

2014 No. 27

REHABILITATION OF OFFENDERS

**The Rehabilitation of Offenders (Exceptions) (Amendment)
Order (Northern Ireland) 2014**

Made - - - - 5th February 2014

Coming into operation - 14th April 2014

The Department of Justice makes the following Order in exercise of the powers conferred by Articles 5(4) and 8(4) of the Rehabilitation of Offenders (Northern Ireland) Order 1978(a).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Rehabilitation of Offenders (Exceptions) (Amendment) Order (Northern Ireland) 2014 and shall come into operation on 14th April 2014.

(2) In this Order “the 1979 Order” means the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979(b).

Amendment of the 1979 Order

2. The 1979 Order is amended in accordance with the following provisions of this Order.

Amendment of Article 1

3.—(1) In Article 1(2) after the definition of “the PRA” insert—

““protected conviction” means a conviction of the kind described in Article 1A;”

(2) Omit paragraph (3).

(3) Before paragraph (4) insert—

“(2A) Nothing in this Order applies in relation to a conviction for a service offence which is not a recordable service offence; and for this purpose—

(a) “service offence” means an offence which is a service offence within the meaning of the Armed Forces Act 2006(c) or an SDA offence within the meaning of the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009(d);

(b) “recordable service offence” means an offence which is a recordable service offence within the meaning of the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009(e).”

(a) S.I. 1978/1908 (N.I. 27); Article 4(1) of and paragraph 6 of Schedule 1 to S.I. 2010/976 transferred the Order making powers of the Secretary of State to the Department of Justice.

(b) S.R. 1979 No. 195; relevant amending Orders are S.R. 1987 No. 393, S.R. 2001/No. 248, S.R. 2001 No. 400, S.R. 2003 No. 355, S.R. 2006 No. 425, S.R. 2009 No. 173, S.R. 2009 No.303 and S.R. 2012 No. 318

(c) 2006 c. 52

(d) S.I. 2009/1059

(e) S.I. 2009/1922

Insertion of new Article 1A

4. After Article 1 insert—

“1A.—(1) For the purposes of this Order, a person’s conviction is a protected conviction if the conditions in paragraph (2) are satisfied and —

- (a) where the person was under 18 years at the time of the conviction, five years and six months or more have passed since the date of the conviction; or
- (b) where the person was 18 years or over at the time of the conviction, 11 years or more have passed since the date of the conviction.

(2) The conditions referred to in paragraph (1) are that —

- (a) the offence of which the person was convicted was not a listed offence;
- (b) no sentence mentioned in paragraph (3) was imposed in respect of the conviction; and
- (c) the person has not been convicted of any other offence at any time.

(3) The sentence referred to in paragraph (2)(b) is a sentence of imprisonment, sentence of service detention or a custodial order within the meaning of Articles 2 and 6 of the Order.

(4) In paragraph (2)(a) “listed offence” means —

- (a) The following offences—
 - (i) Abducting girl under 18 with intention of marriage;
 - (ii) Abducting girl under 18;
 - (iii) Affray;
 - (iv) Breach of the peace;
 - (v) False imprisonment;
 - (vi) Going armed so as to terrify the public;
 - (vii) Indecency – outraging public decency;
 - (viii) Kidnapping;
 - (ix) Manslaughter;
 - (x) Murder;
 - (xi) Publishing obscene libel;
 - (xii) Publishing/exhibiting/selling indecent/obscene things;
 - (xiii) Rape;
 - (xiv) Riot;
 - (xv) Rout (incipient riot); and
 - (xvi) Unlawful assembly.
- (b) an offence under section 1 of the Unlawful Drilling Act 1819;
- (c) an offence under section 10 or 11 of the Slave Trade Act 1824;
- (d) an offence under section 2 or 3 of the Tumultuous Risings (Ireland) Act 1831;
- (e) an offence under section 35 of the Malicious Damage Act 1861;
- (f) an offence under section 32, 33, 34, 58, 59 or 64 of the Offences Against the Person Act 1861;
- (g) an offence under section 26 of the Criminal Justice Act (Northern Ireland) 1945;
- (h) an offence under section 2 of the Nuclear Installations Act 1965;

