

EXPLANATORY MEMORANDUM TO

The Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) Order (Northern Ireland) 2022

S.R. 2022 No.

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 Section 113(A)(7) of the Police Act 1997 and is subject to the draft affirmative resolution procedure.

2. Purpose

- 2.1. The purpose of the Statutory Rule is to enable the new domestic abuse offence, convictions of the domestic abuse offence (with child aggravator(s)) as well as current convictions for other offences for which there is a domestic abuse aggravator to be disclosed as part of the AccessNI disclosure process. Provision is also made in relation to the disclosure of non-court disposals for the domestic abuse offence on standard and enhanced applications.
- 2.2. Article 1 provides the name of the Order, that is the Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) Order (Northern Ireland) 2022. It also provides that the Order will come into operation on the day after it is affirmed by resolution of the Assembly.
- 2.3. Article 2 sets out that the Police Act 1997 is amended as set out in Articles 3 and 4.
- 2.4. Article 3 amends Section 113A(6) of the Police Act 1997, which defines "relevant matter", to include a current conviction of any offence, other than those listed at subsection (6D), which is stated by a court to be aggravated by reason of involving domestic abuse under section 15 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 (the 2021 Act).
- 2.5. Article 4 adds the domestic abuse offence, as well as the domestic abuse offence stated by a court to be aggravated by the child aggravator(s) under Sections 8 and 9 of the 2021 Act, to the list at Section 113A(6D), that is specified offences. It also adds any offence within subsection (6D), stated by a court to be aggravated by reason of involving domestic abuse under section 15 of the 2021 Act.

3. Background

- 3.1. The 2021 Act created a new domestic abuse offence (section 1) and three associated aggravators. Two of the aggravators can be attached to the domestic abuse offence when the offence involves a child (aggravated under sections 8 and 9 of the 2021 Act). The 2021 Act also creates a domestic abuse aggravator which can be attached to any current, existing

criminal offence (aggravated by reason of involving domestic abuse under section 15 of that Act). The new offence and aggravators came into operation on 21st February 2022.

- 3.2. AccessNI discloses information held on the criminal record, particularly about individuals who are seeking to work with children and adults (enhanced checks). After certain periods elapse, AccessNI will not disclose old and minor offences from that record (non-specified offences). This is known as “filtering”. AccessNI does not apply these periods to more serious offences listed in 113A(6D) of the Police Act 1997. These are known as specified offences and are always disclosed on AccessNI standard and enhanced certificates. All offences not listed in 113A (6D) are deemed to be non-specified offences.
- 3.3. Section 113A of the Police Act 1997 requires a criminal record certificate to be issued for any individual who makes an application, who is 16 years old or over at the time of the application (except in prescribed circumstances) and who pays in the prescribed manner any prescribed fee. A criminal record certificate must give the prescribed details of every relevant matter relating to the applicant.
- 3.4. Section 113A(6) of the Police Act 1997 lists offences which are to be considered as relevant matters. The draft Order explicitly adds the domestic abuse offence, as well as convictions for the domestic abuse offence aggravated by the child aggravator(s), to the list at Section 113A(6D), that is specified offences. All other current convictions for offences (other than the domestic abuse offence and specified offences) that are aggravated by domestic abuse would also be included within the list of relevant matters and be disclosable as part of an AccessNI application check.
- 3.5. In both instances it is considered that reference to the child and domestic abuse aggravators would already be covered under the term conviction (as the aggravator will be an integral part of a conviction), and the information could therefore be disclosed. However, explicit inclusion puts this beyond doubt.
- 3.6. By adding the domestic abuse offence (and its associated aggravators) to the list at 113(6D), these offences will always be disclosed on a standard or enhanced AccessNI certificate. Otherwise, convictions for such offences would not be disclosed on a standard or enhanced AccessNI check after a period of 11 years from conviction, or 6 years for an adult non-court disposal. Shorter periods apply to those under 18. This time period would apply to non-specified offences, where these are aggravated by domestic abuse, in line with current provision. Provision is also made in relation to the disclosure of non-court disposals for the domestic abuse offence on standard and enhanced applications.

4. Consultation

- 4.1. Consultation was not considered necessary as this is largely a procedural change to provide for what can be disclosed as part of the AccessNI process. In terms of the inclusion of the domestic abuse offence in the list

of specified offences this would align with the seriousness of offences already listed there.

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. A regulatory impact assessment was not considered necessary.

7. Financial Implications

7.1. Costs associated with the disclosure of the domestic abuse offence and its aggravators, and applying filtering out rules, will be met by AccessNI within existing budgets. Technical changes required by PSNI will also be met within existing budgets.

8. Section 24 of the Northern Ireland Act 1998

8.1. The proposed legislation is considered compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. This measure does not replicate, nor is there a requirement to maintain parity with, legislation in other administrations.

11. Additional Information

11.1. Not applicable.