



**ACCESS  
NORTHERN  
IRELAND**

[www.nidirect.gov.uk/accessni](http://www.nidirect.gov.uk/accessni)

## **ANI CIRCULAR : 1/2016**

Date : 25 January 2016

### **Criminal Record Review scheme - Independent Reviewer**

From **1 March 2016**, a Criminal Record Review (CRR) scheme will start. The CRR allows, in respect of Standard and Enhanced AccessNI certificates, an Independent Reviewer (IR) to:-

- Review, on request by an applicant, conviction(s) and/or non-court disposal(s) disclosed on their AccessNI certificate, subject to certain conditions; and
  - Automatically review information due to be disclosed on a certificate where all of this information refers to convictions or disposals awarded at a time when the applicant was under 18 years of age, subject to certain conditions. This review will be undertaken before the certificate is issued.
-

## Background

1. AccessNI has continued to implement the changes set out in the Justice Act (NI) 2015. Section 41 of the Act together with Schedule 4 provides for an independent review to be undertaken of certain criminal record certificates. This will be known as the **Criminal Record Review (CRR) scheme**. The Justice Minister has agreed to commence these provisions with effect from 1 March 2016.

## Detail and Process of CRR

### (a) Request for review made by an applicant

2. From 1 March 2016, where an application is made for a Standard or Enhanced check by an individual, and following filtering, conviction and/or non-court disposal information is disclosed on the certificate, the applicant may request a review of that information by the Independent Reviewer (IR). Such a request can only be made in respect of offences that are spent under the Rehabilitation of Offenders (Northern Ireland) Order 1978.
3. The current AccessNI certificate dispute form will be amended to enable applicants to apply to the IR for a review. The applicant must seek a review within 90 calendar days of the issue of a certificate, otherwise their request will not be considered.
4. Where a valid application has been made, the IR will consider whether the information disclosed is proportionate in relation to the purpose for which the applicant is seeking the certificate, as indicated on their application form.
5. The IR will also take account of:
  - representations made by the applicant in respect of their appeal on the dispute form; and, if appropriate,
  - information provided by PSNI, the Department of Justice and its agencies or the Probation Board for Northern Ireland (this would be specifically, and only, about the background to, and the circumstances of, the applicant's offending).
6. After consideration of the information the IR may decide to remove:
  - all the information disclosed on the certificate; or
  - some of the information disclosed on the certificate; or
  - none of the information disclosed on the certificate.
7. Where the IR determines that some or all of the information should be removed from a certificate, AccessNI will issue a new certificate to the applicant. In all circumstances the IR will advise the applicant of the reason for his decision.

## **(b) Automatic Reviews (Auto Referrals)**

8. Where an application is made for a Standard or Enhanced check by an individual, and all of the information that would be disclosed relates to convictions and/or non-court disposals awarded when the applicant was under 18, the certificate will not be issued. Instead, the details of the offence(s) will be sent automatically to the IR for review, provided that all the offences are spent (see paragraph 2). The IR will consider whether the information disclosed is proportionate in relation to the purpose for which the applicant is seeking the certificate, as indicated on their application form.
9. The IR may take account of:
  - representations made by the applicant in respect of their appeal; and, if appropriate,
  - information provided by PSNI, the Department of Justice and its agencies or the Probation Board for Northern Ireland about the background to, and the circumstances of, the applicant's offending.
10. After consideration of the information the IR may decide to remove:
  - all the information to be disclosed on the certificate; or
  - some of the information to be disclosed on the certificate; or
  - none of the information to be disclosed on the certificate.
11. Once the IR has advised AccessNI of his decision, the certificate will be issued.

## **Guidance**

12. The Department of Justice will shortly publish, on its website, guidance about the CRR scheme. Registered Bodies will be able to access this guidance and, in turn, they may wish to direct applicants to it. The Department will also publish guidance notes aimed specifically at applicants.

