

EXPLANATORY MEMORANDUM TO
THE POLICE ACT 1997 (CRIMINAL RECORDS) (REGISTRATION)
REGULATIONS (NORTHERN IRELAND) 2007

2007 No. 3283

1. 1.1 This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.

1.2 It contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 The instrument gives effect to those sections of Part V of the Police Act 1997 which make provisions that will allow specified third parties to obtain disclosure of an individual's spent and unspent convictions and any other relevant information about him or her which the police are holding. The intention behind the instrument is to help the third parties, who chiefly will be employers and volunteering organisations providing services to vulnerable groups, to make informed and safer recruitment decisions which should reduce the risk of taking on persons with an unsuitable background. Other employers, who are responsible, for example, for making appointments to sensitive posts of a fiduciary or judicial nature; will be able to obtain the same or a lower level of disclosure but only where the position to be filled is specified in, or otherwise covered by the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979.

2.2 Part V of the Police Act 1997 also provides that the Secretary of State shall be responsible for exercising any and all functions in connection with the registration of persons or bodies seeking to use the new disclosure service unless he delegates responsibility for those functions to someone else. The Secretary of State has delegated his responsibility in this regard to Access Northern Ireland, or ANI for short. Employers and volunteering organisations, who employ individuals to work with, for example, vulnerable groups, will wish to use the services on offer from ANI given they are required by statute, for example, the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003, to be satisfied as to those individuals' suitability for working with children or vulnerable adults. In order to be eligible to obtain disclosures, the employers and volunteering groups concerned must first become registered with ANI and fulfil all the relevant requirements of the instrument.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

4. **Legislative Background**

4.1 Sections 120ZA; 120AA and 125 of Part V of the Police Act 1997 are the bases of these regulations.

4.2 Section 122 of Part V of the Police Act 1997 is the basis for the Code of Practice (incorporating an Explanatory Guide)

5. **Territorial Extent and Application**

5.1 This instrument applies to Northern Ireland.

6. **European Convention on Human Rights**

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. **Policy background**

7.1 Insofar as the instrument will bring sections of the Police Act into operation, it will not change the policy of that Act and to this extent; public interest is expected to be minimal.

7.2 The instrument will enable employers and volunteering organisations in Northern Ireland to make more informed and safer recruitment decisions in that it will require them to carry out extensive checks on the identity and previous history of the subject of the disclosure. It will also, as registered users of the new disclosure service, give them access to a wide range of police and government records which cannot be accessed currently.

7.3 Regulation 5 of the instrument provides that a fee of £150 shall be levied on employers and volunteering organisations for the purposes of registration with ANI. All those seeking registration will have to pay this fee regardless of their means and this will apply to employers and volunteering organisations alike. As some volunteering organisations may find this particular requirement financially burdensome, public interest is likely to be more than minimal.

8. **Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. **Contact**

Philip Melarkey at the Northern Ireland Office, Tel: 028 90528680, or e-mail: Philip.melarkey@nio.x.gsi.gov.uk; can answer any queries regarding the instrument.

REGULATORY IMPACT ASSESSMENT

The Police Act 1997 (Criminal Records) (Registration) Regulations (Northern Ireland 2007).

1. These regulations are based on Part V of the Police Act 1997¹, or Part V for short. They introduce legislation to govern the registration of persons or bodies who may ask exempted questions under the provisions of the Rehabilitation of Offenders (Exceptions) (Northern Ireland) Order 1979 (the Exceptions order)² or questions for prescribed purposes under Part V. The disclosure body concerned is Access Northern Ireland, or ANI for short, which is being set up by government to act as the central body in Northern Ireland for the disclosure of a person's criminal and/or police record.
2. It will begin operations to register users from 17 December 2007 and it is anticipated that it will begin issuing criminal records disclosures the following April 2008. These regulations are concerned with the Registration aspects of the disclosure, however, as this is a new scheme and the regulations cannot be considered in isolation, this RIA deals with the AccessNI service in entirety as well as the regulations themselves.

Background

3. Part V provides a statutory framework for employment checks required prior to taking up certain types of employment, whether paid or unpaid. Although Part V applies to Northern Ireland it has never been implemented; as a result, checking in Northern Ireland takes place by arrangement and has no specific statutory basis. The Secretary of State commissioned a former senior civil servant, Jim Daniell, to conduct an in depth review of this area, with a view to making recommendations for reform. The report of this review was presented to the Secretary of State in May 2004 and, *inter alia*, recommended that the Northern Ireland Office should deliver the full implementation of Part V as soon as practicable.
4. The report identified that the lack of a comprehensive statutory foundation for the system presented two significant risks:
 - **uncertainty within the system** as there is no legislative basis for the disclosure of non-conviction information; and
 - **a lack of effective protection** as the scope of information included in the existing checking process is not always sufficiently extensive.

¹ 1997 c..50.

² S.R. 1979: Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979

5. In response, the Policing and Security Directorate of the Northern Ireland Office, with significant support and commitment from the Department of Health, Social Services and Public Safety, the Department of Education and the Police Service of Northern Ireland, has established a multi-departmental project group, the Employment Checking Reform Implementation Team (ECRIT), to drive this work forward. employers of those working with or wishing to work with the vulnerable for example, must have access to a disclosure service that will provide them with information about applicants' criminal or other police records; hence the need for a disclosure service.

