

*These notes refer to the Justice Act (Northern Ireland)
2015 (c.9) which received Royal Assent on 24 July 2015*

Justice Act (Northern Ireland) 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Criminal Records

This part modernises arrangements for the disclosure of criminal records by allowing for: electronic applications; portable disclosures; the issuing of single certificates; an independent appeals mechanism and guidance in relation to “relevant information” provided by a chief officer of police; a review mechanism in respect of information that has not been filtered by AccessNI; and a range of other improvements.

Section 37: Restriction on information provided to certain persons

This section repeals section 101 of the Justice Act (Northern Ireland) 2011 and sections 113A(4) and 113B(6) of the Police Act 1997 Act (the 1997 Act) which require that an employer or registered person should be sent a copy of a certificate. Such provision is no longer required as only applicants will routinely receive a copy of a certificate.

As a consequence, it also makes provision for registered persons to have access to information about certain certificates that stop short of indicating whether any criminal convictions or other information has been provided on that certificate. It also provides, in respect of the update service, that AccessNI must, in certain circumstances, send a copy of a standard or enhanced certificate to the registered person.

The section also repeals section 113B(5) of the 1997 Act under which information, which might be relevant, may be provided to a registered person without it being copied to the applicant. This is not regarded as human rights compliant and the PSNI have not used the powers for some time and have no plans to do so.

Section 38: Minimum age for applicants for certificates or to be registered

This section provides that children under 16 should not be subject to criminal record checks except in prescribed circumstances (such as those in home-based occupations) and that an individual under the age of 18 applying for registration must satisfy the Department that there is good reason for being registered.

Section 39: Additional grounds for refusing an application to be registered

This section provides a power to refuse to register an individual or organisation that has previously been removed from the register as a result of a breach of the Department's Code of Practice and / or Conditions of Registration as set out within the Police Act 1997 (Criminal Records) (Registration) (Regulations) (Northern Ireland) 2007.

Section 40: Enhanced criminal record certificates: additional safeguards

This section replaces the duty on the Department to send applications for enhanced disclosures to relevant police forces with a duty to send these to relevant chief officers. It also amends the 'relevancy' test in section 113B(4) (a) of the 1997 Act to be applied by a chief officer when determining whether information should be included in an Enhanced criminal record certificate from information which 'might be relevant' and ought to be included in the certificate, to a higher test of information which the chief officer 'reasonably believes to be relevant' and which ought to be included in the certificate.

The section also makes provision for statutory guidance to be published to which chief officers must have regard in discharging their functions under section 113B(4) of the 1997 Act. It also allows parties other than the applicant to dispute the accuracy of the information contained in a certificate. Finally, the section allows a person to apply to the Independent Monitor (appointed under section 119B of the 1997 Act) to determine whether information provided under section 113(B)(4) of the 1997 Act is relevant or ought to be included on an enhanced criminal record certificate.

Section 41: Review of criminal record certificates

This section inserts section 117B and Schedule 8A into the 1997 Act to make provision for a review mechanism as part of the filtering scheme operated by AccessNI. The review process will be undertaken by an independent person appointed by the Minister of Justice.

It will enable a person to seek, in certain circumstances, a review of their case where a conviction or other disposal has not been filtered from their standard or enhanced criminal record certificate. The provision includes an automatic referral for cases where disclosures relate only to spent convictions or other disposals committed under the age of 18.

The section also provides for the publication of guidance to which the independent reviewer must have regard in exercising his or her functions under Schedule 8A to the 1997 Act.

Section 42: Up-dating certificates

This section inserts section 116A into the 1997 Act. This makes provision for updating arrangements. Currently, an individual has to apply for a new certificate for each job or volunteering opportunity for which a certificate

is required as the information on it is only valid when issued. Updating arrangements will make a certificate portable (allowing an individual to use their certificate for a variety of positions).

The provisions enable the Department to permit a relevant person in many circumstances this will be an employer to ask, subject to certain conditions, whether or not there is any new information. This will be done by means of an on-line facility and will enable the relevant person to establish if the information on the certificate remains valid and up to date and whether or not a new certificate should be requested. The section includes the provision that the Department must not grant an application for an enhanced criminal record certificate to be subject to up-date arrangements if the certificate contains (or would contain) information which relates to a third party.

Section 43: Applications for enhanced criminal record certificates

This section makes provision in section 113B of the 1997 Act for those who are self-employed to apply for an enhanced certificate. Section 113B(2)(b) currently provides that an application must be accompanied by a statement by the registered person that the certificate is required for the purposes of an exempted question asked for a prescribed purpose. (The term Exempted question is defined in Section 113A(6) and demonstrates in broad terms that the certificate is required for a purpose that has been excluded from the Rehabilitation of Offenders (Northern Ireland) Order 1978 by the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979).

If the position is one where the individual is self-employed the registered person is unable to provide such a statement. Section 41 will enable self-employed persons to provide, under Section 113B of the 1997 Act, a statement that the certificate is required for the purposes of an exempted question asked for a prescribed purpose.

Applications from a self-employed person must be submitted to AccessNI via a registered person in the same way that other applications are made. This means that the registered person will carry out functions such as checking identity.

Section 44: Electronic transmission of applications

This section makes provision in sections 113A and 113B of the 1997 Act for applications for standard and enhanced certificates to be sent electronically by inserting a new subsection (2A).

Section 45: Disclosures by the Department of Justice to the Disclosure and Barring Service

This section makes provision for the exchange of information between AccessNI and the Disclosure and Barring Service for barring purposes.

Section 46: Inclusion of cautions and other diversionary disposals in criminal records.

This section provides statutory cover for the storage of cautions and other diversionary disposals on the criminal history database.

Section 47: Consequential amendments

This section makes provision for the consequential amendments in Schedule 4 to have effect