## **Time and cost**

13. AccessNI may, under the relevant legislation, require an applicant who requests a review to pay a fee for this process. At present AccessNI does not plan to charge such a fee. This will be subject to further consideration once the scheme has been in operation for a period of time.
14. Although every effort will be made to minimise delay, there will inevitably be some delay in:

- finalising a certificate, where the applicant has made a request for review to the IR; or in
  - issuing a certificate, where information has been automatically referred to the IR.
15. Each case will, of course, be different. Where the IR has to seek further information about any case from other organisations, the delay is likely to be greater than where he can make a decision without the need for further information. However, in broad terms the following timescales will apply:
- An applicant must apply for a review within 90 calendar days of the issue of the certificate;
  - The IR will, if possible, assess the case and advise AccessNI of his determination within 28 calendar days;
  - Where an automatic referral is made, the IR will seek to make a decision within 14 calendar days, except where further representations are sought from the applicant.

## Case tracking

16. AccessNI is currently considering how the on-line case tracking facility could be amended to reflect the fact that a case is with the IR and further information will be made available to RB's prior to 1 March 2016.

## Clarification

17. The following are a list of clarification points that RBs might find helpful:
- In all cases, the “**filtering rules**” (that is, the removal of old and minor convictions) will have been applied before any certificate is issued to the applicant or before any automatic referral is made to the IR. Therefore, if the IR removes information from a certificate, either following an application for review by an individual or as a result of the automatic referral process, this will be in addition to any information removed through the filtering process. The IR can remove offences that are not eligible for filtering, for example, specified offences.
  - The IR has a statutory duty not to remove from a certificate any information that would undermine the safeguarding or protection of children and vulnerable adults or pose a risk of harm to the public.
  - The IR will work closely with PSNI and other police forces to ensure that circumstances will not arise where the IR removes conviction or non-court disposal information, but this is subsequently disclosed on an enhanced certificate as “police information”.

- The removal of information from a certificate in one set of specific circumstances does not mean that the same, or any, information will be removed in respect of a subsequent application and vice-versa. The position applied for, and the nature of the group the applicant wishes to work with, will be a significant factor in any decision made by the IR.
- A number of potential examples are provided at [Annex A](#);
- High level flow charts setting out the process for the automatic referral and the review application routes are at [Annex B](#).

18. Any queries about this circular should be directed to our Call Centre at 0300 200 7888.

**CIRCULAR END**

---

## CASE STUDIES

The following are examples of how disclosure and review applies in a range of circumstances - these are worked out based on an application made to AccessNI in July 2016).

**Automatic review route****Mr A has a caution for common assault from July 2012, when he was 15 years old.**

This **would not be** disclosed by AccessNI on Mr A's check. Common assault is not a specified offence, and the caution is more than 2 years old. It would, therefore, be filtered out under current arrangements before a certificate is issued.

As the information would not be disclosed, the CRR scheme would not apply in these circumstances.

**Miss B has a caution for assault on police from January 2013 when she was 16 years old.**

This **could be** disclosed by AccessNI on Miss B's check. Although the caution is more than 2 years old, it is for a specified offence that cannot be filtered under the current arrangements.

However, as the caution is regarded as spent, and it was given when the individual was under 18, and she has no adult convictions/disposals, the application would be automatically referred to the Independent Reviewer for consideration. The Independent Reviewer may decide that the caution should not be disclosed, or he may decide that it should stay on the certificate. Only at this point is a certificate issued.

**Miss C has a conviction for assault occasioning actual bodily harm from July 2014 when she was 17 years old, for which she received a fine of £100**

This **would be** disclosed by AccessNI on Miss C's check. The conviction would not be regarded as spent until January 2017, and it would not, therefore, be eligible for referral to the Independent Reviewer before this time.

However, if Miss C applied for a standard or enhanced disclosure certificate **after** January 2017, the conviction would be automatically referred to the Independent Reviewer, provided no further offences had been committed as an adult. This is despite the fact that this is a specified offence and would not be eligible for filtering within the current arrangements.

