EXPLANATORY MEMORANDUM TO

THE REHABILITATION OF OFFENDERS ACT 1974 (EXCEPTIONS) (AMENDMENT) (ENGLAND AND WALES) ORDER 2007

2007 No.

1. This explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty

2. Description

The purpose of this Order is to amend the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 ("the 1975 Order"). This Amendment will increase the coverage of the 1975 Order, expanding the list of sensitive positions and bodies which qualify for disclosure of spent conviction information.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

None

4. Legislative Background

4.1. The Rehabilitation of Offenders Act 1974 ("the Act") introduced limitations on the requirement to disclose previous convictions. Section 4(4) of the Act enables the Secretary of State by order to make provision that certain positions, licences, bodies and proceedings be excepted from the Act.

4.2. The 1975 Order removes the protection afforded by the Act so that disclosures may be requested for positions, licences, bodies and proceedings of a sensitive nature.

4.3. The 1975 Order is amended periodically to ensure that the criminal disclosure regime keeps pace with changes in public risk and is part of an ongoing assessment and legislation process. The most recent amendments to the Order were made in 2006. The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2006 (S.I. 2006/2143) amended the 1975 Order to insert HM Revenue and Customs, Traffic Officers (on-road traffic operations staff), court auxiliary staff, home inspectors, Independent Mental Capacity Officers, Detention Custody Officers and football stewards as well as technical amendments to taxi driver licences and contracted staff and came into force on 26 July 2006. The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) (No.2) Order 2006 (SI 2006/3290) made technical amendments regarding the inclusion of football stewards and came into force on 7 December 2006.

4.4. This Amendment extends coverage of the 1975 Order, introducing new instances where the provisions of the Act are to be excepted. A list of the newly introduced exceptions is included at Annex A.

5. Extent

This instrument applies to England and Wales.

6. European Convention on Human Rights

The Minister of State for Penal and Sentencing Policy, Rt Hon David Hanson MP, has made the following statement regarding Human Rights:

> "In my view the provisions of the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2007 are compatible with the Convention rights."

7. Policy Background

7.1. The 1975 Order was introduced to balance the rights of ex-offenders under the Rehabilitation of Offenders Act 1974 with the aim of protecting the public. After specified periods of time, certain convictions become 'spent' under the Act and are no longer required to be disclosed to employers and various other bodies.

7.2. Although generally it is desirable to encourage employment of ex-offenders by allowing their convictions to become spent, there are certain positions of such sensitivity where disclosure of all convictions should be made available when requested.

7.3. By adding new positions and bodies to the list of 'exceptions', this amendment seeks to increase the public protection aspect of the criminal record disclosure regime. Checks cannot be made on positions which are not contained within the Exceptions Order and therefore legislation is required.

7.4. Public interest in this amendment is expected to be minimal. Each addition to the list of excepted positions has been consulted upon within the industry affected.

7.5 Policy responsibility for the 1974 Act moved from the Home Office to the Ministry of Justice on 9 May 2007 as part of the machinery of Government changes.

7.6. 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.

8. Impact

8.1. A full Regulatory Impact Assessment has not been prepared for this instrument as it has minimal impact on business, charities or voluntary bodies.

The majority of public sector impact has been considered in assessments attached to the legislation governing the individual amendments in the Order. The impact of providing criminal record disclosures has been found to be minimal.

8.2. There are no implications for the Exchequer as the fees paid to the Criminal Records Bureau will cover any costs incurred.

9. Contact

Rhiannon Lewis at the Ministry of Justice will answer any queries regarding this instrument. Telephone 020 7035 6807 or e-mail Rhiannon.Lewis4@justice.gsi.gov.uk.

Annex A

Detailed list of proposed amendments to the Exceptions Order

1. The **Criminal Records Bureau** has requested that signatories be included in the Exceptions Order in order to bring the legislation into line with operational policy.

2. The **Ministry of Justice** has requested that staff working in the Public Guardianship Office be added to the Order in posts where there are specific operational security risks.

3. The **Department for Education and Skills** has asked that people in DfES, Ofsted the Government Offices for the English Regions working in sensitive posts, ContactPoint Operators (a database of children in England (0-18 years), a part of the *Every Child Matters* agenda), people giving advice to children over the telephone or other form of electronic communication including the internet and mobile telephone text messaging and Independent Barring Board Staff be included. The inclusion of ContactPoint operators was committed to by the Minister for Children and Families during the passage of the Information Sharing Index (England) Regulations 2006 on 27 March 2006 (Hansard, column 16).

4. The **Financial Services Authority** has asked to update the Order to enable the finance industry and themselves to consider all spent offences committed by individuals falling within the Order by deleting references to 'relevant' offences to bring them into line with the other provisions in the order.

5. The **Gambling Commission** has requested that they be added in order to undertake enhanced criminal record checks on Gambling Commission employees in accordance with the power granted to them under the Gambling Act 2005.

6. The **Border and Immigration Agency** seeks provision to check staff in the employ of private contractors who seek authorisation to become authorised search officers. This was a ministerial commitment during the passage of the Immigration and Nationality Act 2006.

7. The **Ministry of Defence** has requested a clause to enable the disclosure of criminal records on personnel whose normal duties bring them into contact with persons aged under 18 serving in the Armed Forces following the Deepcut Review. Recommendation 12 states that "Instructors should be vetted for their suitability to work with young people, applying standards that are no less rigorous than those applied to civilian establishments educating or training people under 18."

8. The **Welsh Assembly Government** is seeking to make provisions in the Order regarding the Commissioner for Older People in Wales. This is a new position created under the Commissioner for Older People (Wales) Act 2006.