

EXPLANATORY MEMORANDUM TO

[The Rehabilitation of Offenders (Exceptions) (Amendment) Order (Northern Ireland) 2023]

SR 2023 No. 17

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, who are seeking to act as adult placement carers in accordance with the Adult Placement Agencies Regulations (Northern Ireland) 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 (NI) 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 of Health sought this change in the Regulations to bring arrangements for Enhanced checks for adult placement carers in line with the arrangements for children being placed in private households, the regulations for which create eligibility for 'full household' checks, including those under the aged of 16. Section 113B(2)(b) of The Police Act 1997 requires that applications for Enhanced disclosures must be

included within the exemptions in the 1979 Order, thereby enabling the full criminal record to be disclosed (subject to filtering rules).

- 3.5. This Order inserts a new exclusion into Article 2 of the 1979 Order (pursuant to Article 5(4) of the 1978 Order), allowing exempted questions to be asked of applicants seeking to act as adult placement carers, and those who reside in the same household as the adult placement carer, including those under the age of 16. In so doing, it requires applicants seeking to act as adult placement carers, along with all those who reside in the same household, to disclose all spent convictions.

4. Consultation

- 4.1. There has been no consultation on this matter as this is considered a narrow amendment to facilitate a change requested by the Department of Health. The Department believes a public consultation would be disproportionate 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 sought in relation to applications from adult placement carers. It will be a matter for the Department of Health to consider payment of these fees as they fall due.

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.

11. Additional Information

- 11.1. Not applicable.