

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Seventh Delegated Legislation Committee

DRAFT REHABILITATION OF OFFENDERS ACT
1974 (EXCEPTIONS) (AMENDMENT) (ENGLAND
AND WALES) ORDER 2023

Wednesday 17 May 2023

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The Committee consisted of the following Members:

Chair: SIR EDWARD LEIGH

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| † Antoniazzi, Tonia (<i>Gower</i>) (Lab) | † Russell-Moyle, Lloyd (<i>Brighton, Kemptown</i>) (Lab/ Co-op) |
| † Argar, Edward (<i>Minister of State, Ministry of Justice</i>) | † Saxby, Selaine (<i>North Devon</i>) (Con) |
| † Bell, Aaron (<i>Newcastle-under-Lyme</i>) (Con) | † Smith, Cat (<i>Lancaster and Fleetwood</i>) (Lab) |
| † Ellis, Michael (<i>Northampton North</i>) (Con) | Smith, Greg (<i>Buckingham</i>) (Con) |
| † Ford, Vicky (<i>Chelmsford</i>) (Con) | † Tarry, Sam (<i>Ilford South</i>) (Lab) |
| † Howell, John (<i>Henley</i>) (Con) | † Trickett, Jon (<i>Hemsworth</i>) (Lab) |
| † McMorris, Anna (<i>Cardiff North</i>) (Lab) | † Vara, Shailesh (<i>North West Cambridgeshire</i>) (Con) |
| † Mann, Scott (<i>Lord Commissioner of His Majesty's Treasury</i>) | Whittome, Nadia (<i>Nottingham East</i>) (Lab) |
| † Mortimer, Jill (<i>Hartlepool</i>) (Con) | Jonathan Edwards, <i>Committee Clerk</i> |
| | † attended the Committee |

Seventh Delegated Legislation Committee

Wednesday 17 May 2023

[SIR EDWARD LEIGH *in the Chair*]

Draft Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2023

2.30 pm

The Minister of State, Ministry of Justice (Edward Argar): I beg to move,

That the Committee has considered the draft Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2023.

Before I set out the effect of the draft order, it may be helpful for hon. Members if I explain the legislation underpinning the change that the Government are bringing forward. The Rehabilitation of Offenders Act 1974 governs the disclosure of cautions and convictions for most employment purposes. More serious convictions remain disclosable for life, but under the ROA most convictions become spent after a specific period. Once a conviction is spent, it does not need to be disclosed by someone applying for most jobs. That approach supports the rehabilitation of the offender, helping them to put their past behind them when they have not reoffended over a significant period.

The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 lists activities or categories of jobs in respect of which those protections are lifted, so that individuals, are still required to disclose spent convictions if asked to do so. That enables greater disclosure of criminal records information for people in specified roles and activities. The primary rationale behind the exceptions order is that there are certain jobs for which more complete or relevant disclosure of an individual's criminal record may well be appropriate.

Although it is generally desirable to facilitate getting ex-offenders into employment, the public must remain adequately protected. There are some areas in which an employer should be made aware of a person's fuller criminal history before an offer of employment is made, so that consideration can be given to any necessary safeguards. The exceptions order is therefore a counterbalance to the ROA in favour of the protection of the public, providing a greater level of disclosure for individuals performing roles or activities that require additional safeguarding: working with children or vulnerable adults, for example, or in positions of public trust.

The draft order will amend the exceptions order by adding four roles to the exceptions order: chartered management accountants, fire and rescue authority employees, justice system intermediaries and notaries public of England and Wales. Each of those roles has been identified as meeting the criteria for inclusion in the exceptions order: either they are in line with the existing roles and activities reflected in the exceptions order, or there is a compelling case to justify requiring

individuals to disclose all spent and unspent convictions. I will set out the rationale for adding each of those four roles to the exceptions order.

John Howell (Henley) (Con): Is the Minister aware—this is an open question—whether, ahead of this legislation, other professional organisations are going further with respect to liberalisation?

Edward Argar: I am grateful for my hon. Friend's intervention. This is a very narrowly defined set of professions, and the draft order will fulfil a request from some of those professions. As I will address in my closing remarks, there is always a difficult balance to be struck between liberalising the regime, to encourage and facilitate people who have offended but have a subsequent clean record getting into work and back into normal life, and protecting the public in particular circumstances. That does not necessarily mean that the individuals will not be given a job, but it does ensure that their employers have full disclosure so that they can make an informed decision.

The first profession to be added to the exceptions order is members of the Chartered Institute of Management Accountants. The reason is that the functions that they carry out are fundamentally based on trust, and they present a particular opportunity to cause harm to the public through abuse of that trust: they provide services including accounting, taxation and financial management services. The exceptions order already includes chartered accountants and certified accountants, but not members of CIMA, even though they carry out similar functions. I am persuaded that members of CIMA should be included in the exceptions order to enable the institute to discharge its regulatory functions properly and to ensure consistency with Scottish legislation, which already includes them.

