



Department of
Justice

www.dojni.gov.uk

**Short Guide to
Northern Ireland's
Criminal Records Filtering Review Scheme**

March 2016

CRIMINAL RECORD REVIEW SCHEME

GUIDANCE ON THE PROCESS FOR SEEKING A REVIEW OF INFORMATION DISCLOSED ON A STANDARD OR ENHANCED CRIMINAL RECORD CERTIFICATE

What is the review process?

From 1 March 2016, a person can ask to have an **independent review** of the information on their standard or enhanced disclosure certificate if it has not already been filtered from their certificate by AccessNI (the government body responsible for carrying out criminal history checks in Northern Ireland).

Why would a person ask for a review?

The reason that some criminal record information is disclosed is to make sure that the public, and especially children and adults in vulnerable situations, are kept safe. But it is also important to ensure that the disclosure of information about a person is relevant and respects their rights.

If a person believes that the information disclosed on their certificate is not relevant or proportionate to the purpose for which they have asked for the certificate, then they may want to ask the Independent Reviewer to consider whether or not the information might be removed from the certificate on this occasion.

Automatic process for those under 18 years old

If the information to be disclosed is **only** about convictions or other disposals received by a person **before they were 18 years old**, their case **will be referred automatically** to the independent reviewer, without them having to ask for it. This means that the information can be reviewed **before** a certificate is sent to them.

Who will carry out the review?

The review will be carried out by a person who is **independent** of AccessNI and the government.

What information can be reviewed?

In summary, the Independent Reviewer can consider (and may decide not to disclose) information on a standard or enhanced disclosure certificate if it is:

- a **non-conviction disposal** (i.e. those which do not require a person to appear in court - these are used to deal with minor offending, and to help “divert” people away from the formal criminal justice system; or
- a **spent conviction** - even if a person has more than one, and even if it is for a specified offence.

A **spent conviction** is a conviction that does not normally have to be disclosed because a required period of time has passed and an individual has no new or related offences. However certain roles (sometimes referred to as “regulated activities”) require even spent convictions to be disclosed.

The rules that govern the time periods are set out in law - see the table attached at **Annex A**.

There are certain offences which are never filtered – these are called specified offences and they are set out in law (the full list may be accessed via the following link: <http://www.nidirect.gov.uk/accessni-list-specified-offences.pdf?rev=4>). They are mainly serious sexual or violent offences which are thought to be relevant when making sure that children and vulnerable adults are protected, but they also include a wide range of other offences, such as assault on police, riotous behaviour, drug-related offences, criminal damage and so on.

Specified offences cannot be filtered by AccessNI when they check a person’s criminal history, but **they can be reviewed by the Independent Reviewer**, and he may decide that it is appropriate not to disclose them.

Note:

If the independent Reviewer decides that information should not be included on the disclosure certificate, this does not mean that is removed from a person's criminal record – **the information remains on the criminal record, and may be disclosed on a future certificate** if a person applies for a different job or training opportunity, for example.

How does the review process work?

The review process operates in **two different ways**, depending on the age at which any convictions or other disposals were awarded to the person concerned. Details are set out below.

1. Where the information to be disclosed includes convictions or other disposals given to an adult – i.e. to someone over the age of 18 years.

In this case, if a person wants to have their information reviewed, they **must apply in writing** to the Independent Reviewer, after they receive their certificate from AccessNI.

- Information on how to apply is included on the certificate when it is issued.
- There is no charge for a review.
- On receiving a person's application, AccessNI will refer it to the Independent Reviewer, along with any information supplied by the person, and any other relevant information. Information can be provided by someone else on behalf of the applicant. Information should be provided on the relevant section of AccessNI's Certificate Dispute form – a copy of this is attached at Annex B. An applicant may wish to seek help with completing this form – some sources of help are listed on page 8.

Timescales applied

- If an applicant wants to apply for a review, they must do so **within 90 calendar days** of receiving their certificate from AccessNI.
- The Independent Reviewer will then review the case and, where possible, inform AccessNI of his decision **within 28 calendar days**.