Options for Establishing a Disclosure Service for Northern Ireland

6. Government considered three options for setting up a new central disclosure service for Northern Ireland as set out below:-

- (i) Greenfield – an entirely new checking body, distinct for Northern Ireland and equivalent to the Criminal Records Bureau (CRB) for England and Wales or Disclosure Scotland (DS), its Scottish equivalent.
- (ii) Outsourcing – employment checking and associated services are delivered for Northern Ireland through pre-existing systems used by CRB or DS.
- (iii) Enhancing existing systems – Part V is operated using existing technologies and structures, with functions spread across a number of areas.

7. The Government has decided to implement Part V using the model described at Option 6 (iii). The core reasons for the selection of this choice are set out below:

- It was by far the preferred choice of consultation respondents.
- It is the most cost effective option both in terms of capital and running costs and service effectiveness.
- It provides local control over the system, in particular control over pricing policy and prioritisation of work.
- It provides the local platform for Northern Ireland's citizens to gain access to the Independent Safeguarding Authority.

Benefits

8. With the establishment of any new body, there is inevitably a certain amount of disruption and transitional working. Perhaps the most significant change for Northern Ireland is the introduction of fees. It is therefore important that government clearly sets out the benefits of reform, properly demonstrating why change is necessary. The Government has identified the following benefits flowing

from the implementation of Part V:

- The establishment of a ***Legislative framework***. At present, there is a degree of uncertainty throughout the system arising from the lack of a statutory basis for the disclosure of criminal and police records. A legislative system will address this uncertainty, producing end to end improvements in processes through clear roles and responsibilities.
- Checks will be carried out against ***UK-wide records***. Part V will allow Northern Ireland to benefit from, for the first time, a system which automatically provides for a check against criminal records from across the UK. This manages the risk that some applicants may not reveal a true previous address history. In addition, it will allow Northern Ireland to be part of national reforms in this whole area.
- The move to a statutory system will also lead to greater ***confidence***, both for customers and for those operating the system. Confidence amongst ***employers*** will increase with the knowledge that they now have accurate and timely information to assist with their recruitment decisions. A vital part of making the right decisions is having confidence; both in the information provided and the ability to make decisions on the basis of that information. Furthermore, the Police will be surer of their grounds in releasing sensitive information.
- The increased ***investment*** generated by fees will ensure the system is able to cope with the rapidly growing demand for disclosures. As new systems for regulating professions are introduced, employers and voluntary sector organisations increasingly appreciate the importance of vetting their staff given 2004 saw the number of criminal records disclosures under the existing arrangements in Northern Ireland increase by more than ***6,000***.
- ***Increased access to criminal records***. As noted above, organisations face a number of risks which could be more effectively managed through the use of a Part V disclosure. However, at present, access to disclosures is very strictly limited. The PSNI are regularly approached by organisations seeking disclosures on prospective employees, but unfortunately, without a legislative basis for providing third party access to criminal records; police must make decisions on a case by case basis, through reference to the common law. Protections are therefore reduced as those who would gain legitimate access under Part V are unable to currently. The new system will effectively address this, as Part V sets out very clearly which positions warrant disclosures, the type of disclosure this will be and, crucially, who can seek them.
- ***Increased scope of checking***. Part V allows for the specification of additional sources of relevant information as part of the checking process.

- ***Harmonisation with other systems in the UK.*** England, Wales and Scotland have already established systems through Part V. Given the significant amount of migration throughout the UK, it is crucially important that each disclosure body is able to properly work together, and that consistency in the way each operates, is achieved. It is the Government's view that the most effective way to ensure this is to establish systems that have their bases in Part V.
- ***Matching pace with the Bichard reforms.*** The recommendations of the Bichard report into the terrible events at Soham, represent a significant package of measures which fundamentally will change the way in which Part V works. By moving to a Part V based system, the Government will be in the best position to implement the Bichard reforms in Northern Ireland, ensuring that the community will be able to benefit from the improved new systems and more effective safeguards.
- ***Streamlined processes.*** A key difficulty with present arrangements is the complexity of the processes and procedures, leading to confusion, bureaucracy and delay. The new system will provide a simplified one-stop-shop for all users.
- ***Increased customer support.*** An important feature of the new system will be more effective support for users, both in terms of written guidance on how to use the system and the information it provides, and one-to-one support directly from the checking body itself. This is something which has been identified as a critical deficiency in present arrangements.

Registration

9. Persons or bodies who are registered with ANI are known as Registered Bodies (RBs). Part V requires that organisations register with AccessNI before they can make applications. Registered Bodies are responsible for countersigning applications that are made to ANI by applicants for Standard or Enhanced Disclosures.

10. Before countersigning and submitting such applications to ANI under Part V; Registered Bodies are responsible for verifying the applicant's identity and for confirming that the post for which the disclosure is being sought is eligible for a Standard or Enhanced Disclosure.

11. To be eligible for a Standard Disclosure, a post must be one for which an RB is entitled, by the Exceptions order, to ask exempted questions. To be eligible for an Enhanced Disclosure, the RB, as well as being entitled to ask an exempted question under the Exceptions order, must also be able to state that the disclosure is required for a prescribed purposes, such as, for example, determining whether or not the job applicant is suitable to work with children or vulnerable adults. Part V will also provide the basis for another set of regulations, to be called the Disclosure

regulations, which will prescribe the circumstances which must be fulfilled before ANI can issue any level of disclosure and they will also list or prescribe the purposes for which an Enhanced Disclosure may be applied for and issued by ANI.

