EXPLANATORY MEMORANDUM TO

THE POLICE ACT 1997 (CRIMINAL RECORDS) (DISCLOSURE) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2009

2009 No 1798

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.

Description

2. The regulations provide that for the purposes of Section 113B of the Police Act 1997 (Enhanced Criminal Records) both the Scottish Crime and Drug Enforcement Agency and Access NI are to be treated as a police force and amend the Police Act 1997 (Criminal Records) (Disclosure) (Regulations) (Northern Ireland) 2008 to make provision for the taking of fingerprints from applicants or enhanced criminal record checks to ascertain their identity.

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

   None.

Legislative Background

4. The regulations are made under powers conferred by Sections 113B(9, (11)(c)) and Section 118(2) and (3) of the Police Act 1997.

Territorial Extent and Application

5. This instrument applies to Northern Ireland.

European Convention on Human Rights

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

Policy background

7. It is intended to designate the Scottish Crime and Drug Enforcement Agency (SCDEA) as a relevant police force for the purposes of Section 113B of the Police Act 1997 to enable AccessNI to continue to receive relevant information for disclosure from that source.

8. It is also intended to designate Access NI as a relevant police force for the purposes of Section 113B of the Police Act 1997. This is solely in circumstances where an enhanced disclosure application contains no UK address information in respect of the applicant. Access NI receive applications for enhanced disclosures from applicants that reside overseas and who have no UK address history for the previous five years. Upon receipt of such applications Access NI make a check to ascertain whether any nominal records are held on the individual across UK police forces, in the "PLX" system. If a record is found, the police force holding the record will become the "relevant police force" for the purposes of the Police Act. However where no record is found and there is no UK address history, Access NI must decide which force then becomes the relevant police force to undertake the required duties of a "chief officer" under Section 113B(4) of the Police Act.

9. As in these circumstances there is no relevant police force under the legislation, then for the purpose of closing down these notifications Access NI need to be treated as if they were a relevant police force so they can close them down themselves. The Criminal Records Bureau has recently put in place legislation that provides them with similar powers.

10. Section 118(1 of part 5) of the Police Act of 1997 allows the Secretary of State to refuse to issue a disclosure certificate unless it is supported by such evidence of identify as he may require. Section 118(2) further provides that the Secretary of State may refuse to issue a certificate or consider an application unless the applicant has had his fingerprints taken at such place and in such a manner as may be prescribed. It is not intended that this power be used routinely but only where there is uncertainty or dispute over a criminal record and the provision of the fingerprints are required to resolve this dispute.

Impact

11. A Regulatory Impact Assessment in respect of these regulations was not prepared as, in principle, the regulation should have a very similar impact in Northern Ireland to that in England and Wales with due allowance for differences of scale between the two jurisdictions.

Contact

12. Tom Clarke at the Northern Ireland Office (Tel: 02890259168 or email Tom.Clarke@nio.x.gsi.gov.uk) can answer any queries regarding the instrument.