The second profession is fire and rescue authority employees, for whom I also consider that there is a clear case for change. From the independent culture review of the London Fire Brigade, from media reporting on services across England and Wales and from recent reviews of fire and police culture, we have seen the importance of ensuring that we effectively vet and check the people we employ in our key public services; we have repeatedly debated those important issues in this House. Furthermore, the recent spotlight report on culture and values by the fire inspectorate, commissioned by the Government, specifically recommends such a change. The case for making it is also supported by considering the roles that individuals in our fire and rescue services undertake, which can include attending schools or vulnerable people's homes, attending incidents as medical first responders, exercising statutory powers and helping to safeguard others. We hope that the change will help to protect the reputation of our fire and rescue services, which are deeply trusted and highly reliant on public trust and respect for the amazing job that they do to carry out their roles effectively.

The third profession is justice system intermediaries, whose role is to enable communication in police inquiries and in court and tribunal proceedings with those witnesses and parties whose ability to participate is diminished because they are under 18 or are suffering from a mental or physical impairment. It is common for some intermediaries to have unsupervised access to vulnerable

adults for the duration of a communication assessment. In rarer cases, they have unsupervised access to children under the age of 18. The role can also involve discussions with vulnerable people concerning highly personal or sensitive matters such as domestic or sexual abuse. Those factors add to the safeguarding risk and place the intermediary in a position of increased responsibility for the welfare of the vulnerable person.

The fourth profession is notaries. “Notary” or “notary public” is a term for a specialist lawyer who has undertaken further legal education and examination and is appointed and regulated through the Faculty Office of the Archbishop of Canterbury. Notaries are authorised to attest the authenticity of documents, certify documents, take affidavits and swear oaths. Most notaries are solicitors, but they do not have to be. In the light of the Ukraine crisis, the then Deputy Prime Minister, my right hon. Friend the Member for Esher and Walton (Dominic Raab), wrote to legal services regulators to ask how the Government could support them to uphold the economic crime regime. In response, the Faculty Office recommended adding notaries to the exempted professions under the exceptions order. Adding notaries to the order will provide parity with other legal professionals such as barristers and solicitors, who are already subject to standard Disclosure and Barring Service checks, as opposed to the basic checks. Furthermore, given that notaries handle sensitive information and often work with vulnerable people, we consider that the role of a notary meets the criteria for inclusion in the order.

At present, employers can request only a basic DBS check for the aforementioned roles, unless specific activity being undertaken as part of the role makes them eligible for more than that. A basic check is the lowest level of check available and shows only those convictions and cautions that are not considered spent. Approving the draft order will enable employers to request standard DBS checks for prospective employees in those roles. It will also enable employers to assess the suitability of a person for any office or employment that the draft order adds to part 2 of schedule 1 to the exceptions order, such as in the case of the fire and rescue services. Standard DBS checks contain details of both unspent and spent convictions, as well as cautions held on the police national computer that are not subject to filtering, which is a process whereby old or minor convictions are filtered off a standard DBS check.

It is important to bear in mind that where an employer is aware of a conviction, it should not be an automatic bar to employment. The Government strongly urge employers to exercise a balanced judgment, taking into account factors such as the person’s age at the time of the offence, how long ago the offence took place, the nature of the offence and its relevance to the position in question. The Government are committed to the rehabilitation of those who have ceased offending and want to move on with their lives. I am proud to say that we have completed the roll-out of prison employment leads, who match prisoners to jobs, and employment advisory boards chaired by business leaders, which link prisons with local industry. We have delivered those in 92 prisons, including all resettlement prisons, ahead of schedule.

We want to ensure that employers use the new powers granted to them under the draft order fairly and proportionately. As a condition of these professions

being added to the exceptions order, representatives of each profession have agreed to produce or update guidance, which is being developed with the support of policy officials. The guidance will help to ensure that employers are fair in their recruitment decisions.

In conclusion, adding justice system intermediaries, fire and rescue authority employees, chartered management accountants and notaries to the exceptions order is a necessary safeguarding measure. The criminal records disclosure regime is designed to protect the public, particularly children and vulnerable adults, while enabling those who have offended in the past to move on with their lives. We believe that the change that we propose appropriately strikes that balance.

2.39 pm

Anna McMorris (Cardiff North) (Lab): It is a pleasure to serve under your chairship, Sir Edward. I thank the Minister for outlining the provisions of the draft order. As he explained, it will amend schedule 1 to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 by adding new provisions to cover chartered management accountants, fire and rescue authority employees, justice system intermediaries and notaries public of England and Wales to allow questions to be asked about cautions and convictions that have become spent under the 1974 Act where necessary.

The Opposition are able to support the draft order. Supporting ex-offenders into employment is something that we must all endeavour to be better at, especially given the central role that employment can play in preventing future offending. It is vital that our criminal records system does not unnecessarily trap people in the past when they are committing to reform, staying out of the offending cycle or rebuilding their lives. However, the overriding concern when legislating in this area must always be the protection of the public. The exemptions included in the 1975 order strike that proportionate balance because those areas of work, such as working with vulnerable individuals or potentially sensitive information, require high degrees of trust. We are satisfied that the extensions to the 1975 order under discussion today can be introduced while maintaining that vital proportionate balance.