Purpose and intended effect

12. ANI will begin operations to register RBs during December 2007. It is being set up to meet demands for a more comprehensive and effective means through which employers, voluntary organisations and others can obtain details of an individual's criminal history as part of the recruitment process. This information will help employers assess applicants' suitability to work with children, vulnerable adults and/or their suitability to work in certain other positions of trust.

13. There will be three levels of disclosure available: Basic, Standard and Enhanced. A Basic Disclosure can be applied for directly by an individual. It shows the individual's unspent convictions if any. Standard and Enhanced Disclosures provide information on an individual's unspent and spent convictions. If the post being applied for requires it, a check of the lists held by other Government departments identifying a person as unsuitable to work with children and vulnerable adults is also undertaken. In addition to this, where the application is for an Enhanced Disclosure, any local information held by a police force and which is deemed by the chief officer to be relevant to the position in question, will be disclosed. Applications for Standard and Enhanced disclosures must be countersigned by RBs. The purpose of a countersignature is to certify that the application for a Standard or Enhanced disclosure is required for the purpose of asking an exempted question under the terms of the Exceptions Order. The RB is also asked to confirm, by its countersignature, that the requisite documentation and information has been supplied by the applicant and duly checked by it in accordance with ANI guidance. An application for a post to which the Exceptions Order applies, means that information about the applicant's spent and unspent convictions must be disclosed by him or her; and, where appropriate, taken into account when assessing his or her suitability for certain types of employment which may involve working with children or vulnerable adults or in other positions of trust.

14. Section 120 of Part V provides that an RB is an office holder, individual or organisation listed in a register maintained by ANI for the purposes of Part V. The section provides that a person applying for registration must be likely to ask exempted questions under the Exceptions order or be likely to countersign applications for Standard or Enhanced Disclosures and be:-

- a) a body corporate or unincorporate,
- b) a person appointed to an office by virtue of any enactment; or,
- c) an individual who employs others in the course of a business.

15. The proposed registration conditions are set out in the Police Act 1997 (Criminal Records) (Registration) Regulations (Northern Ireland) 2007 or the regulations for short. The regulations apply in Northern Ireland and in particular:

- a) Require RBs to pay the initial registration fee which must accompany the registration application form. RBs are also responsible for paying the fee for the second and each subsequent counter signatory. Whilst the onus will be on the applicant to pay the appropriate disclosure fee (although RBs can bear the cost if they choose); it will be the RBs' responsibility to submit the fees to ANI. ANI will retain the right to grant exemptions to these general rules in, for example, cases where checks are for certain volunteers.
- b) Require RBs to provide to ANI, details of charges, if any, they impose for their services as an Umbrella Body (UB). These charges may be published by ANI, allowing any organisation wishing to use the services of a UB to be able to compare the charges and services offered by other UBs in order to make an informed choice of where to take their business. The UB will also be obliged to publish such charges in its own publications. ANI takes the view that ensuring the transparency of charges and by allowing market forces to prevail, will address any concerns about excessive charges that might be levied by some UBs.
- c) place a duty on RBs to exercise all due diligence when completing a disclosure application.
- d) Place a duty on RBs to ensure that the position applied for is specified in or otherwise covered by the Exceptions order.
- e) Require RBs to take reasonable steps to ensure that applications for 'free of charge' disclosures for certain volunteers satisfy the conditions for same which may be specified in the Police Act 1997 (Criminal Records) (Disclosure) (Northern Ireland) Regulations 2007 which are not due to come into force until April 2008.
- f) Require RBs; or their authorised agents, to verify the identity of the applicant by complying with conditions that will be set administratively by ANI. There will be a responsibility on RBs to ensure both the suitability of any authorised agent and that he or she has received appropriate training in checking the identity of applicants.
- g) Require RBs to comply with ANI's Code of Practice which is compiled and issued under the powers provided by section 122 of the Police Act 1997. The direct sanctions against RBs which do not comply with; or breach, this Code of Practice are: non-issue of a disclosure; and suspension or cancellation of registration.
- h) Require RBs to comply with any reasonable request for information that will enable ANI to make a decision on the suitability or continued suitability of registered persons. Where necessary, this might even include requests to see a wide range documents about organisation.

- i) Require RBs to inform ANI of any changes to details held on the register. This includes changes to certain personal and organisational details and also to inform ANI if a counter signatory is no longer a counter signatory. This will enable ANI to maintain an up to date register of all RB details.
- j) Require any RB that has been suspended or removed from the register, to pay for all applications knowingly submitted to ANI after the commencement of a period of suspension or removal from the register.
- k) Enable ANI to suspend or remove from the register, any RB that does not comply with any of the above conditions of registration.

Objectives

16. These regulations will seek to formalise RB responsibilities, and provide an enforcement mechanism for non-compliance.

17. An ANI Disclosure is an integral part of a robust recruitment process for employing people to work with the vulnerable and/or in positions of trust. In providing wider access to accurate criminal record information for employment vetting purposes, ANI is under a duty to deliver the service in the most effective and efficient way possible. It is recognised that the effectiveness of the end to end process is not solely the responsibility of ANI but that the RBs have a central role to play.

18. RBs are the channel through which applications for Standard and Enhanced Disclosures are submitted to ANI. As such they have a responsibility to ensure that application forms are fully and accurately completed.

Registration Charge

19. Given ANI is required to be self financing; a one-off registration fee will be levied on those wishing to register with it. In the first year of operation, ANI will charge £150 for a registration which, it is estimated, should cover the costs of processing a typical application for registration. The level of this fee, which corresponds to a similar charge made by Disclosure Scotland, will be reviewed after the second year ANI is in operation in order to ensure it recovers the true costs of processing a typical registration.

