

Draft Order laid before Parliament under section 10(2) of the Rehabilitation of Offenders Act 1974, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2006 No.

**REHABILITATION OF OFFENDERS,
ENGLAND AND WALES**

**The Rehabilitation of Offenders Act 1974 (Exceptions)
(Amendment) (England and Wales) Order 2006**

<i>Made</i>	- - - -	2006
<i>Coming into force</i>	- -	2006

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 on him by sections 4(4), 7(4) and 10(1) of the Rehabilitation of Offenders Act 1974(1) 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 2006 and comes into force on the day after the day on which it is made.

(2) This Order extends to England and Wales only(2).

Amendment of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

2. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(3) is amended in accordance with the following provisions of this Order.

Amendment of article 2

3. In article 2(1)—

(a) in the definition of “taxi driver licence”, for paragraph (i) substitute—

(1) 1974 c.53.
(2) As regards Scotland, see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2003 (S.I. 2003/415 (s.5)).
(3) S.I. 1975/1023, amended by S.I. 1986/1249, S.I. 1986/2268, S.I. 2001/1192, S.I. 2001/3816, S.I. 2002/441, S.I. 2003/965; and modified by S.I. 1994/1696. 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the Osteopaths Act 1993 (c. 21) and section 40 of the Chiropractors Act 1994 (c. 17), both of which are prospectively repealed by section 133 of the Police Act 1997 (c. 50).

- “(i) section 46 of the Town Police Clauses Act 1847(4);” and
- (b) insert in the appropriate alphabetical positions—
- ““contracting authority” means a contracting authority within the meaning of Article 1(9) of Directive 2004/18/EC;
- “contracting entity” means a contracting entity within the meaning of Article 2(2) of Directive 2004/17/EC;
- “Directive 2004/17/EC” means Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004(5);
- “Directive 2004/18/EC” means Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004(6);”.

Amendment of article 3

4. In article 3 after paragraph (i), add—

“(j) any question asked by or on behalf of a contracting authority or contracting entity in relation to a conviction within the meaning of Article 45(1) of Directive 2004/18/EC which is a spent conviction (or any circumstances ancillary to such a conviction) for the purpose of determining whether or not to treat a person as ineligible:

(i) for the purposes of regulation 23 of the Public Contracts Regulations 2006(7) or regulation 23 of the Utilities Contracts Regulations 2006(8); or

(ii) to participate in a design contest for the purposes of regulation 33 of the Public Contracts Regulations 2006 or regulation 34 of the Utilities Contracts Regulations 2006,

where the person questioned is informed at the time the question is asked that, by virtue of this Order, convictions within the meaning of Article 45(1) of Directive 2004/18/EC which are spent convictions are to be disclosed;

(k) any question asked, by or on behalf of the Football Association or Football Association Premier League in order to assess the suitability of the person to whom the question relates or of any other person to be approved as able to undertake, in the course of acting as a steward at a sports ground at which football matches are played or as a supervisor or manager of such a person, licensable conduct within the meaning of the Private Security Industry Act 2001(9) without a licence issued under that Act, in accordance with regulations made under section 4 of that Act.”.

Amendment of article 4

5. In article 4 after paragraph (m), add—

“(n) any decision by the Football Association or Football Association Premier League to refuse to approve a person as able to undertake, in the course of acting as a steward at a sports ground at which football matches are played or as a supervisor or manager of such a person, licensable conduct within the meaning of the Private Security Industry Act 2001(10) without a licence issued under that Act, in accordance with regulations made under section 4 of that Act.”

(4) 10 & 11 Vict c. 89; section 46 is subject to section 59 of the Local Government (Miscellaneous Provisions) Act 1976 (c.57).

(5) OJ L 134, 30.4.2004, p.1.

(6) OJ L 134, 30.4.2004, p.114.

(7) S.I. 2006/5.

(8) S.I. 2006/6.

(9) 2001 c.12.

(10) 2001 c.12.

