

## **MEMORANDUM TO**

### **A Code of Practice for Third Party Recipients of Criminal Record Information.**

This memorandum has been prepared by the Northern Ireland Office to accompany a code of practice which is laid before Parliament in accordance with section 122(2) of the Police Act 1997, 1997 Ch. 50.

Access Northern Ireland (AccessNI) begins operations from April 2008. It is a new, statutory based, service for disclosing criminal records in Northern Ireland. From this date, it will replace the existing arrangements for disclosing criminal records which are operated by the Police Service of Northern Ireland.

Employers and other third parties wishing to use the new service will have to be registered beforehand with AccessNI and become registered persons.

Part V of the Police Act 1997 (the Act), in section 122(1), provides that the Secretary of State for Northern Ireland shall publish a code of practice in connection with the use of information provided to; or the discharge of any functions by, registered persons under the Act.

The Secretary of State for Northern Ireland has approved the following Code of Practice (Code) which has been prepared and published by the Northern Ireland Office.

An explanatory guide to the Code has also been prepared and published by the Northern Ireland Office to accompany the Code. While this explanatory guide is not part of the Code itself, it nonetheless contains useful guidance for registered persons who are required to comply with the Code.



**AccessNI**

CODE OF PRACTICE



**The Code of Practice (the Code) is intended to ensure that information released in Standard and Enhanced Disclosures is used fairly; and, to provide assurance to applicants that this is the case.**

**The Code also seeks to ensure that sensitive personal information is handled and stored appropriately and kept for only as long as is necessary.**

**Guidance to the Code, in the form of an Explanatory Guide, is contained in this document as well, after the Code.**

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# Section 1

## *Introduction*

The Code of Practice (the Code) is an important document that sets out the obligations which must be met by Registered Persons and other recipients of Standard and Enhanced Disclosure information.

It is intended to ensure that information released in Standard and Enhanced Disclosures is used fairly; and, to provide assurance to applicants that this is the case.

The Code also seeks to ensure that sensitive personal information is handled and stored appropriately and kept for only as long as is necessary. Guidance to employers on other matters will be issued separately.

The Code is published under section 122 of the Police Act 1997 (the Act) in connection with the use of information provided to registered persons (Disclosure information) under Part V of that Act.

Disclosure information is information:

- contained in criminal records certificates under section 113 of the Act (which are referred to in this Code as Standard Disclosures); or
- contained in enhanced criminal record certificates under section 115 of the Act (which are referred to in this Code as Enhanced Disclosures); or
- provided by the police under section 115(8) of the Act.

Except where indicated otherwise, the Code applies to all recipients of Disclosure information; namely,

- Registered persons;
- those countersigning Disclosure applications on behalf of registered persons; and,
- others receiving such information.

Where reference is made to “employers”, this should be read as including any person at whose request a registered person has countersigned an application, including;

- voluntary organisations and others engaging; or using the services of, volunteers; and,
- regulatory and licensing bodies.

Further information in relation to the Code; and other matters relating to registered persons and others having an involvement with Disclosure information, is contained in the Explanatory Guide (see later).

## Section 2

### *Obligations of the Code*

These are as follows:

#### **1 Fair use of Disclosure information**

Recipients of Disclosure information shall:

- observe guidance issued or supported by Access Northern Ireland (Access) on the use of Disclosure information; and, in particular, recipients of Disclosure information shall not unfairly discriminate against the subject of Disclosure information on the basis of conviction or other details revealed.

In the interest of the proper use of Disclosure information and for the reassurance of persons who are the subject of Disclosure information, registered persons shall:

- have a written policy on the recruitment of ex-offenders, so that a copy can be given to all applicants for positions where a Disclosure will be requested;
- ensure that a body or individual at whose request applications for Disclosures are countersigned, has such a written policy and, if necessary, provide a model for that body or individual to use.

In order that persons who are, or may be, the subject of Disclosure information, are made aware of the use of such information; and be reassured, employers shall:

- ensure that application forms for positions where Disclosures will be requested contain a statement that a Disclosure will be requested in the event of a successful application, so that applicants are aware of the situation;
- include in application forms or accompanying material, a statement to the effect that a criminal record will not necessarily be a bar to obtaining a position, in order to reassure applicants that Disclosure information will not be used unfairly;
- discuss any matters revealed in Disclosure information with the person seeking the position before withdrawing an offer of employment;
- make every subject of a Disclosure aware of the existence of this Code of Practice; and make a copy available on request; and,
- in order to assist staff to make appropriate use of Disclosure information in reaching decisions, make available guidance in relation to the employment and fair treatment of ex-offenders and to the Rehabilitation of Offenders (Northern Ireland) Order 1978 (SI 1978/1908 (NI 27)).

