

**2008 No. 3259**

**REHABILITATION OF OFFENDERS,  
ENGLAND AND WALES**

**The Rehabilitation of Offenders Act 1974 (Exceptions)  
(Amendment) (England and Wales) Order 2008**

*Made* - - - - *17th December 2008*

*Coming into force* - - *18th December 2008*

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 2008 and comes into force on the day after the day on which it is made.

(2) 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.—(1) In article 2(1)—

(a) in the definition of “child minding” for paragraphs (a) and (b) substitute—

“(a) child minding within the meaning of section 79A of the Children Act 1989(d); and

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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 The 1975 Order was revoked in relation to Scotland, by article 6(a) of S.S.I. 2003/231.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, 2005/848, 2005/2011 2006/2143, 2006/3290, 2007/289 and 2007/2149. 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the Osteopaths Act 1993 (c. 21) and section 40 of the Chiropractors Act 1994 (c. 17), both of which are prospectively repealed by section 133 of the Police Act 1997 (c. 50).

(d) 1989 c.41. Section 79A was inserted by section 79(1) of the Care Standards Act 2000 (c.14).

- (b) early years childminding within the meaning of section 96(4) of the Childcare Act 2006<sup>(a)</sup>, or later years childminding within the meaning of section 96(8) of that Act;”
- (b) in the definition of “day care” for paragraphs (a) and (b) substitute–
  - “(a) day care for which registration is required by section 79D(5)<sup>(b)</sup> of the Children Act 1989; and
  - (b) early years provision within the meaning of section 96(2) of the Childcare Act 2006 (other than early years childminding), or later years provision within the meaning of section 96(6) of that Act (other than later years childminding), for which registration is required, or permitted, under Part 3 of that Act;”
- (c) in the definition of “work with children” after “paragraph 14 of” insert “Part 2 of”.
- (2) After paragraph (4) insert–
  - “(4A) In this Order any reference to a conviction shall where relevant include a reference to a caution<sup>(c)</sup>, and any reference to spent convictions shall be construed accordingly.”

**Amendment of article 3**

4. In article 3, for “None of the provisions of section 4(2) of” substitute “Neither section 4(2) of, nor paragraph 3(3) of Schedule 2 to,”.

**Amendment of article 4**

5. In article 4, for “Paragraph (b) of section 4(3) of the Act shall not apply” substitute “Neither paragraph (b) of section 4(3) of, nor paragraph 3(5) of Schedule 2 to, the Act shall apply”.

**Amendment of article 5**

6.—(1) In article 5(1), for “Section 4(1) of the Act shall not” substitute “Neither section 4(1) of, nor paragraph 3(1) of Schedule 2 to, the Act shall”.

(2) In article 5(2) for “(j)” substitute “(n)”.

**Amendment of Schedule 1**

7.—(1) In Part 3 of Schedule 1, after paragraph 8 insert–

“10. Approved legal services body manager.”.

(2) In Part 4 of Schedule 1 before the definition of “assistants to justices’ clerks” insert–

““approved legal services body manager” means a person who must be approved by the Law Society under section 9A(2)(e) of the Administration of Justice Act 1985<sup>(d)</sup>;”.

Signed by authority of the Secretary of State

17th December 2008

*Maria Eagle*  
Ministry of Justice  
Parliamentary Under Secretary of State

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(a) 2006 c.21.  
 (b) Section 79D(5) was amended by paragraph 9 of Schedule 2 to the Childcare Act 2006. As a result of that amendment section 79D applies only in relation to Wales.  
 (c) “Caution” is defined in section 8A(2) of the Act. Section 8A of and Schedule 2 to the Rehabilitation of Offenders Act 1974 were inserted by section 49 and Schedule 10 of the Criminal Justice and Immigration Act 2008 (c.4).  
 (d) 1985 c.61. Section 9A was inserted by section 177(b) of, and paragraphs 80 and 82 of Part 2 of Schedule 16 to, the Legal Services Act 2007 (c.29). These provisions are not yet in force.

## **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”).

Article 3 of the Exceptions Order provides exceptions to section 4(2) of the Rehabilitation of Offenders Act 1974 (“the Act”) (questions which relate to spent convictions).

Article 3 of this Order amends certain definitions relating to child minding and day care to ensure that they are consistent with the new relevant primary legislation (the Childcare Act 2006 (c.21)). It also makes a minor amendment to the definition of “work with children” to clarify the reference.

Article 3 also inserts a new paragraph (4A) in article 2 of the Exceptions Order to provide that where relevant reference to a conviction shall include a reference to a caution. This has the effect, following the amendments to the Act to bring cautions within its ambit (section 8A and Schedule 2, inserted by the Criminal Justice and Immigration Act 2008 (c.4)), that such cautions are also excepted under the terms of the Exceptions Order. A caution includes any caution, conditional caution, reprimand or final warning. Articles 4, 5 and 6 of this Order make amendments to articles 3, 4 and 5 of the Exceptions Order for a similar purpose. Article 6(2) also makes a minor corrective consequential amendment.

Article 7 expands the list of sensitive positions which qualify for disclosure of spent conviction information to include the newly created position of non-lawyer “approved legal services body manager” in the list of regulated occupations in Part 3 of Schedule 1. These non-lawyer managers will be able to manage a legal services body under reforms introduced by the Legal Services Act 2007 (c.29), but must be approved as suitable for such by the Law Society. Adding them to the Exceptions Order ensures that appropriate checks can be carried out to assist the Law Society in making its decision as to approval.

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