

EXPLANATORY MEMORANDUM TO

The Rehabilitation of Offenders (Exceptions) (Amendment) Order (Northern Ireland) 2012

2012 No. 318

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”) 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 1978 Order apply.

3. Background

- 3.1. The 1978 Order 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 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.
- 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 most recent amendments to the 1979 Order were made on 30 August 2009 to introduce provisions relating to new employment patterns concerned with those working in sensitive positions with direct access to children or vulnerable adults, as defined in the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“the 2007 Order”). They also updated provisions relating to a person’s suitability to work as child minder, adopt, provide day care, act as a foster parent, and register as a social care worker; and introduced provisions relating to applications for licences to handle or supply controlled drugs.

- 3.4. This Order, the Rehabilitation of Offenders (Exceptions) (Amendment) Order (Northern Ireland) 2012 (“the 2012 Order”) updates the 1979 Order to ensure existing safeguarding arrangements for those working with children or vulnerable groups, as defined in the 2007 Order, are not diminished by changes to the 2007 Order that are introduced by The Protection of Freedoms Act 2012 (“the 2012 Act”), which come into operation on 10 September 2012.
- 3.5. The 2012 Order provides additional safeguarding arrangements for vulnerable groups by updating the 1979 Order to add those providing advocacy services to vulnerable adults to the list of excepted offices, employments and work, thereby facilitating the provision of enhanced disclosure certificates for those seeking to engage in the provision of these services.
- 3.6. The 2012 Order also updates the 1979 Order to reflect changes in the law that have an impact upon the Financial Services Authority’s (“FSA”) ability to take account of spent convictions for those working in specified positions in the financial services industry. The FSA is an independent body that operates across all jurisdictions of the United Kingdom to regulate the financial services industry to maintain market confidence in the financial system; promote public awareness of the financial system; secure consumer protection; and reduce financial crime.
- 3.7. The 2012 Order amends the 1979 Order to bring the Northern Ireland exceptions arrangements for the FSA into line with those already in operation in England and Wales to ensure that the FSA can continue to operate consistently across all jurisdictions of the United Kingdom. The 1979 Order is amended by removing references to ‘relevant’ offences, bringing the FSA into line with arrangements for all other excepted professions, offices, employments, work and occupations in the 1979 Order. It does so by allowing the FSA to consider all spent convictions when assessing if a person could be considered fit and proper to perform the function applied for.
- 3.8. The 2012 Order also adds certain functions relating to newly created payment and electronic money institutions to the table of positions that the FSA can ask questions of in relation to spent convictions in order to assess the suitability of the individual to hold the position specified.

4. Consultation

- 4.1. This is a necessary amendment to the law to ensure that existing safeguarding arrangements for children and vulnerable groups are not diminished by changes to the law being brought about by the 2012 Act. These changes are made solely as a consequence of changes within the 2012 Act, for which the Department of Health Social Services and Public Safety secured Legislative Consent Motion approvals in the Northern Ireland Assembly and, as such, consultation is not required.
- 4.2. Similarly, the other amendments in the Statutory Rule are made to close gaps in the law or to offer technical changes or tidy ups that do not add any new powers to the provisions of the 1979 Order. Since they do not represent a change in policy but, rather, maintain a consistency of approach across all jurisdictions of the United Kingdom, no consultation was considered necessary.

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 ensure a consistent position with the law in England and Wales in that the safeguarding arrangements for children and vulnerable groups will remain undiminished in both jurisdictions. Similarly, the FSA will be able to continue 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