

2001 No. 3816

REHABILITATION OF OFFENDERS, ENGLAND AND WALES

**The Rehabilitation of Offenders Act 1974 (Exceptions)
(Amendment) (No. 2) Order 2001**

Made - - - - - *29th November 2001*

Coming into force - - - *30th November 2001*

Whereas a draft of this Order has been laid before and approved by a resolution of each House of Parliament pursuant to section 10(2) of the Rehabilitation of Offenders Act 1974(a);

The Secretary of State, in exercise of the powers conferred on him by sections 4(4), 7(4) and 10(1) of that Act, hereby makes the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (No. 2) Order 2001 and shall come into force on the day after the day on which it is made.

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

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

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

Amendment of article 2

3.—(1) In article 2(1) (interpretation), there is inserted, in the appropriate alphabetical position,

““the 2000 Act” means the Financial Services and Markets Act 2000(c);”;

““administration of justice offence” means—

(a) the offence of perverting the course of justice,

(b) any offence under section 51 of the Criminal Justice and Public Order Act 1994 (intimidation etc. of witnesses, jurors and others)(d),

(a) 1974 c. 53.

(b) S.I. 1975/1023; amended by the Osteopaths Act 1993 (c. 21), section 39; the Chiropractors Act 1994 (c. 17), section 40; S.I. 1986/1249; S.I. 1986/2268; S.I. 1988/872 and S.I. 2001/1192; and modified by S.I. 1994/1696. The relevant provisions of the Osteopaths Act 1993 and the Chiropractors Act 1994 are repealed by section 133 of, and Schedule 10 to, the Police Act 1997 (c. 50); these repeals had not been brought into force at the time this Order was made.

(c) 2000 c. 8.

(d) 1994 c. 33; amended by the Criminal Appeal Act 1995 (c. 35), Schedule 2, paragraph 19 and the Youth Justice and Criminal Evidence Act 1999 (c. 23), Schedule 4, paragraph 21.

(c) an offence under section 1, 2, 6 or 7 of the Perjury Act 1911 (perjury)(a), or any offence committed under the law of any part of the United Kingdom (other than England or Wales) or of any other country where the conduct which constitutes the offence would, if it all took place in England or Wales, constitute one or more of the offences specified by paragraph (a) to (c);”;

““associate”, in relation to a person (“A”), means someone who is a controller, director or manager of A or, where A is a partnership, any partner of A;”;

““collective investment scheme” has the meaning given by section 235 of the 2000 Act;”;

““the competent authority for listing” means the competent authority for the purposes of Part VI of the 2000 Act (listing);”;

““controller” has the meaning given by section 422 of the 2000 Act;”;

““Council of Lloyd’s” means the council constituted by section 3 of Lloyd’s Act 1982(b);”;

““director” has the meaning given by section 417 of the 2000 Act;”;

““key worker”, in relation to any body (“A”), means any individual who is likely, in the course of the duties of his office or employment -

(a) where A is the Authority, to play a significant role in the decision making process of the Authority in relation to the exercise of the Authority’s public functions (within the meaning of section 349(5) of the 2000 Act) under any provision of the 2000 Act other than Part VI, or to support directly such a person;

(b) where A is the competent authority for listing, to play a significant role in the decision making process of the competent authority for listing in relation to the exercise of its functions under Part VI of the 2000 Act, or to support directly such a person;”;

““manager” has the meaning given by section 423 of the 2000 Act;”;

““open-ended investment company” has the meaning given by section 236 of the 2000 Act;”;

““Part IV permission” has the meaning given by section 40(4) of the 2000 Act;”;

““relevant collective investment scheme” means a collective investment scheme which is recognised under section 264 (schemes constituted in other EEA States), 270 (schemes authorised in designated countries or territories) or 272 (individually recognised overseas schemes) of the 2000 Act;”;

““trustee”, in relation to a unit trust scheme, has the meaning given by section 237 of the 2000 Act;”;

““UK recognised clearing house” means a clearing house in relation to which a recognition order under section 290 of the 2000 Act, otherwise than by virtue of section 292(2) of that Act (overseas clearing houses), is in force;”;

““UK recognised investment exchange” means an investment exchange in relation to which a recognition order under section 290 of the 2000 Act, otherwise than by virtue of section 292(2) of that Act (overseas investment exchanges), is in force;”.

