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

2014 No.

REHABILITATION OF OFFENDERS, ENGLAND AND WALES

The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2014

Made - - - - ***

Coming into force in accordance with article 1

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 2014.

(2) Subject to paragraph (3) this Order comes into force on the day after the day on which this Order is made.

(3) Articles 3(b), 4(b) and (d), 5(b) and (d) and 6(b)(iii) come into force on 1st September 2014(**b**).

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

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

2. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(**c**) is amended as follows.

(**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**) The articles referred to in article 1(3) of this Order come into force on the same day that section 84 of, and Schedule 4 to, the Children and Families Act 2014 (c. 6) ("the 2014 Act") come into force to the extent that that those provisions of the 2014 Act are not ready in force. S.I. 2014/889 brings those provisions of the 2014 Act into force.

(**c**) S.I. 1975/1023.

Amendments to article 2

3. In article 2(1)(**a**)—

(a) for the definition of "adoption agency" substitute—

""adoption agency" has the meaning given by section 2(1) of the Adoption and Children Act 2002(**b**);

"adoption service" means the discharge by a local authority in England or Wales of relevant adoption functions within the meaning of section 43(3)(a) of the Care Standards Act 2000(**c**);

"adoption support agency" has the meaning given by section 8 of the Adoption and Children Act 2002(**d**);";

(b) after the definition of "authorised payment institution" insert—

""childminder agency" has the meaning given in section 98(1) of the Childcare Act 2006(**e**);";

(c) after the definition of "child minding" insert—

""children's home" has the meaning given by section 1 of the Care Standards Act 2000(**f**);";

(d) after the definition of "the FCA" insert—

""fostering agency" has the meaning given by section 4(4) of the Care Standards Act 2000;

"fostering service" means the discharge by a local authority in England or Wales of relevant fostering functions within the meaning of section 43(3)(b) of the Care Standards Act 2000(**g**);";

(e) after the definition of "relevant collective investment scheme" insert—

""residential family centre" has the meaning given by section 4(2) of the Care Standards Act 2000;";

(f) after the definition of "UK recognised investment exchange" insert—

""voluntary adoption agency" has the meaning given by section 4(7) of the Care Standards Act 2000(**h**);"; and

(g) in the definition of "work with children" for "or 14A" substitute ", 14A, 14B or 14C".

Amendments to article 3

4. In article 3(1)(**i**)—

(a) in sub-paragraph (a)(ii), after "14A," insert "14B, 14C,";

(**a**) Article 2(1) and (2) were substituted by S.I. 1986/2268. The definition of "adoption agency" was inserted by S.I. 2001/1192. The definition of "authorised payment institution" was inserted by S.I. 2011/1800. The definition of "the FCA" was inserted by S.I. 2013/472. The definitions of "relevant collective investment scheme" and "UK recognised investment exchange" were inserted by S.I. 2001/3816. The definition of "work with children" was inserted by S.I. 2001/1192 and was amended by S.I. 2008/3259. The reference to paragraph 14A in that definition was inserted by S.I. 2012/1957. There have been other amendments to article 2 that are not relevant.

(**b**) 2002 c. 38.

(**c**) 2000 c. 14. Section 43(3)(a) has been amended by paragraph 112 of Schedule 3 to the Adoption and Children Act 2002.

(**d**) Section 8 has been amended by Paragraph 126 of Schedule 4 to the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), S.I. 2010/1158 and paragraph 106 of Schedule 5 to the Health and Social Care Act 2012 (c. 7).

(**e**) 2006 c. 21. The definition of childminder agency is inserted by paragraph 62(2) of Schedule 4 to the 2014 Act.

(**f**) Section 1 has been amended by paragraph 2 of Schedule 5 to the Health and Social Care Act 2008 (c. 14).

(**g**) Section 43(3)(b) was substituted by paragraph 13 of Schedule 1 to the Children and Young Persons Act 2008 (c. 23). This amendment is only in force in relation to England in accordance with S.I. 2010/2981.

(**h**) Section 4(7) was amended by paragraph 104 of Schedule 3 to the Adoption and Children Act 2002.

(**i**) 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 and S.I. 2013/1198. There have been other amendments to article 3 that are not relevant.

(b) in sub-paragraph (a)(ii), after "14C," insert "14D,";

(c) after sub-paragraph (e) insert—

"(ea) any question asked by or on behalf of any person in the course of his duties as a person employed by a local authority in England or Wales for the purpose of preparing a report for the court under section 14A(8) of the Children Act 1989(**a**) regarding the suitability of any person to be a special guardian, where—

(i) the question relates to the person whose suitability is being assessed; or

(ii) the question relates to a person over the age of 18 living in the same household as the person whose suitability is being assessed;

and where the person to whom the question relates is informed at the time the question is asked that, by virtue of this Order, spent convictions are to be disclosed;"; and

(d) after sub-paragraph (f) insert—

"(fa) any question asked by or on behalf of Her Majesty's Chief Inspector of Education, Children's Services and Skills in assessing a person's suitability for registration as a childminder agency under Part 3 of the Childcare Act 2006, where the person to whom the question relates is informed at the time the question is asked that, by virtue of this Order, spent convictions are to be disclosed;".

Amendments to article 4

5. In article 4(1)(**b**)—

(a) in sub-paragraph (b), after "14A," insert "14B, 14C,";

(b) in sub-paragraph (b), after "14C," insert "14D,";

(c) after sub-paragraph (j) insert—

"(ja) any decision by the relevant registration authority, as defined by section 5 of the Care Standards Act 2000(**c**), to refuse to grant an application for registration under Part 2 of that Act or to suspend or remove or refuse to restore a person's registration under that Part of that Act;"; and

(d) after sub-paragraph (k) insert—

"(ka) any decision of Her Majesty's Chief Inspector of Education, Children's Services and Skills to refuse to grant a person's application for registration as a childminder agency or to suspend, cancel or impose a condition on a person's registration as a childminder agency under Part 3 of the Childcare Act 2006;".