20. Consideration was also given to imposing an annual recurring registration fee to cover the costs to ANI of ensuring, as recommended by Sir Michael Bichard in recommendation 21 of his report, that RBs meet their responsibilities. This is not being considered further at this stage as it is presumed the RBs will, in view of the higher profile being given to the importance of child protection, meet all their responsibilities. This situation will be reviewed if ANI incurs additional costs in ensuring that RBs are meeting their responsibilities. If it becomes necessary for ANI to recoup its costs in these circumstances, it will consider imposing a continuing registration charge which may be levied annually or at a longer period, depending on

the costs it incurs in ensuring RBs meet their responsibilities. Decisions will have to be taken at that stage as to whether all RBs should pay a continuing registration fee or whether it should be levied only on those whose performance in meeting their responsibilities, is substandard or whether the cost of enhanced disclosures in particular should be increased.

21. From the very beginning of its operation, ANI will be monitoring closely, the performance of all RBs to satisfy itself they are meeting their responsibilities as otherwise; there will be a real risk to the integrity of the disclosure service itself. For example, ANI will wish to be assured there are no discrepancies in RBs' identity checking procedures or in their handling and storage of sensitive information. Poor levels of performance by RBs will also, if left unchecked, pose a serious risk to the protection of children and vulnerable adults and if evidence of poor performance comes to light, ANI will take steps to ensure it is remedied.

22. Initially, in view of the relatively small size of the customer base, ANI, unlike the Criminal Records Bureau for England and Wales, will not be setting any lower limit as to the number of disclosure applications an individual RB is required to make annually. This means there will be not be any limit on the number of RBs registered with ANI given the number of applications submitted annually by an individual RB, will not be a condition for continuing registration. If, however, the number of RBs becomes such that ANI's ability to provide a fast and cost efficient service to all RBs is adversely affected, consideration will be given at this point to reducing the number of RBs. This will be achieved by requiring RBs, as a condition of continuing registration, to submit a minimum number of applications annually. Where an RB does not meet this threshold, ANI will consider removing its registration. This will require legislation, in the form of a suitable amendment to these regulations; which will require ANI to de-register a RB which does not meet whatever minimum number as may be specified in the amendment to the regulations. A RB which is deregistered in these circumstances, will be able to use the services of an another RB which is not de-registered, for the purposes of submitting on its behalf, disclosure applications to ANI (see next paragraph also).

Umbrella Body

23. A de-registered RB would still be able to access ANI through another RB which may charge for its services. Such a RB will be called an Umbrella Body (UB) and will be an employer or an organisation which can satisfy the registration conditions stipulated in these regulations, even if it is unlikely to ask an exempted question itself but wishes to countersign applications on behalf of others that are entitled to do so.

24. In Northern Ireland, UBs will not be restricted as to the organisation they may act for and they may process disclosure applications for any organisation that is entitled to ask exempted questions. This is unlike the situation that applies in GB where there are "restricted" and "unrestricted" UBs. In GB, a "restricted" UB may only act on behalf of organisations that are within the same field of activity as itself whereas an "unrestricted" UB may act for any organisation, regardless of its field of

activity. Accordingly, UBs in Northern Ireland will be “unrestricted” and may act on behalf of any organisation that is entitled to ask exempted questions.

Performance expected of RBs

25. The Independent Review Team (IRT), set up by the Home secretary in late 2002, recognised the risk to any disclosure service that is posed by an ineffective RB network particularly as regards checking applicants’ identities. The IRT also expressed concerns about the performance of RBs and these concerns were further supported by Sir Michael Bichard. In his final report of the Inquiry, which he made to the Home Secretary, Sir Michael noted, in relation to recommendation 21, that he was:

“... concerned about the unacceptable level of performance by some Registered Bodies in meeting their responsibilities..... This represents a considerable risk to [any disclosure service]. RBs should meet their responsibilities and I support steps to ensure that they do so.” Accordingly, these regulations, through the imposition of sanctions, seek to ensure that RBs will comply with their provisions and the accompanying Code of Practice.

26. One area of RB performance that causes concern, is the number of incomplete or inaccurate application forms which CRB receives. CRB returns on average 23% of application forms each year to RBs either because they are incomplete or completed incorrectly. CRB are of the view that this high error rate can be attributed to the fact that there are too many RBs which submit too few Disclosure applications in any year. CRB is now in the process of introducing a phased reduction of the RB network which it hopes to achieve by making it a requirement for continuing registration that each RB must submit a minimum number of applications annually. CRB believes that if action is not taken to reduce the number of RBs in this way, the high error rate will continue and add to the costs incurred by it and the RBs, not least because it results in an increase in the average time taken to issue a Disclosure certificate.

27. Based on CRB’s experience, ANI expects there will be a high error rate in the first year of operation. If this continues into the second year, ANI will look at ways to reduce the error rate by, for example, reducing the size of the RB network or if necessary improving its guidance on completing forms. ANI, like CRB, may consider making it a requirement for continuing registration that RBs submit a minimum number of applications each year. If this requirement is introduced, the purpose will be to make the Northern Ireland network of RBs more manageable and thereby enable ANI to focus its resources more efficiently and effectively towards assuring itself that the RBs’ performance is in compliance with its Code of Practice. In addition, there are administrative and financial burdens associated with running and administering the RB network which ANI will take into account when reviewing the fees it charges for disclosures and registrations given all costs incurred must be reflected in such fees as ANI is required to be self financing.

