EXPLANATORY MEMORANDUM TO

[The Police Act 1997 (Criminal Records) Regulations (Northern Ireland) 2023]

S.R. 2023 No.16

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(2)(b), 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 to enhance safeguarding measures in circumstances where vulnerable adults are being placed with another household / family under the Adult Placement Agencies Regulations (Northern Ireland) 2007.

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 act as adult placement carer in accordance with the Adult Placement Agencies Regulations (Northern Ireland) 2007. The Regulations also extend eligibility to those under the age of 16, who reside in the same household where the adult placement is taking place.

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

3.3. AccessNI Enhanced checks for adult placement carers were previously undertaken on the basis that the role was considered to meet the definition of Regulated Activity with adults. However, these checks were limited to those in the household undertaking this role and aged 16 and over.

3.4. The Department of Health sought this change in the Regulations to bring arrangements for Enhanced checks for adult placements in line with the arrangements for children being placed in private households, the regulations for which create eligibility for 'full household' checks, including those under the aged of 16.

3.5. Inserting Regulation 9(1)(r) into the 2008 Regulations creates a new prescribed purpose for which an Enhanced criminal record certificate may be required (thereby enabling Enhanced checks to be carried out) in respect of adult placement carers, and any person who is living in the same household as an adult placement carer.

3.6. These Regulations also amend Regulation 9B of the 2008 Regulations, by inserting Regulations 9(1)(r), thereby permitting checks of Barred Lists in respect of all applicants (ie adult placement carers and those living in the same household as an adult placement carer). This will support safeguarding measures by alerting decision makers if an applicant is barred from activities with vulnerable adults.

3.7. These Regulations also amend Regulation 12 of the 2008 Regulations, by inserting regulation 9(1)(r), thereby permitting Enhanced checks to be sought for any person (including those under 16 years) living in the same household as an adult placement carer.

4. Consultation

4.1. The Department of Justice has not consulted on this matter as the legislative change is in response to a specific request from Department of Health.

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 applications from adult placement carers. It will be a matter for the Department of Health to consider payment of these fees as they fall due.

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.

11. Additional Information

11.1. Not applicable.