

## **EXPLANATORY MEMORANDUM TO**

### **The Police Act 1997 (Criminal Records) (Amendment No2) Regulations (Northern Ireland) 2015**

**SR 2015 No. 350**

#### **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 113A(1), 113B(1), 114(1), 116(1), 120ZA, 120AC, 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) (Registration) Regulations (Northern Ireland) 2007 (the 2007 Regulations) and the Police Act 1997 (Criminal Records) (Disclosure) Regulations (Northern Ireland) 2008 (the 2008 Regulations). The changes to the 2007 Regulations limit the period of time during which a registered body can ask the Department to confirm whether a criminal record or enhanced criminal record certificate has been issued to 90 days. The change to the 2008 Regulations means that those under 16 years of age remain eligible for an enhanced criminal record certificate where the prescribed purpose involves working with children at a home address.

#### **3. Background**

- 3.1. The Justice Act 2015, makes provision for key changes to Part V of the Police Act 1997 (the 1997 Act). The provisions for these changes are being commenced, but two minor changes must be made to Regulations to give effect to commencement.
- 3.2. Section 37(2) of the Justice Act 2015 introduces a new section 120AC into the 1997 Act. This enables a registered person to request information from the Department as to whether a criminal record or enhanced criminal record certificate has been issued and to confirm whether that certificate has no information about the applicant on it. Under section 120AC(7), the Department may refuse such a request if it is made after the end of a prescribed period, beginning with the day after the certificate is issued.
- 3.3. The Department wishes to prescribe that after a period of 90 days from the day after the certificate was issued, it may refuse a request from a registered person. This is because the Department will provide a case tracking service for registered persons who countersign applications made on-line. The information on this case tracking service, which includes the date the certificate was issued and an indicator as to whether no information has been provided on that certificate, is updated in real time. It is made available to the registered person for a period of 90 days after

the certificate has been issued and the information can be printed out to enable the registered person to keep a permanent record of these facts. The Department therefore contends that after this period has elapsed it should not have to continue to provide information to registered persons about the issue of certificates. In addition to concerns relating to the Data Protection Act 1998 about keeping personal information on individuals longer than is necessary, AccessNI would also have to make significant changes to its IT system at some cost. this cost would have to be passed on to customers. This period should also be applied to registered persons seeking information about applications that have been submitted by means other than on-line.

- 3.4. The 2007 Regulations deal with registration and registered persons matters. The Department proposes to add a further regulation to the 2007 Regulations to state that it may refuse requests from registered persons about whether a certificate has been issued in response to an application, 90 days after that certificate has been issued.
- 3.5. Section 38 of the Justice Act 2015, introduces a minimum age limit of 16 years for applications for criminal record certificates and enhanced criminal record certificates. This section however, also enables the Department to make an exception to this age limit in prescribed circumstances.
- 3.6. The Department does not intend to prescribe any circumstances in respect of applications for criminal record certificates.
- 3.7. Regulation 9 of the 2008 Regulations sets out the prescribed purposes for which an enhanced criminal record certificate may be sought. Regulation 9(d),(e) and(f) specifically refers to the prescribed purposes of registration for child-minding, placing children with foster parents and decisions by an adoption agency as to a person's suitability to adopt a child. These are commonly known as "home-based positions". In all these sub-sections, provision is made for enhanced criminal record checks to be sought not only on the applicant, but also on any person living at premises where the child-minding is to take place, living in the same household as a foster parent or living in the same household as the prospective adopter.
- 3.8. In effect the Regulations enable those in the family of child-minders, foster parents or adopters to apply for an enhanced criminal record certificate. As the age of criminal responsibility in Northern Ireland is currently 10 years of age, it is possible that those under 16 in the household may have a criminal record or information may be held by police about behaviour that might suggest they could pose a risk to children. Therefore, Social Service Departments and foster caring agencies require and countersign applications for family members, some of whom are below the new minimum age.
- 3.9. The Department therefore proposes to continue to enable applications to be made for enhanced criminal record checks by those under 16 in these limited circumstances. This seems appropriate given the unique degree of contact there will be between family members of child-minders, foster parents and adopters and the individual children who are in the care of

child-minders, foster parents and adopters. The Department proposes to add a further regulation to the 2008 Regulations to state that while the minimum age for an enhanced criminal record check is 16, this will not apply where the application is in respect of one of the prescribed purposes at Regulation 9(d),(e) and(f) of the 2008 Regulations.

#### **4. Consultation**

- 4.1. The proposals to cease issuing a copy of a second certificate to registered persons and to limit criminal record and enhanced criminal record checks to those over 16 years of age were set out in Part 1 of Sunita Mason's report on the criminal record regime in Northern Ireland, "A Managed Approach", published in 2011. Specifically Mrs Mason recommended that the age limit of 16 years should not apply where applications were for "home based occupations". These proposals were subject to extensive consultation and were included in the Justice Act on the basis of that consultation.
- 4.2. In addition, the Justice Committee consulted on the specific provisions within the Justice Act. No-one commented on the period after which the Department could refuse requests from registered persons for information on issued certificates. Both NIACRO and the Children's Law Centre commented on the potential exclusions for applications to be made for checks by those under 16. NIACRO supported that proposal that these could only be made in limited circumstances such as home based occupations, though the Children's Law Centre seemed to be unaware of Mrs Mason's specific intentions for exclusion.

#### **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 changes. Applications for enhanced criminal record checks are already made for persons under 16 if they are part of the family of a registered child-minder, a fosterer or an adopter.

#### **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. .

#### **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 do not provide information 93 days after the issue of a certificate and will provide checks for those under 16 where this is in respect of a home based occupation. In Scotland, Dislcostland will not provide a re-print of a certificate 14 days after it is issued, unless it can be proved that the certificate was no delivered. There is no age limit applied for checks in Scotland .

## **11. Additional Information**

11.1. Not applicable