**Mr D has a caution for aggravated assault from July 2014, when he was 17½ years old, and an adult caution for theft from July 2015.**

The information would be disclosed on Mr D's check. The **caution for aggravated assault** would be disclosed as it is a specified offence that cannot be filtered out under current arrangements. Mr D's **adult caution** would also be disclosed as it would not be eligible for filtering under the current arrangements until July 2021.

Mr D's offences will not be automatically referred to the Independent Reviewer as one of them refers to a time when he was an adult.

Mr D could however, as both offences are spent, ask the Independent Reviewer for a review under the process outlined at paragraphs 2-7 of this circular.

**Mr E has a conviction for theft from 1980, when he was 16 years old, and for burglary from 1981. He was fined £50 and £150 respectively.**

These convictions could be disclosed by AccessNI on Mr E's check. Although both offences are spent, and neither is specified, they are not eligible for filtering under the current arrangements as Mr E has more than one conviction.

However, before issuing a certificate, the case would be referred automatically to the Independent Reviewer as Mr E was under 18 at the time he was given both convictions, and they are both spent.

**Mr F was convicted of riotous behaviour in January 2015 when he was 17 years of age. He was sentenced to 3 months imprisonment suspended for 2 years.**

This would be disclosed by AccessNI on Mr F's check. This is a specified offence that could not be filtered under the current arrangements.

Although Mr F was under 18 years old when he was convicted, the conviction would not be considered spent until July 2018, and so it could not be automatically referred to the Independent Reviewer.

However, if Mr F applied for a standard or enhanced disclosure certificate after July 2018, the conviction would be automatically referred to the Independent Reviewer, provided no further offences had been committed as an adult.

## Requests for review made by an applicant

**Mr G was convicted of a serious offence in January 2010 and was sentenced to 4 years imprisonment. He was released on licence in 2013.**

These offences **would be disclosed** on Mr G's check. Any offence which results in a prison sentence of over 30 months can never be spent, nor would it ever be eligible for filtering.

If Mr G's made a request for a review to the Independent Reviewer it would be refused.

**Mrs H was convicted of fraud in January 2010 and was sentenced to 2 years imprisonment. She was released in 2011.**

This offence **would be** disclosed by AccessNI Mrs H's check. As Mrs H was an adult at the time of her conviction, it would not be spent until January 2020, and it would continue to be automatically disclosed until January 2021, as it is only at that time that it would be eligible for filtering under current arrangements (provided no other offences had occurred in the meantime).

However, if Mrs H applied for a check after January 2020, she could apply to have the disclosure of her 2010 fraud conviction reviewed by the Independent Reviewer, as it is spent after this time. If the Independent Reviewer agreed that the information should not be disclosed a new certificate would be issued.

**Mr I was convicted of fraud in January 2009 and given a £500 fine.**

This offence **would be** disclosed on Mr I's check. As Mr I was an adult at the time of conviction it would have become spent in January 2014. It is not, however, eligible for filtering under current arrangements as less than 11 years have passed since the conviction was awarded.

However, as his conviction is spent, Mr I could ask the Independent Reviewer to review whether or not the disclosure of this information is proportionate. If the Independent Reviewer agreed that the information should not be disclosed a new certificate would be issued.



**Miss J was convicted of aggravated assault on a female or boy under 14 in January 2009 and given a £250 fine.**

This conviction **would be** disclosed on Miss J's check. As Miss J was an adult at the time of conviction her offence was spent in January 2014. However, her conviction is not eligible for filtering under the current arrangements as it is for a specified offence.

As her conviction is spent, Miss J could ask the Independent Reviewer to review whether the disclosure of this information is proportionate. If the Independent Reviewer agreed that the information should not be disclosed a new certificate would be issued.