Issuing a new certificate

- Where the Independent Reviewer decides that a certificate should be amended, AccessNI will issue a new certificate to the applicant.
- In all circumstances, the Independent Reviewer will advise the applicant of the reason for his decision.
- There will be no further consideration of a particular certificate after this point in relation to a specific application.

2. Where information to be disclosed refers to convictions or other disposals given only when a person was under the age of 18 years.

In this case, a person's information **will be referred automatically** to the Independent Reviewer, so that it can be reviewed before a certificate is sent to them.

- If the Independent Reviewer examines the information and decides that some or all of it should be disclosed, AccessNI will write to the person to ask if they would like to provide further information for the Independent Reviewer to consider.
- This must be provided in writing, but, if the applicant wishes, they can ask someone else to do this on their behalf - the letter from AccessNI will include a form for completion. An applicant may wish to seek help with completing this form – some sources of help are listed on page 8.
- Any information provided will help the Independent Reviewer when reconsidering the case, before coming to a final decision about whether or not to disclose information.

Timescales applied

- If an application is referred automatically to the Independent Reviewer, and he decides to disclose information, AccessNI will let the applicant know **within 7 calendar days** of being informed by the Independent Reviewer.
- The applicant will be asked to provide any further information they wish to **within 14 calendar days**.
- The Independent Reviewer will then review the case again and, where possible, inform AccessNI of his decision **within 14 calendar days** of receiving any additional information.

Issuing a new certificate

- AccessNI will advise the applicant of the Independent Reviewer's decision, including his rationale for making it, and issue a certificate.

- **Flow charts summarising the processes are set out at Annex C.**
- **Case studies, giving examples of disclosure decisions are listed at Annex D.**

What will the Independent Reviewer consider when making a decision?

When deciding on whether or not information should be included on a certificate, the Independent Reviewer will consider issues such as those set out below.

Factors considered by the Independent Reviewer

- The kind of position being applied for.
- The seriousness of the offence(s).
- How long ago the offence(s) occurred.
- How many offences are being disclosed and - if there is more than one - whether or not they were awarded at a single court hearing.
- If applicable, when the information would fall to be considered for filtering¹.
- The age the person was at the time they carried out the offence(s), including, in those cases where the applicant is under the age of 18 years, the need to have the best interests of children as a primary consideration.

Police information

If the Independent Reviewer decides not to disclose information on an enhanced certificate, he must inform the police so that they can say whether or not they would want to include it.

Circumstances in which Police may add information

- Police will only add information if they **reasonably believe that it is relevant** to the job or position being applied for, and that it should be included on the certificate.
- They must have a **very specific reason** for including the information, and must **give a clear and specific explanation** as to why the information should be disclosed.
- If police do add information to a person's certificate, that person can ask to have the information reviewed by the **Independent Monitor**. Separate guidance on this process is available at:

<http://www.nidirect.gov.uk/index/information-and-services/crime-justice-and-the-law/accessni-criminal-record-checks/accessni-advice-complaints-and-disputes.htm>

¹ Information on filtering is available in the DOJ's Short Guide to Northern Ireland's Criminal Records Disclosure Regime, available at <https://www.dojni.gov.uk/articles/criminal-records-filtering-review-scheme> and on AccessNI's website at www.nidirect.gov.uk/accessni

Access to further guidance and advice

For further advice and guidance, you can:

- telephone the **AccessNI Customer Helpline Service** on **0300 200 7888**;
- email AccessNI at **ani@accessni.gov.uk**; or
- browse AccessNI's website - www.nidirect.gov.uk/accessni

The following organisations may also be able to provide advice:

Organisation	Contact point
NIACRO	disclosureadvice@niacro.co.uk
NI Commissioner for Children and Young People (NICCY)	legalteam@niccy.org Tel: 028 9031 1616
Children's Law Centre (CLC)	CLC Office : 028 9024 5704 CHALKY advice line: 0808 808 5678
Youth Justice Agency	mary.aughey@dojni.x.gsi.gov.uk

