

EXPLANATORY MEMORANDUM TO

[The Police Act 1997 (Criminal Records) (Amendment No2) Regulations (Northern Ireland) 2014]

SR No.265

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 113B(1)(b), 113B(2)(b), 116(1)(b), 120ZA(2), 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") and the Police Act 1997 (Criminal Records) (Registration) Regulations 2007 ("the 2007 Regulations)". The changes to the 2008 Regulations are to increase the prescribed fee for an enhanced criminal record check and to amend the prescribed purpose that enables an enhanced disclosure to be obtained for a taxi driver's licence. The changes to the 2007 Regulations are in respect of the information held in the central register maintained by the Department for communication purposes about registered persons, those nominated by registered persons and those nominated by statutory office holders to countersign standard and enhanced applications on their behalf.

3. Background

- 3.1. Sections 112(1)(b), 113A(1)(b) and 113B(1)(a) of Part V of the Police Act 1997, enable the Minister to set a prescribed fee for applications for criminal conviction certificates (basic), criminal record certificates (standard) and enhanced criminal record certificates (enhanced).
- 3.2. Regulation 4 of the 2008 Regulations sets out the prescribed fees which currently stand at £26 for basic and standard and £30 for enhanced. The Minister proposes to amend regulation 4 to increase the fee for an enhanced from £30 to £33.
- 3.3. AccessNI is required under the Department of Finance and Personnel's Managing Public Money (NI) document to recover its costs of operation through the fees charged for its service. The fee for an enhanced disclosure has remained unchanged since AccessNI commenced operations in April 2008. However, significant and additional costs will be incurred in the development of a new IT system and AccessNI is no longer able to absorb inflationary pressures evident since 2008. In addition, AccessNI anticipates there will be a fall off in demand for standard and enhanced disclosures following the introduction of the

Update Service (portable checks) when the Justice Bill 2014, receives Royal Assent, expected during summer 2015. AccessNI, therefore, compiled a business case based on anticipated costs and income over the next 7.5 years and from this concluded that an increase in the fee for an enhanced disclosure of £3 was required to enable AccessNI to meet its requirements under Managing Public Money (NI). DFP have approved this business case. The Justice Committee were provided with a copy of this for consideration at their meeting on 17th September 2014 and agreed that legislative proposals could be drafted on this basis for their further consideration.

- 3.4. Section 113(2)(b) of Part V of the Police Act 1997 states that an application for an enhanced criminal record certificate must be accompanied by a statement by the registered person that the certificate is required for a prescribed purposes.
- 3.5. Regulation 9 of the 2008 Regulations sets out the list of prescribed purposes for which such a certificate can be obtained. Regulation 9(c) states that one of the prescribed purposes is “considering the applicant’s suitability to hold a taxi driver’s licence under Article 79A of the Road Traffic (Northern Ireland) Order 2007”. The Department of the Environment have advised us that the underpinning taxi licence provisions have been amended and are now contained in “section 23 of the Taxis Act (Northern Ireland) 2008”. Regulation 9(c) of the Criminal Record (Disclosure) Regulations 2008 needs to be amended to reflect this legislative amendment.
- 3.6. Section 120ZA(2)(b) of Part V of the Police Act 1997 enables the Department of Justice to make regulations about information held in the central register of persons registered with AccessNI (lead signatories) and those nominated by registered persons and statutory office holders to countersign criminal record and enhanced criminal record certificates (countersignatories)
- 3.7. Regulation 3 of the 2007 Regulations sets out details of the specific information that can be held.
- 3.8. The Department wishes to make minor changes to regulations 3(1)(a), (1)(e)(ii) and (1)(f)(ii) of the 2007 Regulations to require those referred to in paragraph 3.6 above to provide to the Department, name, address, telephone number and an e-mail address. This information would be held on the central register. Previously, the 2007 Regulations provided options for a telephone number, facsimile number or e-mail address to be provided. This change will enable easier communication with and assist lead and countersignatories to, take advantage of the Department’s intention to introduce a facility for on-line applications to be made in early 2015

4. Consultation

- 4.1. In respect of the proposed fee increase, AccessNI has sought the views of both the Stakeholder Forum (comprising representatives from key Registered Bodies whose constituent interests cater for some 80% of all disclosure applications) and the Advisory Board, whose members include

representatives from key Departmental Stakeholders in the Department of Education, the Department of Health Social Services and Public Safety, PSNI and VolunteerNow.

