Draft Legislation: *This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2014 ISBN 978-0-11-111457-5*

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

2013 No.

REHABILITATION OF OFFENDERS, ENGLAND AND WALES

The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013

Made - - - - ***

Coming into force in accordance with article 1(2)

The Secretary of State, 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(**1**), makes the following Order.

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 2013.

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

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

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

2. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(**2**) is amended as set out in articles 3 to 12 below.

(**1**) 1974 c. 53. Schedule 2 was inserted by the Criminal Justice and Immigration Act 2008 (c. 4), Schedule 10, Part 1, paragraph 6.
(**2**) S.I. 1975/1023.

Amendments of article 2

3.—(1) Article 2(**3**) is amended as follows.

(2) In paragraph (1), after the definition of "payment services" insert—

""protected caution" means a caution of the kind described in article 2A(1);

"protected conviction" means a conviction of the kind described in article 2A(2);".

(3) Omit paragraph (2).

(4) Before paragraph (3) insert—

"(2A) Nothing in this Order applies in relation to a conviction for a service offence which is not a recordable service offence; and for this purpose—

(a) "service offence" means an offence which is a service offence within the meaning of the Armed Forces Act 2006(**4**) or an SDA offence within the meaning of the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009(**5**);

(b) "recordable service offence" means an offence which is a recordable service offence within the meaning of the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009(**6**).".

Insertion of new article 2A

4. After article 2 insert—

"**2A.**—(1) For the purposes of this Order, a caution is a protected caution if it was given to a person for an offence other than a listed offence and—

(a) where the person was under 18 years at the time the caution was given, two years or more have passed since the date on which the caution was given; or

(b) where the person was 18 years or over at the time the caution was given, six years or more have passed since the date on which the caution was given.

(2) For the purposes of this Order, a person's conviction is a protected conviction if the conditions in paragraph (3) are satisfied and—

(a) where the person was under 18 years at the time of the conviction, five years and six months or more have passed since the date of the conviction; or

(b) where the person was 18 years or over at the time of the conviction, 11 years or more have passed since the date of the conviction.

(3) The conditions referred to in paragraph (2) are that—

(a) the offence of which the person was convicted was not a listed offence;

(b) no sentence mentioned in paragraph (4) was imposed in respect of the conviction; and

(c) the person has not been convicted of any other offence at any time.

(4) The sentences referred to in paragraph (3)(b) are—

(a) a custodial sentence, and

(b) a sentence of service detention,

(**3**) Article 2(1) and (2) were substituted by S.I. 1986/2268. The definition of "payment services" was inserted in article 2(1) by S.I. 2011/1800 and the definition of "relevant collective investment scheme" was so inserted by S.I. 2001/3816. Article 2(2) was amended by S.I. 2007/2149. There have been other amendments of article 2 but none are material.

(**4**) 2006 c. 52. See section 50(2) which has been amended by the Armed Forces Act 2011 (c. 18), Schedule 4, paragraph 3.

(**5**) S.I. 2009/1059. See article 2(4).

(**6**) S.I. 2009/1922. See article 2(1) and Schedule 2, paragraph 4.

within the meaning of section 5(8) of the Act, as to be substituted by section 139(1) and (4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**7**).

(5) In paragraphs (1) and (3)(a) "listed offence" means—

(a) an offence under section 67(1A) of the Medicines Act 1968(**8**);

(b) an offence under any of sections 126 to 129 of the Mental Health Act 1983(**9**);

(c) an offence specified in the Schedule to the Disqualification from Caring for Children (England) Regulations 2002(**10**);

(d) an offence specified in Schedule 15 to the Criminal Justice Act 2003(**11**);

(e) an offence under section 44 of, or under paragraph 4 of Schedule 1 or paragraph 4 of Schedule 4 to, the Mental Capacity Act 2005(**12**);

(f) an offence under section 7, 9 or 19 of the Safeguarding Vulnerable Groups Act 2006(**13**);

