

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT REHABILITATION OF OFFENDERS ACT  
1974 (EXCEPTIONS) ORDER 1975 (AMENDMENT)  
(ENGLAND AND WALES) ORDER 2016

*Monday 4 July 2016*

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

*Chair:* PHIL WILSON

Allen, Mr Graham ( <i>Nottingham North</i> ) (Lab)	† Jenrick, Robert ( <i>Newark</i> ) (Con)
† Davies, Dr James ( <i>Vale of Clwyd</i> ) (Con)	† Jones, Mr David ( <i>Clwyd West</i> ) (Con)
† Doughty, Stephen ( <i>Cardiff South and Penarth</i> ) (Lab/ Co-op)	† Parish, Neil ( <i>Tiverton and Honiton</i> ) (Con)
† Dowden, Oliver ( <i>Hertsmere</i> ) (Con)	† Selous, Andrew ( <i>Parliamentary Under-Secretary of State for Justice</i> )
† Doyle-Price, Jackie ( <i>Thurrock</i> ) (Con)	† Stevens, Jo ( <i>Cardiff Central</i> ) (Lab)
Dugher, Michael ( <i>Barnsley East</i> ) (Lab)	† Tomlinson, Michael ( <i>Mid Dorset and North Poole</i> ) (Con)
† Fernandes, Suella ( <i>Fareham</i> ) (Con)	
† Foxcroft, Vicky ( <i>Lewisham, Deptford</i> ) (Lab)	Jonathan Whiffing, <i>Committee Clerk</i>
† Heaton-Jones, Peter ( <i>North Devon</i> ) (Con)	
Hepburn, Mr Stephen ( <i>Jarrow</i> ) (Lab)	† <b>attended the Committee</b>

# First Delegated Legislation Committee

Monday 4 July 2016

[PHIL WILSON *in the Chair*]

## Draft Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2016

4.30 pm

**The Parliamentary Under-Secretary of State for Justice (Andrew Selous):** I beg to move,

That the Committee has considered the draft Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2016.

Good afternoon, Mr Wilson. May I say what a pleasure it is to serve under your chairmanship this afternoon? I hope this measure will not detain the Committee for too long.

The order is part of the Government's ongoing commitment to keeping safeguarding measures in step with developments elsewhere. The amendments contained within it seek to maintain the balance between the rehabilitation of offenders and the need to protect the public.

The Rehabilitation of Offenders Act 1974 seeks to aid the reintegration into society of offenders who put their criminal past behind them. It does so by declaring certain cautions and convictions as spent after a specified period of time. Once a caution or conviction has become spent, an ex-offender is not required to declare it when entering most kinds of employment or applying for insurance, for example, and it cannot be taken into account; that is, ex-offenders are treated as if they had not been charged with or convicted of an offence at all.

Research has consistently shown that obtaining employment is an important factor in reducing the risk of offending. However, there must, of course, be a balance to ensure that members of the public are adequately protected. To that end, the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 creates exceptions to the 1974 Act so that in some circumstances all spent as well as unspent convictions and cautions must be disclosed and may be taken into account when assessing a person's suitability for certain positions. When, for example, a person applies for a job listed in the exceptions order, the employer is entitled to ask about certain spent convictions and cautions as well as those that are unspent.

The areas of activity included in the exceptions order require a high degree of trust and often involve vulnerable persons. It is therefore right that an employer should know a person's fuller criminal history before an offer of employment is made and that consideration can be given to any necessary safeguards to be put in place. It is the exceptions order that sets out the exceptions to the general protections under the 1974 Act.

The Police Act 1997 is the related legislation that sets out the process for the issue of criminal record certificates, otherwise known as standard disclosure, and of enhanced criminal record certificates. Standard disclosure contains

details of a person's unprotected spent cautions and convictions; enhanced disclosure includes, in addition, any information that the chief officer of police considers relevant to the particular application. Disclosure certificates are issued by the Disclosure and Barring Service.

The 2016 order will introduce three amendments to the exceptions order. The first is designed to align the exceptions order with the Police Act 1997 (Criminal Records) Regulations 2002 in relation to certain regulated activities with children; the second creates exceptions for certain roles in the Independent Police Complaints Commission; the third relates to judicial appointments, which are already covered by the exceptions order, to allow for wider disclosure of criminal conviction information.

There is an anomaly between the exceptions order and the connected Police Act 1997 (Criminal Records) Regulations 2002 that needs to be rectified. The 2002 regulations cover both regulated activity relating to children that is unsupervised and carried out on a frequent basis, such as teaching, and any activity that would be defined as a regulated activity relating to children if it were done frequently, such as the provision of health and palliative care to children who are sick or disabled, or childminding on a one-off basis during school holidays. Currently, however, only activity carried out frequently is covered by the exceptions order. The purpose of the amendment, therefore, is to align the order with the Police Act regulations so that positions involving unsupervised work with children on an infrequent basis are eligible for enhanced criminal records checks.

