

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.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2015 No.

REHABILITATION OF OFFENDERS, ENGLAND AND WALES

The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2015

Made - - - - *****

Coming into force in accordance with article 1(2)

The Secretary of State makes this Order in exercise of the powers conferred by sections 4(4), 7(4) and 10(1) of, and paragraphs 4 and 6(4) of Schedule 2 to, the Rehabilitation of Offenders Act 1974(a).

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) Order 1975 (Amendment) (England and Wales) Order 2015.

(2) This Order comes into force 21 days after the day on which it is made.

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

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

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

(2) In article 3(1)(a)(ii)(c), after “13,” insert “13A,”.

(3) In article 4(1)(b)(d), after “13,” insert “13A,”.

(4) In article 5(2)(e), for “4(d) to (n)” substitute “4(1)(d) to (n)”.

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- (a) 1974 c. 53. Schedule 2 was inserted by paragraph 6 of Part 1 of Schedule 10 to the Criminal Justice and Immigration Act 2008 (c. 4).
- (b) S.I. 1975/1023.
- (c) Article 3 has been amended by S.I. 2001/1192; S.I. 2008/3259; S.I. 2009/1818; S.I. 2012/1957; S.I. 2012/3006; S.I. 2013/1198; and S.I. 2014/1707. There have been other amendments that are not relevant.
- (d) Article 4 has been amended by S.I. 2001/1192; S.I. 2008/3259; S.I. 2009/1818; S.I. 2013/1198; and S.I. 2014/1707. There have been other amendments that are not relevant.
- (e) Article 5(2) was substituted by S.I. 2001/3816 and amended by S.I. 2008/3259. There have been other amendments that are not relevant.

(5) In Schedule 1(a)—

(a) in Part II—

(i) in paragraph 12A, after “the 2006 Act” insert “including that Part”,

(ii) after paragraph 13, insert—

“**13A.** Any employment or other work in England or Wales concerned with—

(a) the investigation of fraud, corruption or other unlawful activity affecting the national health service, or

(b) security management in the national health service,

where “the national health service” means, in respect of England, the health service continued under section 1(1) of the National Health Service Act 2006(b) and, in respect of Wales, that continued under section 1(1) of the National Health Service (Wales) Act 2006(c).”, and

(iii) in paragraph 14A, after “the 2006 Act” insert “including that Part”; and

(b) in Part IV, in the appropriate place, insert—

“security management” means activity carried out pursuant to the Secretary of State’s security management functions within the meaning given by section 195(3) of the National Health Service Act 2006(d) and in respect of Wales, the corresponding functions of Welsh Ministers;”.

Signed by authority of the Secretary of State

Name

Parliamentary Under Secretary of State

Ministry of Justice

Date

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends S.I. 1975/1023 (“the 1975 Order”). The 1975 Order disapplies specified provisions of the Rehabilitation of Offenders Act 1974 (c. 53) (“the 1974 Act”) so as to permit questions to be asked about spent convictions and cautions (except where they are protected convictions and cautions as described in article 2A of the 1975 Order) 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 permits spent convictions and cautions, or a failure to disclose them, to be a ground for excluding a person from those occupations or for making decisions in relation to those types of employment, licences and permits.

The amendments in article 2(5)(a)(i) and (iii) concern regulated activity relating to vulnerable adults and children. Work which is regulated activity as defined in Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (c. 47) (“the 2006 Act”) before the amendments to the 2006 Act made by the Protection of Freedoms Act 2012 (c. 9) (“the 2012 Act”) is already included in paragraphs 12A and 14A of Part II of Schedule 1 to the 1975 Order (excepted professions, offices, employments, work and occupations), with the effect that a person’s spent convictions and cautions may be taken into account when assessing a person’s suitability to engage in such activity. Article 2(5)(a)(i) and (iii) of this Order amends paragraphs 12A and 14A to cover any work which is regulated activity as defined in Schedule 4 to the 2006 Act following the 2012 Act amendments.

(a) Schedule 1 has been amended by S.I. 2001/1192; S.I. 2006/2143; S.I. 2009/1818; S.I. 2012/1957; and S.I. 2014/1707. There have been other amendments to Part II and Part IV of Schedule 1 that are not relevant.

(b) 2006 c. 41. Section 1 was substituted by section 1 of the Health and Social Care Act 2012 (c. 7).

(c) 2006 c. 42.

(d) 2006 c. 41. Section 195 has been amended by section 55 of, and Part 9 of Schedule 4 to, the Health and Social Care Act 2012 (c. 7).

Article 2(5)(a)(ii) of this Order amends the 1975 Order by adding a new paragraph to Part II of Schedule 1 to cover counter fraud work and security management in the NHS. The amendment means that a person's spent convictions and cautions may be taken into account when assessing a person's suitability to engage in such work.

Article 2(2) and (3) makes changes consequential upon the amendments described above.

Article 2(4) makes a minor amendment to Article 5 of the 1975 Order consequential on amendments made by S.I. 2013/1198.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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