(2) In the definition of “relevant offence”-

(a) there is omitted the word “or” at the end of sub-paragraph (a);

(b) in sub-paragraph (b), after “financial services,”, there is inserted “money laundering,”; and

(c) at the end of sub-paragraph (b), there is inserted -

“(c) an administration of justice offence; or

(d) an offence committed (whether or not under the law of, or of any part of, the United Kingdom) in connection with, or in relation to, taxation for which a person of 21 years of age or over may be sentenced to imprisonment for a term of 2 years or more;”.

(3) The definition of “the Building Societies Commission” and the words from “the expressions “authorisation” ” to the end of paragraph (1) are omitted.

(a) 1911 c. 6; sections 1 and 2 repealed in part by the Criminal Justice Act 1948 (c. 58), section 1; section 7 repealed in part by the Criminal Attempts Act 1981 (c. 47), the Schedule.

(b) 1982. c. 14.

Amendment of article 3

- 4.—(1) This article amends article 3 of the 1975 Order (application of section 4(2) of the Act).
- (2) Paragraph (ab) is omitted.
- (3) In paragraph (b), after “Civil Aviation Authority,”, there is inserted “the Financial Services Authority”.
- (4) After paragraph (f), there is inserted -
- “(g) any question asked by, or on behalf of, the person listed in the second column of any entry in the table below to the extent that it relates to a conviction for a relevant offence (or any circumstances ancillary to such a conviction) of any individual, but only if -
- (i) the person questioned is informed at the time the question is asked that, by virtue of this Order, spent convictions for relevant offences are to be disclosed; and
 - (ii) the question is asked in order to assess the suitability of the individual to whom the question relates to have the status specified in the first column of that entry.

<i>Status</i>	<i>Questioner</i>
1. A person with Part IV permission.	The Financial Services Authority.
2. (a) An approved person (within the meaning of Part V of the 2000 Act (performance of regulated activities)).	The Financial Services Authority or the authorised person (within the meaning of section 31(2) of the 2000 Act) or the applicant for Part IV permission who made the application for the Authority’s approval under section 59 of the 2000 Act in relation to the person mentioned in sub-paragraph (a) of the first column.
(b) An associate of the person (whether or not an individual) mentioned in sub-paragraph (a).	
3. (a) The manager or trustee of an authorised unit trust scheme, within the meaning of section 237 of the 2000 Act.	The Financial Services Authority or the unit trust scheme mentioned in the first column.
(b) An associate of the person (whether or not an individual) mentioned in sub-paragraph (a).	
4. (a) A director of an open-ended investment company.	The Financial Services Authority or the open-ended investment company mentioned in the first column.
(b) An associate of the person (whether or not an individual) mentioned in sub-paragraph (a).	
5. An associate of the operator or trustee of a relevant collective investment scheme.	The Financial Services Authority or the collective investment scheme mentioned in the first column.
6. An associate of a UK recognised investment exchange or UK recognised clearing house.	The Financial Services Authority or the investment exchange or clearing house mentioned in the first column.
7. A controller of a person with Part IV permission	The Financial Services Authority or the person with Part IV permission mentioned in the first column.