## **2 Handling of Disclosure information**

Recipients of Disclosure information:

- must ensure that Disclosure information is not passed to persons who are not authorised to receive it under section 124

of the Act. Under section 124, unauthorised disclosure is an offence;

- must ensure that Disclosures and the information they contain are available only to those who need to have access in the course of their duties;
- must securely store the Disclosures and the information they contain;
- should retain neither Disclosures nor a record of Disclosure information contained within them for longer than is required for the particular purpose. In general, this should be no later than six months after the date on which recruitment or other relevant decisions have been taken; or after the date on which any dispute about the accuracy of the Disclosure information has been resolved. This period should be exceeded only in very exceptional circumstances which justify retention for a longer period.

Registered persons shall:-

- have a written security policy covering the correct handling and safekeeping of Disclosure information; and,
- ensure that a body or individual at whose request applications for Disclosures are countersigned, has such a written policy; and, if necessary, provide a model for that body or individual to adopt.

### **3 Assurance**

Registered persons shall:

- co-operate with requests from ANI to undertake assurance checks as to the proper use and safekeeping of Disclosure information;
- report to ANI any suspected malpractice in relation to this Code of Practice or any suspected offences in relation to the misuse of Disclosures.

#### **4 Umbrella Bodies**

(a) An Umbrella Body is one which has registered with ANI on the basis that it will countersign applications on behalf of others who are not registered.

(b) Umbrella Bodies must satisfy themselves that those on whose behalf they intend to countersign applications, are likely to ask exempted questions under the Exceptions Order to the Rehabilitation of Offenders (Northern Ireland) 1978.

(c) Umbrella Bodies must take reasonable steps to ensure that those to whom they pass Disclosure information observe the Code of Practice.

#### **5 Failure to comply with the Code of Practice**

ANI is empowered to refuse to issue a Disclosure if it believes that:

- a registered person; or,
- someone on whose behalf a registered person has acted;

has failed to comply with the Code of Practice.

## **THE EXPLANATORY GUIDE**

*The Explanatory Guide should be read in conjunction with the Code of Practice.*

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**APPENDIX:** Offences relating to Disclosure

# 1 INTRODUCTION

## 1.1 Purpose of this Guide

1.1.1 This guidance supplements the information in the Code of Practice published by the Secretary of State under section 122 of the Police Act 1997 (the Act).

## 1.2 Background and types of certificates (Disclosures)

1.2.1 ANI is a branch of the Northern Ireland Office which exercises the powers and fulfils the responsibilities of the Secretary of State under Part V of the Act.

1.2.2 Access will issue three types of document:

**- criminal conviction certificates under section 112 of the Act** (which are referred to in this Guide as **Basic Disclosures**)).

These will be issued to individuals who complete the appropriate application form, pay the appropriate fee and whose identity is confirmed.

A Basic Disclosure (BD) will contain details of convictions held in central police records which are not spent under the terms of the Rehabilitation of Offenders (Northern Ireland) Order 1978 or it will state if there are no such convictions. Any employer will be able to request a potential employee to apply for a BD.

**- criminal record certificates under section 113A of the Act** (which are referred to in this Guide as **Standard Disclosures**)).

These will be available in respect of positions and professions within the terms of the Exceptions Order under the Rehabilitation of Offenders (Northern Ireland) Order 1978.

A Standard Disclosure (SD) will contain details of any spent and unspent convictions, as well as cautions, reprimands and warnings, recorded by the police centrally. It will also indicate if there are no such matters on record.

If an individual is applying for a position working with children or other vulnerable groups; and, the registered person or body states that the Disclosure is required for the purposes of an exempted question, section 113C of the Act provides that the SD will also reveal whether the individual is barred from working with children or other vulnerable groups by virtue of his/her inclusion on lists of those considered unsuitable to work with such people.