28. It is essential RBs carry out rigorous identity checks. If Disclosure applications are accepted by ANI without the RB undertaking rigorous identity

checks, there could be scope for an unsuitable person to circumvent the system in order to obtain a 'clean' Disclosure by passing himself off as another person.

Consultation

29. ANI will continually keep the RBs informed of proposed changes that could affect them. If, for example, it intends to reduce the size of the RB network, it will enter this on its website, send a group e-mail or send a mail shot to all lead counter signatories. In addition, it will consult with key stakeholders and consultative groups including amongst others, the voluntary sectors, independent schools and the sports and leisure sectors.

30. On 30 November 2004, ANI held a consultation event for key customers and stakeholders which provided opportunities for them to give their views directly to the department on the existing system for disclosing criminal and police records and on implementing Part V. This event also explored the options for the delivery of a disclosure service for employers and volunteering groups in Northern Ireland and identified the preferred option which was to enhance the existing systems for employment checking. The government's proposals for implementing Part V; namely, that it should be commenced and implemented in Northern Ireland through the enhancement of existing systems for pre-employment checking; were developed following this consultation event.

31. This was followed by a much wider written consultation exercise in which over 500 organisations were issued with a consultation paper 'Safer Recruitment in Northern Ireland' which was published on 16 February 2005 and included a Regulatory Impact Assessment and an Equality Screening Assessment. These included not only the key customers and stakeholders but also others who appeared to the department to have responsibility for, or an interest in, protecting the vulnerable. They were asked for their views on implementing Part V through the enhancement of existing pre-employment checking systems and also on a number of policy, structural and procedural issues. The written consultation exercise lasted 13 weeks and ran from 16 February until 18 May 2005. Consultation has continued throughout the ECRIT lifecycle through means of a Stakeholder group which forms part of the Programme Structures. ECRIT seeks views from this group on a regular basis and in a number of formats.

32. The ECRIT will hold information sessions prior to going live for its stakeholders which will cover areas such as completion of the application forms; the types of disclosures available; their responsibilities under the legislation and Code of Practice; the employment of ex-offenders; the dispute resolution process; and customer support. Comprehensive guidance on all these areas will be issued to stakeholders beforehand and if necessary, information and advice giving seminars will take place.

Consultation Outcomes

33. Altogether, 32 responses were received over the 13 week consultation period and the overwhelming majority of respondents were in favour of implementation through enhancing current local systems to support the implementation of Part V.

This is the implementation model selected. Further consultation has taken place on specific aspects of the scheme and the results of these processes have been given effect as appropriate.

Issues Raised in the Consultation

34. **Application Form:** Valuable comments were also received on issues such as the government's proposed application forms to support the new disclosure service. Those who responded said the proposed application forms were much simpler and easier to use than those in current use which some thought to be overly complex. The new application forms will be prescribed in the legislation and the schedule to these regulations contains the prescribed application form (or one to like effect) RBs will have to complete to apply for registration.

35. **Subject Identity:** The consultation paper also sought views on verifying the applicants identity by proposing that of all the documents used to support the verification of an applicant's identity; at least one should contain his or her photograph. While the majority of respondents were content with this proposal, others were concerned that applicants might have difficulty providing photographic identification.

36. In recognising these concerns, the government will not insist on photographic proof of identity but will make it clear to RBs that there is a clear reference in favour of it and that wherever possible they should seek photographic evidence of identity. The government's stance on this issue is in line with its obligation to implement the recommendations of the Bichard Inquiry as regards verifying the applicant's identity given recommendation 24 provides that "There should be an expectation that documents produced to confirm identity should, wherever possible, include a photograph."

37. **Umbrella Registered Body:** Views were also sought on the creation in Northern Ireland, of an Umbrella Registered Body (URB) to support the voluntary sector. This is distinct from; and should not be confused with, the "Umbrella Body" mentioned in paragraphs 23 and 24 above. Although this found favour amongst the majority of respondents, there was little consensus as to what its actual role and function would be and moreover, some responses argued against its creation on the grounds it would mirror the bureaucracy and complexity of the current system given its range of functions would, of necessity, be too extensive. In arriving at its response to this issue, the government took account of the fact that bodies already exist who deliver relevant training and support to the voluntary sector. It also took into account the problems experienced by the Central Registered Body in Scotland, on which the URB would be modelled were it to be established in Northern Ireland. It has an oversubscription of voluntary groups relying on its services and this has adversely affected its ability to process disclosure applications within reasonable time limits. Having considered the comments from consultees and the experience of the Central Registered Body in Scotland, the government has decided that support for the voluntary and community sector should be delivered by existing third party training and support suppliers and linked, where possible, to existing schemes.

38. **Fees for Using the URB:** The consultation paper also sought views on whether a much reduced fee should be levied on individual voluntary and community groups for services they receive from the URB, were it to be set up. Most consultees were against this idea because the introduction of any sort of fee for these groups could result in their non-compliance with recruitment requirements because of a lack of funds and a perception of high cost.

39. Given the clear opposition to passing on any costs to the voluntary and community sector, the government no longer proposes this course of action as the risk of the voluntary and community sector not seeking disclosures is a serious one which could lead to a reduction in the protections provided to the vulnerable. Therefore, it is not proposed at this time to introduce a charge for the voluntary and community sector for any potential “umbrella” services.

40. As ANI is required to be self financing, the government proposed in the consultation paper that paying applicants should, by means of increased fees, pay for the cost of free checks for the voluntary and community sector. Nearly all consultees disagreed with this proposal and felt such costs should be borne by government otherwise paying applicants would be discouraged from seeking disclosures.