<i>Status</i>	<i>Questioner</i>
8. (a) A person who carries on a regulated activity (within the meaning of section 22 of the 2000 Act) but to whom the general prohibition does not apply by virtue of section 327 of the 2000 Act (exemption from the general prohibition for members of a designated professional body).	(a) The Financial Services Authority.
(b) An associate of the person (whether or not an individual) mentioned in sub-paragraph (a).	(b) In the case of a person mentioned in sub-paragraph (b) of the first column, the person mentioned in sub-paragraph (a) of that column.
9. A key worker of the Financial Services Authority.	The Financial Services Authority.
10. An ombudsman (within the meaning of Schedule 17 to the 2000 Act) of the Financial Ombudsman Service.	The scheme operator (within the meaning of section 225 of the 2000 Act) of the Financial Ombudsman Service.
11. An associate of the issuer of securities which have been admitted to the official list maintained by the competent authority for listing under section 74 of the 2000 Act.	The competent authority for listing.
12. A sponsor (within the meaning of section 88(2) of the 2000 Act).	The competent authority for listing.
13. A key worker of the competent authority for listing.	The competent authority for listing.
14. An associate of a person who has Part IV permission and who is admitted to Lloyd's as an underwriting agent (within the meaning of section 2 of Lloyd's Act 1982).	(a) The Council of Lloyd's. (b) The person with Part IV permission specified in the first column (or a person applying for such permission).
15. An associate of the Council of Lloyd's.	The Council of Lloyd's.
16. (a) Any member of a UK recognised investment exchange or UK recognised clearing house.	(a) The UK recognised investment exchange or UK recognised clearing house specified in the first column.
(b) Any associate of the person (whether or not an individual) mentioned in sub-paragraph (a).	(b) In the case of a person mentioned in sub-paragraph (b) of the first column, the person mentioned in sub-paragraph (a) of that column.

Amendment of article 4

5. In article 4 of the 1975 Order, for paragraph (d) (application of section 4(3)(b) of the Act), there is substituted -

- “(d) any decision by the Financial Services Authority-
- (i) to refuse an application for Part IV permission under the 2000 Act,
 - (ii) to vary or to cancel such permission (or to refuse to vary or cancel such permission) or to impose a requirement under section 43 of that Act or,
 - (iii) to make, or to refuse to vary or revoke, an order under section 56 of that Act (prohibition orders),
 - (iv) to refuse an application for the Authority's approval under section 59 of that Act or to withdraw such approval,

- (v) to refuse to make, or to revoke, an order declaring a unit trust scheme to be an authorised unit trust scheme under section 243 of the 2000 Act or to refuse to give its approval under section 251 of the 2000 Act to a proposal to replace the manager or trustee of such a scheme,
- (vi) to give a direction under section 257 of the 2000 Act (authorised unit trust schemes), or to vary (or to refuse to vary or revoke) such a direction,
- (vii) to refuse to make, or to revoke, an authorisation order under regulation 14 of the Open-Ended Investment Companies Regulations 2001(a) or to refuse to give its approval under regulation 21 of those Regulations to a proposal to replace a director or to appoint an additional director of an open-ended investment company,
- (viii) to give a direction to an open-ended investment company under regulation 25 of those Regulations or to vary (or refuse to vary or revoke) such a direction,
- (ix) to refuse to give its approval to a collective investment scheme being recognised under section 270 of the 2000 Act or to direct that such a scheme cease to be recognised by virtue of that section or to refuse to make, or to revoke, an order declaring a collective investment scheme to be a recognised scheme under section 272 of that Act,
- (x) to refuse to make, or to revoke, a recognition order under section 290 of the 2000 Act, otherwise than by virtue of section 292(2) of that Act, or to give a direction to a UK recognised investment exchange or UK recognised clearing house under section 296 of the 2000 Act,
- (xi) to make, or to refuse to vary or to revoke, an order under section 329 (orders in respect of members of a designated professional body in relation to the general prohibition), or
- (xii) to dismiss, fail to promote or exclude a person from being a key worker of the Authority,

by reason of, or partly by reason of, a spent conviction of an individual for a relevant offence, or of any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances;

- (e) any decision by the scheme operator (within the meaning of section 225 of the 2000 Act) of the Financial Ombudsman Service to dismiss, or not to appoint, an individual as, an ombudsman (within the meaning of Schedule 17 to the 2000 Act) of the Financial Ombudsman Service by reason of, or partly by reason of, his spent conviction for a relevant offence, or of any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances;
- (f) any decision of the competent authority for listing -
 - (i) to refuse an application for listing under Part VI of the 2000 Act or to discontinue or suspend the listing of any securities under section 77 of that Act,
 - (ii) to refuse to grant a person's application for approval as a sponsor under section 88 of the 2000 Act or to cancel such approval, or
 - (iii) to dismiss, fail to promote or exclude a person from being a key worker of the competent authority for listing,

by reason of, or partly by reason of, a spent conviction of an individual for a relevant offence, or of any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances;