- (i) an offence under section 13, 13A or 13B of the Criminal Justice Act (Northern Ireland) 1966**(a)**;
- (j) an offence under section 5(1) of the Criminal Law Act (NI) 1967;
- (k) an offence under section 25 or 30 of the Children and Young Persons Act (Northern Ireland) 1968;
- (l) an offence under section 7(2)(a), 52, 58(2)(a), 58(2)(b), 63(b), 67 or 67 (1A) of the Medicines Act 1968**(b)**;
- (m) an offence under section 1, 2 or 3 of the Protection of Persons and Property Act (Northern Ireland) 1969;
- (n) an offence under section 7 of the Public Order Amendment Act (Northern Ireland) 1970;
- (o) an offence under section 4(2), 5(2), 5(3), 6(2), 8, 9, 11, 12, 13, 18, 19, 20 or 23 of the Misuse of Drugs Act 1971;
- (p) an offence under section 1 of the Biological Weapons Act 1974;
- (q) an offence under section 2 of the Criminal Jurisdiction Act 1975;
- (r) an offence under Article 5 of the Poisons (Northern Ireland) Order 1976;
- (s) an offence under Article 4 or 5 of the Criminal Damage (Northern Ireland) Order 1977;
- (t) an offence under Article 19 of the Criminal Damage (Compensation) (Northern Ireland) Order 1977;
- (u) an offence under Article 3 of the Criminal Law (Amendment) (Northern Ireland) Order 1977;
- (v) an offence under section 50 of the Customs and Excise Management Act 1979;
- (w) an offence under section 6(2) or section 7(2) of the Aviation Security Act 1982;
- (x) an offence under Article 5, 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983**(c)**;
- (y) an offence under sections 1A to 1D or 2 of the Nuclear Material (Offences) Act 1983**(d)**;
- (z) an offence under section 38 of the Public Order Act 1986;
- (aa) an offence under Article 11, 28, 29, 31, 58, 58ZA or 59 of the Adoption (Northern Ireland) Order 1987**(e)**;
- (bb) an offence under Article 9, 10, 11, 12, 13, 18(3), 22 or 23 of the Public Order (Northern Ireland) Order 1987;
- (cc) an offence under section 139, 139A, or 141 of the Criminal Justice Act 1988**(f)**;
- (dd) an offence under Article 3, 4 or 5 of the Crossbows (Northern Ireland) Order 1988;
- (ee) an offence under section 12, 18 or 19 of the Criminal Justice (International Cooperation) Act 1990;
- (ff) an offence under Article 68 or 132 of the Children (Northern Ireland) Order 1995;

(a) 1966 c.20 (N.I.) Sections 13A and 13B have been inserted by section 60(4) of the Coroners and Justice Act 2009 (c.25).
(b) 1968 c.67 Section 67(1A) has been inserted by section 63(7) of the Health and Social Care Act 2001 (c.15).
(c) S.I. 1983/1120 (N.I. 3). Article 9A has been inserted by section 6(1) of the Criminal Justice (Terrorism and Conspiracy) Act 1998 (c.40) and has been amended by section 72(2)(a) of the Coroners and Justice Act 2009 (c.25).
(d) 1983 c. 18. Sections 1A to 1D have been inserted by paragraph 3 of Schedule 17(1) to the Criminal Justice and Immigration Act 2008 (c. 18).
(e) S.I. 1987/2203 (N.I. 22). Article 58ZA has been inserted by Article 12 of the Adoption (Inter-country Aspects) Act (Northern Ireland) 2001 (c. 11 (N.I.)).
(f) 1988 c. 33. Section 139A has been inserted by section 4(1) of the Offensive Weapons Act 1996 (c. 26).

- (gg) an offence under Article 11A or 12B of the Road Traffic (Northern Ireland) Order 1995**(a)**;
- (hh) an offence under Article 53 or 54 of the Criminal Justice (Northern Ireland) Order 1996;
- (ii) an offence under section 2 or 11 of the Chemical Weapons Act 1996;
- (jj) an offence specified in the Schedule to the Disqualification for Caring for Children Regulations (Northern Ireland) 1996;
- (kk) an offence under section 1 or 2 of the Knives Act 1997;
- (ll) an offence under Article 4, 5(6), 6 or 7(5) of the Protection from Harassment (Northern Ireland) Order 1997;
- (mm) an offence under section 2 of the Landmines Act 1998;
- (nn) an offence under section 35 of the Criminal Justice and Courts Services Act 2000;
- (oo) an offence under section 11, 12, 15, 16, 17, 18, 38B, 39, 58, 60 or paragraph 37 of Schedule 4 to the Terrorism Act 2000;
- (pp) an offence under section 52, 54, 67, 79, 80 or 114 of the Anti-terrorism, Crime and Security Act 2001;
- (qq) an offence under section 58 or 59 of the International Criminal Court Act 2001;
- (rr) an offence under Article 17 of the Criminal Injuries Compensation (Northern Ireland) Order 2002;
- (ss) an offence under section 327, 328, 329, 330, 331, 332, 333A or 342 of the Proceeds of Crime Act 2002;
- (tt) an offence under Article 12, 15(2)(a)-(e), 24 to 28 or 42 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;
- (uu) an offence under Article 30 or 46 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003;
- (vv) an offence stated by a court to be aggravated by hostility under Article 2 of the Criminal Justice (No 2) (Northern Ireland) Order 2004;
- (ww) an offence under Article 3, 24, 37, 39, 40, 41, 42, 45, 61, 62, 63 or 67 of the Firearms (Northern Ireland) Order 2004;
- (xx) an offence under section 1 or 2 of the Terrorism Act 2006;
- (yy) an offence under paragraph 1 of Schedule 1 to the Violent Crime Reduction Act 2006;
- (zz) an offence under section 47 of the Wireless Telegraphy Act 2006;
- (aaa) an offence under Article 11, 13 or 23 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007**(b)**;
- (bbb) an offence under section 27, paragraph 8 of Schedule 3 or paragraph 12 of Schedule 4 to the Justice and Security (Northern Ireland) Act 2007;
- (ccc) an offence under Schedule 1 or Schedule 2 of the Criminal Justice (Northern Ireland) Order 2008**(c)**;