41. Notwithstanding that nearly all consultees disagreed with this proposal, the fact remains that an entirely free service for the voluntary and community sector must be met somehow. Government funding is a limited resource which has to be properly controlled and carefully managed. As part of a continuing commitment on the part of government to maximise the effectiveness of public resources, we have decided that the new disclosure service should be self financing and that it should recover its full costs through the imposition of fees for registration purposes and for providing Disclosures. This will include any costs arising from support required by the voluntary and community sector and we propose therefore, that the cost of providing free disclosure services to volunteers along with any other support costs; should be met through cross-subsidisation from paying customers. The government will strive to minimise this burden but will be guided by the overarching need to ensure a reasonable cost per check.

42. In particular, the government will seek to reduce the burden on paying applicants by defining in legislation, the volunteers who will merit a free check and these will not include volunteers who are in any way connected with the delivery of statutory or other like services (see also paragraph 15 (e) above). This is different to the situation that applies in England and Wales where all volunteers receive free checks regardless of the nature or status of the service they help to deliver. The government intention is to provide free disclosures for volunteers in large or small volunteering and community organisations in Northern Ireland who contribute real benefit to their communities. It is excluding volunteers working for government or government type bodies, such as hospitals and schools, as these bodies should be in a position to pay and that it is fair they are asked to pay; thereby reducing the burden on all paying applicants.

43. **Check of Databases:** Consultees were also asked for their views as to whether, for the purposes of an employment check, databases, other than those containing UK criminal and police records, should be checked by the disclosure

service. They considered it desirable that the new disclosure service should be able to access as broad a range of relevant databases as possible. The Serious Organised Crime and Police Act 2005 will provide the new disclosure service with the necessary legislative power to identify and search a number of databases such as those held by the Passports Agency and the Department for Work and Pensions. As the new disclosure service improves and develops, it will explore ways whereby its disclosure searches can be made more comprehensive and exhaustive by using these legislative powers if necessary.

44. There was also consensus that in view of the significant economic migration to the UK from the Republic of Ireland, other EU Member States and other countries outside the EU/EEA, the new disclosure service should be able to access relevant databases in those countries. The government accepts that international links are an important area especially as Northern Ireland shares a land border with the Republic of Ireland and, as part of its programme of work in implementing the Bichard recommendations, it has reached agreement in principle that existing co-operation in this area will be strengthened and enhanced. The CRB are currently considering whether the existing links with other EU/EEA Member States and third countries need strengthening and ANI will join in any new arrangements that emerge.

45. **Code of Practice (Code):** A number of consultees asked for further information about the Code of Practice; how the new disclosure service will be regulated; and how it will impact on RBs. Basically, the Code will form part of the legislation that will apply to the new disclosure service and broadly speaking, it will set out the obligations of RBs' throughout the disclosure process. Failure to comply with the Code, may result in the refusal to grant a disclosure application and, possibly, deregistration. RBs are responsible for complying with the Code and ANI will be taking whatever measures are necessary to ensure they do.

46. **Disputed disclosures:** Some consultees asked for more information as to how disputes about the accuracy of disclosures would be resolved. Part V provides a mechanism for disclosures to be disputed by any applicant. Basically, anyone disputing the disclosed information will have to apply for a new disclosure and give details of the information they think is incorrect and what, in their view, it should be. A second search of the relevant records will be carried out and if this reveals that the original disclosure was wrongly made, a new disclosure certificate will be issued containing the correct information. If, however, it is found that the original disclosure was correctly made, it will stand and if an applicant is still unhappy with this outcome,

he or she may take the matter up with the owner of the relevant information.

47. On **training and guidance** for employers and RBs, a number of consultees who responded asked for clear guidance and training on any new arrangements that are introduced, particularly as regards operational matters and legislation whereas others expressed their concerns about the potential for mishandling and miss-storage of disclosures. In the run up to the new disclosure service coming into operation, awareness sessions will be held for employers and RBs. These sessions will provide information on using the new service and guidance will also be produced by ANI on using the new system. The guidance will be issued to RBs as part of the application process and it will cover the following:-

- The types of checks
- Guidance for RBs
- Guidance for those who wish to set up as Umbrella Bodies
- Volunteers
- The Code of Practice (see paragraph 45 above)
- Guidance on employing ex-offenders
- The application form and its completion
- Disputes resolution procedure
- Customer support

Equality Screening Assessment:

48. **Section 75 of the Northern Ireland Act 1998:** The consultation document included an Equality Screening Assessment on which views were also sought. The assessment concluded that the implementation of Part V in Northern Ireland would not have an adverse impact on any of the categories of person covered by Section 75 of the Northern Ireland Act 1998. In its response to the consultation document, the Equality Commission for Northern Ireland (the Commission) identified a number of particular issues for individuals who fall within the scope of Section 75.

49. **Political Opinion Assessment:** As regards political opinion, the Commission argued that any review of current disclosure arrangements should take into account those ex-prisoners in Northern Ireland who consider their convictions to be politically motivated. Given Northern Ireland's unique history, the Commission expressed concern that the consultation paper did not address this issue and stressed that guidance should be provided for employers on how to address the assessment of convictions with a politically motivated dimension.

