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

2010 No.

REHABILITATION OF OFFENDERS, ENGLAND AND WALES

The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2010

Made - - - - 2010

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 in accordance with section 10(2) of the Rehabilitation of Offenders Act 1974 and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2010.

(2) It comes into force on the day after the date on which it is made.

(3) It extends to England and Wales only(**2**).

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

2. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(**3**) is amended in accordance with the following provisions of this Order.

(**1**) 1974 c.53, as amended by the Criminal Justice and Immigration Act 2008 (c.4).

(**2**) As regards Scotland, see the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2003 (S.I. 2003/415 (S.5)). The Rehabilitation of Offenders (Exceptions) Order 1975 (S.I. 1975/1023) ("the 1975 Order") was revoked in relation to Scotland, by article 6(a) of S.S.I. 2003/231.

(**3**) S.I. 1975/1023, amended by S.I. 1986/1249, 1986/2268, 2001/1192, 2001/3816, 2002/441, 2003/965, 2005/617, 2005/848, 2005/1082, 2005/2011, 2006/594, 2006/2143, 2006/3290, 2007/289, 2007/2149, 2007/3224, 2008/2683, 2008/3259 and 2009/1818. S.I. 1975/1023 is also amended by section 39 of the Osteopaths Act 1993 (c.21) and section 40 of the Chiropractors Act 1994 (c.17), both of which statutory provisions are subject to prospective repeals.

New article 3A: work in controlled activity

3. After article 3 insert the following new article—

"**3A.**—(1) Neither section 4(2) of, nor paragraph 3(3) of Schedule 2 to, the Act applies to a question to which paragraph (2) or (3) applies.

(2) This paragraph applies to any question asked by or on behalf of any person ("A"), in the course of the duties of A's office or employment, in order to assess the suitability of the person to whom the question relates ("B") for any work which is a controlled activity relating to children within the meaning of section 21 of the 2006 Act(**4**), where the person questioned is told at the time the question is asked, that by virtue of this Order, spent convictions are to be disclosed but only if that person knows that B—

(a) is a person barred from regulated activity relating to children within the meaning of section 3(2) of the 2006 Act;

(b) is included in the list kept under section 1 of the Protection of Children Act 1999(**5**); or

(c) is subject to a direction made under section 142 of the Education Act 2002(**6**).

(3) This paragraph applies to any question asked by or on behalf of any person ("A"), in the course of the duties of A's office or employment, in order to assess the suitability of the person to whom the question relates ("B") for any work which is a controlled activity relating to vulnerable adults within the meaning of section 22 of the 2006 Act, where the person questioned is told at the time the question is asked, that by virtue of this Order, spent convictions are to be disclosed but only if that person knows that B—

(a) is a person barred from regulated activity relating to vulnerable adults within the meaning of section 3(3) of the 2006 Act; or

(b) is included in the list kept under section 81 of the Care Standards Act 2000(**7**)."

Extension of Article 6 to include Isle of Man exceptions

4. For article 6, substitute the following—

"**6.**—(1) Neither section 4(2) of, nor paragraph 3(3) of Schedule 2 to, the Act applies to a question to which paragraph (2) applies.

(2) This paragraph applies to a question asked by or on behalf of any person in the course of that person's office or employment in the Channel Islands or the Isle of Man in order to assess the suitability of the person to whom the question relates for any purposes referred to in article 3 or 3A, where—

(a) the person asking the question states that a corresponding question and purpose are also provided for in—

(i) the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002 ("the Jersey Regulations");

(**4**) The 2006 Act is defined in the 1975 Order as meaning the Safeguarding Vulnerable Groups Act 2006 (c.47).
(**5**) 1999 c. 14. Section 1 was repealed by paragraph 8 of Schedule 9 to the 2006 Act. S.I. 2009/2611 brought that repeal into force on 12 October 2009 with transitional and saving provisions.
(**6**) 2002 c. 32. Section 142 was repealed by Schedule 10 to the 2006 Act. S.I. 2009/2611 brought that repeal into force on 12 October 2009 with transitional and saving provisions.
(**7**) 2000 c. 14. Section 81 was repealed by paragraph 9 of Schedule 9 to the 2006 Act. S.I. 2009/2611 brought that repeal into force on 12 October 2009 with transitional and saving provisions.