(a) S.I. 1995/2994 (N.I. 18). Article 11A has been inserted by Article 52(1) of the Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)). Article 12B has been inserted by Article 53(1) of that Order.

(b) S.I. 2007/1351 (N.I. 11). Articles 11, 13 and 23 have been revoked by paragraph 1 of Schedule 10(5) to the Protection of Freedoms Act 2012 (c. 9). The repeal is effective from 10 September 2012 as S.I. 2012/2234 immediately after the coming into operation of S.R. 2012/320.

(c) S.I. 2008/1216 (N.I. 1). Schedule 1 and Schedule 2 have been amended by paragraph 35(2) and (3) of Schedule 1 to the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), section 139(2) to (4) and (6) of the Coroners and Justice Act 2009 (c. 25), section 57(2) of the Justice Act (Northern Ireland) 2011 (c. 24 (N.I.)) and section 6(3)(b) of the Criminal Justice Act (Northern Ireland) 2013 (c. 7 (N.I.)).

- (ddd) an offence under Article 68, 69 or 73 of the Sexual Offences (Northern Ireland) Order 2008;
- (eee) an offence under section 71 of the Coroners and Justice Act 2009;
- (fff) an offence under Article 137 or 138 of the Air Navigation Order 2009;
- (ggg) an offence specified in the Schedule to the Safeguarding Vulnerable Groups (Prescribed Criteria and Miscellaneous Provisions) Regulations (Northern Ireland) 2009(a);
- (hhh) an offence under section 2 of the Cluster Munitions (Prohibitions) Act 2010;
- (iii) an offence under section 93 of the Justice Act (Northern Ireland) 2011;
- (jjj) an offence under regulation 255 of the Human Medicines Regulations 2012;
- (kkk) an offence which has been superseded (directly or indirectly) by an offence within paragraphs (a) to (jjj);
- (lll) an offence of –
 - (i) attempting or conspiring to commit any offence falling within paragraphs (a) to (kkk), or inciting or aiding, abetting, counselling or procuring the commission of any such offence, or
 - (ii) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or committing serious crime) committed in relation to any such offence;
- (mmm) an offence under the law of England, Scotland or Wales or any territory outside the United Kingdom which corresponds to an offence under the law of Northern Ireland within any of the paragraphs (a) to (lll);
- (nnn) an offence under section 42 of the Armed Forces Act 2006 in relation to which the corresponding offence under the law of Northern Ireland (within the meaning of that section) is an offence corresponding with any of the paragraphs (a) to (lll); and
- (ooo) an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 of which the corresponding civil offence (within the meaning of those Acts) is an offence within any of the paragraphs (a) to (lll).”.

Amendment of Article 2

5. Article 2 is amended as follows—

- (a) the existing text is renumbered as paragraph (1);
- (b) for “None” substitute “Subject to paragraph (2), none”;
- (c) in sub-paragraph (a)—
 - (i) in paragraph (ii), after “Schedule 1”, in the first place, insert “apart from one specified in paragraph 4, 15, 16, 17 or 19” and omit “15, 16, 17,”;
 - (ii) in paragraph (iii), after “Schedule 1” insert “apart from one specified in paragraph 1 or 9”;
 - (iii) in paragraph (iv), after “Order” insert “apart from one specified in paragraph 1 or 4”;
- (d) omit sub-paragraph (b);
- (e) after paragraph (1) insert—
 - “(2) Paragraph (1) does not apply in relation to a protected conviction.”

(a) S.R. 2009/39. The Schedule to these Regulations has been amended by the Safeguarding Vulnerable Groups (Prescribed Criteria and Miscellaneous Provisions) Regulations (Northern Ireland) 2012 (S.R. 2012/319).