If you would like to know more about **Northern Ireland's Criminal Records Disclosure Regime**, [a short guide](#) is available on the DOJ website, at:

<https://www.dojni.gov.uk/articles/criminal-records-filtering-review-scheme>

Rehabilitation of Offenders (NI) Order 1978 – Rehabilitation periods

Sentence/disposal	Rehabilitation Period (i.e. period of time which must pass before the conviction/disposal becomes spent)
A term of imprisonment exceeding 30 months	Never spent
A term of imprisonment exceeding six months but not exceeding 30 months	Ten years (five years if person is under 18 at the time of conviction)
A term of imprisonment not exceeding 6 months	Seven years (three and a half years if person is under 18 at the time of conviction)
A fine or community service order	Five years (two and a half years if person is under 18 at the time of conviction)
Period of probation	One year
Detention in a place directed by Minister of Justice/SofS under Article 45 of CJ (Children) (NI) Order 1998	6 months or less – 3 years Over 6 months but less than 30 months – 5 years
Attendance Centre Orders, remand home orders, training school orders, juvenile justice centre orders	1 year after order expires
Care and supervision orders under Children and Young Persons Act (NI) 1998	Date the order ceases or 1 year, whichever is longer
Hospital orders under Mental Health Act (NI) 1961 or Mental Health (NI) Order 1986	5 years from date of conviction or 2 years after the order expires (whichever is longer)
Disqualification and other orders imposing disability, prohibition or other penalty	Date the order ceases
Absolute discharge	6 months

Sentence/disposal	Rehabilitation Period (i.e. period of time which must pass before the conviction/disposal becomes spent)
Any other sentence for which the Order does not specify a specific period	5 years (2.5 if under 18 at time of conviction)
More than one conviction	Dependent on sentence which is imposed but where there is another conviction during a rehabilitation period which has not expired, that period will under certain circumstances, be extended to the longer or longest period.
Cautions including restorative and conditional cautions	Not covered by ROO. Regarded as spent immediately for purposes of disclosure certificates.
Diversionary youth conference (DYC)	Not covered by ROO. Regarded as spent immediately for purposes of disclosure certificates.
Informed warnings	Not covered by ROO. Regarded as spent immediately for purposes of disclosure certificates.

ACCESSNI'S CERTIFICATE DISPUTE FORM

The form overleaf may be accessed on AccessNI's website:

www.nidirect.gov.uk/accessni

It may be used to raise any dispute you may have regarding your certificate, **and to apply for an Independent Review.**

It includes a section for you to set out your reasons for asking for a review, and a section for you to provide any information you would like the Independent Reviewer to consider.

An application for a review must be made within 90 days of the issue of the certificate.

CERTIFICATE DISPUTE FORM



www.nidirect.gov.uk/accessni

This form should be used to dispute criminal record information or police information recorded on your AccessNI certificate.

The applicant must apply within 90 days of the issue of a certificate, otherwise their dispute/appeal will not be considered.

Please complete this form in CAPITALS and black ink.

Details of applicant and certificate

Full name			
Date of birth		Postcode	
Certificate number			
Contact telephone number			

If you are **not** the person named on the certificate you must complete the section below and provide full details of what your interest is in the certificate. For example countersignatory, employer, licensing authority. If other, please specify. The applicant **MUST** sign the section below to verify that they are giving permission for you to act on their behalf. The form will be invalid if the signature is not provided.

Full name	
Organisation name	
Contact details	
Please specify interest	
Applicant's signature	

Type of certificate? (please insert X in relevant box below)

Basic	<input type="checkbox"/>	Go to Section A
Standard	<input type="checkbox"/>	Go to Section B
Enhanced	<input type="checkbox"/>	Go to Section C

Section A: Basic checks

Please complete this section by inserting X in the relevant box to show the criminal record information you are disputing.