Amendment of Schedule 1

6. In Part I of Schedule 1, after paragraph 17 add—
- “18. Home inspector.”
7. Part II of Schedule 1 is amended as follows—
- (a) omit paragraph 3;
- (b) the following paragraphs are amended as follows—
- (i) in paragraph 4(11) for the words “and their assistants” substitute “and assistants to justices’ clerks”;
- (ii) in paragraph 7 after the words “remand centre” insert “removal centre, short-term holding facility,”;
- (iii) in paragraph 15 after the words “carry out the” insert “humane”;
- (c) for paragraph 12 substitute—
- “12. Any office or employment which is concerned with:
- (a) the provision of care services to vulnerable adults; or
- (b) the representation of, or advocacy services for, vulnerable adults by a service that has been approved by the Secretary of State or created under any enactment; and which is of such a kind as to enable a person, in the course of his normal duties, to have access to vulnerable adults in receipt of such services.”;
- (d) for paragraph 18 substitute—
- “18. The Commissioners for Her Majesty’s Revenue and Customs and any office or employment in their service.
- 18A. The Director and any office or employment in the Revenue and Customs Prosecutions Office.”;
- (e) after paragraph 21 add—
- “22. An individual designated under section 2 of the Traffic Management Act 2004(12).
23. Judges’ clerks, secretaries and legal secretaries within the meaning of section 98 of the Supreme Court Act 1981(13).
24. Court officers and court contractors, who in the course of their work, have face to face contact with judges of the Supreme Court, or access to such judges’ lodgings.
25. Persons who in the course of their work have regular access to personal information relating to an identified or identifiable member of the judiciary.
26. Court officers and court contractors, who, in the course of their work, attend either the Royal Courts of Justice or the Central Criminal Court.
27. Court security officers, and tribunal security officers.
28. Court contractors, who, in the course of their work, have unsupervised access to court-houses, offices and other accommodation used in relation to the courts.

(11) Paragraph 4 was substituted in relation to England and Wales by articles 2 and 6(3) of [S.I. 2001/1192](#).

(12) [2004 c.18](#).

(13) [1981 c.54](#). Section 98 was amended by section 71(2), 74(1) of, and paragraph 47 of Schedule 10 to, the Courts and Legal Services Act [1990 \(c.41\)](#). It was further amended by the Constitutional Reform Act [2005 \(c.4\)](#).

29. Contractors, sub-contractors, and any person acting under the authority of such a contractor or sub-contractor, who, in the course of their work, have unsupervised access to tribunal buildings, offices and other accommodation used in relation to tribunals.

30. The following persons—

- (a) Court officers who execute county court warrants;
- (b) High Court enforcement officers;
- (c) sheriffs and under-sheriffs;
- (d) tipstaffs;
- (e) any other persons who execute High Court writs or warrants who act under the authority of a person listed at (a) to (d);
- (f) persons who execute writs of sequestration;
- (g) civilian enforcement officers as defined in section 125A of the Magistrates' Courts Act 1980⁽¹⁴⁾ ;
- (h) persons who are authorised to execute warrants under section 125B(1) of the Magistrates' Courts Act 1980⁽¹⁵⁾ , and any other person, (other than a constable), who is authorised to execute a warrant under section 125(2) of the 1980 Act⁽¹⁶⁾;
- (i) persons who execute clamping orders, as defined in paragraph 38(2) of Schedule 5 to the Courts Act 2003⁽¹⁷⁾.

31. The Official Solicitor and his deputy.

32. Persons appointed to the office of Public Trustee or deputy Public Trustee, and officers of the Public Trustee.

33. Court officers and court contractors who exercise functions in connection with the administration and management of funds in court including the deposit, payment, delivery and transfer in, into and out of any court of funds in court and regulating the evidence of such deposit, payment, delivery or transfer and court officers and court contractors, who receive payments in pursuance of a conviction or order of a magistrates' court.”.

8. In Part IV of Schedule 1, insert in the appropriate alphabetical positions—

““assistants to justices' clerks” has the meaning given by section 27(5) of the Courts Act 2003⁽¹⁸⁾;

“court contractor” means a person who has entered into a contract with the Lord Chancellor under section 2(4) of the Courts Act 2003, such a person's sub-contractor, and persons acting under the authority of such a contractor or sub-contractor for the purpose of discharging the Lord Chancellor's general duty in relation to the courts;

“court officer” means a person appointed by the Lord Chancellor under section 2(1) of the Courts Act 2003;

“court security officers” has the meaning given by section 51 of the Courts Act 2003;

“funds in court” has the meaning given by section 47 of the Administration of Justice Act 1982⁽¹⁹⁾;

⁽¹⁴⁾ 1980 c.43. Section 125A was inserted by section 92 of the Access to Justice Act 1999 (c.22).

⁽¹⁵⁾ Section 125B(1) was inserted by section 92 of the Access to Justice Act 1999.

⁽¹⁶⁾ Section 125(2) was amended by the Access to Justice Act 1999. It was further amended by section 65(1) of the Criminal Justice Act 1988 (c.33).

⁽¹⁷⁾ 2003 c.39.

⁽¹⁸⁾ 2003 c.39.

⁽¹⁹⁾ 1982 c.53.

