

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT REHABILITATION OF OFFENDERS ACT  
1974 (EXCEPTIONS) (AMENDMENT) (ENGLAND  
AND WALES) ORDER 2022

*Wednesday 26 October 2022*

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**The Committee consisted of the following Members:**

*Chair:* MR VIRENDRA SHARMA

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|--|--|
| † Bell, Aaron ( <i>Newcastle-under-Lyme</i> ) (Con)                        | † Morrissey, Joy ( <i>Beaconsfield</i> ) (Con)           |
| Brennan, Kevin ( <i>Cardiff West</i> ) (Lab)                               | † Owen, Sarah ( <i>Luton North</i> ) (Lab)               |
| Byrne, Ian ( <i>Liverpool, West Derby</i> ) (Lab)                          | † Penning, Sir Mike ( <i>Hemel Hempstead</i> ) (Con)     |
| † Cruddas, Jon ( <i>Dagenham and Rainham</i> ) (Lab)                       | † Reeves, Ellie ( <i>Lewisham West and Penge</i> ) (Lab) |
| † Freeman, George ( <i>Mid Norfolk</i> ) (Con)                             | † Sturdy, Julian ( <i>York Outer</i> ) (Con)             |
| † Gibson, Peter ( <i>Darlington</i> ) (Con)                                | † Vickers, Martin ( <i>Cleethorpes</i> ) (Con)           |
| † Greenwood, Margaret ( <i>Wirral West</i> ) (Lab)                         | † Watling, Giles ( <i>Clacton</i> ) (Con)                |
| † Hillier, Dame Meg ( <i>Hackney South and Shoreditch</i> )<br>(Lab/Co-op) | Abi Samuels, James Holland, <i>Committee Clerks</i>      |
| † Mackinlay, Craig ( <i>South Thanet</i> ) (Con)                           |  |
| † Maclean, Rachel ( <i>Minister of State, Ministry of Justice</i> )        | † <b>attended the Committee</b>                          |

## Sixth Delegated Legislation Committee

Wednesday 26 October 2022

[MR VIRENDRA SHARMA *in the Chair*]

### Draft Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2022

2.30 pm

**The Minister of State, Ministry of Justice (Rachel Maclean):** I beg to move,

That the Committee has considered the draft Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2022.

This instrument amends the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 to enable any current or potential sponsor on the Homes for Ukraine scheme in England and Wales to be eligible for the highest level of criminal record check undertaken by the Disclosure and Barring Service. This is an enhanced criminal record certificate with barred list checks. Homes for Ukraine is a sponsorship scheme in which individuals in the UK offer up their homes to Ukrainians fleeing the war. I think we would all agree it has been a monumental achievement of the Government, providing sanctuary to our friends from Ukraine.

Since its launch in March this year, more than 98,000 Ukrainians have arrived in the UK as part of the scheme. I pay tribute to those who have offered up their homes, but it is right to ensure that when Ukrainian refugees arrive in the UK adequate safeguards are in place. Currently, local authorities can only obtain the highest level DBS check when a Homes for Ukraine sponsor's guests include a child under 18 who is not related to the sponsor, or when a sponsor is providing services to an unrelated guest adult with additional needs. Otherwise, sponsors are only eligible for a basic DBS check. The Government have identified further scenarios where we consider that higher level DBS checks on sponsors might be necessary.

The first is a process called domestic rematching. That occurs when the original match breaks down or is deemed unsuitable. In this circumstance, a local authority may rematch the beneficiary with a new sponsor. That is a significantly increased role for the local authority, compared to the original matching process. The new sponsor may not have been through the initial safeguarding and security checks that are only consistently applied at the visa stage.

The other situation the Government have identified where higher level DBS checks may be necessary is for children who are not travelling with or going to join a parent or legal guardian in the UK. In July, the Government expanded the Homes for Ukraine scheme to enable children to come to the UK without a parent or legal guardian and stay with a sponsor, who, except in exceptional circumstances, should be personally known to the parent or legal guardian. While under current regulations the higher level DBS checks can be carried out on most

Homes for Ukraine sponsors for those children, only the basic DBS check can be carried out on the sponsor or members of the sponsor's household if they have a family relationship with the child.

However, some of those family ties might be quite loose. For example, a parent in Ukraine may entrust a child to an extended family member with whom they do not have a close or recent relationship. As a result of those emerging risks, the Government seek to amend the 1975 order to enable local authorities to carry out enhanced with barred list checks on all Homes for Ukraine sponsors. To be eligible for this highest level DBS check, a positional role must be included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, the Police Act 1997 (Criminal Records) Regulations 2002, and the Police Act 1997 (Criminal Records) (No. 2) Regulations 2009.

The Home Office laid a statutory instrument on 22 September to amend the Police Act 1997, and that came into effect on 13 October. The Rehabilitation of Offenders Act 1974 protects those with convictions from having to disclose their convictions and cautions once they become spent. When a conviction or caution is spent, the individual is considered to have become rehabilitated. The exceptions order lists activities or categories of jobs where those protections are lifted, so that individuals, if asked, are required to disclose spent convictions.