- 4.2. The Bodies consulted commended AccessNI in appreciating the importance of, and maintaining, a steady fee structure for the past 6 years and commented that this financial aspect of the service had been well managed. They broadly supported the concept that volunteer checks should remain free of charge, adding that whilst none would welcome a fee increase, the financial position presented was unsustainable and the proposed £3 increase in enhanced checks was reasonable and unavoidable in order to maintain a cost recovery position.
- 4.3. In respect of the proposed change to the prescribed purpose for those applying for an enhanced criminal record check for a taxi driver's licence, this is a technical amendment brought about by a change of legislation by the parent Department that deals with taxi licensing. Therefore no consultation is required or would be meaningful.
- 4.4. In respect on the proposed change to the information held on the central register this is a minor change that will impact only on new registered persons, countersignatories and statutory office holders. No consultation has been held due to the very minor nature of the change requested

5. Equality Impact

- 5.1. In respect of the proposed fee increase AccessNI does not ask for or hold information on applicants across the section 75 areas. However based on applications from male and female applicants, the increase will affect females more than males in that around 33% of paying applicants are males while 66% are females. These percentages are line with the overall number of applicants across each gender group, paying and non-paying. Those under 18 make up just over 5% of applicants and therefore any impact is likely to be minimal. It should also be noted that a registered body or employer will, at times, pay the fee on behalf of the applicant; AccessNI is unable to indicate how often this would happen. AccessNI has concluded while there is an impact, there is no adverse impact on any section 75 group in respect of this fee increase.
- 5.2. In respect of the proposed changes to the prescribed purpose for a taxi driver's licence and to the information held on the central register there is no equality impact.

6. Regulatory Impact

- 6.1. In respect of the proposed fee increase, AccessNI has calculated that the cost to the public sector of a £3 increase in the cost of an enhanced criminal record check would be approximately £108,000 per annum. It has also estimated that a similar additional cost would be incurred across the private and charitable sectors and arm's length public sector bodies. This is based on current estimates that around 72,000 applications for enhanced checks are received each year for which a charge can be made.

- 6.2. In respect of the proposed change to the prescribed position for a taxi driver's licence and the change to information held on the central register, AccessNI considers there will be no Regulatory impact.

7. Financial Implications

- 7.1. As indicated previously, AccessNI has prepared a full business case for the proposed fee increase which has been approved by DFP. That business case concluded that AccessNI will be able to meet its cost recovery requirements for the next 7.5 years with the increase in the cost of an enhanced criminal record certificate to £33. As set out in paragraph 6.1 above, AccessNI has calculated the additional cost of this increase to the various sectors that seek such checks. Applications for enhanced criminal record checks from those who meet the AccessNI statutory based definition of a volunteer will remain free of charge.

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 cost of an enhanced criminal record check is £44. In Scotland it is £25. In Scotland the concept of an enhanced criminal record check has largely been replaced by the Protecting Vulnerable Groups Scheme. This involves a transferrable check which costs £59 and updates to that check cost £19.
- 10.2. In terms of the proposed change to the prescribed purpose there is similar legislation in other parts of Great Britain to enable those applying for taxi driver's licences to obtain criminal record checks. This will specify the applicable legislation relevant in those jurisdictions.
- 10.3. In terms of the proposed change to information held on the central register there is similar legislation in other parts of GB that requires information to be held on registered persons and others on a central register, though the specific details have slight variations in each jurisdiction.

11. Additional Information

- 11.1. Not applicable