(g) an offence specified in section 17(3)(a), (b) or (c) of the Health and Social Care Act 2008(**14**), apart from an offence under section 76 of that Act;

(h) an offence specified in the Schedule to the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009(**15**);

(i) an offence specified in Schedule 2 or 3 of the Childcare (Disqualification) Regulations 2009(**16**);

(j) an offence superseded (whether directly or indirectly) by any offence falling within paragraphs (a) to (i);

(k) an offence of—

(i) attempting or conspiring to commit any offence falling within paragraphs (a) to (j), or

(ii) inciting or aiding, abetting, counselling or procuring the commission of any such offence,

or an offence under Part 2 of the Serious Crime Act 2007(**17**) (encouraging or assisting crime) committed in relation to any such offence;

(l) an offence under the law of Scotland or Northern Ireland, or any country or territory outside the United Kingdom, which corresponds to any offence under the law of England and Wales falling within paragraphs (a) to (k);

(**7**) 2012 c. 10. Section 139(1) and (4) is not yet in force.
(**8**) 1968 c. 67. Section 67(1A) was inserted by the Health and Social Care Act 2001 (c. 15), section 63(7).
(**9**) 1983 c. 20. Section 126 has been amended by the Mental Health (Patients in the Community) Act 1995 (c. 52), Schedule 1, paragraph 17. Section 127 has been amended by the Care Standards Act 2000 (c. 14), Schedule 4, paragraph 9(8) and the Mental Health Act 2007 (c. 12), section 42 and Schedule 11, Part 5, paragraph 1. Section 128 has been amended by the Mental Health Act 2007, Schedule 3, paragraph 28. Section 129 has been amended by the Mental Health (Patients in the Community) Act 1995, Schedule 1, paragraph 19 and the Health and Social Care Act 2008 (c. 14), Schedule 3, paragraph 10.
(**10**) S.I. 2002/635. The Schedule has been amended by S.I. 2011/2581.
(**11**) 2003 c. 44. Schedule 15 has been amended by the Domestic Violence, Crime and Victims Act 2004 (c. 28), Schedule 10, paragraph 65, the Coroners and Justice Act 2009 (c. 25), section 138, the Domestic Violence, Crime and Victims (Amendment) Act 2012 (c. 4), Schedule, paragraph 6 and the Protection of Freedoms Act 2012 (c. 9), Schedule 9, Part 10, paragraph 139, Part 11, paragraph 147.
(**12**) 2005 c. 9.
(**13**) 2006 c. 47. Sections 7, 9 and 19 have been amended by the Protection of Freedoms Act 2012 (c. 9), Schedule 9, Part 6, paragraphs 47, 49 and 59 respectively, and Schedule 10, Part 5.
(**14**) 2008 c. 14.
(**15**) S.I. 2009/37. The Schedule has been amended by S.I. 2009/2610, S.I. 2010/1146 and S.I. 2012/2160.
(**16**) S.I. 2009/1547. Schedules 2 and 3 have been amended by S.I. 2011/2581.
(**17**) 2007 c. 27. The provisions of Part 2 containing offences have been amended by the Coroners and Justice Act 2009 (c. 25), Schedule 21, Part 2, paragraph 61 and S.I. 2010/976.

(m) an offence under section 42 of the Armed Forces Act 2006(**18**) in relation to which the corresponding offence under the law of England and Wales (within the meaning of that section) is an offence falling within paragraphs (a) to (k); or

(n) an offence under section 70 of the Army Act 1955(**19**), section 70 of the Air Force Act 1955(**20**) or section 42 of the Naval Discipline Act 1957(**21**) of which the corresponding civil offence (within the meaning of that Act) is an offence falling within paragraphs (a) to (k).".

