



Northern Ireland  
Assembly

Committee for Justice

# OFFICIAL REPORT (Hansard)

The Police Act 1997 (Criminal Records)  
(Amendment No. 2) Regulations (Northern  
Ireland) 2012

20 September 2012



Safeguarding Vulnerable Groups (Northern Ireland) Order 2007. If we did not make those changes, individuals such as supervised volunteers who look after children in Church or community settings or people who look after catering or other ancillary services in the adult-care sector would no longer be entitled to enhanced checks. It applies to others as well. Therefore, the regulations allow us to ensure that existing safeguarding arrangements are not diminished for those who work with children or other vulnerable groups.

Secondly, the regulations redefine the PSNI as a relevant police force for the purposes of an enhanced check. At present, we must send every application for an enhanced check to the PSNI, and it has to check whether it has any relevant information that should be disclosed about an individual. From the 100,000-plus enhanced checks that we send to the PSNI every year, we get between 200 and 250 pieces of information back that we disclose on certificates. That is an essential part of the process, but clearly it is very time-consuming and costly.

In other parts of the United Kingdom, in recognition of the fact that about 90% of those enhanced checks go out with absolutely no information on them, the Criminal Records Bureau (CRB) and Disclosure Scotland send only the cases in which they believe that some information might exist to the police, including the PSNI. They do this by looking at the record of convictions and at a police database called police local cross-check (PLX). If the information is there, they will send it to those police forces, including the PSNI. Basically, our regulations would replicate that process in Northern Ireland.

The practical impact of that is that, instead of sending 100,000 applications every year to get 250 pieces of information, we propose to send around 40,000 and still get the 250 pieces of information that we need. The obvious advantages are that Access NI can deal much more quickly with the 60,000 other cases for which there is no information. That will reduce the turnaround time on those by at least three days and, more likely, five to seven days. There are cost savings for the PSNI that are passed on to our applicants.

We already do this for forces in Great Britain. If we get an Access NI application, and there is a previous address in GB, we will send it to a police force only if we believe that it has some information on an individual. We will not do it per se or automatically. We will do it only if we think that there is information on that individual.

As you quite rightly say, Chair, in the SL5, we advised the Committee that, since the submission of the SL1, the PSNI raised some concern that, in the new process, there is a risk that some information on individuals may not be disclosed because of the timing of the transfer of the information onto the PLX database. We have considered this issue very carefully. We do not want to introduce any change that would have an impact on the safeguarding of the most vulnerable people. We are confident that all the appropriate cases will be provided to the police.

The key difference now is that we used to get an update on PLX information each month. We now get it each week, and that should remove the timing issues that may have existed previously. However, to be doubly sure, we will run another couple of checks on the new process before we implement it. The current legislation is sufficiently flexible to enable us to continue to provide all cases to the PSNI in the interim until we do our final double-check, just to be absolutely sure. This process has been checked a considerable number of times. It was checked by the CRB in England and Wales before it switched it off, by Disclosure Scotland and by us, but in view of the concerns raised by the police, we are happy to do that again.

**The Chairperson:** Have members any questions on that? [*Inaudible.*] formally to the Committee, so this came very late in the day. That is the explanation.

**Mr Wells:** I have been through this process many times, and I have a slight concern. You need to get it wrong only once, and some offender will be let loose in a youth club or whatever.

Will you tie down the areas in which you suspect that there is likely to be material? You are going to look at the 60,000 applications and say that you are absolutely certain that there is nothing there. In the other 40,000 applications, you have a slight hunch that there might be something, so you send them off and get 250 back. How do you split the 60,000 from the 40,000?

**Mr Tom Clarke:** How do we select those 60,000?

**Mr Wells:** In the 60,000 applications that you are not going to send, there could be someone who is a pillar of society but beneath the surface, he may have a hidden secret. How will you judge that?

**Mr Tom Clarke:** The short answer is that that should be on the PLX database. There should be a flag on the PLX database about that individual that would allow us to send the application to the police. We send the application to the police, and they will find out whether they have any information on that individual. If there is information, it should be flagged up on the PLX database.

**Mr Wells:** Is that flag always there?

**Mr Tom Clarke:** Yes. It is always supposed to be there; that is the way in which it is supposed to work. The Criminal Records Bureau and Disclosure Scotland have looked at the issue ad infinitum to make sure that there are no gaps, and the belief is that there is minimal risk to safeguarding. We will send out the 60,000. We think that we can filter the 90,000 cases that go out with no information on them. We are confident that the 60,000 applications that we will deal with have no information on them. Despite my aged face, I have a youngster who is still at school. I am also on the board of governors of a nursery school. I am not going to do anything that will put any of those children at any risk. If I thought that there were any risk, I would not be bringing the regulations forward, and nor would Access NI be doing so.

