EXPLANATORY MEMORANDUM TO

[The Police Act 1997 (Criminal Records) (Disclosure) (Amendment) Regulations (Northern Ireland) 2010]

SR 2010 No. 229

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under sections 112(1)(b), 113A(1)(b), 113 B(1)(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. This Statutory Rule will enable AccessNI to place on a statutory basis its current administrative practice of not charging any fee for standard and enhanced disclosure certificates to most volunteers who work closely with children and vulnerable adults. It also makes drafting improvements to provisions relating to the provision of suitability information in respect of children and vulnerable adults

3. Background

3.1. Sections 112(1)(b), 113A(1)(b) and 113B(1)(b) of the Police Act 1997 as modified by the the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010, enable the Department of Justice to prescribe fees for , respectively, criminal conviction certificates, criminal record certificates, and enhanced criminal record certificates. These are also known as , respectively, basic, standard, and enhanced disclosures. The fees are prescribed in regulation 4 of the Police Act 1997(Criminal Records)(Disclosure)Regulations (S.I.2008/542) ("the principal Regulations) as amended, most recently, by S.I.2009/3334 and currently are £26 for a basic or standard disclosure and £30 for an enhanced disclosure. From the commencement of AccessNI operations in April 2008, AccessNI did not charge most volunteers a fee for disclosures, the only exceptions being where the volunteering was for a statutory organisation or where funding to a non-profit organisation included the cost of AccessNI fees. AccessNI did not charge fees on the basis that the application form was “prescribed” in subordinate legislation. This form clearly indicated there was no charge for volunteers.

3.2. AccessNI will introduce a new application form from 26 July which is no longer prescribed. Therefore to ensure that volunteers continue to enjoy free disclosures from that time, it is necessary to introduce subordinate legislation to create an exception to paying fees. Without this subordinate legislation, AccessNI would have no option but to charge fees to volunteers.

3.3. Regulation 2(5) of SI 2009/2495 amended the principal Regulations to prescribe the cases for which suitability information for working with children or vulnerable adults could be provided on an enhanced disclosure certificate. We have taken the opportunity to improve the drafting of this provision so that it is clearer and easier to understand. There is no change to the cases which are prescribed.

4. Consultation

4.1. There was full consultation on the volunteer issue before AccessNI was established

5. Equality Impact

5.1. Consideration has been given to compliance with section 75 of the Northern Ireland Act. An assessment was conducted before AccessNI commenced operations which indicated there was no differential impact on any of the section 75 groups. As this change to legislation does not make any material difference to the system of issuing disclosure certificates the initial assessment remains appropriate

6. Regulatory Impact

6.1. There is no impact to any business, charity, social economy enterprise or voluntary body as a result of this legislation. If the legislation does not proceed however the impact will be significant as charges will have to be made to those working in such bodies that work closely with children or vulnerable adults

7. Financial Implications

7.1. There are no financial implications in consequence of this legislation

8. Section 24 of the Northern Ireland Act 1998

8.1. This legislation is not incompatible with rights under the European Convention, incompatible with European Community Law or discriminate on the grounds of religious belief or political opinion.

9. EU Implications

9.1. There are no EU implications.

10. Parity or Replicatory Measure

10.1. This measure replicates the position for volunteers in England and Wales who make applications to the Criminal Records Bureau and in Scotland to Disclosures Scotland. The only exception is that this legislation will make provision for those volunteering for statutory organisations to make a payment or for those who receive public funding for disclosures to pass this to AccessNI. Consideration was given to creating parity with England and Wales but this could only be achieved by increasing prices for all customers to make good any shortfall in income. No person volunteering for a statutory organisation pays for their disclosures, this is made good by the statutory organisation.

11. Additional Information

11.1. Not applicable