

Draft Order laid before Parliament under section 10(2) of the Rehabilitation of Offenders Act 1974, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2009 No.

REHABILITATION OF OFFENDERS, ENGLAND AND WALES

**The Rehabilitation of Offenders Act 1974 (Exceptions)
(Amendment) (England and Wales) Order 2009**

Made - - - - *2009*

Coming into force in accordance with article 1(2)

A draft of this Order has been laid before and approved by a resolution of each House of Parliament:

The Secretary of State, in exercise of the powers conferred by sections 4(4), 7(4) and 10(1) of, and paragraphs 4 and 6(4) of Schedule 2 to, the Rehabilitation of Offenders Act 1974(a), makes the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2009.

(2) This Order comes into force—

- (a) on 12th October 2009 for the purposes of article 7(1)(a) and (b), and
- (b) on the day after the day on which this Order is made for all other purposes.

(3) This Order extends to England and Wales only(b).

Amendment of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

2. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(c) is amended in accordance with the following provisions of this Order.

Amendment of article 2

3. In article 2, after the definition of “the 2000 Act” insert—

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- (a) 1974 c.53, as amended by the Criminal Justice and Immigration Act 2008 (c.4).
 - (b) As regards Scotland, see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2003 (S.I. 2003/415 (S.5)). The 1975 Order was revoked in relation to Scotland, by article 6(a) of S.S.I. 2003/231.
 - (c) S.I. 1975/1023, amended by S.I. 1986/1249, 1986/2268, 2001/1192, 2001/3816, 2002/441, 2003/965, 2005/617, 2005/848, 2005/1082, 2005/2011, 2006/594, 2006/2143, 2006/3290, 2007/289, 2007/2149, 2007/3224, 2008/2683 and 2008/3259. S.I. 1975/1023 is also amended by section 39 of the Osteopaths Act 1993 (c. 21) and section 40 of the Chiropractors Act 1994 (c. 17), both of which statutory provisions are subject to prospective repeals.

““the 2006 Act” means the Safeguarding Vulnerable Groups Act 2006(a).”

Amendment of article 3

4.—(1) In article 3(a)(ii) for “13, 14, 20, 21, 35, 36, 37, 40 or 43” substitute “12A, 13, 14, 14A, 20, 21, 35, 36, 37, 40, 43 or 44”.

(2) After article 3(l) insert—

“(m)any question asked by or on behalf of the Master Locksmiths Association for the purposes of assessing the suitability of any person who has applied to be granted membership of that Association;

(n) any question asked by or on behalf of the Secretary of State for the purpose of assessing the suitability of any person or body to obtain or retain a licence under regulation 5 of the Misuse of Drugs Regulations 2001(b) or under Article 3(2) of Regulation 2004/273/EC(c) or under article 6(1) of Regulation 2005/111/EC(d) where—

(i) the question relates to the holder of, or an applicant for, such a licence or any person who as a result of his role in the company or other body concerned is required to be named in the application for such a licence (or would have been so required if that person had had that role at the time the application was made), and

(ii) any person to whom the question relates is informed at the time the question is asked that by virtue of this Order, spent convictions are to be disclosed.”

Amendment of article 4

5. In article 4(b) for “13, 14, 20, 21, 35, 36, 37, 40 or 43” substitute “12A, 13, 14, 14A, 20, 21, 35, 36, 37, 40, 43 or 44”.

New article 6: Channel Islands exceptions

6. After article 5 insert the following article—

“6.—(1) Neither section 4(2) of, nor paragraph 3(3) of Schedule 2 to, the Act applies to a question to which paragraph (2) applies.

(2) This paragraph applies to a question asked by or on behalf of any person in the course of the duties of that person’s office or employment in the Channel Islands in order to assess the person’s suitability for any purposes referred to in article 3, where—

(a) the person asking the question states that a corresponding question and purpose are also provided for in the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002 (“the Jersey Regulations”), or the Rehabilitation of Offenders (Bailiwick of Guernsey) Law 2002 (Commencement, Exclusions and Exceptions) Ordinance 2006 (“the Guernsey Ordinance”), and

(b) the person to whom the question relates is a person to whom article 3 would apply and is informed at the time the question is asked that spent convictions must be disclosed.

(3) Neither subsection (1) or (3) of section 4 of, nor paragraph 3(1) or (5) of Schedule 2 to, the Act apply to a question to which paragraph (4) applies.

(4) This paragraph applies to a question asked by or on behalf of any person in the course of that person’s office or employment in the Channel Islands for a purpose mentioned in, or

(a) 2006 c.47

(b) S.I. 2001/3998

(c) O.J. No. L 47 18.2.2004, p.1

(d) O.J. No. L 22, 26.1.2005, p.1

in respect of a case or class of case and conviction specified in, article 4 or 5, where the person asking the question states that a corresponding purpose or case or class of case and conviction is provided for in the Jersey Regulations or the Guernsey Ordinance and the person to whom the question relates is a person to whom article 4 or 5 would apply.”

Amendment of Schedule 1

7.—(1) In Part 2 of Schedule 1—

(a) after paragraph 12 insert—

“**12A.** Any work which is regulated activity relating to vulnerable adults within the meaning of Part 2 of Schedule 4 to the 2006 Act.”;

(b) after paragraph 14 insert—

“**14A.** Any work which is regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the 2006 Act.”;

(c) after paragraph 43 insert—

“**44.** Any office or employment or other work in the Criminal Records Bureau.”.

(2) In Part 3 of Schedule 1, after paragraph 10 insert—

“**11.** A regulated immigration adviser.”

(3) In Part 4 of Schedule 1, after the definition of “registered teacher” insert—

““regulated immigration adviser” means any person who provides immigration advice or immigration services as defined in section 82(1) of the Immigration and Asylum Act 1999(a) and is—

(i) a registered person under Part 5 of that Act, or

(ii) a person who acts on behalf of and under the supervision of such a registered person, or

(iii) a person who falls within section 84(4)(a), (b) or (c) of that Act.”

Signed by authority of the Secretary of State

Minister of State
Ministry of Justice

(a) 1999 c. 33

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (“the Exceptions Order”).

It confers the right to ask questions regarding spent convictions and spent cautions for the purposes of assessing a person’s suitability for—

regulated activity relating to children and vulnerable adults within the meaning of the Safeguarding Vulnerable Groups Act 2006,

working for the Criminal Records Bureau,

obtaining or retaining a licence under regulation 5 of the Misuse of Drugs Regulations 2001 (controlled drugs), article 3(2) of Regulation 2004/273/EC or article 6(1) of Regulation 2005/111/EC (drug precursors),

membership of the Master Locksmiths Association.

It also confers the right to ask such questions in relation to offices, employment or other work etc in the Channel Islands where there is corresponding provision in those Islands for the rehabilitation of offenders and the right to ask excepted questions for prescribed purposes.

It also confers the right to ask such questions for the purposes of considering the suitability of a person to pursue the occupation of regulated immigration adviser.

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