EXPLANATORY MEMORANDUM TO

THE REHABILITATION OF OFFENDERS ACT 1974 (EXCEPTIONS) (AMENDMENT) (ENGLAND AND WALES) ORDER 2012

2012 No. 1957

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

2. Purpose of the instrument

This instrument amends the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (the "Exceptions Order"). It creates a new exception for the role of Police and Crime Commissioner (PCC) following the creation of this elected office in the Police Reform and Social Responsibility Act 2011 (PRSRA). It also ensures that, in general, the effect of the Exceptions Order is unchanged as a result of changes introduced by the Protection of Freedoms Act 2012 (PoFA) to the Safeguarding Vulnerable Groups Act 2006 (SVGA) for those working with children and vulnerable adults and it consolidates the references to 'health care professionals' contained in the Exceptions Order.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 The Rehabilitation of Offenders Act 1974 ("the Act") protects rehabilitated offenders from having to reveal certain past convictions and cautions once a specified period of time has passed. Section 4(4) enables the Secretary of State by order to make provision that, in certain circumstances and certain proceedings, the protection against having to reveal spent convictions does not apply and exempted questions may be put requiring responses which include giving information about spent convictions and cautions.

4.2 The Exceptions Order, by providing for the right to put an exempted question, taken in conjunction with the provisions of Part 5 of the Police Act 1997 and regulations made under it, has the result that a full criminal records history may be provided for an individual involved in sensitive areas of activity and work. The Criminal Records Bureau (CRB) is able to provide this information on application for any purpose listed on the Exceptions Order.

4.3 The Exceptions Order is amended periodically to ensure that the criminal disclosure regime meets the changing requirements of public protection.

4.4 This instrument meets assurances given to Parliament during the course of debates on the PoFA that people who will no longer fall within regulated activity will remain eligible for enhanced criminal record certificates http://www.publications.parliament.uk/pa/cm201011/cmpublic/protection/110503/pm/110503s01.htm (column 548).

5. Territorial Extent and Application

This Instrument extends to England and Wales.

6. European Convention on Human Rights

Crispin Blunt, the Parliamentary Under Secretary of State, 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 2011 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Rehabilitation of Offenders Act 1974 designates convictions of 30 months imprisonment or less as 'spent' after a certain period of time has elapsed, which varies according to the seriousness of the sentence received. The Act seeks to aid the reintegration and resettlement of ex-offenders into employment by not requiring them or any other person to answer questions regarding their spent convictions for any purpose not included in the Exceptions Order.

7.2 While it is generally desirable to facilitate ex-offenders into employment, the Exceptions Order exists to ensure that the public remain adequately protected. Those areas of activity included in the Exceptions Order are activities considered to provide individuals with greater opportunities to harm the public, and therefore where it is appropriate that an employer should know a person's full criminal history before an offer of employment is made and consideration can be given to any necessary safeguards to put in place.

Police and Crime Commissioners

7.3 Part 1 of the PRSRA replaces police authorities in England and Wales with directly elected PCCs. Section 66(3)(c) of the PRSRA provides for a person to be disqualified from being elected as, or being, a PCC if the person has been convicted in the UK, Channel Islands or Isle of Man of an imprisonable offence, regardless of whether a sentence of imprisonment was actually imposed. This disqualification criterion is stricter than for any other elected office. The special nature of the role, with its oversight of the police, is held to necessitate this higher threshold to ensure that a PCC's good character is not brought into question and they are able to command public trust.

7.4 The purpose of this amendment is to ensure that candidates for the post of PCC divulge both spent and unspent convictions when signing a declaration of eligibility to stand for election by ensuring that criminal record checks may be made to verify the information given and spent convictions can be grounds for disqualification.

Alignment with the Protection of Freedoms Act

7.5 Chapter 1 of Part 5 of PoFA will scale back the Vetting and Barring Scheme (VBS) by amending the SVGA. This will be achieved in part by narrowing the scope of 'regulated activity' through a new, tighter definition of those individuals who are subject to the barring regime. PoFA will also repeal SVGA provisions regarding 'controlled activity' and the current definition of 'vulnerable adult'. Currently, the Exceptions Order contains references to 'regulated activity', 'controlled activity' and 'vulnerable adult'. If the Order is not amended, PoFA, once in force, will reduce the scope of people eligible for criminal records checks.

7.6 The purpose of these amendments is to ensure that, for those posts and activities which will no longer be treated as 'regulated activities' but which continue to involve work with children or vulnerable adults, employers and voluntary organisations should still be able to access criminal records checks.

Consolidation

7.7 In addition to maintaining existing safeguards, the consolidation of the provisions regarding health care professionals should result in a more user-friendly set of provisions within the Exceptions Order.

7.8 An informal consolidated version of the amended Exceptions Order will be available at http://www.legislation.gov.uk/.

8. Consultation Outcome

8.1 Whilst a full public consultation was carried out on PCC policy as a whole, the current provisions for disqualification on the basis of criminal convictions were not included at that time. Following substantial debate in the Commons, there was cross-party consensus that the nature of the PCC role required a higher threshold for a convictions disqualification. An amendment to the PCC provisions along these lines was agreed to without a vote both in Committee and on the floor of the House.

8.2 The Government's remodelling review of the Vetting and Barring Scheme, published in February 2011, included the proposal that criminal records certificates would continue to be available to employers for posts which are currently within 'regulated activity' but which will fall outside it under the new definition. This review involved extensive consultation with a wide range of stakeholders.

9. Guidance

9.1 The Electoral Commission will be responsible for providing guidance for potential candidates for the post of PCC as part of their duty to raise awareness of the election. The Home Office will recommend that this provision should be highlighted in the guidance to ensure that candidates are aware of the higher threshold for a convictions disqualification.

9.2 As the amendments to the Order preserve existing eligibility for posts and activities currently within 'regulated activity', there is no need for additional guidance. The CRB, as part of normal practice, liaise with the Ministry of Justice on any changes to guidance in relation to eligibility for CRB certificates.

9.3 The Ministry of Justice are currently working on revised guidance for the Rehabilitation of Offenders Act 1974 as a whole, including the Exceptions Order, as part of the implementation process of the reforms to the Act in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, to be commenced in due course.

10. Impact

10.1 The impact of the addition of PCCs to the Order is limited to those individuals seeking to run for this elected office. The impact is not anticipated to be significant.

10.2 As the amendments to the Order preserve existing eligibility for posts and activities currently within 'regulated activity', there are no additional financial implications for the private, public or voluntary sectors as a result of these reforms.

11. Regulating Small Business

11.1 The inclusion of PCCs on the Order will not create new burdens on small businesses.

11.2 As the amendments to the Order preserve existing eligibility for posts and activities currently within 'regulated activity', there will be no new burdens on small businesses.

12. Monitoring and Review

The policy behind the Exceptions Order is kept under regular review by the Ministry of Justice.

13. Contact

Hannah Meyer at the Ministry of Justice, Tel: 020 3334 2863 or e-mail: hannah.meyer@justice.gsi.gov.uk, can answer any queries regarding the instrument.