This draft Statutory Instrument supersedes the draft published on 5th June 2007. It has been printed in substitution of the earlier draft SI and is being issued free of charge to all known recipients of that draft Statutory Instrument.

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

2007 No.

REHABILITATION OF OFFENDERS, ENGLAND AND WALES

The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2007

Made - - - -	*2007*
Coming into force - -	*2007*

A draft of this Order has been laid before and approved by a resolution of each House of Parliament:

The Secretary of State, in exercise of the powers conferred on him by sections 4(4) and 10(1) of the Rehabilitation of Offenders Act 1974(**a**) makes the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2007 and comes into force on the day after the day on which it is made.

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

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

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

Amendment of article 2

3.—(1) In article 2(1), omit the definition of "relevant offence".

(**a**) 1974 c.53.

(**b**) As regards Scotland, see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2003 (S.I. 2003/415 (s.5)).

(**c**) S.I. 1975/1023, amended by S.I. 1986/1249, S.I. 1986/2268, S.I. 2001/1192, S.I. 2001/3816, S.I. 2002/441, S.I. 2003/965, S.I. 2006/2143, S.I. 2006/3290; and modified by S.I. 1994/1696. S.I. 1975/1023 is also amended by section 39 of the Osteopaths Act 1993 (c. 21) and section 40 of the Chiropractors Act 1994 (c. 17), both of which are prospectively repealed by section 133 of the Police Act 1997 (c. 50).

(2) In article 2(2) omit "unless the said provisions are excluded only in relation to spent convictions for relevant offences".

Amendment of article 3

4.—(1) In article 3(a)(ii) for "12, 13, 20 or 21" substitute "13, 14, 20, 21, 35, 36, 37, 40 or 43".

(2) In article 3(g)–

(i) omit "for a relevant offence"; and

(ii) omit "such".

(3) In article 3(g)(i) omit "for relevant offences".

(4) After article 3(k) insert–

"(l) any question asked by the Secretary of State for the purpose of considering the suitability of an individual to have access to information released under sections 113A and 113B of the Police Act 1997(**a**).".

Amendment of article 4

5.—(1) In article 4, omit "for a relevant offence" in each place where it occurs.

(2) In article 4(b) for "12, 13, 20 or 21" substitute "13, 14, 20, 21, 35, 36, 37, 40 or 43".

Amendment of article 5

6. In article 5, omit "for any relevant offence" in each place where it occurs.

Amendments to Schedule 1

7. In Part II of Schedule 1, after paragraph 33 insert–

"**34.** People working in the Department for Education and Skills, the Office for Standards in Education, Children's Services and Skills(**b**) or in the Government Offices for the English Regions with access to sensitive or personal information about children or vulnerable adults.

35. Any office, employment or other work which is concerned with the establishment or operation of a database under section 12 of the Children Act 2004(**c**), and which is of such a kind as to enable the holder of that office or employment, or the person engaged in that work, to have access to information included in the database.

36. Any office, employment or other work which is of such a kind that the person is or may be permitted or required to be given access to a database under section 12 of the Children Act 2004.

37. Any work which is normally concerned with the provision of any form of information, advice or guidance wholly or mainly to children which relates to their physical, emotional or educational well-being and is provided by means of telephone or other form of electronic communication including the internet and mobile telephone text messaging.

38. The chairman, other members, and members of staff (including any person seconded to serve as a member of staff) of the Independent Barring Board(**d**).

(**a**) 1997 c.50. Sections 113A and 113B were inserted by the Serious Organised Crime and Police Act 2005 (c.15), section 163(2).

(**b**) The Office for Standards in Education, Children's Services and Skills is established by section 112 of the Education and Inspections Act 2006 (c.40).

(**c**) 2004 c.31.

(**d**) The Independent Barring Board is established by section 1 of the Safeguarding Vulnerable Groups Act 2006 (c.47). Section 1 is not yet in force.

