

EXPLANATORY MEMORANDUM TO
THE REHABILITATION OF OFFENDERS ACT 1974 (EXCEPTIONS)
(AMENDMENT) (ENGLAND AND WALES) ORDER 2006

2006 No. 2143

1. This explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The purpose of this Order is to amend the Rehabilitation of Offenders Act 1974 (exceptions) Order 1975 (“the 1975 Order”). This Amendment will increase coverage of the 1975 Order, expanding the list of sensitive positions, licences, bodies and proceedings which qualify for disclosure of spent conviction information.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 The Rehabilitation of Offenders Act 1974 (“the Act”) introduced limitations on the requirement to disclose previous convictions. After a specified period of time, certain convictions become ‘spent’ under the Act and are no longer required to be disclosed to employers and various other bodies.

4.2 The 1975 Order removes the protection afforded by the Act with regard to many positions, licences, bodies and proceedings of a sensitive nature.

4.3 The 1975 Order is amended periodically to ensure that the criminal disclosure regime keeps pace with changes in public risk. The most recent amendment was made in 2003. This Amendment extends coverage of the 1975 Order, introducing new instances where the provisions of the Act are to be excepted.

4.4 The use of this Order has been necessary as there remained certain positions, licences, bodies and proceedings of a sensitive nature which were not in the 1975 Order or the Act. A list of the newly introduced exceptions has been annexed.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

The Minister of State for Criminal Justice and Offender Management, Baroness Scotland of Asthal, has made the following statement regarding Human Rights:

In my view the provisions of the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2006 are compatible with the Convention rights.

7. Policy Background

7.1 The 1975 Order was introduced to balance the rights of ex-offenders under the Rehabilitation of Offenders Act 1974 with the aim of protecting the public. Although generally it is desirable to encourage employment of ex-offenders by allowing their convictions to become spent, there are certain positions of such sensitivity where disclosure of all convictions should be made available when requested.

7.2 By adding new positions, licenses, bodies and proceedings to the list of 'exceptions', this amendment seeks to increase the public protection aspect of the criminal record disclosure regime.

7.3 Public interest in this amendment is expected to be minimal. Each addition to the list of excepted positions has been consulted upon within the industry affected.

8. Impact

8.1 A full Regulatory Impact Assessment has not been prepared for this instrument as it has minimal impact on business, charities or voluntary bodies.

8.2 The majority of public sector impact has been considered in assessments attached to previous legislation. Any outstanding impact has again been found to be minimal.

9. Contact

9.1 Tony Browne at the Home Office will answer any queries regarding this instrument. Telephone 020 7035 6807 or e-mail tony.browne9@homeoffice.gsi.gov.uk.

Detailed list of proposed amendments to the Exceptions Order

Position/employment:

- (i) **HM Revenue and Customs** – inserted to reflect the creation of the new department.
- (ii) **Revenue and Customs Prosecutions Office** – a commitment has been made in Parliament to the full vetting of this newly-created body. This would merely be recreating the vetting previously available to relevant sections of HM Customs & Excise and the Inland Revenue.
- (iii) **Traffic Officers, TO supervisors, TO Operations Managers, and Network Operations Managers** - all on-road traffic operations staff. Traffic Officers are able to take over police functions on motorways and trunk roads. Currently obtaining disclosure under the access to vulnerable adults exceptions contained with the Order, however we have moved to explicitly include the post on the advice of our lawyers, who believe the current arrangement is vulnerable to challenge.
- (iv) **Court Auxiliary staff** – DCA have requested that coverage for staff with access to court records and contractors working in courts be covered. We believe that this is justified on the grounds that they have privileged access to locations and/or information about the administration of justice.
- (v) **Home Inspectors** – The Housing Act 2004 will require, from 2007, that someone selling a residential property must have a valid home information pack (HIP). The HIP will consist of a number of documents, including a home condition report reporting on the physical condition and the energy efficiency of the property, which will be made by a home inspector. The Home Inspector will need to spend some time in each home (s)he assesses; ODPM want to ensure that they are ‘fit and proper’ persons. ODPM’s case is that legislation imposes a statutory requirement for vendors to let these people into their homes. Following legal advice, we now think it sensible to add them to the Order.
- (vi) **Independent Mental Capacity Advocates** – The Mental Capacity Act 2005 introduced the IMCA service. Its purpose is to provide particular safeguards for vulnerable people who are facing important decisions about treatment and residence. This is clearly Bichard-related – however, we felt an exception was warranted as these advocates are currently being recruited and the service piloted.
- (vii) **Detention Custody Officers** – Currently obtaining disclosure under the *access to vulnerable adults* exceptions contained with the Order, however we have decided to explicitly include the post on the advice of our lawyers. Technical amendment.

Licences:

(viii) **Taxi driver licences** – A technical amendment is required due to an error in the current drafting of this exception.

(ix) **Football stewards** - Ministers agreed last September a framework for exempting football stewards from the Private Security Industry Act 2001 (PSIA 2001). We need to amend the Exceptions Order to give the CRB the legal authority to carry out checks on football stewards at the request of the Football Association or Premier League. A framework for excluding premises from the PSIA 2001 is being developed. It is likely that the football industry will make a submission to Ministers that football grounds be excluded from the PSIA 2001. Evidence will need to be provided, and if this is persuasive Ministers may be minded to grant the exclusion. A consultation exercise is currently underway on how the PSIA 2001 impacts upon security staff at sports and other events, and is due to end on 16 June. The responses to that might mean that Ministers need to look again at the position in relation to football, but that this amendment is being included in any event since the SI is being laid before the end of the consultation period.

Proceedings:

(x) **Prohibition from teaching proceedings** – The current exception needs updating. This does not extend the coverage and is purely for technical reasons

(xi) **Proceeds of Crime Act proceedings** - The Organised and Financial Crime Unit have ministerial agreement to allow the courts to admit evidence of spent convictions during various proceedings under the Proceeds of Crime Act 2002.

(xii) **Parole Board proceedings** – This will ensure the Parole Board have the right to look at spent proceedings when assessing offenders for release, without need for specific consideration of the “interests of justice” test on every occasion. This will not effect the amount of CRB checks carried out.

(xiii) **Recovery of criminal injuries compensation from offenders proceedings** – This will ensure that the Criminal Injuries Compensation Authority can take account of spent convictions in order to assess a claim in all cases.

Miscellaneous:

(xiii) **EU Public Sector Procurement Directive** - for the award of public works contracts, public supply contracts and public service contracts. The directive states that a contracting authority must exclude from the tendering process for a public works, services or supply contract, a candidate or tenderer who has been the subject of certain convictions of which the contracting authority is aware. Lawyers have advised that to be EU compliant, access to the full criminal records of these individuals should be available.