EXPLANATORY MEMORANDUM TO

THE REHABILITATION OF OFFENDERS ACT 1974 (EXCEPTIONS) (AMENDMENT) (ENGLAND AND WALES) ORDER 2026

2026 No. 41

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Justice (MoJ) and is laid before Parliament by Act.

2. Declaration

2.1 Lord Timpson, Minister for Prisons, Probation and Reducing Reoffending, confirms that this Explanatory Memorandum meets the required standard.

2.2 Paul Norris, Deputy Director for Prison Policy at the MoJ confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Amber Rush at the MoJ, email: amber.rush@justice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and Context, of the Instrument

4. Overview of the Instrument

4.1 The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (the 1975 Order) disapplies specified provisions of the Rehabilitation of Offenders Act 1974 (the 1974 Act) which would otherwise prevent a person from having to disclose a spent conviction or caution.

4.2 This instrument amends the 1975 Order. Firstly, this instrument disapplies the relevant provisions of the 1974 Act to any question asked by a person to assess the suitability of a self-employed individual or personal employee that they wish to employ or engage in any work which is or has been regulated activity relating to children and vulnerable adults as defined in the Safeguarding Vulnerable Groups Act 2006. Secondly, Article 2(3) adds to Schedule 1 of the 1975 Order certain Electronic Monitoring contractor roles and registered Healthcare Professionals (HCP) employed or engaged by the Secretary of State for Work and Pensions (including registered healthcare professionals employed or engaged by contractors or sub-contractors, who are carrying out activities on behalf of the Secretary of State for Work and Pensions), to be asked by an employer or licensing authority about cautions and convictions that have become spent under the 1974 Act, where it is necessary to assess a person's suitability to engage in such work. Thirdly, the instrument also adds a new paragraph to Schedule 2 of the 1975 Order to enable questions to be asked about cautions and convictions that have become spent to assess the suitability of a person to hold a pedicab driver licence granted under regulations made under Section 2 of the Pedicabs (London) Act 2024.

Where does the legislation extend to, and apply?

4.3 The territorial extent of this instrument is England and Wales.

4.4 The territorial application of this instrument is England and Wales.

5. Policy Context

5.1 The 1975 Order lists activities or categories of jobs, where employers (and other bodies as specified) can use information about a prospective employee's spent convictions and cautions to inform their suitability decision. The key rationale behind the 1975 Order is that there are certain jobs – positions of public trust or those involving work with children or vulnerable adults - where more complete disclosure of an individual's criminal record may be appropriate to mitigate risks to public safety.

Self-employed persons or personal employees

5.2 The purpose of adding a new sub-paragraph to Article 3(1) of the 1975 Order is to enable any question asked by a person to assess the suitability of a self-employed individual or personal employee that the person wishes to employ or engage in any work which is or has been captured under regulated activity relating to children and vulnerable adults.

5.3 The final report from the 2022 Independent Inquiry into Child Sexual Abuse (IICSA) recommended changes to enable any self-employed individual working in a sensitive role with children to obtain a check of the Disclosure and Barring Service's (DBS) children's barred list. Also, the IICSA Tackling Child Sexual Abuse Progress Update, which the Government published on 9 April 2025, states that by the end of 2025, the Government will create the ability for the self-employed and those employed by a private individual to access higher-level DBS checks.

5.4 At present, for eligible roles, standard and enhanced checks can only be requested by organisations that make decisions as to the suitability of an individual for a particular role. In most cases, that will be an organisational employer (such as school or NHS trust), but it also includes regulators (e.g. Ofsted in the case of registered child minders) and recruitment agencies. The 1975 Order does not, however, enable access to higher-level checks for individuals applying where no such organisation is involved i.e. where someone is not assessing someone's suitability for a role in the course of their employment. This has affected self-employed individuals working in non-regulated sectors or people who are directly employed by (or provide their services to) a private individual.

5.5 The amendment to include self-employed and those employed by personal employers in the 1975 Order will enable these persons to apply for an enhanced criminal record certificate or an enhanced with barred list(s) criminal record certificate, if the role or activity being undertaken is eligible for these kinds of check.