**- enhanced criminal record certificates under section 113B of the Act** (which are referred to in this Guide as **Enhanced Disclosures**)

Enhanced Disclosures (ED) will be available where the registered person makes a statement that it is required for the purposes of an exempted question asked for a prescribed purpose within the meaning of section 113B(2)(b) of the Act. They are available, for example, where the position involves regularly caring for, training, supervising or being in sole charge of children or other vulnerable groups.

An ED will contain the same details as a SD and may also contain non-conviction information from police records which a chief police officer thinks may be relevant in connection with the matter in question.

1.2.3 Applications for Disclosures are made by the persons being checked upon or vetted and often at the request of his or her employer or prospective employer. The Act, however, does not place any obligation on such persons to apply for a criminal record check.

1.2.4 In this Guide, Disclosure information has the same meaning as in the Code of Practice; namely, it is information that is –

- contained in Standard Disclosures; or,
- contained in Enhanced Disclosures; or'
- provided by the police under section 113B(4) and (5)

### **1.3 Good recruitment practice**

1.3.1 Access Northern Ireland is committed to encouraging the spread of best practice in recruitment to ensure the best possible use of the information it provides and to encourage safer recruitment. The establishment of Access widens the availability of criminal record information. It is crucially important that people who have been convicted are treated fairly and are given every opportunity to establish their suitability for positions.

1.3.2 The existence of a comprehensive Disclosure service should not be regarded as a substitute for any of the full range of existing pre-appointment checks, including the taking up of references and enquiring into the person's previous employment history. Disclosures should be seen as complementary to existing recruitment practice and should only be sought after a candidate has been provided with a provisional offer of employment or a voluntary position.

## **2 GENERAL PRINCIPLES AND REGISTRATION**

### **2.1 Eligibility**

2.1.1 Disclosures are designed to help employers make safer recruitment decisions. They are also available to persons exercising regulatory and licensing functions.

2.1.2 All recipients of Disclosure information; namely,

- registered persons;
- those countersigning Disclosure applications on behalf of registered persons; and,
- others receiving such information

must adhere to the Code of Practice.

2.1.3 If ANI believes that a registered person has:

- failed to comply with the Code of Practice; or,
- countersigned an application at the request of a body or individual that has failed to comply with the Code of Practice;

ANI may refuse to issue a Disclosure.

### **2.2 Sensitivity of Disclosure information**

2.2.1 All information disclosed by ANI is sensitive personal information. ANI publishes guidance covering the full range of its services. This includes guidance to employers on how to make best use of the information contained within Disclosures and how to make sensible and fair decisions about the suitability of individuals for positions.

2.2.2 All recipients of Disclosure information must treat such information with care and responsibility. Such information may be particularly sensitive; and the arrangements made must fully recognise this.

## **2.3 The Register**

2.3.1 Applications for Standard and Enhanced Disclosures must be countersigned by a person registered with ANI for this purpose. A person, in this context, includes a body. Persons applying to be registered will undergo a check to assess their suitability to receive information from ANI.

2.3.2 For some persons or bodies with a legitimate requirement to have access to Standard and Enhanced Disclosures, separate registration may not be appropriate for reasons of practicality or cost. They may, however, be able to gain access to the information they require by asking another, registered, organisation to countersign applications for Disclosures on their behalf. Such registered organisations are known as Umbrella Bodies.

## **2.4 Registration**

### **2.4.1 Basic criteria**

2.4.1.1 A person will be registered if he/she applies in writing, provides such information as may be requested by ANI, pays the applicable fee and meets the requirements summarised in sections 2.4.2 and 2.4.3 below.

## 2.4.2 **Registered persons**

2.4.2.1 A person applying for registration must be:

(a) a body; or,

(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.

2.4.2.2 Applicants must satisfy ANI that they are likely to ask exempted questions, under the terms of the Exceptions Order to the Rehabilitation of Offenders (Northern Ireland) Order 1978, or that they are a body that is likely to countersign applications for Disclosures at the request of bodies or individuals asking exempted questions (see section 2.4.3).

## 2.4.3 **Umbrella bodies**

2.4.3.1 Even if a body is not likely to ask exempted questions, it may apply for registration if it satisfies ANI that it is likely to countersign Disclosure applications at the request of bodies or individuals asking exempted questions. Such an organisation is known as an Umbrella Body.

2.4.3.2 In turn, the Umbrella Body must satisfy itself that those on whose behalf it wishes to countersign applications, are likely to ask exempted questions.

