

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

2012 No.

REHABILITATION OF OFFENDERS, ENGLAND AND WALES

**The Rehabilitation of Offenders Act 1974 (Exceptions)
(Amendment) (England and Wales) Order 2012**

Made - - - - *****

Coming into force in accordance with article 1

The Secretary of State, in exercise of the powers conferred by sections 4(4) and 10(1) of, and paragraph 4 of Schedule 2 to, the Rehabilitation of Offenders Act 1974(a), makes the following Order.

A draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament in accordance with section 10(2) of that Act.

Citation, commencement and extent

1.—(1) This Order may be cited as the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2012.

(2) This article and articles 2, 3, 6, 7, 8, 10(1), (4) and (5) and 11(1) and (3) come into force on the day after the day on which this Order is made.

(3) Articles 4 and 5 come into force on the day after the day on which this Order is made or, if later, the day on which section 213 of the Health and Social Care Act 2012(b) comes into force.

(4) Articles 9, 10(2) and (3) and 11(2) come into force on the day after the day on which this Order is made or, if later, the day on which sections 64 to 66 and 68 of the Protection of Freedoms Act 2012(c) come into force.

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

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

2. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(d) is amended as follows.

(a) 1974 c. 53. Schedule 2 was inserted by the Criminal Justice and Immigration Act 2008 (c. 4), Schedule 10, paragraph 6.
(b) 2012 c. 7.
(c) 2012 c. 9.
(d) S.I. 1975/1023.

Police and crime commissioners

3. After article 4 insert—

“**4A.**—(1) Section 4(2) of the Act shall not apply to a question asked by or on behalf of any person, in the course of the duties of the person’s office or employment, in order to assess whether the person to whom the question relates is disqualified by reason of section 66(3)(c) of the 2011 Act from being elected as, or being, a police and crime commissioner.

(2) Section 4(3)(a) of the Act shall not apply in relation to any obligation to disclose any matter if the obligation is imposed in order to assess whether a person is disqualified by reason of section 66(3)(c) of the 2011 Act from being elected as, or being, a police and crime commissioner.

(3) Section 4(3)(b) of the Act shall not apply in relation to the disqualification of a person from being elected as, or being, a police and crime commissioner under section 66(3)(c) of the 2011 Act.

(4) In this article—

“the 2011 Act” means the Police Reform and Social Responsibility Act 2011(a); and

“police and crime commissioner” means a police and crime commissioner established under section 1 of the 2011 Act.”

Health care professionals

4. In article 2, omit the definition of “Council”(b).

5. In articles 3(i) and 4(k)(c), for “Council” substitute “Care Council for Wales”.

6.—(1) Schedule 1 is amended as follows.

(2) In Part I—

(a) for paragraph 1 substitute—

“1. Health care professional.”, and

(b) omit paragraphs 4(d), 6, 7(e), 8, 8A(f), 10(g), 11(h) and 12(i).

(3) In Part IV—

(a) after the definition of “head of legal practice of a licensed body” insert—

““health care professional” means a person who is a member of a profession regulated by a body mentioned in subsection (3) of section 25 of the National Health Service Reform and Health Care Professions Act 2002(j) (and for the purposes of this definition subsection (3A) of that section(k) is to be ignored);”, and

(a) 2011 c. 13.

(b) The definition of “Council” was added by S.I. 2003/965.

(c) Articles 3(i) and 4(k) were added by S.I. 2003/965.

(d) Paragraph 4 was substituted by S.I. 2009/1182.

(e) Paragraph 7 was amended by S.I. 2005/848.

(f) Paragraphs 8 and 8A were substituted by S.I. 2007/289 and were saved by S.I. 2010/231.

(g) Paragraph 10 was amended by S.I. 2003/1590.

(h) Paragraph 11 was inserted by the Osteopaths Act 1993 (c. 21), section 39(2).

(i) Paragraph 12 was inserted by the Chiropractors Act 1994 (c. 17), section 40(2).

(j) 2002 c. 17. Section 25(3) has been amended by the Health and Social Care Act 2008 (c. 14), Schedule 10, paragraph 17, the Health and Social Care Act 2012, Schedule 15, Part 2, paragraph 56(b), and S.I. 2010/231.

(k) Section 25(3A) was inserted by the Health and Social Care Act 2012, section 220(6).

- (b) omit the definitions of “registered chiropractor”(a), “registered dental care professional”(b), “registered osteopath(c)”, “registered pharmacist” and “registered pharmacy technician”(d).