Electronic Monitoring Contractors

5.6 MoJ is seeking to amend the 1975 Order to allow its appointed provider of Electronic Monitoring and Field Services to increase the minimum permitted level of criminal records disclosure for successful candidates who apply for roles in the delivery of that contracted service.

5.7 Electronic Monitoring requirements or conditions may be imposed as part of a court order (e.g. court bail, community sentences, domestic abuse protection orders), as a condition of release from prison custody or as part of a Home Office immigration bail order. Subject to legislative and policy restrictions, Electronic Monitoring may be

used to monitor compliance with other conditions of the court order (e.g. curfew or exclusion zones) or to monitor the individual's whereabouts.

5.8 The contractor is required to: install or issue the necessary Electronic Monitoring equipment; configure it so that it can monitor the requirements or conditions of the order; monitor compliance with those requirements or conditions or the person's whereabouts as specified by the order and report violations to the relevant responsible agency.

5.9 The role of the contractor does not currently appear in the 1975 Order and consequently only the DBS Basic level of criminal records disclosure applies to successful candidates whose specific duties do not meet the threshold for higher levels of clearance such as Counter Terrorism Checks (CTC).

5.10 There is a risk of corruption within these roles as staff are at risk of being offered incentives to make the monitoring regime less onerous than required. The consequences of members of staff acceding to this corruption are that persons to be monitored:

a. Do not adhere to all the requirements of their order, which undermines public confidence in the criminal justice system;

b. Have an opportunity to commit further offences by circumventing their Electronic Monitoring; and

c. Can more effectively evade detection of any reoffending by falsely claiming that the monitoring data provided by the equipment demonstrates they were elsewhere, which further undermines public confidence in the criminal justice system, and which could encourage yet more offending behaviour.

5.11 Consequently, the principal benefit of the legislative change is that the contractor is better able to identify prospective recruits who are amenable to corruption and thus help to avoid the deleterious consequences summarised above. The likely magnitude of these benefits cannot be quantified.

Registered Healthcare Professionals (HCPs) employed or engaged by the Secretary of State for Work and Pensions and its contractors / sub-contractors

5.12 The purpose of amending Part 2 Schedule 1 of the 1975 Order is to enable the Secretary of State for Work and Pensions, including contractors and sub-contractors carrying out services on behalf of the Secretary of State for Work and Pensions, to require registered HCPs already working for or on their behalf, and those who may do so in future, to disclose spent convictions and cautions.

5.13 There are over 5,000 HCPs (including regulated doctors, nurses, physiotherapists, occupational therapists, paramedics and pharmacists), undertaking around 2 million health assessments per year of people aged 16 or over with long-term health conditions or disabilities, some of whom are among the most vulnerable in society.

5.14 At present, the 1974 Act prevents the Secretary of State for Work and Pensions (and its contractors and sub-contractors) from requiring disclosure of spent convictions of HCPs. This is an unsatisfactory position because HCPs undertake health-related benefits assessments of often vulnerable people, including having access to their sensitive health and other personal data. HCPs occupy a position of trust and therefore it is necessary for the Secretary of State for Work and Pensions and their contractors and sub-contractors to ensure only suitable HCPs are occupying these roles.

5.15 The inability of the Secretary of State for Work and Pensions, or contractors and sub-contractors carrying out services on behalf of the Department, to require disclosure of spent convictions and cautions impedes the Department's ability to assess the suitability of potential HCP for the role. That in turn poses a potential risk to the public who will meet such persons as part of the health assessment process for certain benefits. Following assessment, it has been determined that the appropriate approach is to include this specific HCP role within the scope of the 1975 Order. This enables the Department to require registered HCPs, whether currently working for, contracted or sub-contracted by, or potentially engage in future, to disclose spent convictions and cautions.

Pedicab Driver Licences'

5.16 The aim of adding a definition of 'Pedicab Driver Licence' to Schedule 1, and 'Pedicab Driver Licences' to Schedule 2 of the 1975 Order is to allow Transport for London (TfL) to require pedicab drivers to disclose spent convictions and cautions when seeking a licence to operate under regulations made under the Pedicabs (London) Act 2024 (the 2024 Act).