2.4.3.3 Umbrella Bodies should also satisfy themselves that the relevant terms of the Code of Practice are observed by those on whose behalf they countersign applications. However, ultimate responsibility for

compliance with those parts of the Code which relate to all recipients of Disclosure information rests with each recipient.

#### **2.4.4 When and how to apply for registration**

2.4.4.1 Applications for registration should be made in writing, in the form determined by ANI

#### **2.4.5 Identity**

2.4.5.1 Each person applying for registration must provide such evidence of identity as may be requested by ANI.

### **2.5 Lead Countersignatory**

2.5.1 Applicants for registration are required to nominate a Lead Countersignatory. The Lead Countersignatory will be required to countersign the initial application for registration.

2.5.2 The Lead Countersignatory should be a senior person within the organisation who has a measure of management responsibility for those making recruitment decisions. For example, a human resources director would be a suitable nominee although, clearly, many organisations may not have an obvious equivalent. The Lead Countersignatory will not necessarily be expected to countersign Disclosure applications with the frequency of other countersignatories.

2.5.3 The Lead Countersignatory will be ANI's principal point of contact on all matters connected with the registration and use of the Disclosure service. The exception is that results of individual Disclosure applications will be sent to the individual who countersigned the application.

2.5.4 A Lead Countersignatory must be assigned at all times. If a Lead Countersignatory leaves that position, a new Lead Countersignatory

should be nominated as soon as possible and ANI should be informed in writing of the change at the same time (see also 2.7 below).

2.5.5 A person who is the only counter signatory in an organisation (including a person who employs others in the course of a business and who is seeking registration) may countersign his/her own application for registration. He/She should indicate that this is the case in the application.

## **2.6 Confidentiality**

2.6.1 Details of registrations are confidential and are not made public. However, those registered may wish to make some contact details available for members of the public or prospective recruits. This is particularly true for Umbrella Bodies.

## **2.7 Changes**

2.7.1 Registered persons shall inform ANI promptly of any material changes to the details of their registration. ANI will make any necessary amendments according to published service standards.

2.7.2 Registered persons who consider that they are no longer likely to wish to countersign applications should notify ANI so that they can be removed from the register.

## **2.8 Applicability**

2.8.1 The Code of Practice and this Guide apply to those registering with ANI in Northern Ireland. Disclosure information supplied by ANI will include information about all relevant matters including, where appropriate, convictions and cautions that were disposed of in other jurisdictions. Employers offering positions that are located within Northern

Ireland will therefore only need to make an application for registration to ANI

2.8.2 The Criminal Records Bureau (CRB) provide a broadly similar service in England and Wales.

2.8.3 Disclosure Scotland (DS) provide a broadly similar service for Scotland.

2.8.4 Employers in Northern Ireland offering positions that are located within England or Wales, make an application for registration to CRB and submit their applications for Disclosure information to CRB.

2.8.5 Employers in Northern Ireland offering positions that are located within Scotland, make an application for registration to DS and submit their applications for Disclosure information to DS.

### **3 COUNTERSIGNING APPLICATIONS FOR DISCLOSURES**

#### **3.1 Identity of the applicant**

3.1.1 It is standard good recruitment practice for employers to satisfy themselves as to the identity of those applying for positions. This is especially sensible in relation to sensitive posts, such as those working with children or vulnerable adults, to which Standard and Enhanced Disclosures apply. Moreover, such checks will also be very helpful in ensuring that identity is correctly established for the purposes of Disclosure. Although Access NI may in some cases conduct its own checks to confirm identity, these are no substitute for thorough identity checks by employers. Application forms for Disclosures, which contain details of the required identification evidence, should, where appropriate, be completed

by employers to indicate the checks undertaken to establish the identity of the applicant.

3.1.2 Although there are no definitive rules about the types of evidence of identity that would be acceptable, employers are nevertheless required to follow the clear guidance that is contained in page 55 of this document. Even so, at least one item of photographic evidence would be desirable, such as a current UK passport or UK driving licence plus at least one item of address-related evidence such as a utility bill or a bank, credit card or mortgage statement containing the applicant's name and address. In the absence of photographic evidence, a full birth certificate, issued at the time of birth, will carry more weight than one issued more recently.

3.1.3 Consistency of information with the information provided by the applicant in his/her application for the position, tends to lead to a greater level of confidence in his/her identity.

