

**EXPLANATORY MEMORANDUM TO THE
REHABILITATION OF OFFENDERS (EXCEPTIONS) (AMENDMENT) (NO. 2)
ORDER (NORTHERN IRELAND) 2009**

SR 2009 No. 303

1. 1.1 This Explanatory Memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.
1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Purpose of the instrument**
2.1 This instrument amends the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 by adding new definitions, amending the circumstances under which questions relating to spent convictions can be asked, and adding to the list of excepted offices, employments, licences and proceedings to which exceptions from the rehabilitative provisions of the Rehabilitation of Offenders (Northern Ireland) Order 1978 apply.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
3.1 None.
4. **Legislative Context**
4.1 The Rehabilitation of Offenders (Northern Ireland) Order 1978 (“the 1978 Order”) introduced limitations on the requirement to disclose previous convictions for rehabilitative purposes. However, Articles 5(4) and 8(4) of the 1978 Order (under which this Order is made), allow the Secretary of State to make an order to allow for the protection afforded by the 1978 Order to be set aside so that disclosures may be requested for employments, positions, licences and proceedings of a sensitive nature.
4.2 The Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 is amended periodically to retrospectively replicate provisions introduced in England and Wales, on whom our legislation is modelled, to ensure that the disclosure regimes remain consistent across both jurisdictions and to maintain the public trust and protection process.
4.3 The most recent amendments to the 1979 Order were made on 22nd April 2009 to introduce provisions relating to new employment patterns concerned with working with children; providing care services to vulnerable adults; and to strengthen measures for dealing with the proceeds of crime.
5. **Territorial Extent and Application**
5.1 This instrument applies to Northern Ireland only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

7. Policy background

7.1 The Rehabilitation of Offenders (NI) Order 1978 makes it possible for certain convictions to become “spent” with no requirement to declare them for employment purposes. This 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 Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 (“the 1979 Order”) so that, for certain professions and occupations, applicants must declare all past convictions when asked so that employers may then consider them as part of the recruitment process.

7.2 The Rehabilitation of Offenders (Exceptions) (Amendment) (No. 2) Order (Northern Ireland) 2009 (“the 2009 Order”) updates the circumstances under which a convicted person may be required to declare spent convictions by expanding the list of excepted employments to include persons working in regulated and controlled activity, as defined by the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“the 2007 Order”). These additions are necessary so that a new Vetting and Barring Scheme to be established under the 2007 Order and due to go live on 12 October 2009 can operate. The Scheme, mirroring arrangements to be implemented in England and Wales under the Safeguarding Vulnerable Groups Act 2006, will require all those working in sensitive positions with direct access to children or vulnerable adults to be vetted and registered with the newly created Independent Safeguarding Authority (ISA).

7.3 The list of excepted employments is further expanded with the inclusion of persons working in AccessNI (the Northern Ireland equivalent of the Criminal Records Bureau) to replicate provisions that were introduced in England and Wales earlier this year, following an internal review of security measures by CRB in line with government practice with regard to data security.

7.4 The 2009 Order also updates the circumstances under which questions relating to spent convictions can be asked to include questions asked for the purpose of determining a person’s suitability to act as a child minder; adopt; provide day care; act as a foster parent; register as a social care worker; and register establishments or agencies, including residential care homes, nursing homes, independent clinics, independent hospitals and independent medical agencies. These changes are required to ensure that existing vetting arrangements in these areas can be maintained after an amendment to be made to Section 113B of the Police Act 1997 comes into effect on 12 October 2009 (the amendment is being brought forward by the Safeguarding Vulnerable Groups Act 2006), which will restrict access to enhanced criminal records after that date to those that are needed for an excepted purpose, in addition to the existing qualification criteria.

7.5 Under the existing construction of Section 113B of the Police Act 1997, which restricts access to enhanced criminal record checks to registered bodies that require them for a prescribed purpose, as defined in the Police Act 1997 (Criminal Records) (Disclosure Regulations) (Northern Ireland) 2008 (“the 2008 Regulations”), the Department of Health, Social Services and Public Safety (DHSSPS) currently have access to enhanced disclosures as part of their vetting arrangements to determine a person’s suitability to act in the capacities described. By adding the circumstances above to the 1979 Order to create similar provisions to those that already exist in the E+W Exceptions Order that were not previously required here, the provisions of the 1979 Order will be aligned with those of the 2008 Regulations to ensure that the current levels of DHSSPS access to enhanced disclosures for suitability assessment purposes can continue.

7.6 Finally, the 2009 Order removes a number of obsolete references; adjusts the positioning of taxi driving and Security Industry Authority licences that were introduced in the most recent N.I. amendment order to better mirror the construction, placement and supporting provisions for these two areas within the E+W Exceptions Order; and allows questions to be asked of those named on applications for licences to handle or supply controlled drugs by adding Licences granted under the Misuse of Drugs Regulations (Northern Ireland) 2002 to the Schedule of Excepted Licences to replicate similar provisions introduced in England and Wales earlier this year.

8. Consultation outcome

8.1 The provisions relating to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 are necessary to implement primary legislation. Full consultation was conducted at the time of the Order and no further consultation is considered necessary.

8.2 The provisions relating to suitability assessments by DHSSPS do not create any new powers, introduce any new vetting arrangements or change existing levels of access to enhanced criminal record checks that were established after full consultation on the implementation of Part V of the Police Act 1997 in Northern Ireland. No further consultation is therefore considered necessary to align the provisions of the 1979 Exceptions Order with the Criminal Record Disclosure regulations to ensure existing levels of public protection are maintained in these areas.

8.3 The provisions relating to employment in AccessNI have been included at the request of, and after consultation with, AccessNI to replicate provisions introduced in England and Wales in relation to employment in the Criminal Records Bureau after an internal review of security measures with regard to data security.

8.4 Finally, the provisions relating to controlled drugs licences have been included at the request of, and after consultation with, the Pharmaceutical Advice and Services Section of the Department of Health, Social Services and Public Safety. The provisions are intended to improve the current vetting arrangements employed when considering applications to obtain licences under the Misuse of Drugs Regulations (Northern Ireland) 2002 by replicating similar provisions introduced in England and Wales by the Home Office earlier this year.

9. Guidance

9.1 A booklet offering guidance on the Rehabilitation of Offenders (Northern Ireland) Order 1978 has been previously published and is available from the Northern Ireland Office. The content of the booklet will be revised to take account of the amendments that the Rehabilitation of Offenders (Exceptions) (Amendment) (No. 2) Order (Northern Ireland) 2009 provides for and an information circular on the updated exceptions provisions will be circulated to relevant Criminal Justice agencies, employers and interested bodies.

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

11. Contact

11.1 Tom Haire at the Northern Ireland Office Tel: 028 9052 9122 or email: tom.haire@nio.x.gsi.gov.uk or Andrew Lavery on 028 9052 7442 or email; andrew.lavery@nio.x.gsi.gov.uk can answer any queries regarding this instrument.