A1 The conviction information recorded is spent	<input type="checkbox"/>
A2 The conviction information on the certificate is incorrect	<input type="checkbox"/>

Go to Section D

Section B: Standard checks

Please complete this section by inserting X in the box to confirm the criminal record information you are disputing.

B1 The conviction information on the certificate is incorrect	<input type="checkbox"/>
B2 The non-court disposal information on the certificate is incorrect	<input type="checkbox"/>
B3 The disclosure of conviction/non-court disposal information on the certificate is disproportionate	<input type="checkbox"/>

Please note that where you mark B3 your appeal will automatically be referred to the Independent Reviewer (IR) provided convictions are spent under the Rehabilitation of Offenders (Northern Ireland) Order 1978. The Independent Reviewer will review your case and may decide that:

- your convictions and/or non-court disposal information should remain as currently displayed on your certificate; or
- only some of this information should be disclosed on your certificate; or
- none of this information should be disclosed on your certificate.

If some or all information is no longer to be disclosed on your certificate a new certificate will be issued.

Go to Section D

Section C: Enhanced checks

Please complete this section by inserting **X** in the relevant box to show the criminal record information you are disputing.

C1 The conviction or non-court disposal information is incorrect	<input type="checkbox"/>
C2 The Police information is incorrect	<input type="checkbox"/>
C3 The Police information is not relevant to the job I'm applying for	<input type="checkbox"/>
C4 The Police information on the certificate should not have been disclosed	<input type="checkbox"/>
C5 The disclosure of conviction/non-court disposal information on the certificate is disproportionate	<input type="checkbox"/>

Please note that where you mark boxes C2, C3, or C4 your dispute will automatically be referred to the Independent Monitor (IM), who will review your case and decide whether the police information should:

- **remain as currently on your certificate**
- **be amended**
- **be removed from your certificate**

Please note that where you mark C5 your appeal will automatically be referred to the Independent Reviewer (IR) provided convictions are spent under the Rehabilitation of Offenders (Northern Ireland) Order 1978. The independent Reviewer will review your case and decide whether:

- **your convictions and/or non-court disposal information should remain as currently displayed on your certificate; or**
- **only some of this information should be disclosed on your certificate; or**
- **none of this information should be disclosed on your certificate.**

If some or all information is no longer to be disclosed on your certificate a new certificate will be issued.

Go to Section D

Section D: Reasons for the dispute

Please set out below the reason you are disputing the information on your certificate. Where you believe the disclosure of the information to be disproportionate, please provide details of the conviction(s) and/or non-court disposals and the reasons why you consider these should not have been disclosed on your certificate. (If necessary use a continuation sheet to complete this).

I understand that I may need to provide fingerprints in order to confirm my identity and for the purposes of matching convictions or other information held on Police records.

Please insert an X in the box to confirm you understand	<input type="checkbox"/>
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Signature:		Date:	
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If you are under 18 years of age your parent or legal guardian must also sign the form below.

Full Name Parent/Guardian:			
Signature Parent/Guardian:		Date:	

If you have any queries about completing this form please contact the AccessNI customer helpline on 0300 200 7888.

Please submit completed form to: ani@accessni.gov.uk or AccessNI, PO Box 1085, Belfast BT5 9BD

AccessNI use only:

