EXPLANATORY MEMORANDUM TO

[The Police Act 1997 (Criminal Records) (Amendment) Regulations (Northern Ireland) 2027]

S.R. 2027 No.

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 sections 113B(2)(b), 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. These Regulations have been introduced by the Department for Justice to maintain parity with England and Wales equivialent legislation and to close a safeguarding gap where individuals undertake work infrequently which, if done frequently, would be Regulated Activity relating to children within the meaning of Part 1 of Schedule 2 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

2.2. The Regulations also create eligiiblity for Barred List checks to be undertaken for staff working in AccessNI.

2.3. These Regulations amend The Police Act 1997 (Criminal Records) (Disclosure) Regulations (NI) 2008 ("the 2008 Regulations") to provide eligibility of enhanced checks for individuals who are undertaking work infrequently which, if done frequently, would be Regulated Activity.

2.4. Connected amendments to the statutory framework in relation to these roles are being made in the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979.

3. Background

3.1. The disclosure of criminal records information in NI is undertaken by AccessNI on behalf of the Department of Justice in accordance with Part V of the Police Act 1997. There are three levels of check available namely Basic, Standard and Enhanced. A Basic check is the disclosure of unspent convictions. A Standard check is the disclosure of spent and unspent convictions and cautions, subject to filtering rules. An Enhanced check shows the same information as a Standard check, with the addition of relevant information held by police and, as appropriate, a check of the lists of people barred from working with children and/or vulnerable adults (Barred Lists).

3.2. Regulation 9 of the 2008 Regulations sets out the prescribed purposes for which an Enhanced criminal record certificate may be requried, thereby creating eligibility for Enhanced checks to be carried out for specific roles. Regulation 9 includes roles that meet the definiton of "Regulated Activity"

with children and vulnerable adults within the meaning of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

3.3. The Department is seeking to close a safeguarding gap in Northern Ireland legislation to permit AccessNI Enhanced checks for individuals undertaking work infrequently which, if done frequently, would be Regulated Activity with children. It is noted that this eligibility has been created under equivalent legislation in England and Wales. This allows individuals who do not meet the frequency test for Regulated Activity to obtain and Enhanced check, without a check of barred lists. This approach will help to close a safeguarding gap by ensuring that criminal record and relevant police information could be disclosed as part of any pre-employment checking regime for such roles.

3.4. Inserting Regulation 9(l)(u) into the 2008 Regulations creates a new prescribed purpose in Northern Ireland which mirrors the legislative provisions in England and Wales and helps to close a safeguarding gap by allowing those undertaking Regulated Activity infrequently with children to obtain an Enhanced check.

3.5. These Regulations also amend Regulation 9A and 9B of the 2008 Regulations, by inserting Regulation 9(1)(k), thereby permitting checks of children's and adult's Barred Lists in respect of those seeking to work in AccessNI.

4. Consultation

4.1. The Statutory Rule makes narrow amendments to facilitate change to address potential safeguarding gaps and is required in order to mirror similar legislative changes already in place in England and Wales.

4.2. The Department does not consider that a public consultation is required 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 (volunteer checks are provided free of charge).

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. This amendment relates to Northern Ireland only and will maintain parity by replicating changes to equivalent legislation already enacted in England and Wales.

11. Additional Information

11.1. Not applicable.