EXPLANATORY MEMORANDUM TO

[The Rehabilitation of Offenders (Exceptions) (Amendment) Order (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 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, whose work is done 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, 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 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. 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 for individuals undertaking work infrequently which, if done frequently, would be Regulated Activity with children to obtain Enhanced 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 individuals undertaking work infrequently which, if done frequently, would be Regulated Activity with children In so doing it requires individuals undertaking such work, in these circumstances, to disclose all spent convictions.

4. Consultation

4.1. The Statutory Rule makes a narrow amendment 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 would be 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 only to Northern Ireland and will maintain parity by replicating changes to equivalent legislation already enacted in England and Wales.

11. Additional Information

11.1. Not applicable.