3.1.4 Where an applicant claims to have changed his/her name by deed poll or by any other mechanism, such as, for example, by marriage or by statutory declaration; the employer should see evidence of such a change.

3.1.5 Registered persons should ensure that employers seek documentary evidence; and that they indicate on the application form, the checks that have been made.

3.1.6 Disclosures should not be accepted by prospective employers as proof of identity.

## **3.2 Overseas applicants**

3.2.1 Employers seeking to make use of Disclosure information should consider carefully before deciding whether to request a Disclosure in respect of an applicant with a substantial record of overseas residence.

3.2.2 Applicants falling into this category include United Kingdom residents, whether British nationals or otherwise, with recent periods of overseas residence. Also in this category are those with little or no previous United Kingdom residence. .

3.2.3 It may be difficult to obtain satisfactory evidence of identity in respect of such applicants. It may also be of limited value to ask for a Disclosure in respect of persons with very substantial gaps in their United Kingdom residence; or, of individuals with little or no previous residence in the United Kingdom. The Police National Computer (PNC) contains a limited number of overseas convictions but this data is by no means comprehensive.

3.2.4 Access NI will offer guidance to employers about the availability of criminal record checks in a variety of foreign countries. Employers are free to ask those with overseas residence to apply for the equivalent of a Disclosure, if available.

3.2.5 However, a substantial period of overseas residence should not preclude employers from considering applicants with such backgrounds and reference to Access NI should only be part of the overall recruitment process. In these situations, as for other appointments, employers should engage in a full range of pre-employment checks which goes beyond a simple reference to Access NI.

### **3.3 Policy in relation to persons with a criminal record**

3.3.1 It is essential that those who have been convicted are treated fairly. All employers should have available, a written policy on the recruitment of people who have been convicted in the past. Individuals and organisations making use of an Umbrella Body, should be able to obtain a model policy from the Umbrella Body. A sample policy will be provided by Access NI on request.

### **3.4 Information for applicants**

3.4.1 Each applicant for a position should be given a copy of this policy at the commencement of the recruitment process.

3.4.2 Wherever appropriate, a statement expressing a willingness to consider persons with a criminal record on their merits, should be included on application forms. Application forms, or other recruitment documentation, should also carry a statement that the provisionally selected applicant for a position, will be asked to apply for a Disclosure.

3.4.3 Applicants should be made aware of the Code of Practice and the employer's commitment to it. Umbrella Bodies should satisfy themselves that all employers, on whose behalf they act, are aware of the Code; and should take reasonable steps to ensure that they comply with it.

### **3.5 Guidance to staff**

3.5.1 Staff involved in employment and other decisions using Disclosure information, should receive guidance in the following areas;

- the employment of persons who have been convicted in the past;
- the Rehabilitation of Offenders (Northern Ireland) Order 1978 and the Exception Order enacted there under;
- Part V of the Police Act 1997; and,
- the Code of Practice.

## 4 CONSIDERATION OF CHECKS

### 4.1 Factors to take into account

4.1.1 Employers should take into account, a number of factors before reaching a recruitment decision. Other guidance that will be issued by Access NI will help employers to consider how best to use the information contained in Disclosures. Umbrella Bodies should make such guidance available to those at whose request they countersign applications.

4.1.2 Employers shall consider the following:

- whether the conviction or other matter revealed is relevant to the position in question;
- the seriousness of any offence or other matter revealed;
- the length of time since the offence or other matter occurred;
- whether the applicant has a pattern of offending behaviour or other relevant matters;
- whether the applicant's circumstances have changed since the offending behaviour or the other relevant matters occurred; and,
- the circumstances surrounding the offence and the explanation(s) offered by the convicted person, which may need to be verified.

4.1.3 Ultimately, it is the responsibility of the employer to decide whether to offer the applicant a position. However, recruiters should be fully aware of their duties and responsibilities under the provisions of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (see 5.4.3 below) and any other requirements stipulated in law or by regulatory bodies.

## **4.2 Validity**

4.2.1 Disclosures obtained from Access NI carry no absolute guarantee of accuracy. Neither do they carry a pre-determined period of validity; simply because a conviction or other matter could be recorded against the subject of the Disclosure at any time after it is issued. Employers are advised to make recruitment decisions as soon as possible after receiving their copies of Disclosures.

