

**EXPLANATORY MEMORANDUM TO
THE REHABILITATION OF OFFENDERS ACT 1974 (EXCEPTIONS)
(AMENDMENT) (ENGLAND AND WALES) ORDER 2010**

2010 No. [Draft]

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 This instrument amends the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (the “Exceptions Order”). It expands the circumstances in which a person loses the protection of the Rehabilitation of Offenders Act 1974 so as to include those who, having been barred from ‘regulated activity’, as defined by the Safeguarding Vulnerable Groups Act 2006 (the “SVGA”), then seek to find work in ‘controlled activity’, as defined by the SVGA.
 - 2.2 The Order also enables the Criminal Records Bureau (“CRB”) in England to answer questions about the spent convictions and other information relating to persons in the Isle of Man, where there is similar provision for the rehabilitation of offenders in the Isle of Man and similar circumstances in which excepted questions may be put and answered. By amending article 6 of the Order, the position as regards the Isle of Man will be aligned with that which was made for the purposes of the Channel Islands in the amendment to the Exceptions Order made in 2009 which added article 6.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 This Order is subject to the affirmative resolution procedure.
 - 3.2 There was an erroneous reference to “paragraph 3(2)” - instead of “paragraph 3(3)” - of Schedule 2 to the Rehabilitation of Offenders Act 1975 added by the Criminal Justice and Immigration Act 2008. This error appeared in the vires conferring paragraph 4(a) of that Schedule. This error was mentioned in the Ministry of Justice’s Explanatory Memorandum to SI 2009/1818. We are pleased to inform the Committee that the error has been corrected by way of the publication of a correction slip, which may be identified by the ISBN number 978-0-10-540408-8.
4. **Legislative Background**

Legislative context of the Rehabilitation of Offenders Act 1974

- 4.1 The Rehabilitation of Offenders Act 1974 (“the Act”) protects rehabilitated offenders from having to reveal certain past convictions and cautions once a specified period of time has passed. Section 4(4) enables the Secretary of State by order to make provision that in certain circumstances and proceedings the protection against having to reveal such spent convictions does not apply and exempted questions may be put resulting in the giving of information about such convictions.
- 4.2 The Exceptions Order, by providing for the right to put an exempted question, taken in conjunction with the provisions of the Police Act 1997 and regulations made under it, has the result that a full criminal records history may be provided for an individual involved in sensitive areas of activity and work. The Criminal Records Bureau (CRB) is able to provide the relevant disclosure information on application for any purpose listed on the Exceptions Order.
- 4.3 The Exceptions Order is amended periodically to ensure that the criminal disclosure regime meets the changing requirements of public protection. For example, in July 2009, the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2009 added to the list of circumstances in which exempted questions could be asked, including persons seeking work in regulated activity with children or vulnerable adults under the SVGA, and the ability to put excepted questions for the purposes of those working in the Channel Islands.

Legislative context of the Safeguarding Vulnerable Groups Act

- 4.4 The SVGA reforms arrangements for safeguarding children and vulnerable adults from harm or the risk of harm by employees (paid or unpaid) whose work gives them significant access to these groups. The Act creates a Vetting and Barring Scheme (“VBS”), and a new body, the Independent Safeguarding Authority, which may bar people from working in these positions.
- 4.5 This Order is being laid in tandem with the draft Safeguarding Vulnerable Groups Act 2006 (Controlled Activity and Miscellaneous Provisions) Regulations 2010 (the “SVGA Controlled Activity Regulations”). Further detail on the legislative background to the SVGA can be found in the Explanatory Memorandum to those Regulations and accompanying annexes.

5. Territorial Extent and Application

- 5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

Claire Ward, the Parliamentary Under Secretary has made the following statement regarding Human Rights:

“In my view the provisions of the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2010 are compatible with the Convention rights.”

7. Policy background

- 7.1 The Rehabilitation of Offenders Act 1974 designates convictions of 30 months imprisonment or less as ‘spent’ after a certain period of time has elapsed, which varies according to the seriousness of the sentence received. The Act seeks to aid the reintegration and resettlement of ex-offenders into employment by not requiring them to answer questions regarding their spent convictions for any purpose not included in the Exceptions Order.
- 7.2 While it is generally desirable to facilitate ex-offenders into employment, the Exceptions Order exists to ensure that the public remain adequately protected. Those areas of activity included on the Exceptions Order are considered to provide individuals with particular opportunities to harm the public, and therefore it is appropriate that it should be possible to know a person’s full criminal history before an offer of employment is made and consideration can be made of any necessary safeguards to put in place.
- 7.3 Article 3A has the result that questions may be put by employers to the person questioned – i.e. to the CRB and the prospective employee (“B”) - for the purposes of assessing B’s suitability to work in a controlled activity. At the moment of putting the question, the employer may or may not know whether B is a person barred from SVGA regulated activity (or, transitionally, on one of the lists that will in due course be added to the SVGA barred lists). The requirement to answer the excepted question so as to reveal spent convictions only arises once the person questioned knows that B is such a barred person.
- 7.4 Until such time as the VBS has been rolled out in relation to controlled activity and persons working in a controlled activity are the subject of monitoring, the right to ask an excepted question, in conjunction with the provisions governing access to information held on criminal records and the provisions of the SVGA and regulations made under it, will allow employers in controlled activity to know if an individual newly seeking work in controlled activity has been barred from regulated activity.

8. Consultation Outcome

- 8.1 The provisions relating to the Isle of Man have been included at the express request of the Isle of Man government.

9. Guidance

Safeguarding Vulnerable Groups Act 2006

- 9.1 The government has produced comprehensive guidance for those affected by the operation of the VBS. This was published in 2009 and may be accessed at: www.isa-gov.org.uk/default.aspx?page=402

10. Impact

- 10.1 Comprehensive impact assessments on the VBS have been carried out by the government both at the time of the primary legislation, and as part of the implementation programme. The existing published Assessment for the VBS as a whole may be found at: www.dfes.gov.uk/ria/index.cfm?action=assessments.view&i_assessmentID=73. Specific details of the impact of these interim arrangements for controlled activity may be found in the Explanatory Memorandum to the SVGA Controlled Activity Regulations.
- 10.2 The clause relating to the Isle of Man only affects those already subject to similar requirements under the Isle of Man's own rehabilitation of offenders legislation.
- 10.3 The CRB have confirmed that they expect to receive only a small number of additional applications as a result of these amendments; therefore, any impact can be absorbed. As the CRB is self-financed by application fees, there is no cost implication.

11. Regulating Small Business

- 11.1 This Order has minimal impact on small businesses other than the impact separately identified in the Explanatory Memorandum to the related SVGA Controlled Activity Regulations.

12. Monitoring and Review

- 12.1 Details of the monitoring and review of the VBS as a whole are contained in paragraphs 153 and 160 of the published Impact Assessment.
- 12.2 As article 4 of this Order only serves to enhance existing regulatory regimes in the Isle of Man, no other monitoring and review is necessary.

13. Contact

- 13.1 Mary Jones at the Ministry of Justice, Tel: 020 3334 5037 or e-mail: mary.jones@justice.gsi.gov.uk can answer any queries regarding the instrument.