EXPLANATORY MEMORANDUM TO

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

SR 2014 No. 28-

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(6), 125(1) and (5) of the Police Act 1997 ("the 1997 Act") 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"). The amendment will enable AccessNI to dislcose information about cautions, informed warnings and details of diversionary youth conferences from the Causeway criminal history database on criminal record and enhanced criminal record certificates.

3. Background

3.1. Sections 113A(3) and 113B(3) of Part V of the Police Act 1997, require the Minister of Justice to provide information held in central records on criminal record and enhanced criminal record certificates. Part V also enables the Minister to prescribe central records for this purpose.

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. 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.

3.6. These Regulations amend Regulation 7(2)(a) to enable AccessNI to routinely disclose informed warnings, cautions and details of diversionary youth conferences held on the Causeway system, for standard and enhanced criminal record certificates in line with Mrs Mason's recommendations. This legislation, however, will only be brought into operation at the same time as legislation to make provisions for AccessNI to filter old and minor convictions and other relevant criminal information from such certificates.

4. Consultation

4.1. The recommendation made by Mrs Mason in respect of disclosure of cautions etc, was consulted on between May and August 2012 as part of the consultation on recommendations in her Part 2 report on the criminal records regime (available online at http://www.dojni.gov.uk/part-two-review-of-the-criminal-records-regime-in-northern-ireland), published in March 2012. Consultation was held over until Part 2 of that report was published as it was considered that the recommendation in respect of the disclosure of cautions and other criminal information was directly linked to recommendations in Part 2 of her report. The other recommendation from her Part 1 report relating to the filtering of old and minor convictions was also consulted on at this time.

4.2. The consultation found that twelve of the organisations who responded broadly supported the recommendation and five disagreed. The Minister decided to proceed with the amending legislation.

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. There is no business regulatory impact arising from these Regulations.

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 a also a one-off cost of £8,200 to amend AccessNI's IT system to take details of diversionary disposals from the Causeway criminal history database and to dislcose 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 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. This change brings Northern Ireland into line with practice in other parts of the UK where cautions and other similar disposals are routinely disclosed on certificates. In England and Wales such disposals are subject to a system of filtering similar to that being introduced in Northern Ireland.

11. Additional Information

11.1. Not applicable