I would like to take the chance to thank the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee for reviewing this instrument. The latter raised a concern about the length of time it has taken for this extension of the safeguards to be implemented. We recognise the importance of ensuring that safeguarding measures are as effective as possible to protect those fleeing the ongoing war in Ukraine. As the Homes for Ukraine scheme evolved, further scenarios emerged in which the highest level check was not currently possible but where the risks were such that a basic DBS check may not have provided adequate assurance. Once that need was identified, we moved to amend the relevant legislation as quickly as the parliamentary calendar has allowed.

In conclusion, not proceeding with the draft order increases the chances of a beneficiary of the Homes for Ukraine scheme coming to harm where information that would have been on an enhanced DBS check could have prevented that from happening. Delay to proceeding with the legislation prevents the mitigation of that risk, and I therefore commend the draft order to the Committee.

2.35 pm

**Ellie Reeves (Lewisham West and Penge) (Lab):** The Rehabilitation of Offenders Act 1974 is a vital piece of legislation. It ensures that people in the UK who have criminal records are, in the main, able to put their offending past behind them. When we talk about the declaration of historical acts of criminality, we must always be mindful of the balance between the rights of those who have put their offending behind them and the rights of others to be informed about the past behaviour of those with whom they may be in close contact. Indeed, an important component of our criminal justice system is that we allow those who have atoned for their crimes to lead a meaningful life after a period of

rehabilitation and punishment, but it is also right that there are some offences, and some forms of employment, for which the disclosure of criminal convictions is a necessity.

Those coming here from Ukraine are in a uniquely vulnerable position. Having fled war and left so much of their lives behind, they arrived here needing sanctuary and stability. Safeguarding proceedings are therefore incredibly important. The spirit of the British public in opening their homes to help those seeking refuge has been overwhelming, and I pay tribute to the many families and individuals in my constituency who have signed up for the Homes for Ukraine scheme. However, we must be aware that some may seek to exploit the situation, and we must ensure that there is no opportunity for people to do so. I am therefore satisfied that the draft order is proportionate and necessary, and we are happy to support it. However, I am concerned that this vital element of safeguarding has not been considered until now, as thousands of Ukrainians have already arrived in the UK through the Homes for Ukraine scheme.

It seems that there are other safeguarding loopholes left open too. I worry that the expectation on hosts to inform the council when their guests arrive is not clear to some, meaning that welfare visits can be missed if a host does not know whom to contact or does not contact anyone at all. That means there could be Ukrainian refugees who the council simply does not realise have arrived in the UK, opening a gap in safeguarding that could be exploited.

I am also concerned that this is part of the wider picture on oversight. Many six-month placements under the scheme are now coming to an end, and many are not being extended. In so many cases, however, the private rented sector is not an option because of the high costs and landlord checks involved, so those families are now facing homelessness. Despite that, and despite the Opposition's raising this issue consistently, we have still yet to hear the plan from the Government in relation to the scheme. Until it is delivered, many families will risk homelessness and the prospect of their lives being uprooted again.

Although I support the draft order, I hope that the Minister will feed back some of the wider concerns to her ministerial colleagues. It is important that the Government work on this issue as a matter of urgency, so that those who are fleeing war can find refuge here.

2.38 pm

**Sir Mike Penning** (Hemel Hempstead) (Con): It is a pleasure to serve under your chairmanship, Mr Sharma. I refer the Committee to my entry in the Register of Members' Financial Interests as a non-executive director of a law firm.

The Minister's portfolio was my portfolio when I was a Minister for some two and a half years, and this type of SI is being used in exactly the right way. There have been extensive criticisms about using secondary legislation from Members of different parties over many years, but sometimes it is absolutely spot on to do so, and the draft order is an example of that. The shadow Minister is absolutely right to say there will be other loopholes and other things that need to be addressed, but at the end of the day, this is about the safety of those who

come here for their protection and making sure that those who open their doors are the right people and that we have had the right checks on them.

I commend the Government for introducing the draft order, but there are still issues outstanding. We need to be agile, and SIs are exactly how we should do it.

2.39 pm

**Dame Meg Hillier** (Hackney South and Shoreditch) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Mr Sharma. I have a couple of simple questions for the Minister. As my hon. Friend the Member for Lewisham West and Penge has highlighted, this measure is quite late in coming. When the scheme was being put together, there must have been some thought somewhere in the Government's system that there would be a need for this new measure. When were the Minister's Department and the Home Office first aware that there might need to be a change in the legislation? If there were any delays in bringing it forward from that date to now, can she explain why?

2.40 pm

**Craig Mackinlay** (South Thanet) (Con): It is always a pleasure to serve under your chairmanship, Mr Sharma. A couple of issues come to mind. Following on a little from the hon. Member for Hackney South and Shoreditch, there must have been a mischief that it was felt needed to be closed. I would think a precautionary principle is in play, and the Government have come to this conclusion—I think for the right reasons because it is the right thing to do—but there must have been worries about not the looseness, but the lack of checks in the system that have caused this SI to be laid.