Children and vulnerable adults

7. In article 2, in the definition of “work with children”(e), after “14” insert “or 14A”.
8. In articles 3(a)(ii) and 4(b)(f), omit “37,”.
9. In article 3A(2) and (3)(g), after “2006 Act”, in the first place, insert “as it had effect immediately before the coming into force of section 68 of the Protection of Freedoms Act 2012”.
- 10.—(1) Part II of Schedule 1 is amended as follows.
- (2) In paragraph 12A(h) insert at the end “as it had effect immediately before the coming into force of section 66 of the Protection of Freedoms Act 2012”.
- (3) In paragraph 14A(i), insert at the end “as it had effect immediately before the coming into force of section 64 of the Protection of Freedoms Act 2012”.
- (4) In paragraph 34(j), omit—
- (a) “or in the Government Offices for the English Regions”, and
- (b) “or vulnerable adults”.
- (5) Omit paragraph 37(k).
- 11.—(1) Part IV of Schedule 1 is amended as follows.
- (2) For the definition of “vulnerable adult”(l) substitute—
- ““vulnerable adult” has the meaning given by section 59 of the 2006 Act as it had effect immediately before the coming into force of section 65 of the Protection of Freedoms Act 2012.”
- (3) In the definition of “regulated position”(m), insert at the end “other than a position which would not be a regulated position if in section 36(4) of that Act “employment” included unpaid employment.”

Signed by authority of the Secretary of State

Signatory text

Address
Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

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- (a) The definition of “registered chiropractor” was inserted by the Chiropractors Act 1994, section 40(4).
- (b) The definition of “registered dental care professional” was inserted by S.I. 2009/1182.
- (c) The definition of “registered osteopath” was inserted by the Osteopaths Act 1994, section 39(4).
- (d) The definitions of “registered pharmacist” and “registered pharmacy technician” were inserted by S.I. 2007/289 and substituted by S.I. 2010/231.
- (e) The definition of “work with children” was inserted by S.I. 2001/1192 and amended by S.I. 2008/3259.
- (f) Articles 3(a)(ii) and 4(b) were substituted by S.I. 2001/1192 and amended by S.I. 2009/1818.
- (g) Article 3A was inserted by S.I. 2010/1153.
- (h) Paragraph 12A was inserted by S.I. 2009/1818.
- (i) Paragraph 14A was inserted by S.I. 2009/1818 and amended by S.I. 2012/979.
- (j) Paragraph 34 was inserted by S.I. 2007/2149 and amended by S.I. 2007/3224 and S.I. 2010/1836.
- (k) Paragraph 37 was inserted by S.I. 2007/2149.
- (l) The definition of “vulnerable adult” was inserted by S.I. 2002/441.
- (m) The definition of “regulated position” was inserted by S.I. 2001/1192.

EXPLANATORY NOTE

(This note is not part of the Order)

The Police Reform and Social Responsibility Act 2011 provides for there to be a police and crime commissioner for each police area in England and Wales outside London. Section 66(3)(c) of that Act means that a person is disqualified from being elected as, or being, a police and crime commissioner if the person has been convicted of an imprisonable offence. Article 3 amends the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (“the 1975 Order”) to permit questions to be asked about spent convictions in order to establish whether a person is disqualified from being elected as or being a police and crime commissioner, to ensure that any obligation on a (or a potential) police and crime commissioner to disclose convictions extends to spent convictions and to allow spent convictions to be grounds for disqualification from office as a police commissioner.

The 1975 Order permits questions to be asked about spent convictions and cautions in order to assess suitability for admission to various occupations listed in Part I of Schedule 1 and permits spent convictions and cautions, or failure to disclose them, to be a ground for excluding a person from those occupations. It also contains special provisions about social workers. Articles 4 to 6 amend the 1975 Order to simplify the way in which it covers health and social care occupations and to reflect recent changes in the way in which social workers in England are regulated.

Articles 7 to 11 make various amendments of the coverage by the 1975 Order of work with children and vulnerable adults. In particular, they secure that the 1975 Order is unaffected by the amendments made to the Safeguarding Vulnerable Groups Act 2006 by the the Protection of Freedoms Act 2012. Without the changes made by those articles, those amendments would operate substantially to limit the range of cases in which the 1975 Order would permit questions to be asked, or allow persons to be excluded from certain types of work, and would thereby reduce the protection afforded by the 1975 Order to children and vulnerable adults. Article 11(3) introduces one limitation of the coverage of the 1975 Order: for those working with 16 and 17 year olds on work experience.

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