

## **EXPLANATORY MEMORANDUM TO**

### **[The Police Act 1997 (Criminal Records) (Amendment) Regulations (Northern Ireland) 2012]**

**SR 2012 No. 86**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department of Justice ("the Department") to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under sections, 113 B(9), 120ZA(1) and (2), 120AA(1) and 125(1) and (5) of the Police Act 1997 (the 1997 Act") as modified by section 126A of that Act and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1. These Regulations amend the Police Act 1997(Criminal Records)(Registration) Regulations (Northern Ireland ) 2007 ("the 2007 Regulations") and the Police Act 1997(Criminal Records)(Disclosure) Regulations (Northern Ireland) 2008 ("the 2008 Regulations"). The main purposes of the amendments to the 2007 Regulations are to change the time that a Registered Body (RB) has to pay invoices submitted by AccessNI from 15 days from the end of the month in which the invoice was issued to 30 days from the date of the invoice; and to enable AccessNI to refuse to accept an individual or organisation for registration as an RB if it is considered that the applicant is likely to countersign fewer than 20 applications per annum. The opportunity is also taken to revoke the provision prescribing an application form, as this is no longer required. These Regulations also amend Regulation 8 of the 2008 Regulations which defines "relevant police force". The main purpose is to limit the occasions where details of an application for enhanced disclosure is given to police forces in Great Britain to those where a police force in Great Britain appears to be holding relevant information.
- 2.2. The Department discharges its functions under the 2007 and 2008 Regulations through AccessNI.

#### **3. Background**

- 3.1. The 2007 Regulations provided 15 days from the end of the month following the invoice for RBs to pay accounts in respect of applications submitted. Current practice in AccessNI in line with Departmental requirements is to provide a period of 30 days from the date of the invoice for payment and the Regulations are now amended to reflect this.
- 3.2. AccessNI has over 1,900 Registered Bodies (RBs) (organisations registered with us that can countersign applications for criminal record and enhanced criminal record certificates). Within these bodies approximately 4,000 persons are registered to countersign applications. AccessNI has a duty to ensure that RBs are capable of providing an efficient and effective

service and comply with a statutory based Code of Practice. Given the size of the current RB network we are unable to do so satisfactorily.

- 3.3. To enable AccessNI to successfully manage the disclosure process and to improve efficiency and accuracy these Regulations insert a provision into the 2007 Regulations by which the Department may refuse to register an RB which it is considered is likely to countersign fewer than 20 applications per year. This would also impact on current RBs in that the Department will now be able, by virtue of section 120AA of the 1997 Act, to suspend or remove from the register an existing RB who has in a 12 month period countersigned fewer than 20 applications. The power to suspend or remove from the register is subject to the procedural requirements of section 120AB which include the right for the RB to make representations which the Department must consider. Those RBs whose registration is suspended or who are removed from the register can either obtain disclosures through RBs that act on behalf of other organisations (known as Umbrella Bodies), or RBs that had similar interests could form their own Umbrella Body. In either event, AccessNI would ensure that appropriate provision would be made so that applicants can continue to obtain disclosure certificates.
- 3.4. AccessNI believe this will reduce the number of RBs to around 650.
- 3.5. The definition of "relevant police force" in the 2008 Regulations required that AccessNI send applications to police forces in Great Britain (GB) on the basis of GB address information supplied by the applicant (address based searching). In turn police forces search information available to them and determine in line with Section 113B (4) of the Police Act 1997 whether they have any information that is relevant to the applications and ought to be disclosed to AccessNI and on disclosure certificates.
- 3.6. From research AccessNI is aware this approach is not yielding significant information but is adding to cost and increasing turnaround times for applicants. Each application sent to a police force in England and Wales costs AccessNI £5.65 and over £11 if Scotland is involved. AccessNI would make around 10,000 such requests each year (about 15% to Scotland). Information is returned in around 300 cases only, the vast majority of which are minor Scottish traffic offences.
- 3.7. AccessNI as part of its searching regime, currently checks the Police National Computer (PNC) (which contains convictions, cautions and other information from GB) and the iPLX database. The iPLX database "flags" those individuals on which local police information is held.
- 3.8. The Criminal Records Bureau (CRB) in England and Wales undertook detailed research into whether significantly more information is found by address-based searching than would have been found by solely relying on searches of PNC and iPLX. They found this was not the case.
- 3.9. Given this evidence and having conducted its own research, AccessNI take the view there is no risk to safeguarding by amending the current legislative requirement which requires AccessNI to send all applications with a GB address in the address history on the application form to the police force in whose jurisdiction that address falls.

- 3.10. The amendment to Regulation 8 of the 2008 Regulations means that AccessNI would only send cases to police forces in GB where it considered information about an individual is held on the PNC (for example pending prosecutions) or where it is evident that one of these forces had further information about the individual (i.e., they have been "flagged" on iPLX). In all other cases, AccessNI will determine that no information is available and issue the certificate without further checks.
- 3.11. The outcome of this change will be that there will be reduced turnaround times for many cases where the applicant has provided an address in GB and there will be an annual cost saving of between £15,000 and £20,000.
- 3.12. AccessNI propose for the time being to continue to undertake address based searching with PSNI in respect of all cases where a Northern Ireland address appears on the application form. The opportunity has been taken to amend regulation 8 of the 2008 Regulations to enable the AccessNI to contact the PSNI where the applicant resides in Northern Ireland, or was born in Northern Ireland, or was convicted in Northern Ireland at any time.
- 3.13. AccessNI propose to tidy up the current Regulations by removing a number of Regulations that no longer apply. For example, the application form prescribed in the 2007 Regulations specify application and registration forms that are no longer used and make references to those forms.

