EXPLANATORY MEMORANDUM TO

THE POLICE ACT 1997 (CRIMINAL RECORDS) (DISCLOSURE) (AMENDMENT NO.2) REGULATIONS (NORTHERN IRELAND)

2009 No. 2495

1. This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These regulations substitute a new regulation 9 and add a new 9A to the Police Act 1997 (Criminal Record) (Disclosure) Regulation (Northern Ireland) 2008.
The effect is to provide for the introduction of the new vetting and barring scheme for Northern Ireland provided by the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Part V of the Police Act 1997 introduced a regime that provides for the Secretary of State to issue certificates in relation to the Criminal Records of persons who apply for them for the purposes of obtaining employment in certain fields primarily to do with working with children and vulnerable adults.
These regulations are made in exercise of the powers conferred by sections 113B(2)(b), 113BA(1), 113BB(1) and 124 of the Police Act 1997.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

7. Policy background

- ***What is being done and why***

7.1 The Safeguarding Vulnerable Groups Act 2006 (the 2006 Act) and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (the 2007 Order) contain provision for the introduction of a new vetting and barring scheme for England, Wales and Northern Ireland respectively. The scheme which is due to go live on 12th October 2009, will eventually require all those working in specific positions and locations with direct access to children or vulnerable adults to be registered with the newly created Independent Safeguarding authority. These positions are described as regulated and controlled activity.

7.2 In order for the Scheme to operate, individuals in regulated and controlled activity will require to have access, through Registered Bodies, to enhanced criminal record certificates. This can only be facilitated if regulated and controlled activity, as defined in the 2007 order, are added to the list of prescribed purposes for which enhanced criminal record certificates may be required.

7.3 In addition, due to changes introduced by the 2006 Act, suitability information as defined by Part V of the Police Act 1997 will be restricted to enhanced criminal record certificate and no longer be available to applicants applying for criminal records certificates (known as standard disclosures).

8. Consultation outcome

8.1 These provisions relating to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 are necessary to implement primary legislation. Full consultation was conducted at the time of the Order and no further consultation is considered necessary.

9. Guidance

9.1 This will be issued to affected groups.

10. Impact

10.1 The impact on business, charities or voluntary bodies is that from the 12th October 2009, positions that fall within the prescribed purposes will be entitled to enhanced disclosure and will enable existing requirements to carry out barred list checks on individuals to continue, but will refer to the new Independent Safeguarding Authority barred lists and the current barred lists across the UK. .

10.2 The impact on the public sector is the same because AccessNI do not differentiate in their services between the public and private sectors..

11. Regulating small business

11.1 The legislation applies to small business. There will be minimal impact on small business because the majority are already eligible for enhanced disclosure and utilising the disclosure service.

12. Monitoring and Review

12.1 The effectiveness of the regulations will be kept under review.

13. Contact

Tom Clarke at the AccessNI Tel: 02890 259168 or email: Tom.Clarke@ani.x.gsi.gov.uk can answer any queries regarding the instrument.