Date dispute received in AccessNI :	
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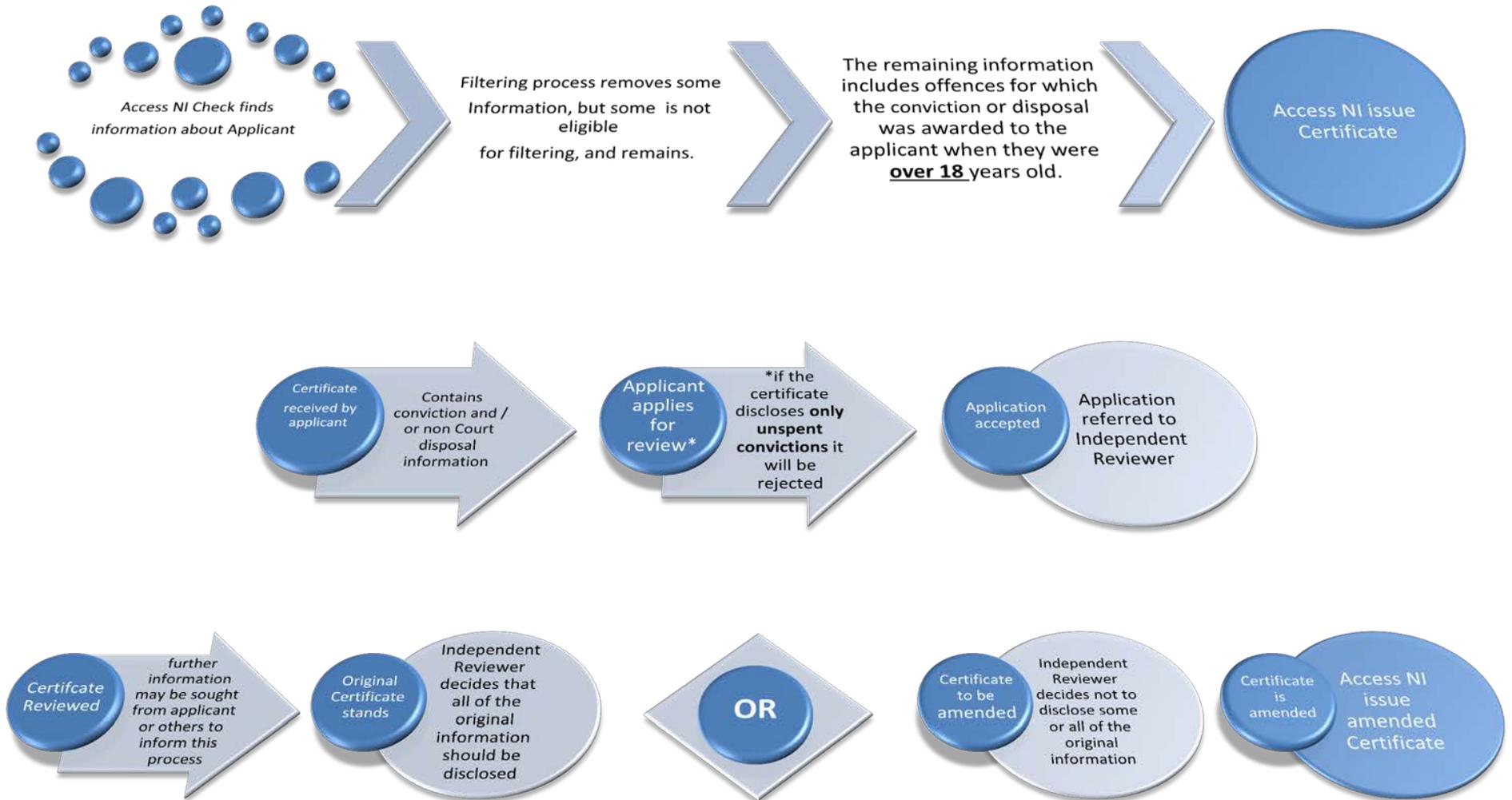
All information removed at Filtering stage