4.2.2 Where a prospective employee or volunteer disputes the information provided in a Disclosure, that dispute will need to be resolved before the employer can reach a recruitment decision. In the final analysis, if it should prove impossible to resolve matters by other means, the ANI dispute procedures will apply. In the event of a dispute about the accuracy of a Disclosure certificate, the applicant may make an application in writing to ANI for a new certificate. If ANI is of the opinion that the information in the certificate is inaccurate, it will issue a new certificate. Registered Bodies, including Umbrella Bodies or applicants, as appropriate, may contact ANI for assistance in this regard.

4.2.3 Where information has been released by the police to an employer in a separate letter, that information must not be discussed with the applicant.

## **4.3 Handling information**

#### 4.3.1 **Security**

4.3.1.1 Disclosure information must be kept securely and only those entitled to see it in the course of their duties should have access.

4.3.1.2 Employers should have available, a written security policy for the handling of Disclosure information. Individuals and organisations making use of an Umbrella Body should be able to obtain a model from the Umbrella Body. Access NI will make available a specimen policy on request. In particular, employers should keep a written record of the names of those, whether in or outside their organisations, to whom Disclosure information has been revealed.

#### 4.3.2 **Storage**

4.3.2.1 All recipients of Disclosure information must store Disclosures and other confidential documents issued by Access NI in secure conditions. Documents should be kept in locked, non-portable storage containers. Keys or combinations for such storage units should not be freely available within an organisation and access must be restricted to named individuals. Wherever possible, access to rooms containing storage containers should be restricted to staff engaged in recruitment work.

#### 4.3.3 **Retention of Disclosure information**

4.3.3.1 Once a recruitment decision or other relevant decision, for example, for regulatory or licensing purposes, has been made, a recipient of a Disclosure must not retain it, or any associated correspondence, for longer than is necessary for the particular purpose. In general, this should be for a maximum of 6 months. This period allows for any dispute about the accuracy of a Disclosure or a recruitment decision to be made and considered.

4.3.3.2 In the case of a dispute, Disclosure information may need to be maintained for a longer period, but in general this should be for no longer than 6 months after resolution of the dispute.

4.3.3.3 If, *very exceptionally*, it is considered necessary to retain Disclosure information for a longer period, ANI should be consulted. In dealing with such a case, ANI will need to give full weight to the rights of the subject of such information under Human Rights and well as Data Protection legislation.

4.3.3.4 The usual conditions in respect of storage and access (as detailed in 4.3.2.1) should continue in place during this period. If an Umbrella Body has forwarded a Disclosure to an employer on whose behalf it has countersigned an application, the employer should either store the Disclosure securely according to the Code, or should return it to the Umbrella Body for storage.

4.3.3.5 Disclosures should be destroyed by suitably secure means; namely, by shredding, pulping or burning. They should not be kept in any insecure receptacle; such as a waste bin or confidential waste sack, whilst awaiting destruction.

4.3.3.6 No photocopy or other image of the Disclosure may be retained, nor must any copy or other representation of the contents be made or kept. It is advisable, however, for recipients of Disclosure information to –

- keep a record of the date of the Disclosure;
- the name of the subject of the Disclosure;
- the type of the Disclosure; namely, whether it is the Basic, Standard or Enhanced type;
- the position which the Disclosure was applied for;

- the unique number that was issued by Access NI for that Disclosure; and,
- the recruitment decision taken.

4.3.3.7 The references in this section to Disclosures, include relevant non-conviction information that was supplied by the police but not included in the Disclosures themselves.

## **5 ASSURANCE**

### **5.1 Assurance checks**

5.1.1 ANI has a responsibility to check that recipients of Disclosure information act responsibly and use the information provided in an appropriate manner. Accordingly, ANI will monitor compliance with the Code by recipients of Disclosure information. All such recipients should co-operate with ANI in respect of any compliance enquiries and related matters.

5.1.2 In conducting assurance checks, ANI will seek to confirm that recipients of Disclosure information are complying with the Code of Practice, identify any breaches and provide for remedial action to be taken. In particular, ANI will seek to –

- identify those no longer likely to ask exempted questions;
- ensure that requirements in respect of security and retention of Disclosures are being met;
- confirm that those registered are seeking the appropriate level or type of Disclosure in respect of those being recruited;

- ensure that information provided by Access NI is being used fairly; and not unjustly to the detriment of persons with a criminal record; and,

- advise those registered on good practice in the use of Disclosure information.

