

EXPLANATORY MEMORANDUM TO

[The Police Act 1997 (Criminal Records) (Disclosure) (Amendment) Regulations (Northern Ireland) 2015]

SR No. 143

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 112(2)(a), 113A(3)(a) and 6, 113B(3)(a), 114(3), 116(3), 125(1) and (5) of the Police Act 1997(a) 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) (Disclosure) Regulations (Northern Ireland) 2008 (the 2008 Regulations). The changes to the 2008 Regulations amend the prescribed details in relation to conviction information provided for basic disclosures in regulation 5, to amend the prescribed details in relation to relevant matters in regulation 6 and to amend the prescribed details in respect of central records in regulation 7.

3. Background

- 3.1. As part of the AccessNI modernisation programme and with the introduction of the new AccessNI IT system from 1 April 2015, AccessNI will no longer search both the Northern Ireland criminal record database (Causeway) and the Police National Computer (PNC) for details of an applicant's criminal record. From that point searching will be limited to PNC.
- 3.2. This is now possible through the transfer of recordable offences held on Causeway to PNC, by means of the PSNI "LINK" project. This has specific advantages for AccessNI in that disclosure of offences will be brought into line with disclosure in other parts of the United Kingdom. It is also a more proportionate form of disclosure of criminal offences in that some minor offences will no longer be routinely disclosed, which will assist AccessNI to address Article 8 ECHR proportionality concerns raised by the European Court of Human Rights in the case of *MM v UK*. The change is in line with the recommendations made by Sunita Mason in her 2011 report, "A Managed Approach. A Review of the Criminal Records Regime in Northern Ireland", that examined the disclosure regime in Northern Ireland. Finally, it will eliminate the duplicate recording of offences on certificates issued.
- 3.3. The 2008 Regulations specify certain issues about the disclosure of criminal record information, including details of what may be disclosed, the types of disposals that are provided on different types of certificates and the

central records from which AccessNI can disclose information. Minor changes are needed in these regulations to reflect the change in policy outlined above.

- 3.4. Section 112(2)(a) of Part V of the Police Act 1997, enables the Minister of Justice to determine the specific information that will be released about convictions of applicants on a criminal conviction certificate and to set this out in secondary legislation .
- 3.5. Regulation 5 of the 2008 Regulations sets out these details. The Minister proposes to substitute sub-section (b) to reflect the fact that the court of conviction may not always be available on central records.
- 3.6. Sections 113A(3)(a) and 6, 113B(3)(a), 114(3) and 116(3) enable the Minister of Justice to determine the specific information that will be released about relevant matters on criminal record and criminal conviction certificates and to set these out in secondary legislation.
- 3.7. Regulation 6 of the 2008 Regulations sets out these details. The Minister proposes to substitute paragraph (a)(ii) to reflect the fact that the court of conviction may not always be available on central records.
- 3.8. In addition, the Minister proposes to extend regulation 6 by setting out the prescribed details that can be provided for two non-court disposals where these are held on central records. These disposals are diversionary youth conferences and informed warnings. Further it is proposed the regulation is amended to make it clear that the prescribed details that will be provided where a restorative caution is disclosed are the same as if disclosure of a caution was being made. A restorative caution is a term generally used where the recipient of the caution is under 18.
- 3.9. Section 112(2)(a) and (3), 113A(3)(a) and 6, 113B(3)(a), 114(3) and 116(3) of Part V of the Police Act 1997 set out that information may be released on applicants which is recorded in central records. Section 112(3) sets out that central records may be prescribed in respect of criminal conviction certificates, section 113A(6) sets out that central records may be prescribed in respect of criminal record certificates. Section 113B(9) provides that the section 113A(6) definition of central records applies to enhanced criminal record certificates.
- 3.10. Regulation 7 of the 2008 Regulations sets out those records that are prescribed as central records. The Minister proposes to amend regulation 7 to establish that for criminal conviction certificates that convictions held on PNC will be disclosed and that for criminal record and enhanced criminal record certificates details of convictions, cautions, restorative cautions, diversionary youth conferences and informed warnings held on PNC will be disclosed. The Minister also proposes that where information is held on the Northern Ireland criminal record system (Causeway), but not on PNC, the Causeway information may be disclosed.

4. Consultation

- 4.1. These are technical changes to the Regulations that reflect the AccessNI modernisation programme and as such it was considered that a consultation was not required.

5. Equality Impact

- 5.1. AccessNI does not ask for or hold information on applicants across the section 75 areas. However AccessNI has concluded that there is no adverse impact on any section 75 group in respect of these technical changes.

6. Regulatory Impact

- 6.1. AccessNI considers these minor changes will have no regulatory impact.

7. Financial Implications

- 7.1. There are no specific financial implications in respect of these changes. The AccessNI modernisation programme and the implementation of a new IT system has been the subject of a full business case approved by the Department of Finance and Personnel. That business case included an option for retention of searching and disclosing from Causeway as well as PNC. This was rejected on the grounds of cost and the enhancements that PNC only searching provides.

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 England and Wales the Disclosure and Barring Service search and disclose from PNC only. In Scotland, both the Criminal History Scotland database and PNC are searched and information is disclosed from both. However, we are aware that Disclosure Scotland are reviewing this practice in the light of the MM v UK case and other court judgments.

11. Additional Information

- 11.1. Not applicable