5.17 The 2024 Act conferred powers onto TfL to regulate London's pedicab industry for the first time, closing a legal anomaly which had meant that pedicabs were an unregulated form of public transport on London's roads. The lack of regulation meant there were very limited powers available to TfL or the Metropolitan Police to control pedicab operations in London.

5.18 To implement an effective pedicab licensing regime, TfL need to be able to require pedicab drivers to apply for enhanced DBS with barred lists checks. Under current arrangements, TfL would only be able to request basic DBS checks for pedicab drivers. This is in comparison to taxi and Private Hire Vehicle (PHV) licencing, where TfL can request enhanced DBS with barred lists checks that can show spent and unspent convictions and cautions, subject to filtering rules, relevant police information and whether the individual is barred by DBS from working in regulated activity with children and/or adults.

5.19 This change will enable TfL's licencing regime for pedicabs to be in line with the regime for taxis and PHVs, both within London and on a national basis. It also reduces the potential operational and reputational risks that TfL would be exposed to if it implemented a licencing regime without fuller disclosure of any criminal background.

6. Legislative and Legal Context

How has the law changed?

6.1 The 1974 Act affords offenders protection from having to disclose certain convictions and cautions once a specified period of time has passed, which varies according to the seriousness of the disposal received. This Act seeks to aid the reintegration and resettlement of ex-offenders into employment by not requiring them, or any person, to answer questions regarding their spent cautions and convictions. When a person's convictions and cautions for an offence have become spent under the 1974 Act, they are treated as though they never committed the offence and can withhold information about that caution or conviction.

6.2 The 1975 Order creates exceptions to the 1974 Act by disapplying certain provisions in the 1974 Act, which would otherwise prevent a person from having to disclose a spent conviction or caution. The general effect of the disapplication of these

provisions is that, in specified circumstances, questions about spent convictions and cautions are permitted to be asked. This reflects that, while it is generally desirable to facilitate ex-offenders into employment, the public must remain adequately protected. Roles and areas of activity included in the 1975 Order are those that require a high level of public trust or involve special risks and sensitivities, such as working closely with children or vulnerable adults. In these contexts, it is appropriate that an employer should know a person's fuller criminal history, including certain spent convictions or cautions, before an offer of employment is made and consideration can be given to any necessary safeguards to be put in place. Filtering rules determine that even where fuller disclosure of spent convictions and cautions can be made, some convictions will become "protected" from disclosure after periods of time outlined in legislation, so that disclosure is proportionate. These filtering rules are laid out in Section 2A of the 1975 Order and Section 113A of the Police Act 1997.

6.3 Article 2(2) of this instrument amends the 1975 Order to disapply Section 4(2) of and paragraph 3(3) of Schedule 2 of the 1974 Act to any question asked by a person to assess the suitability of a self-employed individual or personal employee that they seek to employ or engage in any work which is or has been regulated activity relating to children and vulnerable adults in accordance with the Safeguarding Vulnerable Groups Act 2006.

6.4 Article 2(3) of this instrument amends Schedule 1 to the 1975 Order by adding new paragraphs to Part 2 (offices, employments and work) to cover any employment which is concerned with the delivery of Electronic Monitoring and field services by a contractor in accordance with arrangements made by the Secretary of State for Justice under Section 3 of the Offender Management Act 2007 and registered Healthcare Professionals employed or engaged by the Secretary of State for Work and Pensions, (including registered healthcare professionals employed or engaged by contractors or sub-contractors, who are carrying out activities on behalf of the Secretary of State for Work and Pensions).

6.5 The amendments would mean that a person's spent convictions and cautions, subject to filtering rules, may be considered when assessing their suitability to engage in such work.

6.6 Article 2(5) adds Pedicab Driver Licences to those excepted licences listed in Schedule 2 to enable questions to be asked about cautions and convictions that have become spent to assess the suitability of a person to hold a pedicab driver licence granted under regulations made under section 2 of the Pedicabs (London) Act 2024.

