

EXPLANATORY MEMORANDUM TO

The Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) Order (Northern Ireland) 2014

2014 SR no. 100

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 section 113(A)(7) of the Police Act 1997 as modified by section 126A of that Act and is subject to the draft affirmative resolution procedure.

2. Purpose

- 2.1. This Order amends the definition of "relevant matter" in section 113A(6) of Part V of the Police Act 1997. The definition of "relevant matter" sets out what is to be disclosed by AccessNI in response to an application for a criminal record certificate (a standard certificate) or an enhanced criminal record certificate. The Order also includes a list of legislation which specifies offences which will never be filtered and provides definitions of current convictions and other disposals.

3. Background

- 3.1. Section 113A(6) of Part V of the Police Act 1997, provides a definition of "relevant matter" as above.
- 3.2. In November 2012, the European Court of Human Rights (ECtHR) ruled that the disclosure of a caution in the case of *MM v United Kingdom* (Application No 24029/07) was a violation of Article 8 (right to privacy). The Court recognised that there may be a need for a comprehensive record to be maintained of all cautions, convictions, warnings, reprimands, acquittals and even other police information, but it was not satisfied that there are (under the Police Act 1997) sufficient safeguards in the system for retention and disclosure of criminal record data to ensure that data relating to an individual's private life would not be disclosed in violation of his or her Article 8 rights.
- 3.3. The Department considered this decision and the judgment by the England and Wales Court of Appeal in *R. (on the application of T) v Chief Constable of Greater Manchester*; *R. (on the application of JB) v Secretary of State for the Home Department* and *R. (on the application of AW) v Secretary of State for the Home Department* [2013] EWCA Civ 25. The Court of Appeal found that, in the case of cautions, the disclosure of all cautions relating to recordable offences is disproportionate to the legitimate aims of the disclosure scheme. The Court noted that, in relation to disclosure, relevance must depend on a number of factors, including the seriousness of the offence; the age of the offender at the time of the

offence; the sentence imposed or other manner of disposal; the time that has elapsed since the offence was committed; whether the individual has subsequently re-offended; and the nature of the work that the individual wishes to do.

- 3.4. Sunita Mason in her Part 1 report “A Managed Approach - A Review of the Criminal Records Regime in Northern Ireland”, published in August 2011 (available online at <http://www.dojni.gov.uk/index/publications/publication-categories/pubs-policing-community-safety/community-safety/reviews-strategies-action-plans/review-of-the-criminal-records-regime-in-northern-ireland.htm>), recommended that the Department should filter convictions and criminal information such as cautions that are regarded as old and minor, from standard (ie criminal record certificates) and enhanced criminal record certificates. She however noted that there are some types of information which should always be disclosed. In addition Mrs Mason recommended that AccessNI should routinely disclose informed warnings, cautions and the details of diversionary youth conferences on standard and enhanced criminal record certificates (subject to filtering).
- 3.5. This Order introduces provisions that allow certain convictions and other disposals such as cautions, that are sufficiently old and minor, to be ‘filtered’, which means that the individual will no longer have to reveal these to an employer nor will they be disclosed as part of standard and enhanced disclosure certificates.
- 3.6. The introduction of a filtering scheme requires amendments to the Rehabilitation of Offenders (Exceptions) (Northern Ireland) Order 1979; to the definition of “relevant matter” in section 113A(6) of Part V of the Police Act 1997 and to regulation 7(2)(a) of the Police Act 1997 (Criminal Records) (Disclosure) Regulations (Northern Ireland) 2008 to allow for the disclosure of cautions, diversionary youth conferences and informed warnings.
- 3.7. This Order amends Section 113A(6) so that "relevant matter" means that for a person with one conviction only, this will only be disclosed if it is on the specified list, involved a custodial sentence (whether suspended or not) or is current. For anyone with more than one conviction, all convictions will be disclosable. A caution, restorative caution, diversionary youth conference or informed warning will be disclosable if it is for a specified offence or is "current". A list of specified offences and definition of "current" is provided.
- 3.8. The consequential amendments to the Rehabilitation of Offenders (Exceptions) (Northern Ireland) Order 1979 will be made by the Rehabilitation of Offenders (Exceptions) (Amendment) Order (Northern Ireland) 2014. The amendments to the Police Act 1997 (Criminal Records) (Disclosure) Regulations (Northern Ireland) 2008 will be made by the Police Act 1997 (Criminal Records) (Amendment) Regulations (Northern Ireland) 2014. The legislation will all be brought into operation on the same date.

4. Consultation

4.1. The Department consulted publicly in 2012 on the two recommendations in Sunita Mason's 2011 Part 1 report relating to the routine disclosure of informed warnings, cautions and details of diversionary youth conferences on standard and enhanced criminal record certificates and the introduction of a filtering scheme. There was broad support from consultees for these proposals. The results of the consultation were published by the Department in December 2013. These can be accessed at www.dojni.gov.uk/index/public-consultation/archive-consultation/review-of-criminal-records-regime-further-consultation.htm

5. Equality Impact

5.1. Equality screening exercises were carried out on the filtering scheme and the routine disclosure of cautions, informed warnings and diversionary youth conferences and both were screened out as not requiring an equality impact assessment.

6. Regulatory Impact

6.1. This Order has no negative effect on business, charities, social economy enterprises or voluntary bodies.

7. Financial Implications

7.1. It is estimated that manual filtering will have a recurring cost of around £2.5k per month which will continue until an IT solution can be put in place in Access NI. The set up costs for a technical, computer based solution are estimated to be around £190k with annual running costs of about £21k. It is anticipated that the overall costs of the IT contract and annual running costs will be passed on to customers through an increase in fees. There is also a one-off cost of £8,200 to amend AccessNI's IT system to take details of diversionary disposals from the criminal history database and to disclose them on standard and enhanced certificates.

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 this Order is not incompatible with Convention rights, nor is it incompatible with Community law. It does not discriminate against a person or class of person on the grounds of religious belief or political opinion, and does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Part of the aim of this Order is to avoid a possible breach of Article 8 of the European Convention on Human Rights (right to privacy). There are no other EU implications.

10. Parity or Replicatory Measure

10.1. This change brings Northern Ireland into line with practice in England and Wales where a system of filtering has already been introduced.

11. Additional Information

11.1. Not applicable