Lloyd Russell-Moyle (Brighton, Kemptown) (Lab/Co-op): Does my hon. Friend agree that this is all well and good, but as we have seen with scandals in policing and recently in the NHS—there was a case in the papers this week about an NHS worker accessing documents for the purpose of stalking—it is only any good if the organisation in question has proper, ongoing safeguarding measures? These changes should not be a cause for complacency for any of the other organisations that we know still have a long way to go.

Anna McMorris: My hon. Friend makes a very important point. Chartered accountants, for example, undertake sensitive accounting work that requires a very high degree of public trust, and the risk of abuse of that trust is higher than in many other jobs. Fire and rescue authority employees who come into contact with incredibly vulnerable individuals, including children and young people, have a particularly important safeguarding role when they attend incidents as medical first responders.

[Anna McMorrin]

Given the culture that we have seen across some of our fire and rescue authorities and police, as my hon. Friend mentions, we need to ensure that people are properly safeguarded.

Justice system intermediaries have very high levels of responsibility for the vulnerable individuals they assist, who include children, and they sometimes have unsupervised access to them. Notaries public also frequently deal with vulnerable people and highly sensitive information. It is right that individuals who undertake such sensitive work are subject to additional DBS scrutiny, so we are happy to support the draft order.

I recognise that the relevant organisations are producing guidance to ensure that a proportionate approach is taken with regard to the disclosure of criminal records in these additional areas to ensure that equality and individual privacy is upheld alongside public protection. I wonder whether the Minister can tell me what plans, if any, the Department has to review that guidance to ensure that it is proportionate and that it is drafted in line with the anticipated needs of the professions that he has set out today.

I also wonder whether the Minister can share whether the draft order represents the extent of his Department's current intentions on changes to the criminal record system. As shadow Minister for Victims and Youth Justice, I have been following the #FairChecks campaign with interest, particularly in relation to its asks about offences committed in childhood. I would be interested to hear from the Minister whether he has had any meetings with the campaign or has any plans for further reform in the area.

2.45 pm

Edward Argar: I will respond briefly, if I may. I thank the shadow Minister, both for her typically considered remarks and for the support that she has offered for this measure on behalf of the Opposition. I hope that the Committee agrees that this instrument is necessary and that adding the four additional professions, or roles, to the exceptions order is a sensible measure to ensure the protection of the public. It is always a complex balance to strike, and I share the hon. Lady's desire for those who have committed a crime and paid for it and who wish to get back on the straight and narrow to be enabled to get their life back on track and live within bounds again. There should be no unnecessary barriers to that, but equally, appropriate safeguards and checks must be in place for particularly sensitive roles. As I have said, there is no automatic exclusion preventing someone from being offered a role; it is about the due diligence to check that their potential employers know what is coming.

Lloyd Russell-Moyle: Will the Minister give way?

Edward Argar: I will, because I was just about to respond to the hon. Gentleman's point.

Lloyd Russell-Moyle: Actually, I was going to be really cheeky and say that women's centres offer a particularly good place for rehabilitation for women. The Minister came to visit my local women's centre in Brighton, and we would love to see him back to see the improvements and the continuous struggles that the centre has had in delivering justice and rehabilitation for women in my area.

Edward Argar: I am grateful to the hon. Gentleman, who typically puts in a plug for his own constituency and the services provided there. I recall that in my last stint in this role, I had the privilege of visiting his constituency, visiting his local women's centre with him and seeing the team's amazing work down there. I can still remember it: I think we posed for a photograph on the front step after spending quite a long time chatting with the team, service users and others about the amazing work being done there. If I am able to, it is always a pleasure to return to sunny Brighton, particularly at this time of year or during the summer.

On the point that the hon. Gentleman made in his intervention on the shadow Minister, I think that this measure is an important step forward, but he is absolutely right to highlight that no statutory instrument—no single piece of legislation—can solve the problem. Once it is passed, it is not a case of "Job done: there we are." Every organisation in our public services and beyond, particularly one that works with vulnerable people or holds a position of trust, has an ongoing responsibility to continue to look at its behaviours and processes to ensure that safeguarding, particularly of vulnerable individuals, is front and centre in its approach. The hon. Gentleman was absolutely right to highlight that point.

The shadow Minister raised a couple of questions. I have not met the campaign group that she mentioned, but if she wishes to write to me about the campaign as a starting point, she knows that I will always read her letters with care. As I mentioned in my opening speech, we are reviewing the guidance around each of the professions. We want to do so with the professions to try, in so far as is possible, to make it jointly authored and ensure that it actually works for the specifics of each. We will seek to do so collaboratively where we can. I commend the draft order to the Committee.

Question put and agreed to.

2.48 pm

Committee rose.