Amendments of article 3

5. Article 3(**22**) is amended as follows—

(a) the existing text is renumbered as paragraph (1);

(b) for "Neither" substitute "Subject to paragraph (2), neither";

(c) in sub-paragraph (a)—

(i) in paragraph (ii), after "Schedule 1", in the first place, insert "apart from one specified in paragraph 6, 16, 17, 18, 18A, 31, 32, 35 or 36" and omit "35, 36,";

(ii) in paragraph (iii), after "Schedule 1" insert "apart from one specified in paragraph 1 or 8";

(iii) in paragraph (iv), after "Order" insert "apart from one specified in paragraph 1 or 3";

(d) omit sub-paragraph (b);

(e) after paragraph (1) insert—

"(2) Paragraph (1) does not apply in relation to a protected caution or a protected conviction.".

Insertion of new article 3ZA

6. After article 3 insert—

"**3ZA.** Neither section 4(2) of, nor paragraph 3(3) of Schedule 2 to, the Act applies in relation to—

(a) any question asked by or on behalf of any person, in the course of the duties of his office or employment, in order to assess the suitability—

(**18**) 2006 c. 52.

(**19**) 1955 c. 18. Section 70 has been amended by the Suicide Act 1961 (c. 60), Schedule 1, Part II, ,, the Armed Forces Act 1971 c. 33, sections 34(1) and 78(4), Schedule 4, Part 1, the Biological Weapons Act 1974 (c. 6), section 5(1), the Criminal Attempts Act 1981 (c. 47), section 7(1), the Armed Forces Act 1976 (c. 52), section 10(3), the Chemical Weapons Act 1996 (c. 6), section 35, the Crime (Sentences) Act 1997 (c. 43), Schedule 4, paragraph 1(1), the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), Schedule 9, paragraph 8, the International Criminal Court Act 2001 (c. 17), section 74, Schedule 10 paragraph 1, the Armed Forces Act 2001 (c. 19), Schedule 6, Part 6, paragraph 33(2), Schedule 7, Part 4 and the Sexual Offences Act 2003 (c. 42), Schedule 6, paragraph 9(b), Schedule 7.

(**20**) 1955 c. 19. Section 70 has been amended by the Suicide Act 1961 (c. 60), Schedule 1, Part II, the Armed Forces Act 1971 (c. 33), sections 34(1) and, 78(4), Schedule 4, Part 1, the Biological Weapons Act 1974 (c. 6), section 5(1), the Criminal Attempts Act 1981 (c. 47), section 7(1), the Armed Forces Act 1976 (c. 52), section 10(3), the Chemical Weapons Act 1996 (c. 6), section 35, the Crime (Sentences) Act 1997 (c. 43), Schedule 4, paragraph 2(1), the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), Schedule 9, paragraph 13, the International Criminal Court Act 2001 (c. 17), section 74, Schedule 10, paragraph 1, the Armed Forces Act 2001 (c. 19), Schedule 6, Part 6, paragraph 33(2), Schedule 7, Part 4 and the Sexual Offences Act 2003 (c. 42), Schedule 6, paragraph 10(b), Schedule 7.

(**21**) 1957 c. 53. Section 42 has been amended by the Armed Forces Act 1971 (c. 33), sections 34(3) and 78(4), the Criminal Attempts Act 1981 (c. 47), section 7(1), the Armed Forces Act 1986 (c. 21), section 16, Schedule 1, paragraph 3, Schedule 2, the Crime (Sentences) Act 1997 (c. 43), Schedule 4, paragraph 3(1), the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), Schedule 9, paragraph 18, the Armed Forces Act 2001 (c. 19), Schedule 6, Part 6, paragraph 34, Schedule 7, Part 4 and Part 7.

(**22**) Article 3 has been amended by S.I. 2001/1149, S.I. 2001/1192, S.I. 2001/3816, S.I. 2002/441, S.I. 2008/3259, S.I. 2009/1818, S.I. 2012/1957, S.I. 2012/3006 and S.I. 2013/472. There have been other amendments of article 3 but none are material.