. (The SVG Act has made similar changes to analogous provision in the Police Act 1997 for England and Wales.)

47. The order-making power at section 113CC(2) provides a degree of flexibility to enable the information revealed through an enhanced criminal record certificate, with suitability information relating to children or protected adults, to develop in line with provisions for England, Wales and Northern Ireland.

Choice of procedure

48. The regulation powers in sections 113CA(1) & (2)(b) and 113CB(1) & (2)(b) will be made subject to annulment in pursuance of a resolution of the Scottish Parliament. Since these are new sections inserted into the Police Act 1997, “prescribed” takes the meaning in section 125(1) thereof, and, as with other regulation powers in the Police Act, negative resolution procedure will apply. The negative resolution procedure is considered appropriate to ensure consistency with other regulation powers within the Police Act. In addition there is a need for flexibility so that if there are future cases where the enhanced criminal record certificate is sought and it would be appropriate to include information about an applicant being listed, then that need can be responded to quickly. The order-making power in new section 113CC(1) is also subject to annulment in pursuance of a resolution of the Scottish Parliament under subsection (2). This power can be used to amend new sections 113CA and 113CB and negative procedure is appropriate because the meaning of suitability information relating to children or protected adults is set out in considerable detail in sections 113CA(2)(a)-(d) and 113CB(2)(a)-(d). Therefore any future amendments will be in the context of detailed provisions already in the Police Act 1997.
Police Act 1997 (c.50)

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution

Provision

49. The provision in paragraph 26B(6) of schedule 4 is connected to the amendments made to section 60 (power to use fingerprints to check identity) discussed above. Paragraph 26B(6) replaces section 118(3) of Part 5 of the Police Act 1997. Currently section 118(3) provides that:

“Regulations dealing with the taking of fingerprints may make provision requiring their destruction in specified circumstances and by specified persons.”

The new section 118(3) will provide:

“The Scottish Ministers must arrange the destruction of any fingerprints taken in pursuance of subsection (2) as soon as reasonably practicable after they have been used for the purpose mentioned in subsection (1).”

Reason for removing power

50. The power in section 118(3) of the Police Act has been removed to ensure consistency between that Act and this Bill in their treatment of fingerprints taken to check identity.
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