The Independent Police Complaints Commission was established by the Police Reform Act 2002 and became operational in April 2004. The IPCC's primary statutory purpose is to secure and maintain public confidence in the police complaints system in England and Wales. It makes decisions independently of the police, Government and interest groups. It investigates the most serious complaints and incidents involving the police across England and Wales as well as handles certain appeals from people who are not satisfied with how the police have dealt with their complaints.

The IPCC is currently undertaking a three-year programme of change and expansion, which means that, by the end of 2017, it will independently investigate all serious and sensitive cases. That expansion has increased the number of cases and breadth of matters being investigated, which includes an increased number of allegations of child sexual abuse and exploitation and allegations concerning the abuse of vulnerable adults. The amendment to the exceptions order will commit the IPCC to ask for and take into account the unprotected spent convictions and cautions of those staff and commissioners who have contact with vulnerable adults or who have access to sensitive and personal information relating to children and vulnerable adults.

Contact with children by commissioners and other IPCC staff is already covered by other provisions in the exceptions order relating to regulated activity. Similarly, the IPCC will be able to ask for disclosure of such information when recruiting to those roles. It is important that IPCC staff and commissioners undertaking that work should be subject to disclosure of unprotected spent cautions and convictions to assess their suitability for those roles. The amendment to the exceptions order provides for that.

The Judicial Appointments Commission is an independent commission established under the Constitutional Reform Act 2005 to select candidates of good character for judicial office in courts and tribunals in England and Wales. Prior to the Act, appointments were made by the Lord Chancellor. Magistrates fall outside the remit of the JAC. They are appointed by the senior presiding judge, but they are assessed for suitability in the same way as judicial appointees. Judicial appointments are already covered by the exceptions order, which means that the JAC is currently entitled to ask candidates for details of their unspent convictions and those spent cautions and convictions that are not protected from disclosure, and it can take that information into account.

I need to explain what we mean by protected cautions and convictions. It used to be the case that where an occupation or activity was listed in the exceptions order, full disclosure of all spent cautions and convictions was required. In May 2013, however, following a Court of Appeal judgment that was upheld by the Supreme Court, the Government amended the exceptions order to provide that certain old and minor spent cautions and convictions were protected from routine disclosure and criminal record certificates—in other words, they are filtered from certificates and they do not have to be disclosed by individuals; nor can they be taken into account by employers.

Since the change in policy, the JAC has therefore been entitled to take into account only unprotected spent cautions and convictions. However, the Lord Chief Justice has asked for the commission to be added to the limited number of roles—for example, the police—for which it is considered necessary and proportionate to be allowed to request the disclosure of all cautions and convictions, including those that are protected. The JAC is clear that disclosure of old and minor cautions and convictions is required to mitigate the risk to the integrity of the judiciary, should details of an appointee's previous caution or conviction subsequently emerge. That is because of the unique position of the judiciary and magistracy for which the significance of a caution or conviction is considered much greater. It is a requirement that judges be of good character, and were that good character not possessed, there would be potential damage to the public's confidence in their constitutional function. The amendment will allow full disclosure of spent cautions and convictions by disapplying the provisions of the exceptions order that would otherwise protect certain such cautions and convictions from disclosure.

Before the Government agreed to support such a change, we asked the commission to put in place a clear and transparent recruitment policy for the treatment of old and minor cautions and convictions to ensure that all applications would be treated objectively and fairly. Proper and balanced consideration will be given to any old and minor spent convictions that are disclosed, and they will not automatically preclude an applicant from taking up a judicial appointment. The JAC good character guidance has been updated, and if Parliament approves the amendment, that guidance will be available to candidates once the order comes into force.

The instrument illustrates our commitment to update legislation when necessary to protect the public, in line with the latest analysis of risks. It is focused on maintaining the correct public protection balance. The amendments to the exceptions order are limited in scope but will

ensure that employers can request and take into account the convictions and cautions of individuals who work closely with vulnerable people and those investigating child abuse, and will preserve the integrity of the judiciary.

4.41 pm

**Jo Stevens** (Cardiff Central) (Lab): It is a pleasure to serve under your chairmanship for the first time, Mr Wilson. I thank the Minister for outlining the order, which will make amendments to the Rehabilitation of Offenders Act 1974 in relation to current regulated activities under the Safeguarding Vulnerable Groups Act 2006, in that certain members of staff and commissioners of the IPCC, and candidates seeking appointment to judicial office, will have to have an enhanced criminal records check. The Minister outlined a further category in relation to the Police Act 1997.