7. Consultation Outcome

7.1 This Order does not seek to consolidate or revoke any existing Orders.

Self-employed persons or a personal employees

7.2 The MoJ and Home Office have considered how to enable access to higher-level criminal record checks for self-employed individuals and those employed by a personal employer, with the aim of ensuring consistency in DBS check standards across all those working in regulated activity. Sector engagement was carried out through workshops, stakeholder consultation including representatives from health, education, sport, charities, to ensure the amendment reflects the needs of these diverse sectors.

Electronic Monitoring Contractors

7.3 The MoJ has engaged with its current provider of Electronic Monitoring and Field Services, and the change is not expected to impact the delivery of the service. No wider consultation has taken place.

Registered Healthcare Professionals employed or engaged by the Secretary of State for Work and Pensions and its contractors / sub-contractors

7.4 The Department for Work and Pensions (DWP) were consulted extensively throughout the development of this instrument. The change in eligibility is being made to support DWP's intent to require the highest level of DBS as part of its vetting process for HCPs. The expectation outside of DWP is that an enhanced check will occur for all NHS-related work. It is an expectation of HCPs to have been employed in the NHS prior to their appointment in DWP and its contractors / sub-contractors and so the HCPs are used to this level of check

7.5 No formal consultation was deemed necessary because this change affects only a very small number of HCPs working within a specialised area of healthcare which pertains to benefits assessment. The legislative changes affect England and Wales. The Scottish, Welsh, and Northern Ireland Governments have been made aware and expressed no concerns about the proposed changes.

Pedicab Driver Licences'

7.6 Following the passage of the Pedicabs (London) Act 2024, TfL ran a public consultation to inform the design and implementation of the future pedicabs regulatory regime prior to bringing it into force. The consultation ran from 27 January to 7 March 2025. Due to the nature of the pedicab industry, there is currently no recognised representative body. However, the consultation was wide ranging and included any organisations with a valid interest in the future regulation of pedicabs. A second public consultation, informed by the results of the first consultation and focusing on the proposed licencing requirements, ran from 9 September to 20 October 2025.

7.7 TfL were consulted extensively throughout the development of this Instrument. The change in eligibility is being made to support TfL's intent to regulate pedicabs in London, the principle of which was passed through the Pedicabs (London) Act 2024. As this amendment only affects pedicab drivers in London, because those outside of London are already eligible for DBS Enhanced with Barred List checks, there is no requirement to notify devolved authorities.

8. Guidance

8.1 Guidance on the1974 Act and the 1975 Order is available on the Government website.[1]

8.2 The organisations concerned will update guidance to ensure criminal record disclosures are proportionate, balancing public safety, equality, cost, recruitment efficiency, fairness and privacy. The guidance is clear that recruiters should only consider offences relevant to the role and use information in ways that supports rehabilitation.

[1] https://assets.publishing.service.gov.uk/media/653f7e52d10f3500139a6b20/30102023___Guidance_on_the_Rehabilitation_of_Offenders_Act_1974_and_The_Exceptions_Order_1975.pdf

8.3 However, this legislation comes into force ahead of TfL's guidance. The guidance relates to TfL's regulations and the range of pedicab license conditions contained therein, including requiring the disclosure of spent cautions and convictions. The guidance will be made available when the commencement regulations to the Pedicabs (London) Act 2024 are laid by TfL and will be published on TfL's pedicab-dedicated webpage to support the implementation of TfL's licencing regime. Both guidance and regulations will be determined by the outcome of TfL's public consultation on licensing requirements for pedicab drivers; TfL are waiting to publish their guidance to mitigate any pre-determination of that outcome.

8.4 The updated HR guidance for HCPs is available to employees via the DWP intranet. It is not publicly available in line with DWP's internal HR recruitment policies. New or potential recruits will have the policy regarding Enhanced with Barred list checks detailed on the job advertisement.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

Self-employed persons or a personal employees

9.1 No Impact Assessment has been prepared by the MoJ for this instrument, as it is not expected to have a significant financial impact on the private, voluntary or public sectors. While the instrument enables access to a higher level of criminal record check and permits questions about spent convictions in specific safeguarding contexts, it does not create a new requirement. Any associated costs are likely to fall to individuals — such as the self-employed person, personal employee, or personal employer — rather than organisations.