50. Part V, on which the new disclosure scheme is based, does not differentiate between the nature or types of conviction or the context in which any crime was committed given it is instead concerned with an individual's criminal or police record and its relevance to the position for which the individual is applying. This is why the Equality Screening Assessment, which was included in the consultation document, focused on whether or not an individual has a criminal or police record rather than the circumstances which gave rise to its creation. Moreover, under Part V, the existence of a criminal record should not constitute an impediment to employment unless it is very clearly incompatible with the position being sought. This means that employers should consider how any criminal record disclosed, impacts on the individual's ability to fulfil the position concerned rather than lead them to make any wider judgements about the individual's past or present political opinions or beliefs.

51. The government view is that employment decisions should be based upon all the information that is made available in the course of the recruitment process and it is therefore incumbent on every employer to make a reasonable and proportionate decision when considering any criminal records that may be disclosed. To help employers in this regard, the government agrees that they must be given effective guidance in order to help them make the right choice and to have the confidence to employ an individual with a criminal record, where this is the right decision. As well as protecting the vulnerable, the disclosure scheme must protect the rights of

individuals and safeguard those with criminal records from unfair discrimination by employers.

52. Under the current, non statutory, arrangements for the disclosure of criminal records, there is little if any guidance available to employers as to how they should use or interpret the records proportionately. The end effect of this could be that employers may think it is safer not to recruit someone who has a criminal record or they may perhaps wrongly believe that they cannot recruit or continue to employ someone who has a conviction. There is also anecdotal evidence to suggest that some ex-paramilitary prisoners find it difficult to get jobs on account of the nature of their convictions. Although there is no hard evidence to suggest these effects are actually happening in practice, the potentially unfair or disproportionate impact of previous convictions is something the government will address by issuing the guidance mentioned in the previous paragraph. In addition to this guidance, the Disclosure scheme will incorporate the following new elements that are designed to protect the rights of any individual with a criminal record:

- The disclosure of a criminal record should be the last stage in the employment process and therefore the decision to employ the individual should already have been made
- The financial and administrative costs of obtaining a disclosure should inhibit checking for the purposes of eliminating from the recruitment process, those with criminal records
- each RB will be required, as a condition of registration with the disclosure service, to agree to and abide by, a Code of Practice which will clearly set out what their obligations are as regards, for example, having a written policy on employing ex-offenders, which must be made available to all job applicants; and,
- applicants will be able to see for themselves the criminal record that was disclosed and will be able to make their own judgement on the fairness or otherwise of the employment decisions that were taken in their cases when weighed against the employer's written policy on employing ex-offenders.

53. The government expects that these elements of the new scheme, when combined with effective guidance, will have a positive impact on the quality of decision making as regards the recruitment of ex-offenders and it believes that if applied properly and combined with a rigorous recruitment process, they will result in safer and fairer employment decisions. The implementation of a Part V-based disclosure scheme should, therefore, improve the current situation and will not have a negative impact on ex-prisoners whose crimes were politically motivated.

54. The Commission also pointed out that the Fair Employment and Treatment (Northern Ireland) Order 1998 (FETO), which provides protection against discrimination on the basis of religion or political belief, does not provide protection for an individual whose past or present political beliefs include the approval of; or, acceptance of; violence as a political tool. While Part V will have no impact on the

operation of FETO, it is important the government is satisfied that the new disclosure scheme does not have a disproportionately negative impact on this group.

55. **Race and Equality Impact Assessment:** The Commission pointed out that in 2001, the highest number of individuals who were born outside the UK or the Republic of Ireland, worked in the health and social services sectors in Northern Ireland and that these were employment areas in which a significant amount of vetting checks would be expected given both involved working with vulnerable groups. The Commission asked if government would take into account the difficulties these workers may face when asked to produce documents confirming their identities. It is accepted that identification schemes may disadvantage some workers more than others and this is especially the case where the migrant worker has only recently arrived in the country and has not had enough time to acquire the necessary documentation.

56. In recognition of this disadvantage, government will introduce an element of flexibility for relevant RBs insofar as they will be able to use their discretion as to whether or not the documents that actually can be produced by the applicant, reasonably establish his or her identity. This will also apply in, for example, the cases of political refugees who have come to this country because it was too dangerous for them to remain in their own countries. These applicants, although resident here for some time, may nevertheless be unable to produce the required documents because, for example, they are afraid that by obtaining same from their countries of origin, they will disclose their present whereabouts to the authorities in those countries and thereby place themselves or their families in grave danger. Again, in these cases, it will be left to the discretion of the RB/employer as to whether or not the evidence that can be produced is sufficient to reasonably establish the applicant's identity.

57. The Commission also drew attention to the difficulties that would be encountered in trying to check whether or not a migrant, including one who has recently arrived from abroad, has a criminal record in his or her country of origin. Whilst every effort should be made to carry out criminal records checks on these workers, the government recognises that for some countries at any rate, it may not always be possible to do so. In such cases, RBs should satisfy themselves they have explored all potential options for checking the criminal histories of potential employees from these countries and in any event, they should always make sure an application is made to the new disclosure service notwithstanding that the value of any check which is based on UK records is likely to be very limited.

58. **The Sex Assessment:** On sex, the Commission highlighted the possibility that the revised arrangements which the new scheme will introduce may have a higher impact on men compared to women given men have been convicted for criminal offences in greater numbers than women. In doing so, the Commission acknowledged that this must be viewed against the need to safeguard employers, the public; and in particular, children and vulnerable adults; and they pointed out that this made it very important to ensure that any scheme which is introduced must be applied fairly to each applicant.

