EXPLANATORY MEMORANDUM TO

[The Police Act 1997 (Criminal Records)(Amendment) Regulations (Northern Ireland) 2022]

SR 2022 No.212

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the 212Department 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(2)(b), 113BA(1), 113BB(1) and 125(1) and (5) of the Police Act 1997 as modified by section 126A of that Act and is subject to the negative resolution procedure.

2. Purpose

2.1. These Regulations have been introduced in response to the Homes for Ukraine Sponsorship Scheme ("the Scheme") announced by the UK Government for those fleeing war in Ukraine.

2.2. These Regulations amend The Police Act 1997(Criminal Records) (Disclosure) Regulations (NI) 2008 ("the 2008 Regulations") to provide eligibility of enhanced checks, including suitability information, for individuals who are seeking to provide accommodation to Ukrainian nationals and their immediate family members under the Scheme. The Regulations also extend eligibility to those, over the age of 16, who reside with the sponsor / host in the same premises as those being provided to the the Ukrainian guests.

2.3. Connected amendments to the statutory framework in relation to self-disclosure are being made in the Rehabilitation of Offenders (Exceptions) Order (NI) 1979.

3. Background

3.1. The disclosure of criminal records information in NI is undertaken by AccessNI on behalf of the Department of Justice in accordance with Part V of the Police Act 1997. There are three levels of check available, Basic, Standard and Enhanced. A Basic check is the disclosure of unspent convictions. A Standard check is the disclosure of spent and unspent convicitons and cautions, subject to filtering rules. An Enhanced check shows the same information as a Standard check, with the addition of relevant information held by police and, as appropriate, a check of the lists of people barred from working with children and/or vulnerable adults (Barred Lists).

3.2. Regulation 9 of the 2008 Regulations sets out the prescribed purposes for which an Enhanced criminal record certificate may be required, thereby creating eligibility for Enhanced checks to be carried out for specific roles. Regulation 9 includes roles that meet the defintion of "Regulated Activity"

with children and vulnerable adults within the meaning of the Safeguarding Vulnerable Groups (NI) Order 2007.

3.3. When initally considering the level of AccessNI check for hosts under the Scheme, it was decided that there was potential for Regulated Activity for hosts whose Ukrainian guests included children or adults who required additional support due to age, illness or disability - thereby creating eligibility for Enhanced checks. In all other circumstances, hosts would be eligible for a Basic check only.

3.4. Following a review, it has been decided that all hosts (and those over the age of 16 residing with the host in the premises to be provided) should be eligible for Enhanced checks, with a check of the barred lists. The Executive Office, in leading the Scheme in NI, requested the relevant legislative change to facilitate this requirement.

3.5. Inserting Regulations 9(1)(p) and 9(1)(q) into the 2008 Regulations creates two new prescribed purposes for which an Enhanced criminal record certificate may be required (thereby enabling Enhanced checks to be carried out) in respect of all hosts and those over the age of 16 residing with the host in the premises to be provided.

3.6. These Regulations also amend Regulations 9A and 9B of the 2008 Regulations, by inserting Regulations 9(1)(p) and 9(1)(q), thereby permitting checks of Barred Lists in respect of all applicants (ie hosts and those over the age of 16 residing with the hosts in the same premises being provided). Thus will support safeguarding measures by alerting decision makers if an applicant is barred from activities with children and/or vulnerable adults.

4. Consultation

4.1. There has been no consultation on this matter due to pressing need to progress this regulatory change quickly to faciliate hosting arrangements for the scheme in NI. The Department believes a public consultation would be disproportionate in these circumstances.

5. Equality Impact

5.1. Consideration has been given to compliance with section 75 of the Northern Ireland Act 1998. The Department considers that this matter will not have a differential impact on any of the section 75 categories and, on this basis, the measure was screened out.

6. Regulatory Impact

6.1. The Department has concluded that there are no impacts arising on the wider business community as a result of this change.

7. Financial Implications

7.1. Fees are liable to be paid for AccessNI checks sought in relation to the Scheme. Costs in relation to the Scheme are being managed within TEO and partner organisations, with funding provided by central Government.

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 amendment relates to Northern Ireland only. It replicates a similar regulatory change that came into effect in Scotland in March 2022. It is also understood that a similar regulatory change is being considered in England and Wales.

11. Additional Information

11.1. Not applicable.