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.

DRAFT STATUTORY INSTRUMENTS

2016 No.

REHABILITATION OF OFFENDERS, ENGLAND AND WALES

The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2016

Made - - - - ***

Coming into force in accordance with article 1(2)

The Secretary of State makes this Order in exercise of the powers conferred by section 4(4) of, and paragraph 4 of Schedule 2 to, the Rehabilitation of Offenders Act 1974(**a**).

A draft of this Order was laid before Parliament and approved by 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 2016.

(2) This Order comes into force on the twenty-first day after the day on which it is made.

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

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

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

(2) In each of article 3(1)(a)(ii)(**c**) and article 4(1)(b)(**d**)—

(a) before "14B" insert "14AA, ", and

(b) before "20" insert "14E, ".

(3) In each of the following, before "6" insert "1, "—

(a) article 3(1)(a)(ii);

(b) article 3ZA(a)(i)(**e**);

(**a**) 1974 c. 53. Schedule 2 was inserted by paragraph 6 of Schedule 10 to the Criminal Justice and Immigration Act 2008 (c. 4).
(**b**) S.I. 1975/1023.
(**c**) Amended by S.I. 2001/1192, 2009/1818, 2012/1957, 2012/3006, 2013/1198, 2014/1707 and 2015/317.
(**d**) Amended by S.I. 2001/1192, 2009/1818, 2012/1957, 2013/1198, 2014/1707 and 2015/317.
(**e**) Article 3ZA was inserted by S.I. 2013/1198 and amended by S.I. 2014/1942.

(c) article 4(1)(b), and

(d) article 4ZA(a)(**a**).

(4) In Part II of Schedule 1 (offices, employments and work)(**b**)—

(a) after paragraph 14A(**c**) insert—

"**14AA.** Any work done infrequently which, if done frequently, would be regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the 2006 Act including that Part as it had effect immediately before the coming into force of section 64 of the Protection of Freedoms Act 2012(**d**). ", and

(b) after paragraph 14D(**e**) insert**—**

"**14E.** Any chairman, member or member of staff of the Independent Police Complaints Commission who in the course of his normal duties—

(a) has contact with vulnerable adults; or

(b) has access to sensitive or personal information about children or vulnerable adults. ".

Name
Parliamentary Under Secretary of State
Ministry of Justice

Date

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"). 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 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 1975 Order also makes provision for a "protected conviction" and "protected caution" in respect of which the 1974 Act is no longer disapplied when a question is asked to assess a person's suitability for certain purposes. The person is not required to disclose such convictions and cautions; and those convictions and cautions, or a failure to disclose them, cannot be taken into account.

Article 2(4)(a) of this Order amends the 1975 Order by adding a new paragraph to Part II of Schedule 1 (offices, employments and work), to cover activity relating to children which would constitute "regulated activity" in relation to children if it were it carried out more frequently. The effect is that a person's spent convictions and cautions may be taken into account when assessing a person's suitability to engage in such activity. Work which is "regulated activity" in relation to children, as defined in Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (c. 47) before and after the amendments made by the Protection of Freedoms Act 2012 (c. 9), is included in paragraph 14A of Part II of Schedule 1 to the 1975 Order.

(**a**) Article 4ZA was inserted by S.I. 2013/1198.

(**b**) Amended by paragraph 1 of Schedule 8 to the Criminal Justice Act 1988 (c. 33), paragraph 190 of Part 4 of Schedule 8 to the Crime and Courts Act 2013 (c. 22), S.I 1986/1249, 2001/1192, 2002/441, 2003/965, 2005/617, 2006/2143, 2007/2149, 2007/3224, 2009/1818, 2010/1836, 2012/979, 2012/1957, 2012/1198, 2014/1707, 2015/317 2014/1707 and 2015/317.

(**c**) Inserted by S.I. 2009/1818 and amended by S.I. 2012/1957 and 2015/317.

(**d**) 2012 c. 9.

(**e**) Inserted by S.I. 2014/1707.

Article 2(4)(b) of this Order amends the 1975 Order by adding a new paragraph to Part II of Schedule 1 to cover the chairman, members and staff members of the Independent Police Complaints Commission who have contact with vulnerable adults or access to information about such adults or children. The amendment means that a person's spent convictions and cautions may be taken into account when assessing a person's suitability to engage in such work.

Article 2(2) of this Order makes changes consequential upon the amendments described above.

Article 2(3) of this Order amends the 1975 Order by including judicial appointments (included at paragraph 1 of Part II of Schedule 1) in article 3ZA and article 4ZA, and removes the reference to judicial appointments in article 3 and article 4. The effect is that in relation to such appointments the 1974 Act continues to be disapplied even in relation to a "protected caution" or a "protected conviction".

A full impact assessment has not been produced for this instrument as no significant impact on the private, voluntary or public sectors is foreseen.