Insertion of new Article 2A

6. After Article 2 insert—

- “**2A.** None of the provisions of Article 5(2) of the Order shall apply in relation to –
- (a) any question asked by or on behalf of any person, in the course of the duties of his office or employment, in order to assess the suitability —
 - (i) of the person to whom the question relates for an office or employment specified in paragraph 4, 15, 16, 17 or 19 of Part II of Schedule 1 to this Order or for any work specified in paragraph 15,16, 17 or 19 of Part II of said Schedule 1;
 - (ii) of the person to whom the question relates or of any other person to pursue an occupation specified in paragraph 1 or 9 of Part III of Schedule 1 to this Order or to pursue it subject to a particular condition or restriction; or
 - (iii) of the person to whom the question relates or of any other person to hold a licence, certificate or permit of a kind specified in paragraph 1 or 4 of Schedule 2 to this Order or to hold it subject to a particular condition or restriction,where the person questioned is informed at the time the question is asked that, by virtue of this Order, spent convictions are to be disclosed; or
 - (b) any question asked by or on behalf of any person, in the course of his duties as a person employed in the service of the Crown, the United Kingdom Atomic Energy Authority, the FCA, the PRA or the Post Office corporation in order to assess, for the purpose of safeguarding national security or of protecting public safety or public order, the suitability of the person to whom the question relates or of any other person for any office or employment where the person questioned is informed at the time the question is asked that, by virtue of this Order, spent convictions are to be disclosed for the purpose of safeguarding national security or of protecting public safety or public order.”

Amendment of Article 3

7. Article 3 is amended as follows—

- (a) the existing text is renumbered as paragraph (1);
- (b) for “Paragraph” substitute “Subject to paragraph (2), paragraph”;
- (c) in sub-paragraph (b)—
 - (i) after “Part II” insert “of Schedule 1 apart from one specified in paragraph 4, 15, 16, 17 or 19”;
 - (ii) after “Schedule 1” insert “apart from one specified in paragraph 1 or 9”; and
 - (iii) omit “15, 16, 17,”
- (d) omit sub-paragraph (c);
- (e) after paragraph (1) insert—

“(2) Paragraph (1) does not apply in relation to a protected conviction.”.

Insertion of new Article 3A

8. After Article 3 insert—

- “**3A.** None of the provisions of Article 5(2) of the Order shall apply in relation to –
- (a) any office, employment or occupation specified in paragraph 4, 15, 16, 17 or 19 of Part II of Schedule 1 or paragraph 1 or 9 of Part III of Schedule 1 or any work specified in paragraph 15, 16, 17 or 19 of Part II of Schedule 1.

- (b) any action taken for the purpose of safeguarding national security or of protecting public safety or public order.”.

Sealed with the Official Seal of the Department of Justice on 5th February 2014



David Ford
Minister of Justice

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Rehabilitation of Offenders (Exceptions) Order 1979 (“the 1979 Order”). The 1979 Order disapplies specified provisions of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (“the 1978 Order”) to allow questions to be asked about spent convictions in order to assess a person’s suitability for admission to certain occupations or to hold certain types of employment, licences or permits. It also allows spent convictions, or a failure to disclose them, to be grounds for excluding a person from these occupations or for making decisions in relation to those types of employments, licences and permits.

Article 3(3) of this Order inserts a new paragraph (2A) into Article 1 of the 1979 Order. It provides that the 1979 Order does not apply to “service offences” within the meaning of the Armed Forces Act 2006 other than “recordable service offences” as defined in the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009. Its effect is that minor “non-recordable service offences”, which do not correlate to conduct which would be criminal in the civilian sphere, need not be disclosed once the relevant rehabilitation period has been served.

Articles 4 to 8 of this Order make amendments to the coverage of the 1979 Order by adjusting the range of spent convictions covered by it. Articles 5 and 7 amend Articles 2 and 3 of the 1979 Order respectively so that the 1978 Order is no longer disapplied in respect of a “protected conviction” when a question is asked to assess a person’s suitability for certain purposes or when a decision is made for certain purposes.

The definition of a “protected conviction” is provided in Article 4, which inserts a new Article 1A into the 1979 Order. A conviction is a “protected conviction” if it was given for an offence other than those listed in new Article 1A(4); a sentence other than custody or service detention was imposed; the person has not been convicted of any other offence at any time; and, where the person was aged 18 or over at the time of the conviction, 11 years or more have passed since the date of conviction. Shorter time periods apply in respect of a person aged under 18 at the date of conviction.

Articles 6 and 8 introduce new Articles 2A and 3A respectively into the 1979 Order. These new Articles continue the existing effect of Articles 2 and 3 in certain circumstances so that in those circumstances, such as for the purpose of safeguarding national security, the 1978 Order continues to be disapplied even in relation to a “protected conviction”.

The Order comes into operation on 14th April 2014.

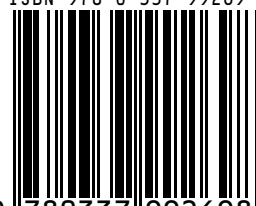
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