EXPLANATORY MEMORANDUM TO

[The Rehabilitation of Offenders (Exceptions) (Amendment) Order (Northern Ireland) 2026]

S.R 2026 No. 12

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 Article 5(4) of the Rehabilitation of Offenders (Northern Ireland) Order 1978 ("the 1978 Order") and is subject to the negative resolution procedure.

2. Purpose

2.1. This instrument amends the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 ("the 1979 Order") to bring individuals, who are seeking to act as adult restorative justice practitioners and those who are self-employed or personal employees, within the scope of the exceptions set out in the 1979 Order, requiring them to self-disclose spent convictions.

2.2. Connected amendments to the statutory framework in relation to eligibility for Enhanced disclosures are being made to The Police Act 1997 (Criminal Records)(Disclosure) Regulations (Northern Ireland) 2008.

3. Background

3.1. The 1978 Order makes it possible for certain convictions to become "spent", which means that after a specified period a person can be treated for certain purposes as if the conviction had never happened and they need not, for example, tell an employer about the conviction when applying for a job.

3.2. To ensure that the public is adequately protected, however, certain exceptions to the 1978 Order are set out in the 1979 Order so that, for specified professions and occupations that typically involve a high degree of trust and often involve vulnerable persons, applicants must declare all past convictions (including all spent convictions) when asked.

3.3. The 1979 Order is amended periodically to ensure that access to the criminal record disclosure regime keeps pace with changes in public risk; to ensure that disclosure regimes remain consistent across jurisdictions where appropriate; and to maintain the public trust and protection process.

3.4. The Department of Justice considers that a small safeguarding gap exists insofar as individuals seeking to act as an adult restorative justice practitioner, are not currently eligible for a check of barred lists as part of their AccessNI Enhanced disclosure application, meaning that someone who is barred could be successfully appointed to this role, working with vulnerable adults. By creating a specific prescribed purpose within The

Police Act 1997 (Criminal Records)(Disclosure) Regulations (Northern Ireland) 2008 and a new exclusion within the 1979 Order, it will be possible to also create eligibility for barred list checks.

3.5. This Order inserts a new exclusion into Article 2 of the 1979 Order (persuant to Article 5(4) of the 1978 Order), allowing exempted questions to be asked of applicants seeking to act as an adult restorative justice practitioner. In so doing it requires applicants seeking to act as adult restorative justice practitioners to disclose all spent convictions.

3.6. This Order also seeks to close a safeguarding gap in respect to self-employed people who are seeking to work with children and vulnerable adults. At present, self-employed / personal employees cannot obtain an AccessNI Enhanced check as the current provisions regarding the asking of the exempted question in the 1979 Order do not extend to self employed. This Order inserts a new exclusion into Article 2 of the 1979 Order (persuant to Article 5(4) of the 1978 Order), allowing exempted questions to be asked by persons to assess the suitability of self-employed individuals or personal employees they want to employ or engage in regulated or controlled activity relating to children or vulnerable adults.

4. Consultation

4.1. The Department of Justice has not consulted on these matters as they are considered narrow amendments to facilitate change to address potential safeguarding gaps.

4.2. With respect to the amendment regarding self-employed / personal employees, the Department notes the outcome of reviews undertaken at the behest of the Home Office, namely the Independent Review of the Disclosure and Barring Regime and Independent Inquiry into Child Sexual Abuse. Both these reviews recommended the extension of elibility for Enhanced checks to those who were self-employed in certain roles.

4.3. The Department believes a public consultation would be disproportionate in these circumstances.

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 those seeking to act as restorative justice practitioners and self-employed / personal employees.

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. Both amendments related only to Northern Ireland only. The amendment in respect to self-employed and personal employees keeps pace with a similar change enacted in England and Wales.

11. Additional Information

11.1. Not applicable.