

**EXPLANATORY MEMORANDUM TO
THE REHABILITATION OF OFFENDERS (EXCEPTIONS) (AMENDMENT)
ORDER (NORTHERN IRELAND) 2009**

SR 2009 No. 173

1. 1.1 This Explanatory Memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Purpose of the instrument**

2.1 This instrument amends the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 by adding new definitions, amending the circumstances under which questions relating to spent convictions can be asked, and adding to the list of excepted offices and employments to which exceptions from the rehabilitative provisions of the Rehabilitation of Offenders (Northern Ireland) Order 1978 will apply.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.
4. **Legislative Context**

4.1 This instrument is being made in exercise of the powers conferred by Articles 5(4) and 8(4) of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (“the 1978 Order”).
5. **Territorial Extent and Application**

5.1 This instrument applies to Northern Ireland only.
6. **European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.
7. **Policy background**

7.1 The Rehabilitation of Offenders (NI) Order 1978 makes it possible for certain convictions to become “spent” with no requirement to declare them for employment purposes. This means that after a specified period a person can be treated for certain purposes as if the conviction had never happened and they need not, for example, tell an employer about the conviction when applying for a job.

7.2 To ensure that the public is adequately protected, however, certain exceptions to the 1978 Order are set out in the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979. For instance there are certain professions and occupations (e.g. police, doctors) for which applicants must declare all past convictions when asked and where employers may then consider them as part of the recruitment process.

7.3 The Rehabilitation of Offenders (Exceptions) (Amendment) Order (Northern Ireland) 2009 updates the circumstances under which a convicted person may be required to declare spent convictions. It adds to the list of excepted occupations as a result of new employing offices, bodies and employment patterns, examples of which would be employment in the Security Industry Authority, taxi driving and employment concerned with working with children or providing care service to vulnerable adults. It also strengthens measures for dealing with the proceeds of crime, thereby applying to Northern Ireland a series of requirements already in place in with England and Wales.

8. Consultation outcome

8.1 A consultation exercise was completed to ascertain public views on proposals to update the list of excepted occupations. The consultation exercise closed with only six responses received. Of the six, three supported the proposals without any additional comment; two supported the proposals while providing additional, minor comments in relation to the operation of the legislation; and one commented on the operation of the exceptions scheme generally, citing it as a barrier to the re-integration of ex-offenders.

8.2 We welcomed the support for the proposals though the comment that an exceptions regime was a barrier to reintegration was not accepted. Firstly, for rehabilitation law as a whole, a requirement to declare a conviction in ‘excepted’ circumstances does not automatically debar an individual from gaining employment. When declared, it is for the employer to take on board the relevance of the conviction to the post or service in question - employment can still be offered. Secondly, and more generally, excepted professions and occupations where convictions must be declared are an important part of the public trust and protection process. In appropriate circumstances employers need to know a full criminal record in order to make informed decisions. Finally we were keen to ensure that rehabilitation requirements were consistent with England and Wales on whom our legislation is modelled.

9. Guidance

9.1 A booklet offering guidance on the Rehabilitation of Offenders (Northern Ireland) Order 1978 has been previously published and is available from the Northern Ireland Office. The content of the booklet will be revised to take account of the amendments that the Rehabilitation of Offenders (Exceptions) (Amendment) Order (Northern Ireland) 2009 provides for and an information circular on the updated exceptions provisions will be circulated to relevant employers and interested bodies.

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

11. Contact

11.1 Andrew Lavery at the Northern Ireland Office Tel: 028 9052 7742 or email: andrew.lavery@nio.x.gsi.gov.uk can answer any queries regarding this instrument.