I understand that there has been no public consultation on the Judicial Appointments Commission amendment but key stakeholders were consulted. I, too, have consulted key stakeholders. Will the Minister explain why there was no public consultation on that amendment and identify the key stakeholders that were consulted about the amendment?

The order extends the number of roles for which employers will be entitled to know about spent convictions. Will the Minister please outline what support and/or guidance the Government will give to employers to ensure that that change does not result in a blanket refusal to employ people with spent convictions who are legitimately seeking to lead law-abiding lives? There are many ways in which risk can be managed; the challenge is knowing about it and dealing with it rather than avoiding it altogether. I am concerned that employers may feel that the best approach is to eliminate risk completely by not employing people who have criminal records.

Although it is extremely important that we do all we can to facilitate the employment of ex-offenders, we know that public safety must always be paramount. Subject to the Minister's clarification on those issues, the Opposition welcome the amendments, as they ensure that further checks will be carried out into the backgrounds of those who are working with vulnerable people and on extremely sensitive issues to assess their suitability for such roles.

4.43 pm

**Stephen Doughty** (Cardiff South and Penarth) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Mr Wilson. I support entirely the aims of the order and my Front-Bench colleague's position, not least on the provisions about the protection of children, which I think we would all agree is crucial. However, I have become aware of an unusual case in my constituency that I want to share with the Minister, because it shows that some inconsistencies exist within the current system of sensitive occupations for which convictions may or may not have to be disclosed. If I might put that case to the Minister, perhaps he will come back to me in writing or express his views on it, because I think it is worth looking at.

The case concerns a constituent who has served extensively in the British armed forces, including as a Royal Military Police officer, and has also been on

[Stephen Doughty]

detachment to police forces in other countries around the world. He served with distinction and in fact has been commended for his work both with the RMP and when attached to an overseas police force, but unfortunately, he received a relatively minor conviction as a teenager, I believe involving the theft of a motor vehicle. From what I gather about the case, he is completely reformed and had served with distinction in the forces and in those roles. He wanted to serve in the police force in this country, not least given his experience, but he has been told at various points that that would not be possible because that would involve the disclosure of that relatively minor offence from his teenage years and because of the risk that that may pose.

There does seem to be an inconsistency, however, because although he was allowed to serve as an RMP officer and with a police force in another country, he appears to be barred from joining the police force in this country. Indeed, when I have spoken to police officers who know him, they argue he is exactly the sort of person they would want to recruit, not least given his extensive experience and commitment to the role, but they cannot do that because of those inconsistencies. Interestingly, he applied and got accepted for and now works as a prison officer, which one would argue is an important and sensitive role for which such matters should be disclosed.

I accept that such cases are extremely rare and often extremely unusual, but I would appreciate it if the Minister would look into that and the wider consistency of application. I think my constituent feels that there is at least an inconsistency if not an injustice which means he cannot apply to be a police officer. I say that while fully agreeing with the Minister that this is an important order and I entirely support the principles behind it.

4.46 pm

**Andrew Selous:** I will do my best to respond to the various points made in the debate. The hon. Member for Cardiff South and Penarth raised a valid, real-life

case from his constituency and I will ask the police Minister, my right hon. Friend the Member for Hemel Hempstead (Mike Penning), to respond because, as I am not the policing Minister, I am not qualified to speak about the police's requirements. However, the point made about the gentleman serving as a Royal Military Police officer and currently being a prison officer is valid, so I will ask my right hon. Friend to write to the hon. Gentleman on that.

I want to reassure the hon. Member for Cardiff Central as strongly as I can that I am absolutely passionate about ex-offender employment and I am doing everything I possibly can to get employers to realise that there is a good business case for it. We have many successful examples of ex-offenders who have gone on to be extremely valuable members of staff. Indeed, what I hear by and large from employers is very high-quality feedback: people have really appreciated being given that second chance and taken full advantage of it. That tends to benefit employers in terms of the length of time employees stay and the commitment they show. I do not believe that anything in the order will put that in doubt in any way.

The hon. Lady made the valuable point that the order is about giving employers knowledge, but we ask them to assess intelligently the information provided to them. She made a good point about disclosure not automatically leading to a blanket ban. That is very much the case in terms of judicial appointments.

If I may, I will write to the hon. Lady about consultation on the JAC. I know informal consultations took place and that there was wide support. I also know concerns had been raised by the Lord Chief Justice on seeking the changes as far as the Judicial Appointments Commission is concerned. I hope that that has reassured the Committee. As I said, I commit to write back to the hon. Lady on that.

*Question put and agreed to.*

4.49 pm

*Committee rose.*