Review process is not required

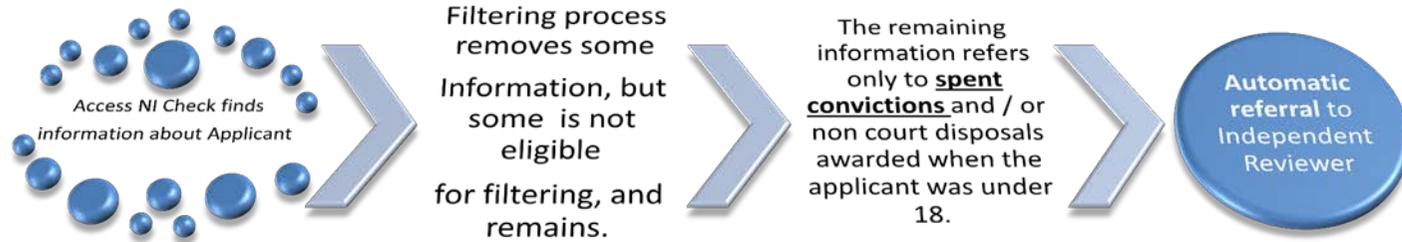
Application process

(applies where the information remaining after filtering includes adult offences)



Automatic referral process

(applies where the information remaining after filtering refers only to under 18 offences)



OR



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.

Disclosures involving convictions or disposals awarded to someone under 18

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 a standard or enhanced certificate. Common assault is not a specified offence, and the caution is more than 2 years old. It would, therefore, be filtered out before a certificate is issued.

As the information would not be disclosed, there would be no role for the independent reviewer.

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 a standard or enhanced certificate. Although the caution is more than 2 years old, it is for a specified offence that cannot be filtered off.

However, as the caution is regarded as spent (all non-court disposals are considered spent immediately after the award), 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.

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 a standard or enhanced certificate. This conviction is not eligible for filtering as it is for a specified offence. In addition, the conviction would not be regarded as spent until January 2017, and it would not, therefore, be eligible for referral to the Independent Reviewer at 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.

Mr D has a caution for aggravated assault from July 2014, when he was 17.5 years old, and an adult caution for theft from July 2015.

The **caution for aggravated assault** would be disclosed as it is a specified offence that cannot be filtered out.

Although Mr D was under 18 years old when he was given this first caution, it would not be automatically referred to the Independent Reviewer as he was also given a caution as an adult.

Mr D's **adult caution** would also be disclosed as it would not be eligible for filtering until July 2021.

Mr D's standard or enhanced certificate would, therefore, be issued to him including both cautions.

He could, however, apply to the Independent Reviewer asking him to consider whether or not their disclosure is proportionate.

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 a standard or enhanced certificate. Although both offences are spent, and neither is specified, they are not eligible for filtering 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 a standard or enhanced certificate. This is a specified offence that could not be filtered.

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. The fact that it is not spent would also mean that it would not be eligible for an application for review.

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.

Disclosures involving convictions or disposals awarded to adults

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** by AccessNI on a standard or enhanced certificate. Any offence which results in a prison sentence of over 30 months can never be spent, nor would it ever be eligible for filtering.

Mr G's case could not be referred the Independent Reviewer.

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 on a standard or enhanced certificate. 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 (provided no other offences had occurred in the meantime).

However, if Mrs H applied for a standard or enhanced disclosure certificate after January 2020, she could apply to have the disclosure of her 2010 fraud conviction reviewed by the Independent Reviewer.

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

This offence **would be** disclosed by AccessNI on a standard or enhanced certificate. 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 as less than 11 years have passed since the conviction was awarded.

His standard or enhanced certificate would, therefore, be issued to him including this conviction.

However, as his conviction is spent, Mr L could apply to the Independent Reviewer asking him to consider whether or not its disclosure is proportionate.

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 by AccessNI on a standard or enhanced certificate. As Miss J was an adult at the time of conviction her offence would have become spent in January 2014. However, her conviction is not eligible for filtering as it is for a specified offence.

Her standard or enhanced certificate would, therefore, be issued to her including this conviction.

However, as her conviction is spent, Miss J could apply to the Independent Reviewer asking him to consider whether or not its disclosure is proportionate.

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

This caution **would be** disclosed by AccessNI on a standard or enhanced certificate. It is not eligible for filtering until March 2019.

However, as the caution is regarded as spent, Mr K could apply to the Independent Reviewer asking him to consider whether or not its disclosure is proportionate.