Electronic Monitoring Contractors

9.2 No Impact Assessment has been prepared by the MoJ for this instrument because of the low level of impact on businesses and the public sector.

Registered Healthcare Professionals employed or engaged by the Secretary of State for Work and Pensions

9.3 No Impact Assessment has been completed by DWP as there is no, or no significant impact on business, charities or voluntary bodies because this change only affects a very small number of HCPs working within a specialised area of health-related benefits assessment.

9.4 This change will also affect up to 5000 HCPs in the first year, with subsequent DBS checks repeated every three years, it is likely to have minimal impact on HCPs currently contracted on behalf of or employed directly by DWP. DWP do not expect a significant number of applications to be declined as the HCPs at DWP are expected to be in good standing with their regulatory body, as they are within the NHS and so should have disclosed any convictions to their regulator already. If any current member of staff is required to disclose any spent cautions or convictions, then DWP will work with the individual and their regulator to mitigate risks and to understand the impact of those convictions on their current role.

Pedicab Driver Licences'

9.5 A full Impact Assessment has not been prepared for this instrument because of the small scale of impact. This instrument does not impose a requirement for checks; it creates eligibility for a higher-level DBS check.

9.6 It will enable TfL to require that pedicab drivers in London applying for a licence to get an enhanced DBS with barred lists check. TfL has estimated that there are around 200 pedicabs in operation, with this number increasing to around 900 in peak season. As a function of the change in eligibility afforded by this instrument and also the concurrent change to The Police Act 1997 (Criminal Records) Regulations 2002[2] and (No.2) 2009,[3] and the separate setting of DBS check requirements by TfL, 100% of those pedicab drivers currently operating in London will be subject to Enhanced DBS with Barred Lists' checks as part of the wider future pedicab licensing regime. Drivers lacking a licence will be unable to legally drive a pedicab once the proposed pedicab regulations are implemented by TfL. It is expected that a smaller proportion of pedicab drivers will apply for a licence, as it is estimated that some pedicabs operators may be unable to get a licence due to licensing conditions and/or failing to pass right to work checks. It is worth noting, given the industry is currently unregulated, there will be no reliable way to track who is applying as a current pedicab driver or a new entrant. Nor will it be possible to know what element of the regulations act as a disincentive to anyone (current driver or otherwise) from applying for a licence.

9.7 An Impact Assessment was previously completed for the Pedicabs (London) Act 2024. This captured the estimated full costs and benefits of this Act, and these fell below the de-minimis threshold of £5 million and was exempt from Regulatory Policy Committee scrutiny. As such, a further Impact Assessment relating to the required changes to the 1975 Order (which will enable the implementation of any effective future regulatory regime) is not required.

9.8 An Equalities Impact Assessment was also conducted for the Pedicabs (London) Bill, and it was determined that the Pedicabs (London) Bill did not engage Section 20 of the Environment Act (as the Bill merely allows TfL to rectify a legal anomaly and regulate pedicabs). As such, further assessments relating to equalities and environmental impacts are not required for the proposed changes to the 1975 Order, but TfL (as the relevant licencing authority) will need to take into account any relevant environmental and equalities considerations as part of their ongoing work to determine the future pedicabs regulatory regime.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to use existing mechanisms of engagement with the Department for Transport (DFT), TfL, and DWP, alongside the MoJ to monitor the implementation of the legislation and identify any issues.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

[2] https://www.legislation.gov.uk/uksi/2002/233/contents
[3] https://www.legislation.gov.uk/uksi/2009/1882/contents

12. European Convention on Human Rights

12.1 The Minister for Prisons, Probation and Reducing Reoffending, Lord Timpson has made the following statement regarding Human Rights:

12.2 "In my view the provisions of the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument does not relate to withdrawal from the European Union and does not trigger the statement requirements under the European Union (Withdrawal) Act.