“home inspector” means a person who is a member of a certification scheme approved by the Secretary of State in accordance with section 164(3) of the Housing Act 2004(20);

“judges of the Supreme Court” means the Lord Chief Justice, the Master of the Rolls, the President of the Queen’s Bench Division, the President of the Family Division, the Chancellor of the High Court, the Lords Justices of Appeal and the puisne judges of the High Court;

“members of the judiciary” means persons appointed to any office by virtue of which the holder has power (whether alone or with others) under any enactment or rule of law to determine any question affecting the rights, privileges, obligations or liabilities of any person;

“personal information” means any information which is of a personal or confidential nature and is not in the public domain and it includes information in any form but excludes anything disclosed for the purposes of proceedings in a particular cause or matter;

“removal centre” and “short-term holding facility” have the meaning given by section 147 of the Immigration and Asylum Act 1999(21);

“tribunal security officers” means persons who, in the course of their work, guard tribunal buildings, offices and other accommodation used in relation to tribunals against unauthorised access or occupation, against outbreaks of disorder or against damage;

“tribunals” means any person exercising the judicial power of the State, that is not a court listed in section 1(1) of the Courts Act 2003(22);”.

Amendment of Schedule 3

9. In Schedule 3—

(a) for paragraph 9 substitute—

“**9.** Proceedings in respect of a direction given under section 142 of the Education Act 2002(23) or of any prohibition or restriction on a person’s employment or work which has effect as if it were contained in such a direction.”; and

(b) after paragraph 19, add—

“**20.** Proceedings before the Parole Board.

21. Proceedings under section 7D of the Criminal Injuries Compensation Act 1995(24).

22. The following proceedings under the Proceeds of Crime Act 2002(25)—

(a) proceedings under Chapter 2 of Part 5;

(b) proceedings pursuant to a notice under section 317(2)(26);

(c) proceedings pursuant to an application under Part 8 in connection with a civil recovery investigation (within the meaning of section 341).

23. Proceedings brought before the Football Association or Football Association Premier League against a decision taken by the body before which the proceedings are

(20) 2004 c.34.

(21) 1999 c.33. Section 147 was amended by section 66 of the Nationality, Immigration and Asylum Act 2002 (c.41).

(22) Section 1(1) was amended by the Constitutional Reform Act 2005 (c.4). It is also to be amended by section 67(1) of, and paragraph 47 of Schedule 6 to, the Mental Capacity Act 2005, from a date to be appointed under section 68(1).

(23) 2002 c.32.

(24) 1995 c.53. Section 7D was inserted by the Domestic Violence, Crime and Victims Act 2004, s 57(1), (2) and comes into force from a date to be appointed under section 60.

(25) 2002 c.29. Relevant amendments to that Act have been made by sections 98, 107 and 109 of, and Schedule 6 to, the Serious Organised Crime and Police Act 2005 (c.15).

(26) Section 317(2) was amended by section 50(1) and (7) of the Commissioners for Revenue and Customs Act 2005 (c.11).

brought to refuse to approve a person as able to undertake, in the course of acting as a steward at a sports ground at which football matches are played or as a supervisor or manager of such a person, licensable conduct within the meaning of the Private Security Industry Act 2001 (27) without a licence issued under that Act, in accordance with regulations made under section 4 of that Act.”.

Home Office

Minister of State

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (“the 1975 Order”).

Article 3 of the 1975 Order provides exceptions to section 4(2) of the Rehabilitation of Offenders Act 1974 (“the Act”) (questions which relate to spent convictions). Article 4 of this Order provides new exceptions for questions asked in relation to public contract tendering under European Community law and in relation to assessing the suitability of a person to undertake certain activities as a football steward.

Article 4 of the 1975 Order provides exceptions to section 4(3)(b) of the Act (spent convictions not to be a proper ground for dismissal or for prejudicing a person in any occupation or employment). Article 5 of this Order provides a new exception relating to decisions to refuse approval for a person to undertake certain activities as a football steward.

Parts I and II of Schedule 1 to the 1975 Order list the professions, offices, employments, work and occupations which are excepted from the provisions of the Act. Article 6 of this Order adds “home inspectors” to the list. The effect of article 7 is to make substitutions to the 1975 Order in relation to those who work with vulnerable adults and to reflect the new arrangements in relation to “HM Revenue and Customs” and the “Revenue and Customs Prosecutions Office”. Various new posts are also added to the list including persons designated under the Traffic Management Act 2004 and various persons who work in the courts and in relation to the Official Solicitor and Public Trustee.

Schedule 3 to the 1975 Order deals with excepted proceedings (for the purposes of Article 5 to the 1975 Order which allows for spent convictions to be disclosed in such proceedings). Article 9 of this Order adds certain new proceedings in which spent convictions may be used: those before the Parole Board; under section 7D of the Criminal Injuries Compensation Act 1995; under the Proceeds of Crime Act 2002; and in relation to the refusal to approve a person to undertake certain activities as a football steward.