Local authorities are the bodies responsible for asking for enhanced DBS checks. Will there be guidance from the Department for Levelling Up, Housing and Communities, the Home Office or the Ministry of Justice about what level of previous criminality would be deemed to be a definite no? A drink-driving offence from 20 years ago or a shoplifting offence from 15 years ago would not cause the same concern as the offences that we are trying to highlight, where it would be obvious that people might be a risk to youngsters and families coming from Ukraine. Is there any guidance for local authorities about what is deemed to be an accepted—if there is such a thing—previous offence, or is it down to local authorities to manage on a one-by-one basis?

2.41 pm

**Rachel Maclean**: I thank all colleagues for their contributions to this debate. I will take the issues that were raised in turn before I come to the shadow Minister. My right hon. Friend the Member for Hemel Hempstead raised very good points about the importance of using SIs for a specific purpose, which is exactly what we have done. There is a role both for the Ministry of Justice and for the Home Office. We have had to amend the Police Act 1997, as I set out in my initial remarks, and we are also having to amend the Rehabilitation of Offenders Act 1974. As other Members have suggested, the scheme has been incredibly important. I agree with the hon. Member for Hackney South and Shoreditch and pay tribute to all Members of this House and

[Rachel Maclean]

elsewhere who are hosting our Ukrainian guests. It is an incredibly compassionate act and demonstrates the true British spirit.

The hon. Member for Hackney South and Shoreditch asked when we became aware of the issues. It is fair to say I was part of the initial set-up of the scheme in my previous role in the Home Office under the previous Home Secretary, and we worked at pace, along with Lord Harrington, to set up the scheme, which was a true cross-Government effort. It was a completely new, bespoke scheme, so we worked through the night on many occasions to try to address the myriad issues that sat with our Department, with other Departments, with DLUHC, and, in some cases, with the devolved Administrations.

**Dame Meg Hillier:** On that point, the Minister says that it was a bespoke scheme. The Public Accounts Committee, which I have the privilege of chairing, looked at the Syrian resettlement scheme, which we gave quite a big tick. There are always issues with big projects, but it worked very well, so there was an example of a scheme that went before. It was not domestic hosting, so the safeguarding was slightly different, but there were still issues there. Did she look back to that scheme? I am still puzzled why the Government drew up a whole new scheme when there was a fairly good model on the stocks.

**Rachel Maclean:** That is a perfectly valid question, but I fear that the scope of this debate is very narrow and is about the exceptions in the Rehabilitation of Offenders Act. I was not the Minister responsible for the policy decisions. The right answer for colleagues who have raised valid points about the future of the scheme is probably to seek a Backbench Business debate—perhaps a Westminster Hall debate—so that the relevant Minister can come along and answer all those questions. It is not possible for me to answer them now, but I am happy to feed them back to my colleagues or to answer any correspondence on them.

The hon. Member for Lewisham West and Penge mentioned the fact that the scheme was initially going to run for a shorter period and that people are now coming to the end of that period, and asked what plans we have made for that. Again, it would be wrong for me to try to answer those questions as I am not the Minister with responsibility for those issues.

I very much hope that colleagues are reassured that the draft SI is an important part of the Government's safeguarding responsibility, and I commend it to the Committee.

**Craig Mackinlay:** Could the Minister address some of the points that I raised?

**Rachel Maclean:** I am very happy to do so in writing, unless my hon. Friend would like to reiterate those points to the Committee.

**Craig Mackinlay:** I would be delighted to. Local authorities are in the driving seat when it comes to asking for the tests, but will any guidance come from the centre—be it from DLUHC, the Ministry of Justice or the Home Office—about what kind of former offence would be acceptable and pass muster, as it were, or is it up to the local authorities to make those decisions for themselves? I gave the example of a drink-driving offence from 20 years ago.

**Rachel Maclean:** I thank my hon. Friend for that aide-mémoire—it is very kind of him. We can certainly write with further detail, but I can assure him that we are talking here about a specific feature of the Rehabilitation of Offenders Act, which allows for exceptions to be made, and that decisions would be not be made case by case by local authorities—there is wider guidance on the whole scheme, the safeguarding measures and the suitability of families to be hosts.

We are talking here about making a change to the Act to provide that where a more sensitive role or activity is listed in the order—such as being a host for a vulnerable person fleeing war—greater disclosure of information that would otherwise be considered as spent is required. The rules that apply to determine what information is included—known as filtering—are quite detailed, and they include serious offences, such as serious sexual offences and others of that nature. I assure my hon. Friend that the regime is detailed, well established and in the interest of public protection. I hope that that answers his question, but he can feel free to probe further if not.

*Question put and agreed to.*

2.48 pm

*Committee rose.*