

**EXPLANATORY MEMORANDUM TO**  
**The Establishment and Agencies (Fitness of Workers) (Revocation)**  
**Regulations (Northern Ireland) 2021**

**S.R. 2021 No. 198**

**1. Introduction**

This Explanatory Memorandum has been prepared by the Department of Health to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

The Statutory Rule is made under Articles 23(1), 2(a), (b), (f) and (h), (4), (7)(c) and 48(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 and is subject to the negative resolution procedure.

**2. Purpose**

The purpose of the Rule is to revoke the Establishment and Agencies (Fitness of Workers) Regulations (Northern Ireland) 2020. The regulations were made on 2 April 2020 to give effect to a temporary Covid-19 pre-employment vetting policy that permitted employers to recruit staff quickly to health and social care posts on the basis of more limited pre-employment checks, in anticipation of Covid-19 staffing pressures. AccessNI put in place an emergency Barred List Check (BLC) provision to facilitate the temporary policy. The Establishment and Agencies (Fitness of Workers) Regulations (Northern Ireland) 2020 underpinned the policy in certain health and social care roles and establishments including nursing homes, residential care homes, nursing agencies, children's homes, day care settings, domiciliary care agencies and residential family centres, where an employer has a statutory requirement to obtain an enhanced disclosure check and other pre-employment vetting information.

**3. Background**

The Health Minister agreed to a request from the Justice Minister in August to end the emergency Barred List Check (BLC) service put in place by AccessNI in response to Covid-19 staffing pressures (with the exception of barred list checks for applications for foster carers at that time). This decision reflected a reduction in Covid-19 staffing pressures and related demand for the BLC, quick turnaround times for the full enhanced disclosure check from AccessNI and some safeguarding concerns identified with the BLC. The BLC scheme closed on 9 September. At the same time the Health Minister stood down the associated temporary Covid-19 pre-employment vetting policy introduced by the Department in March and which was given effect by the Establishment and Agencies (Fitness of Workers) Regulations (Northern Ireland) 2020. The Minister agreed at that time to keep the regulations extant as Covid-19 infections were rising again. It has not been necessary to either stand up the temporary pre-employment policy or BLC service during the time since and it is now appropriate to revoke the regulations.

**4. Consultation**

Before the BLC was ended in September 2020, Access NI undertook a consultation with BSO, the 5 Health and Social Care Trusts and the Independent Health and Care Providers (IHCP) organisation to obtain their views on the ending of the BLC process. No Health & Social Care Trust objected to the proposal and were content for the BLC process to cease providing that it could quickly be re-instated should there be a further wave of the pandemic. IHCP was more reluctant to agree to the removal of the BLC, but their key concern was identical to others, in that it should be available should there be further outbreaks of the pandemic. These stakeholders have not sought to re-instate either the temporary pre-employment vetting policy or BLC since September 2020.

This SR reflects the current position in that both the temporary pre-vetting policy and BLC service which it supported have been stood down for the last 8 months and the substantive pre-employment vetting policy prior to April 2020 has been in effect during that time.

**5. Equality Impact**

In accordance with guidance produced by the Equality Commission for Northern Ireland, and in keeping with Regulation 75 of the Northern Ireland Act 1998, the proposals have been screened for equality impact.

**6. Regulatory Impact**

Given the nature of this legislation, no regulatory impact screening has been carried out. It is not anticipated that any business, charity, social economy enterprise or the voluntary sector in Northern Ireland will be adversely affected by these changes.

**7. Financial Implications**

No additional costs are envisaged.

**8. Section 24 of the Northern Ireland Act 1998**

Consideration has been given to the human rights implications of these regulations. They are considered compatible with section 24 of the Northern Ireland Act 1998.

**9. EU Implications**

Not applicable.

**10. Parity or Replicatory Measure**

In England and Wales temporary arrangements are still in place to provide fast-track emergency barred list checks for health and social care workers recruited in connection with the pandemic. The fast-track emergency check is provided as part of an enhanced disclosure application and cannot be applied for separately. Scotland was given powers under the Coronavirus Act (2020) to modify vetting arrangements. It has not used these powers but implemented a Covid priority service which is still running but demand has decreased significantly. Scottish Ministers have extended free checks for positions required to fight COVID until 25 March 2022 but this will be kept under review and can be revoked sooner. In the Republic of Ireland, applications for vetting disclosures from the National Vetting Bureau on healthcare workers and healthcare volunteers are continuing to be prioritised e.g. applications can be processed within 24 to 48 hrs.

**11. 21 Day Rule**

The 21 Day Rule has been adhered to.

**12. Additional Information**

Not applicable