## **5.2 Complaints and audits**

5.2.1 Assurance checks may be instigated by ANI for one of two reasons.

### **5.2.2 Complaints**

5.2.1 Checks may be made following complaints from –

- members of the public;

- any authority or organisation;

- counter signatories, if one reports that the organisation of which he/she is a part; or to which he/she may be passing information; may be in breach of the Code of Practice or may be using the information provided by ANI inappropriately.

### **5.2.3 Audits**

5.2.3.1 ANI will conduct audits of those registered with it, in order to check compliance and to provide advice on good practice where that would be helpful. Audits may also be undertaken at the request of employers.

5.2.3.2 ANI will provide written reports of each audit to the audited organisation and these will contain recommendations, where this would be

helpful. ANI may undertake further audits to check that any recommendations made as a result of any earlier audits, have been implemented.

5.2.3.3 All recipients of Disclosure information must co-operate with audits.

### **5.3 Lost Disclosures**

5.3.1 If Disclosure information, or information contained within a Disclosure, is lost, the registered person or body should inform ANI immediately. ANI will consider whether to issue a replacement, if this is requested.

5.3.2 Where an individual or body using the services of an Umbrella Body loses Disclosure information, or information from a Disclosure, the individual or body must immediately inform the Umbrella Body so that the loss can be reported to ANI

### **5.4 Offences**

5.4.1 Where ANI has reason to believe that a criminal offence may have been committed in respect of some aspect of Disclosure, it will consider passing details to the police.

5.4.2 Offences relating to the misuse of Disclosure information are summarised in the Appendix.

5.4.3 The Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003, makes it an offence to apply for, offer to do, accept or do any work, whether paid or unpaid, with children or vulnerable adults, if disqualified from working with children or vulnerable adults. Disqualification can arise from inclusion in any of the lists of those who are considered unsuitable to work with children or vulnerable adults, which are maintained by either the Department of Health and Personal

Social Services (DHSSPS) or the Department of Education. In addition, the courts can disqualify those convicted of serious offences of a sexual or violent nature from working with children by imposition of a disqualification order. It is an offence knowingly to offer a disqualified person work with children or to allow them to continue in such work.

5.4.4 There may be circumstances where a recipient of Disclosure information is asked to reveal details of a Disclosure to a third party in connection with legal proceedings, in for example, a case submitted to an Employment Tribunal. In such instances, the recipient of Disclosure information should inform ANI of any such request immediately and prior to the release of any information.

## **6 TERMINATING REGISTRATION**

### **6.1 Withdrawal from the register**

6.1.1 A person who considers that he/she is no longer likely to wish to countersign applications for Disclosures should ask to be removed from the register. Any such request should be made to ANI in writing. Thereafter, he/she shall be free to apply to rejoin the register again, on payment of the prescribed fee.

### **6.2 Removal from the register**

6.2.1 The following summarises the provisions set out in the Police Act 1997 (Criminal Records) (Registration) Regulations (Northern Ireland) 2007.

6.2.2 Where ANI considers that a registered person is no longer likely to wish to countersign Disclosure applications, it may remove that person from the register.

6.2.3 In such cases, ANI will write giving notification of the intention to remove the person from the register and reasons for this decision. The person shall also be informed of his/her right to make representations as to why he/she should not be removed from the register.

6.2.4 The registered person may make representations, in writing, within 28 days.

6.2.5 Having considered such representations, ANI will inform the registered person either –

(a) that, giving reasons, it remains of the view that the person is unlikely to wish to countersign applications and that the person will be removed from the register at the end of a further period of 28 days; or,

(b) that it does not propose to take further action.

6.2.6 If no further representations are received within the period of 28 days, ANI may remove the person from the register at the end of that period.

6.2.7 The procedure described above will not apply where –

(a) ANI is satisfied, in the case of a registered person; other than a body, that the person has died; or is incapable due to physical or mental impairment, of countersigning applications; or,

(b) the registered person has requested that ANI remove that person from the register.

## **APPENDIX: OFFENCES RELATING TO DISCLOSURE**

*This appendix is not a definitive guide to the provisions of the Police Act 1997. For an authoritative statement of the law; ANI recommends that professional legal advice is sought.*

### **Registered bodies acting on their own behalf**

A member, officer or employee of a body that is registered may only disclose Disclosure information –

- in the course of his/her duties; and either
- to another member, officer or employee of that body.