#### **4. Consultation**

- 4.1. The following sets out the position with regard to consultation in each area of the Regulations
- 4.2. AccessNI did not consult about the change to payment times as the change reflects current practice and benefits Registered Bodies as they will have longer time to pay accounts
- 4.3. AccessNI specifically consulted with all Registered bodies about reducing the RB network during November and December 2010. The majority of those responding accepted that the RB network was too large (62%) and favoured AccessNI's option to reduce this by amending Regulations (57%).
- 4.4. AccessNI did not specifically consult about proposals to limit the referral of cases involving applicants with GB addresses to those where it is believed additional information is available. This is primarily an internal processing issue and AccessNI has established there is no danger to safeguarding and the outcome will be quicker disclosures to customers. RBs will be informed about the change before implementation
- 4.5. AccessNI did not consult about the removal of superfluous Regulations as this has no impact on customers and so consultation would have no benefit.

#### **5. Equality Impact**

- 5.1. Consideration has been given to compliance with section 75 of the Northern Ireland Act. An assessment was conducted before AccessNI commenced operations which indicated there was no differential impact on

any of the section 75 groups. As this change to legislation does not make any material difference to the system of issuing disclosure certificates the initial assessment remains appropriate

## **6. Regulatory Impact**

- 6.1. This RIA is an analysis of the impact of a range of options for implementing a reduction in the size of the Registered Body Network
- 6.2. AccessNI envisage that by requiring RBs to submit 20 or more disclosure applications per year in order to retain RB status, the size of the RB Network will reduce from 1,850 to 650. Organisations that lose their RB status will be required to submit disclosure applications through a 3rd Party Umbrella Body [UB]. In order to facilitate this change, AccessNI plan to grow the size of the UB network across Northern Ireland and to improve means of communicating the various services and charges UB provide.
- 6.3. The current position is that AccessNI cannot fulfil its obligations to ensure RBs comply with the Code of Practice as the size of the RB Network is unmanageable within the resources available to AccessNI. 'Do nothing' is not therefore an option if AccessNI is to deliver this important part of the service.
- 6.4. The additional costs incurred in order to adequately resource the team to service the current RB Network would place further additional pressure on the funding model, and require a further review of fees. It is expected that further increased in fees for this reason would not be welcomed by customers. The final option is to review the size of the RB Network, bringing it down to a manageable size. A customer consultation supported this approach; indeed such an exercise was undertaken in CRB (in England and Wales) and the anecdotal evidence would suggest that outcomes were significantly beneficial to both CRB and the nature of support provided to customers..
- 6.5. The main impact of this proposal will be on RBs who lose their registration. They will be required to source a viable UB that will service their needs, agree service arrangements and [potentially] pay an additional administration fee to the UB. Some organisations may struggle to find suitable UB to provide the type of service they require, at an affordable rate. AccessNI will develop a searchable database to facilitate UB identification. In addition, AccessNI will encourage organisations to 'group' together to form a local Umbrella Body service that suits all their needs.
- 6.6. The use of an UB is likely to introduce some delay in the disclosure process (arising from an extra link in the chain). Organisations will be required to review their vacancy filling arrangements to ensure that the additional time required does not adversely affect their ability to fill a vacancy in a timely manner. These issues will be highlighted through AccessNI communications prior to effecting the change.
- 6.7. There are currently some 200 organisations registered with AccessNI as UBs. These UBs range from very sector or region specific organisations to 'global' UBs willing to provide services to all-comers. AccessNI

estimate that there will be c. 6,000 additional disclosure applications per year that will need to be submitted through the UB network. UBs will need to ensure that they are resourced to handle this extra work (c. 24 applications per day); although this is not considered to be burdensome. It is likely that new UBs will emerge (some on a UK basis) and some degree of promotion across sectors will be undertaken as they seek to secure a foothold in this market.

- 6.8. In conclusion, AccessNI consider the reduction of the RB Network the most effective means of ensuring full compliance procedures can be delivered across all Registered Bodies within a difficult fiscal climate. Placing a minimum threshold of applications at 20 per year will reduce the RB network by 65% whilst effecting only 5% of all applicants.
- 6.9. AccessNI will seek to provide as much information as is necessary to all RBs and to ensure that those that lose RB status will be afforded sufficient time and information to allow them to establish alternative working arrangements prior to removal of RB status.

## **7. Financial Implications**

- 7.1. A small saving may be made by switching off address-based searching of around £15,000 to £20,000 per annum.

## **8. Section 24 of the Northern Ireland Act 1998**

- 8.1. The Department has considered its obligations under section 24 of the Northern Ireland Act 1998 and is satisfied that these regulations are not incompatible with Convention rights, nor are they incompatible with Community law, do not discriminate against a person or class of person on the grounds of religious belief or political opinion, and do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998..

## **9. EU Implications**

- 9.1. There are no EU implications.

## **10. Parity or Replicatory Measure**

- 10.1. In terms of the reduction of the RB network the Criminal Records Bureau (CRB) have imposed a minimum limit of 100 applications before they will consider registering an organisation. This has reduced their RB network to around 4,000 organisations. We believe that limit is too high for the Northern Ireland context and could result in a number of medium sized organisations that do a significant number of applications with AccessNI being de-registered. In Scotland a different approach is taken in that the fee for registration is £400 which effectively prevents a number of small organisations from registering. AccessNI considered this model but decided not to opt for this as it did not address the immediate problem of having too many organisations registered with AccessNI.
- 10.2. In all other parts of the UK (ie CRB and Disclosure Scotland), legislation has been enacted which limits the numbers of applications sent to police forces in a similar way to that proposed by AccessNI. .

## **11. Additional Information**

11.1. Not applicable