

EXPLANATORY MEMORANDUM TO

The Rehabilitation of Offenders (Exceptions) (Amendment) (No. 2) Order (Northern Ireland) 2014

2014 No. 174

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Articles 5(4) and 8(4) of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (“the 1978 Order”) and is subject to negative resolution procedure.

2. Purpose

- 2.1. This instrument amends the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 (“the 1979 Order”) to reinstate a small number of previously specified financial positions that were erroneously removed from the 1979 Order by consequential amendments made under the Financial Services Act 2012.

3. Background

- 3.1. The 1978 Order makes it possible for certain convictions to become “spent”, which means that after a specified period a person can be treated for certain purposes as if the conviction had never happened and they need not, for example, tell an employer about the conviction when applying for a job. To ensure that the public is adequately protected, however, certain exceptions to the 1978 Order are set out in the 1979 Order so that, for specified professions and occupations that typically involve a high degree of trust and often involve vulnerable persons, applicants must declare all past convictions when asked.
- 3.2. The 1979 Order is amended periodically to ensure that the access to the criminal record disclosure regime keeps pace with changes in public risk; to ensure that disclosure regimes remain consistent across jurisdictions where appropriate; and to maintain the public trust and protection process.
- 3.3. The 1979 Order was amended in 2012 by The Rehabilitation of Offenders (Exceptions) (Amendment) Order (Northern Ireland) 2012 (S.R. 2012 No. 318) to specify certain financial functions relating to the control or management of payment institutions (such as Western Union) and / or electronic money institutions (such as Paypal) (“the 2012 substituted financial functions”) so that the Financial Services Authority (FSA) could take spent convictions into account when assessing an individual’s suitability to perform these functions.
- 3.4. The Financial Services Act 2012 (2012 c. 21) then replaced the FSA with a new financial oversight and regulatory body, the Financial Conduct Authority (FCA), and consequential amendments were brought forward by

Her Majesty's Treasury (HMT) in 2013 to replace references to the FSA in the 1979 Order with references to the FCA.

- 3.5. Unfortunately, however, the amendments to the 1979 Order that were carried in The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013 No. 472) inadvertently omitted the 2012 substituted financial functions the 1979 Order.
- 3.6. The omission created a gap in the law, which this Statutory Rule will close by reinstating the 2012 substituted financial functions in the 1979 Order.
- 3.7. This will reinstate the statutory cover needed to allow the FCA to ask questions of individuals' spent convictions in order to assess their suitability to perform these functions and re-establish parity with other jurisdictions, where the same drafting errors did not arise, thereby ensuring that the FCA can operate consistently across all jurisdictions in the United Kingdom as intended.

4. Consultation

- 4.1. The changes in the Statutory Rule are being made solely as a consequence of the oversight contained in The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013. As the amendments in the Statutory Rule are being made purely to close the gap in the law by reinstating the previously specified functions relating to payment institutions and electronic money institutions, consultation is not required.

5. Equality Impact

- 5.1. There are no issues of equality to be considered

6. Regulatory Impact

- 6.1. There are no issues to be considered.

7. Financial Implications

- 7.1. There are no financial implications.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. There are no s.24 considerations.

9. EU Implications

- 9.1. Not applicable

10. Parity or Replicatory Measure

- 10.1. This order will re-establish a consistent position with the law in England and Wales so that the FCA will be able to consider the same range of spent conviction information across both jurisdictions when determining an individual's suitability to exercise certain functions in specified financial institutions.

11. Additional Information

- 11.1. Not applicable