EXPLANATORY MEMORANDUM TO

THE POLICE ACT 1997 (CRIMINAL RECORDS) (DISCLOSURE) (AMENDMENT NO3) REGULATIONS (NORTHERN IRELAND)

2009 No. 3334

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**

   2.1The regulations amend the Police Act (Criminal Records) Regulations (Northern Ireland) 2008 in three respects. The fee payable for a standard disclosure is reduced. The purposes for which an enhanced certificate can be made extended to include persons applying for drugs licences. Finally provision is made for the taking of fingerprints as evidence of an applicant's identity.

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

   3.1 In addition to introducing new amending provisions, these regulations replace regulation 11 of the 2008 Regulations. Regulation 11 was inserted by S.I. 2009/1798 which is defective and was reported by the JCSI in its 24th report of Session 2008-09. The department has agreed with the SI registrar that the free issue procedure should apply.

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 but not exclusively, to do with working with children and vulnerable adults. These regulations are made in exercise of the powers conferred by sections 112(1)(b), 113A(1)(b) 113B(1)(b) and (2)(b), 118(2) and (3), and 125 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. The scheme went live on 12 October. At that time, the 2007 Order provided that "suitability information" as defined by Sections 113BA and 113BB of the Police Act 1997 could no longer be provided in respect of criminal record certificates as defined by section 113A of the Police Act 1997, known as standard disclosures. Given that standard disclosures would no longer contain as much information as prior to 12 October, it was determined that the fee payable for such a certificate as allowed for in section 113A (1)(b) of the 1997 Police Act (and as prescribed by regulation 4 of the 1997 Police Act (Criminal Records) (Disclosure) Regulations (Northern Ireland) 2008) should be reduced by £2 from £28 to £26. This change means the fee payable for a standard disclosure is consistent with both the cost of producing that disclosure and that charged by the Criminal Records Bureau for a standard CRB check.

7.2 In addition, regulation 9 of the Police Act 1997 (Criminal Records) (Disclosure) Regulations (Northern Ireland) 2008 (the 2008 Regulations), prescribes the purposes for which an enhanced criminal record certificate may be required in accordance with a statement made by a registered person under section 113B (2)(b) of the Police Act 1997. The Department of Health, Social Services and Public Safety (DHSSPS) in Northern Ireland now consider that individuals seeking to obtain or retain a licence under the Misuse of Drugs (Northern Ireland) Regulations 2002 which deals with the production, supply, offering to supply or possession of any controlled drug should be eligible for enhanced criminal record certificates. This will assist the Department to make appropriate decisions about whether individuals are suitable persons to have or retain such a licence. This provision mirrors legislation in England and Wales (the Police Act 1997 (Criminal Records) (No2) Regulations 2009) and will ensure individuals in Northern Ireland will be subject to the same degree of scrutiny when they apply for licences as their counterparts in England and Wales.

7.3 Section 118(2) of the Police Act 1997 permits the Secretary of State to refuse to issue a certificate or to consider an application unless the applicant has his fingerprints taken at such place and in such manner as may be prescribed. Section 119 (4) of the same Act requires any person who holds fingerprints for the use of police forces generally to make those records available to the Secretary of State for the purpose

of allowing him to carry out his functions in relation to any application for a certificate. These regulations prescribe the procedure for having fingerprints taken, how the fingerprints will be used and how they will be disposed of. These provisions mirror those set out in the Police Act 1997 (Criminal Records) Regulations 2002, SI 2002 No233.

8. Consultation Outcome

8.1 All organisations registered with AccessNI have been informed of the intention to reduce the price of a standard disclosure

8.2 The proposal to make regulations around the taking of fingerprints was the subject of consultation with ACPO and ACPOS

8.3 The extension of prescribed purposes for which an enhanced criminal record certificate may be required in accordance with a statement made by a registered purpose under section 113B (2)(b) of the 1997 Police Act to those producing, supplying, offering to supply or have in their possession controlled was the subject of a Home Office consultation.

9. Guidance

9.1 That part of the regulations that relate to the change in fees,and fingerprint provision will be reflected in the AccessNI guidance and on the web-site.

9.2 That part of the regulations that extend eligibility for enhanced disclosures to those requiring a licence in respect of controlled drugs will be covered in guidance to be issued by DHSSPS.

10. Impact

10.1 The impact of a price reduction in the cost of a criminal record certificate (standard disclosures) will be welcomed by private sector business who are the main users of these certificates.

10.2 The extension of eligibility for enhanced criminal record certificates to those who produce, supply, offer to supply or have in their possession, controlled drugs will have a minor impact on those falling within the extension, in two areas. First, a payment of £30 will be required to cover the cost of the enhanced criminal record certificate and second, there may be a short delay in the issuing of licences until the enhanced criminal record certificate is received and scrutinised. However to minimise this it is intended that the application form for the certificate will be completed as part of the licence application. Licensees are typically pharmaceutical wholesalers, manufacturers, drug research facilities, private hospitals, dog trainers and hemp growers. Around 70 licences are sought in Northern Ireland each year.

10.4 AccessNI estimate that in only 5-10 applications per annum will there be a need to obtain fingerprints. This will slow down the process of obtaining an enhanced disclosure for those applicants, but is a necessary requirement in terms of safeguarding the most vulnerable.

11. Regulating small business

11.1 Part of this legislation applies to small business, though there will be minimal impact. A small number will benefit from the reduction in the cost of a criminal record certificate. A small number will be affected by having to pay an additional £30 for their drugs licence, but the licensing requirement does not extend to, for example, pharmacies or medical practitioners. A number of small businesses who employ workers directly from overseas, for example, some independent private care homes will benefit from AccessNI being designated as a police force for applications with no UK addresses.

12. Monitoring and review

12.1 The fee for a standard disclosure will be reviewed annually prior to AccessNI setting its budget each year. This process will take into account whether AccessNI is recovering its own costs.

12.2 AccessNI and PSNI will monitor the operation of the regulations around the taking of fingerprints.

12.3 The requirement for enhanced disclosures for those seeking licences in respect of controlled drugs will be monitored and reviewed by DHSSPS in conjunction with the Home Office at relevant intervals

13. Contact

Tom Clarke at AccessNI, telephone 02980 259168 or e-mail tom.clarke@ani.x.gsi.gov.uk can answer any queries regarding the instrument.