- (g) any decision of anyone who is specified in any of sub-paragraphs 2 to 4 or 5 to 7 of the second column of the table in article 3(g), other than the Authority, to dismiss an individual who has, or to fail to promote or exclude an individual who is seeking to obtain, the status specified in the corresponding entry in the first column of that table (but not, where applicable, the status of being an associate of another person), by reason of, or partly by reason of, a spent conviction of that individual or of his associate for a relevant offence, or of any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances;

(a) S.I. 2001/1228.

(h) any decision of anyone who is specified in sub-paragraph 8(a), 14(a) or 16(a) of the second column of the table in article 3(g) to dismiss an individual who has, or to fail to promote or exclude an individual who is seeking to obtain, the status specified in the corresponding entry in sub-paragraph (b) of the first column of that table (associate), by reason of, or partly by reason of, a spent conviction of that individual for a relevant offence, or of any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances;

(i) any decision of the Council of Lloyd's -

(i) to refuse to admit any person as, or to exclude, an underwriting agent (within the meaning of section 2 of Lloyd's Act 1982), where that person has, or who has applied for, Part IV permission, or

(ii) to dismiss, or to exclude a person from being, an associate of the Council of Lloyd's,

by reason of, or partly by reason of, a spent conviction of an individual for a relevant offence, or of any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances;

(j) any decision of a UK recognised investment exchange or UK recognised clearing house to refuse to admit any person as, or to exclude, a member by reason of, or partly by reason of, a spent conviction of an individual for a relevant offence, or of any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.”.

Amendment of article 5

6. For paragraph (2) of article 5 of the 1975 Order (application of section 4(1) of the 1974 Act), there is substituted -

“(2) The proceedings referred to in paragraph (1) above are any proceedings with respect to a decision or proposed decision of the kind specified in article 4(d) to (j).”.

Revocations

7. The following provisions of the 1975 Order are revoked -

(a) paragraph 3 of Part III of Schedule 1;

(b) in Part IV of Schedule 1, the definition of “insurance company”; and

(c) paragraph 8 of Schedule 3.

Home Office
29th November 2001

Keith Bradley
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 (S.I. 1975/1023) (“the 1975 Order”).

These amendments are made in consequence of the enactment of the Financial Services and Markets Act 2000. Article 4 amends article 3 of the 1975 Order to provide for exceptions from section 4(2) of the Rehabilitation of Offenders Act 1974 (“the Act”) (questions relating to spent convictions). The exceptions apply to questions asked by specified persons (including the Financial Services Authority) to assess the suitability of an individual to have a specified status. For example, questions asked by the Financial Services Authority to assess the suitability of an individual to have permission under Part IV of the Financial Services and Markets Act 2000 are exempt from section 4(2) of the Act. The question is only exempt to the extent that it relates to a relevant offence (defined in article 2 of the 1975 Order as amended by this Order).

Article 5 amends article 4 of the 1975 Order to provide exceptions from section 4(3)(b) of the Act (use of spent convictions as ground for dismissing a person from an office etc.). By virtue of this Order, that provision of the Act does not apply to certain decisions, including decisions made by the Financial Services Authority and the competent authority for listing under the Financial Services and Markets Act 2000, taken by reason of, or partly by reason of, an individual’s spent conviction for a relevant offence.

Article 6 amends article 5 of the 1975 Order (admission of evidence relating to spent convictions in proceedings) so as to provide an exemption for proceedings with respect to a decision (or proposed decision) of the kind exempted by article 4(d) to (j) of the 1975 Order (as amended by article 5 of this Order).

Article 7 revokes certain provisions of the 1975 Order.

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The Rehabilitation of Offenders Act 1974 (Exceptions)
(Amendment) (No. 2) Order 2001

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