59. Whilst it acknowledges the Commission's concerns that men will probably be affected more by the new scheme than women, the government view is that the

scheme has many features which are designed to ensure there will not be any unfair discrimination and it points out that under current arrangements, the disclosure of criminal records takes place without a legislative framework or the safeguards this will bring. The government also believes that in deciding whether an individual is suitable for a particular job; a disproportionate emphasis may be placed upon that individual's criminal record whereas such decisions must be made on the basis of the type of offence and its relevance to the position for which he or she is being considered. Employers and RBs will be reminded by the new disclosure scheme that this is the approach to take in all cases regardless of an applicant's sex and that each case must be considered on its merits. They will also be reminded that individuals should be refused employment on the basis of their criminal record only where they pose a risk to the vulnerable or have been banned from working with them as a result of their conviction.

60. **The Age Assessment:** On age, the Commission pointed out that in Northern Ireland, the meaning of "juvenile" is anyone under the age of 17 whereas in England and Wales, it is anyone under the age of 18 years. As this distinction is relevant to the operation of the Rehabilitation of Offenders legislation, the Commission argued that it could lead to confusion when screening out spent convictions. This difference has been addressed by the Justice (Northern Ireland) Act 2002 and it is recognised that when basic checks are being carried out, care will need to be exercised when applying the Rehabilitation of Offenders legislation in order to ensure fair and accurate disclosures.

61. **The Small firms impact Assessment:** A large proportion of RBs will be small businesses or charities. Responses to the consultation event on 30 November 2004; and to the subsequent written consultation exercise, which was launched on 16 February 2005; indicate there is strong support across all sectors, including this sector, for RBs taking on responsibility for all of the requirements they will have to fulfil under this legislation. Although RBs are currently fulfilling many of these requirements anyway, there was strong support for RBs becoming responsible for verifying an applicant's identity which the majority of them thought should not have any adverse impact or implications on their ability to deliver their respective services. There was also a majority in favour of introducing quality standards for identity checking which small firms and other small organisations will have to meet.

62. In the majority of cases, RBs were generally in favour of establishing a new disclosure service for Northern Ireland because it will mean -

- a faster delivery of disclosures than can currently be achieved;
- increased customer support;
- less complexity in applying for disclosures which could lead to lower administrative costs for RBs;
- greater confidence in disclosures as they will be based on a search of UK-wide databases which currently, is not the case.

63. Although it has been decided not to set up an Umbrella Registered Body (see paragraph 37 above) in Northern Ireland; and to rely instead on existing forms of support; the government will, nevertheless, keep the situation under review lest some

small firms and other small organisations, find it too onerous to comply with this legislation and its Code of Practice.

64. **The Competition assessment:** The majority of RBs will not be commercially affected by this legislation as they will be using the new disclosure service as part of their recruitment processes and the introduction of quality standards (see paragraphs 25-29) should not have an effect on competition. Competition in this regard will, however, come into play if more than one Umbrella Body (UB) is established to, for example, carry out checks on behalf of deregistered RBs; and each imposes a charge for the services it provides to RBs. In this eventuality, there will be competition amongst the UBs for the business involved.

65. **The Environmental Impact Assessment:** No impact on the environment has been identified.

66. **The Health impact assessment:** No impact on health has been identified.

67. **The Rural impact assessment:** No rural impact has been identified.

68. **Enforcement, sanctions and monitoring:** The required standards for RBs will be implemented by attaching conditions to registration. ANI will monitor compliance with such conditions and provide training and support where needed. Where it becomes necessary to suspend or remove from the register, an RB because it has breached the conditions of registration, this will be done under the provisions of this legislation which is based on Part V.

69. If a RB is suspended or removed from the register it will be open to it to make a fresh application for registration if and when it can demonstrate that it can meet the conditions. While the body remains deregistered, it may use the services of another RB or of an UB (see paragraphs 23 & 24 above) to access the new disclosure service on its behalf.

70. **Post implementation review:** ANI will monitor the performance of RBs in the year following the commencement of the regulations and identify those areas of weakness which, if left unchecked, could jeopardise the integrity of the new disclosure service. ANI will use this information and any other information which, for example, reveals common weaknesses in the completion of disclosure applications, to devise suitable guidance and/or training for RBs. ANI will continue to monitor the performance of RBs into subsequent years and take any remedial action it deems necessary to continually improve the performance of RBs. This monitoring and assurance process will also help ANI to identify those RBs which are not complying with the conditions of registration, including the conditions of the Code of Practice (see also paragraphs 23-25 above).

Summary:

71. The Government is implementing Part V of the Police Act 1997 in Northern Ireland. Following extensive consultation and continuous stakeholder engagement a delivery model has been developed that builds on the existing local systems and retains local control. The implementation of Part V will not only improve the

effectiveness of disclosure arrangements in Northern Ireland but it will also create a platform for participation in national reforms flowing from the Bichard Inquiry.

72. These regulations deal specifically with the registration of organisations to use the new service and set the requirements for and the conditions of registration. However, as they are being introduced for the first time in preparation for the introduction of the new scheme, the regulations must be considered in the context of the overall system.

Declaration and publication

“I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.”

Signed

Date

Approved by Paul Goggins, NIO Minister of State, on 4 November 2007

Contact point

Enquiries should be addressed to: Philip Melarkey, Employment Checking Reform Implementation Team, Northern Ireland Office, Room B3.6, Castle Buildings, Stormont Estate, Belfast BT4 3SG

Telephone: 028 9052 8680

Facsimile: 028 9052 8679

E-mail: Philip.melarkey@nio.x.gsi.gov.uk