EXPLANATORY MEMORANDUM TO

[The Police Act 1997 (Criminal Record Certificates: Relevant Matters) Order (Northern Ireland) 2020]

[draft affirmative]

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under the powers conferred by section 113A(7) of the Police Act 1997 as modified by section 126A(1) and (8) of that Act and is subject to the draft affirmative resolution procedure.

2. Purpose

2.1. This Order amends Section 113A(6) of Part V of the Police Act 1997 and in particular the definition of "relevant matter". "Relevant matter" defines the information that can be disclosed by AccessNI on criminal record or enhanced criminal record certificates. Specifically the legislation seeks to remove the requirement for all convicitions held on the criminal record to be disclosed on relevant AccessNI certificates where there is more than a single convicition.

3. Background

3.1. In line with the appropriate legislation, AccesssNI does not disclose old and minor convictions or other disposals (known as non-court disposals) on criminal record or enhanced criminal record certificates. This is known as "filtering". The filtering of old and minor convictions was a recommendation made by Mrs Sunita Mason in her 2011 review of the criminal record regime in Northern Ireland. The purpose of this recommendation was to ensure that information considered irrelevant due to its age and the nature of the offence was not disclosed on certificates and could not therefore be used as part of an applicant's assessment for a job or volunteering opportunity working with children and/or vulnerable adults or other roles. This recommendation was subsequently enacted through an amendment to Section 113A(6) of Part V of the Police Act 1997 via the Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) Order (Northern Ireland) 2014.

3.2. Section 113(A)(6) of Part V of the Police Act 1997 currently defines a "relevant matter" to include all convictions where an applicant has more than a single conviction on their criminal record, regardless of age or the nature of the offence.

3.3. In 2014, an AccessNI applicant Mrs Lorraine Gallagher raised objections to the disclosure of what she considered was old and minor information on her enhanced criminal record certificate. The information from 1996 and 1998 involved 6 motoring offences and was disclosed on the basis that a

"relevant matter" included all convictions where the applicant had more than a single conviction.

3.4. After the case was considered at both the High Court and the Court of Appeal which found for the applicant, the Department of Justice asked the Supreme Court to reconsider the issue, which they did in June 2018. In January 2019, the Supreme Court ruled that while the filtering process was lawful, concerns were raised that two categories in the scheme could not be regarded as a necessary and proportionate way of disclosing to potential employers criminal records indicating a propensity to offend. One of these categories was the requirement that where an individual had more than a single offence on their criminal record that all offences should be disclosed.

3.5. To comply with the Court ruling the definition of "relevant matter" requires to be amended. The Department proposes to remove the requirement to disclose all convictions on relevant certificates where an applicant has more than a single conviction by amending the definition of "relevant matter" in section 113A(6) of Part V of the Police Act 1997.

3.6. This means that every conviction will now be eligible for filtering after 11 years has passed, or 5 and half years where the conviction was awarded when the applicant was under 18. However, section 113A(6D) of the Police Act 1997 sets out a number of serious offences as a "relvant matter" that are always disclosed even after the 11 year period has elapsed or where the offences resulted in a sentence of imprisonment.

4. Consultation

4.1. The Department does not intend to consult on this matter given that the change is as a direct result of a ruling of the Supreme Court.

5. Equality Impact

5.1. The Department has concluded that there is no adverse impact on any section 75 group in respect of these changes as they equally apply to all applicants.

6. Regulatory Impact

6.1. The Department has concluded there are no regulatory impacts arising from this change. The key impact is on the information that would be disclosed to an applicant on their certificate.

7. Financial Implications

7.1. AcccessNI will make a minor change to its IT system to assist its staff to apply the revised legislation at a cost of £7,500. There are no wider financial implications resulting from the change.

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, 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. The Disclosure and Barring Service (DBS), a non-Departmental body of the Home Office was a co-applicant in the Supreme Court case. The Court also considered a similar DBS case where information had been disclosed on the basis that the person had more than a single conviction. The Court's ruling required the Home Office to make a similar change to the legislation that applies in England and Wales. This was undertaken through the The Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2020, that came into force on 28th November 2020.

11. Additional Information

11.1. Not applicable.