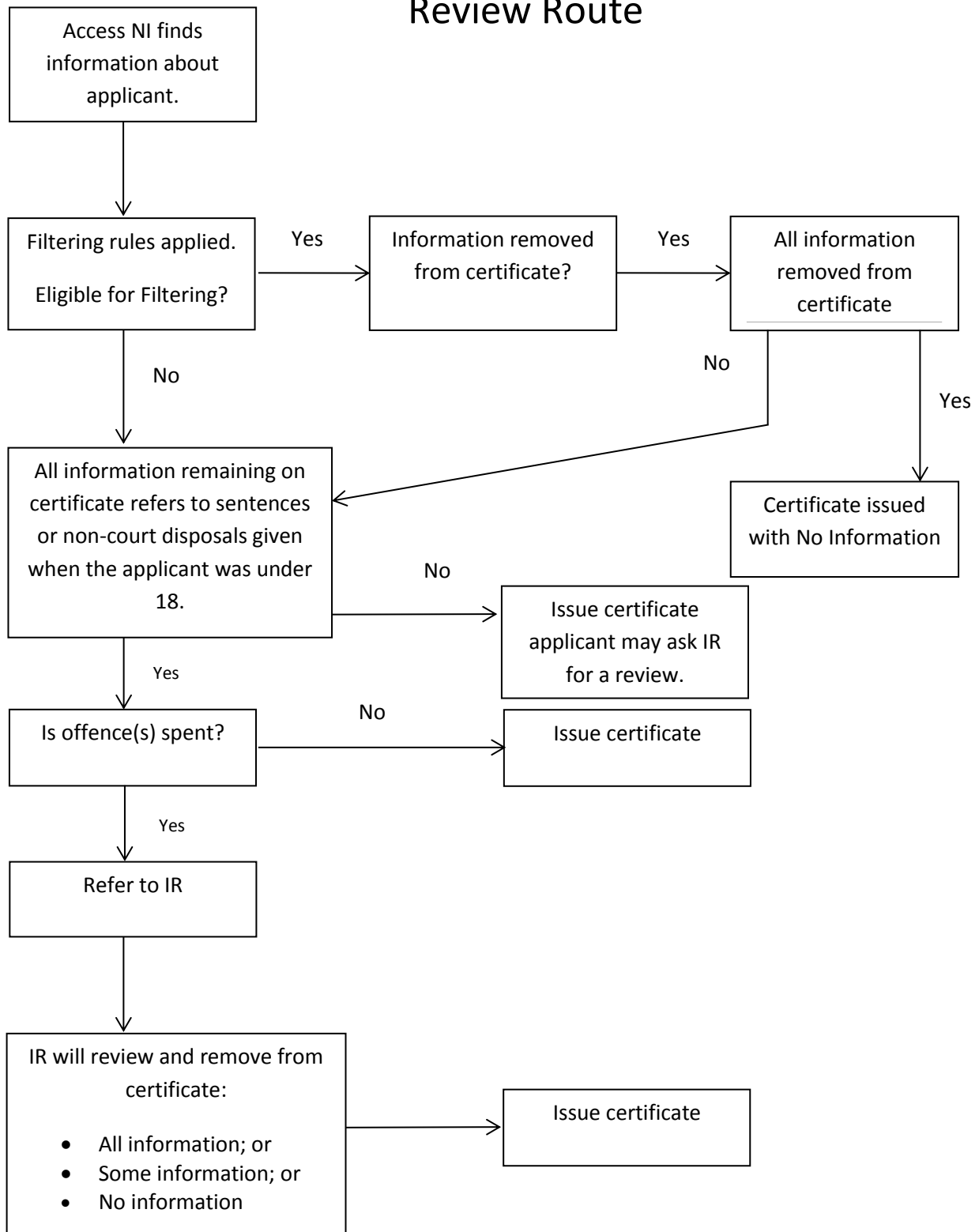
**Mr K was cautioned, as an adult, for criminal damage in March 2013.**

This caution **would be** disclosed on Mr K's check. It is not eligible for filtering under the current arrangements until March 2019.

However, as the caution is regarded as spent, Mr K could ask the Independent Reviewer to review whether the disclosure of this information is proportionate. If the Independent Reviewer agreed that the information should not be disclosed a new certificate would be issued.

# Criminal Record Review Scheme – Automatic Review Route

ANNEX B



# Criminal Record Review Scheme – Application Route