**The Chairperson:** At this point, you are able to say that you can stand over the current system without any question mark.

**Mr Tom Clarke:** You can never say that, Chair, because there is always human intervention, and no one could ever guarantee that every single piece of information that is known about someone would be disclosed. However, we have no concerns about switching off address-based searching and asking the PSNI to look at only the 40,000 cases on which we believe that some information might exist.

**The Chairperson:** We do not want to approve a new system after you have said that you will not implement it if it does not work when you do your final, final tests.

**Mr Tom Clarke:** That is absolutely correct.

**The Chairperson:** So we could approve something that may not happen. That is my only problem: we are being asked to approve a statutory rule on a process about which, at this point, you are not 100% certain. You said that you are going to run all these tests, and the Committee is at the point of agreeing to all this, but you have yet to do your final testing. I accept what you say about the new system being just as effective as the current system in detecting individuals who might try to get through Access NI. My problem is the principle of the Committee agreeing to a system that has not been signed off.

**Mr Tom Clarke:** I understand exactly what you are saying. It is good that the legislation is sufficiently flexible to allow us to continue with the current system until we do our final tests, which we are confident will show that we can implement the new system. If, for example, the final tests threw up something of which we were completely unaware, we could continue to work with the current system under the new regulations. Those regulations, instead of saying that we have to send everything, give us the flexibility to determine what we want to send to the PSNI. From that point of view, you will not be approving regulations that we would subsequently request the Committee to change back.

**Mr McCartney:** Have you met with PSNI representatives to discuss their reservations? Are they satisfied now?

**Mr Tom Clarke:** We put a number of points to the PSNI representatives. This is exactly the way in which the Criminal Records Bureau and Disclosure Scotland work with the PSNI as it is. They do not send all their cases with a Northern Ireland address to the PSNI; they filter them by using conviction material and the PLX database. We met PSNI representatives and told them that we are confident about the new system. There is a requirement that the PSNI ensure that the PLX database is kept up to date, but the PSNI updates it every week, and we get the new database from that.

**The Chairperson:** Mr Dickson, are you satisfied?

**Mr Dickson:** Yes. Effectively, we are giving a post-dated cheque. Should anything be flagged up that causes you a problem, a full check can still be done. Basically, you are drawing both systems together.

**Mr Tom Clarke:** That is exactly correct.

**Mr Dickson:** In those circumstances, I am content.

**Mr Wells:** If you still have to send 40,000 names out to get 250 back, it cannot be that specific. Clearly, your system is not that refined, and you are still throwing an awful lot of material down the line to get that 250. If the new system is introduced, and, many months down the line, a mistake appears, do you have the authority to go back to the old system of sending all 90,000 or 100,000 names?

**Mr Tom Clarke:** Yes. Under the regulations, we could do that.

**Mr Wells:** For how long will you have the flexibility to do that?

**Mr Tom Clarke:** As long as the regulations are there, we can continue to do that.

**Mr Wells:** So if something goes wrong, we are not stuck with the new system.

**Mr Tom Clarke:** No, absolutely not. We still send a lot of applications because the PLX database will flag up people who might be the individuals for whom we are looking. We send the information to the PSNI so that it can check whether or not it is a certain individual. If you will excuse the technical term, it is quite a fuzzy match. In other words, if we put "Tom Clarke" and a date of birth into the system —

**Mr Wells:** There are quite a few Tom Clarkes.

**Mr Tom Clarke:** Exactly. For that name, we may send more than one case to the PSNI. That also assures us that cases are going to the PSNI. As you can see, many of those will still come back with "no trace" on them. However, we will speed up the process for the ones that we know will come back with "no trace", and we will get them out to employers and applicants much more quickly.

**The Chairperson:** The Committee discussed the fact that the changes came up at the eleventh hour, and we are satisfied that you have addressed our queries.

Do members agree that the Committee for Justice considered statutory rule 2012 No. 321, the Police Act 1997 (Criminal Records) (Amendment No. 2) Regulations (Northern Ireland) 2012 and has no objection to it?

*Members indicated assent.*

**The Chairperson:** Thank you, Mr Clarke.