Amendments to Schedule 1

6. In Schedule 1(**d**)—

(a) in Part I, for paragraph 16 substitute—

"**16.** Chartered legal executive or other CILEx authorised person."

(b) in Part II—

(i) for paragraph 9 substitute—

(**a**) 1989 c. 41. Section 14A was inserted by section 115(1) of the Adoption and Children Act 2002.

(**b**) Article 4 has been amended by S.I. 2001/1192, S.I. 2008/3259, S.I. 2009/1818, S.I. 2012/1957 and S.I. 2013/1198. There have been other amendments to article 4 that are not relevant.

(**c**) Section 5 has been amended by paragraph 105 of Schedule 3 to the Adoption and Children Act 2002, paragraph 6 of Schedule 5 to the Health and Social Care Act 2008 and by section 4(2)(b) of the Children and Young Persons Act 2008.

(**d**) The headings to Schedule 1 and to Part II of that Schedule were substituted by S.I. 2001/1192. Paragraph 16 in Part I and the definition of "legal executive" in Part IV were inserted by S.I. 2002/441. The definition of "child" in Part IV was inserted by S.I. 2007/2149. There have been other amendments to Schedule 1 that are not relevant.

"**9.** Officers of providers of probation services as defined in section 9 of the Offender Management Act 2007(**a**).";

(ii) after paragraph 14A insert—

"**14B.** Any employment or other work that is carried out at a children's home or residential family centre.

14C. Any employment or other work which is carried out for the purposes of an adoption service, an adoption support agency, a voluntary adoption agency, a fostering service or a fostering agency and which is of such a kind as to enable a person, in the course of his normal duties, to have contact with children or access to sensitive or personal information about children."; and

(iii) after paragraph 14C insert—

"**14D.** Any employment or office which is concerned with the management of a childminder agency or any work for a childminder agency which is of such a kind as to require the person engaged in that work to enter day care premises or premises on which child minding is provided and as to enable the person, in the course of his normal duties, to have contact with children for whom child minding or day care is provided or access to sensitive or personal information about children for whom childminding or day care is provided.";

(c) in Part III, after paragraph 13 insert—

"**14.** CILEx approved manager."; and

(d) in Part IV—

(i) after the definition of "chartered accountant" insert—

""chartered legal executive" means a fellow of the Chartered Institute of Legal Executives.";

(ii) after the definition of "child" insert—

""CILEx approved manager" means a person authorised by the Chartered Institute of Legal Executives to be concerned in the management of a body which is a CILEx authorised person.

"CILEx authorised person" means a person authorised by the Chartered Institute of Legal Executives to provide a reserved legal activity in accordance with the Legal Services Act 2007(**b**).."; and

(iii) omit the definition of "legal executive".

Amendment to Schedule 3

7. After paragraph 17 insert—

"**17A.** Proceedings relating to registration under Part II of the Care Standards Act 2000.".

Signed by authority of the Secretary of State

Name
Parliamentary Under Secretary of State
Ministry of Justice

Date

(**a**) 2007 c. 21.
(**b**) 2007 c. 29.

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"). 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 provisions referred to in article 1(3) of this Order are consequential on amendments made to Part 3 of the Childcare Act 2006 (c. 21) by section 84 of, and Schedule 4 to, the Children and Families Act 2014 (c. 6). Those amendments allow for the registration of persons who propose to provide childcare on domestic premises with childminder agencies as an alternative to registration in one of the registers maintained by Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector"). In turn, any person wishing to operate as a childminder agency will be required to register with the Chief Inspector. The amendments made to the 1975 Order will permit the Chief Inspector, in the course of assessing a person's suitability for registration as a childminder agency, to ask about the spent convictions and cautions of those who will carry on the agency. In the case of a body corporate seeking registration as a childminder agency the Chief Inspector will, for example, be permitted to ask about the spent convictions of the directors and other officers of the company. The amendments will also permit a registered childminder agency to ask any person it proposes to employ to manage the agency or to work for the agency in a capacity which involves entering childminders' premises (for example to assess the quality of care and education provided in that setting) about their spent convictions and cautions.

Article 4(c) inserts a new provision in article 3(1) of the 1975 Order. This amendment permits a person employed by a local authority in England or Wales, when preparing a report for the court about the suitability of a person to be a special guardian as described in section 14A of the Children Act 1989 (c. 41) to ask about the spent convictions and cautions of that person or a person over the age of 18 living in the same household as the proposed special guardian.

Articles 2 to 7 make various amendments to the 1975 Order so that administrative and auxiliary staff in organisations such as children's homes, adoption agencies or residential family centres who are neither running the service nor engaged in work that is regulated activity in relation to children, but may still have access to sensitive information or contact with vulnerable children, to be asked about their spent convictions and cautions.

Article 6(b)(i) inserts a new paragraph 9 into Part II of Schedule 1 to the 1975 Order to reflect legislative changes introduced by the Offender Management Act 2007 (c. 21) under which individuals authorised to deliver probation services are described as officers of providers of probation services.

Article 6(c) and (d) make amendments to the 1975 Order to permit the Chartered Institute of Legal Executives ("CILEx") to ask a person concerned with the management of a CILEx authorised person, or to ask a person authorised to conduct a reserved legal activity as defined by Legal Services Act 2007 (c. 29) and who is not a fellow of CILEx, about their spent convictions and cautions.

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