39. Staff working within the Public Guardianship Office, (to be known as the Office of the Public Guardian from October 2007)(**a**), with access to data relating to children and vulnerable adults.

40. The Commissioner for Older People in Wales(**b**), and his deputy, and any person appointed by the Commissioner to assist him in the discharge of his functions or authorised to discharge his functions on his behalf.

41. The Commissioners for the Gambling Commission(**c**) and any office or employment in their service.

42. Individuals seeking authorisation from the Secretary of State for the Home Department to become authorised search officers.

43. Any employment or other work where the normal duties

(a) involve caring for, training, supervising, or being solely in charge of, persons aged under 18 serving in the naval, military or air forces of the Crown; or

(b) include supervising or managing a person employed or working in a capacity referred to in paragraph (a).”

8. In Part IV of Schedule 1, insert in the appropriate alphabetical positions—

““authorised search officer” means a person authorised to carry out searches in accordance with sections 40 and 41 of the Immigration, Asylum and Nationality Act 2006(**d**);

“child” means a person under the age of eighteen (and “children” is to be construed accordingly);”.

Ministry of Justice
2007

Minister of State

(**a**) The Public Guardianship Office is an Executive Agency of the Ministry of Justice, and was established in 2001. The Office of the Public Guardian is established by section 57 of the Mental Capacity Act 2005 (c.9).
(**b**) The Commissioner for Older People in Wales is established by section 1 of the Commissioner for Older People (Wales) Act 2006 (c.30).
(**c**) The Gambling Commission is established by section 20 of the Gambling Act 2005 (c.19).
(**d**) 2006 c.13.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 ("the 1975 Order").

Article 3 of the 1975 Order provides exceptions to section 4(2) of the Rehabilitation of Offenders Act 1974 ("the Act") (questions which relate to spent convictions). Article 3 of this Order updates the 1975 Order to enable the finance industry and the Financial Services Authority to consider all spent offences committed by individuals falling within the Order by deleting references to 'relevant' offences. Articles 4, 5 and 6 of this Order make similar amendments. Article 4 of this Order also excepts from the Act signatories to criminal records checks.

Articles 4(1) and 5(2) make consequential amendments to update the exception in article 3(a)(ii) and 4(b) of the 1975 Order in relation to references to 'other work' in Part II of Schedule 1 to the 1975 Order. The reference in articles 3(a)(ii) and 4(b) of the 1975 Order to paragraph 12 of Part II of Schedule 1 had become redundant following a previous amendment and is omitted.

Part II of Schedule 1 to the 1975 Order lists the offices, employments and work which are excepted from the provisions of the Act. Article 7 of this Order makes a number of additions to the list to include:-

(a) People in the Department for Education and Skills, the Office for Standards in Education, Children's Services and Skills or in the Government Offices for the English Regions working in sensitive posts relating to children or vulnerable adults.

(b) Operators of ContactPoint, a database containing basic information about children in England aged up to 18 years.

(c) Persons giving advice to children over the telephone or other form of electronic communication including the internet and mobile telephone text messaging.

(d) The chairman, members, and members of staff of the Independent Barring Board. The Independent Barring Board has not yet been established at the date of coming into force of this Order, but this exception will apply for to prospective appointments to the Board.

(e) Staff working within the Public Guardianship Office with access to data relating to children and vulnerable adults.

(f) Commissioner for Older People in Wales, his deputy, and any person appointed by the Commissioner to assist him or authorised to discharge his functions on his behalf.

(g) The Commissioners for the Gambling Commission and any office or employment in their service.

(h) Individuals seeking authorisation from the Secretary of State at the Home Department to become Authorised Search Officers.

(i) Anyone in employment where normal duties involve caring for, training, supervising, or being solely in charge of, persons aged under 18 serving in the Armed Forces and anyone in employment where normal duties include supervising personnel referred to above.

Part IV of Schedule 1 is amended by article 8 of this order, which inserts two definitions relevant to the amendments to Part II of Schedule 1.

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