### Registered bodies acting on behalf of others (Umbrella Bodies)

A member, officer or employee of a registered body that is acting at the request of an unregistered body, or at the request of an individual, may only disclose Disclosure information

- in the course of his/her duties; and either
- to another member, officer or employee within the Umbrella Body; or
- to a member, officer or employee of the body at whose request the Umbrella Body countersigned the application; or

- to the individual at whose request the Umbrella Body countersigned the application.

### **Unregistered bodies receiving Disclosure information from Umbrella Bodies**

A member, officer or employee of an unregistered body at whose request a Disclosure application is countersigned by another body which is registered; namely, an Umbrella Body, may only disclose Disclosure information –

- in the course of his/her duties; and only then
- to another member, officer or employee of the unregistered body.

### **An individual who is registered**

An individual who is a registered person may only disclose Disclosure information-

- in the course of his/her duties; and,
- to an employee of the individual, for the purpose of the employee's duties.

Likewise, an employee of a registered individual may only disclose Disclosure information –

- in the course of his/her duties; and,
- to another employee of the same individual.

**Passing Disclosure information in any other circumstances may be a criminal offence.**

### **Subsequent use of information**

If Disclosure information is disclosed to a person in circumstances which constitute an offence under the terms set out above, that person commits an offence if he/she then divulges the information to any other person.

### **Other circumstances in which disclosing Disclosure information would not be an offence**

In addition to the circumstances set out above, information contained in a Disclosure may also be communicated in other specified, exceptional, circumstances, including in particular:

- with the written consent of the subject of the Disclosure;
- to a government department (but note that the Data Protection Act places limits on the purposes and situations in which such a disclosure can be made).
- to a person appointed to an office by virtue of any enactment;
- in accordance with an obligation to provide information under or by virtue of any enactment.

Similarly, Disclosure information conveyed by the police separately from a Disclosure (under section 113B (4) and (5) of the Police Act 1997 may also be communicated, with the written consent of the chief officer who provided the information.

## Valid Identity Documents

Three documents must be produced; one from Group 1 **and** two from Group 2. If this is not possible, then **five** documents from Group 2 must be produced– these must be in the name of the applicant. It is preferred that at least one of these documents contains photographic identification.

Group 1	Group 2
<ul style="list-style-type: none"> <li>• Valid passport (any nationality)</li> <li>• UK Driving Licence Full or Provisional – England/Wales/Scotland/Northern Ireland/Isle of Man; either photocard or paper (a photocard is only valid if accompanied with the paper counterpart)</li> <li>• Original UK birth certificate (issued within 12 months of date of birth, full or short form acceptable)</li> <li>• Valid photo identity card (EU countries only)</li> <li>• UK Firearms licence</li> <li>• HM Forces ID card (UK)</li> <li>• Adoption Certificate (UK)</li> </ul>	<ul style="list-style-type: none"> <li>• Marriage certificate/Civil Partnership Certificate</li> <li>• Non-original UK birth certificate (issued after 12 months of date of birth, full or short form acceptable)</li> <li>• P45/P60 statement</li> <li>• Utility bill ( electricity, gas, water, telephone – including mobile phone contract/bill)</li> <li>• Valid TV licence</li> <li>• Credit card statement</li> <li>• Store card statement</li> <li>• Mortgage statement</li> <li>• Valid insurance certificate</li> <li>• Certificate of British nationality</li> <li>• British work permit/visa**</li> <li>• Asylum Registration Card</li> <li>• ANI Disclosure Certificate</li> <li>• Personal correspondence or a document from a Government Department*</li> <li>• Bank or Building Society Document**</li> <li>• Financial statement e.g. pension, endowment, ISA **</li> <li>• Valid vehicle registration document</li> <li>• Mail order catalogue statement*</li> <li>• Court summons</li> <li>• Valid NHS card</li> <li>• Court Claim Form</li> <li>• Addressed payslip*</li> <li>• National insurance number card</li> <li>• Examination certificate (e.g. GCSE, NVQ)</li> <li>• Letter from a Head Teacher*</li> <li>• Child benefit book</li> <li>• Smart pass</li> </ul>

- \* documentation must be less than 3 months old
- \*\* must be issued within the last 12 months