



Northern
Ireland
Office

**Consultation on proposals to amend
the Rehabilitation of Offenders
(Exceptions) Order (Northern Ireland)
1979**

Criminal Law Branch
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May 2006

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1. SUMMARY

- a) The Northern Ireland Office intends to make an exceptions amendment order under the **Rehabilitation of Offenders (Northern Ireland) Order 1978** to apply in Northern Ireland and invites your views on its proposals.
- b) The proposed amendments are mainly to bring Northern Ireland up-to-date with developments which have taken place in England and Wales and to maintain parity with current developments.

2. RELEVANT LEGISLATION

- c) The Rehabilitation of Offenders (Northern Ireland) Order 1978 (the “1978 Order”) introduced limitations on the requirement to disclose previous convictions. After a specified period of time a conviction can become ‘spent’ and may no longer be required to be disclosed to employers and others. The intention is to enable those with previous convictions who no longer offend to put their past behind them. The 1978 Order sought to strike the right balance between the rehabilitation of ex-offenders on the one hand, and the protection of the public on the other hand.
- d) The 1978 Order recognises that there are certain circumstances where the wider public interest outweighs the interests of the individual and justifies some exceptions to these rules. In particular, the Order provides a power for the Secretary of State to make an order exempting certain professions, occupations and activities. The effect of the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 is to limit the protection afforded to those convicted of offences and to increase protection for the public. For example, a person may be questioned about his spent convictions in order to assess his suitability for specified offices or occupations or for admissions to specified professions. A spent conviction may be relied on as a ground of dismissal of such persons from office or employment, or for dismissal or exclusion from their profession.
- e) Exceptions to the 1978 Order can be categorised broadly in terms of protecting the vulnerable (for example, work with children and vulnerable adults), the administration of justice (for example, the legal profession and criminal justice practitioners), and national security. There are also exceptions relating to positions in finance and banking, regulated by the Financial Services Authority. Unlike the other areas, these exceptions are limited to information on relevant spent convictions only – which are essentially offences involving fraud or other dishonesty.

3. WHY CHANGES ARE BEING MADE

- f) The scope of the Exceptions Order is subject to review and it has been amended on a number of occasions by statutory instrument. It is updated periodically to reflect changes in legislation, society and political climate. The last such amendment was done in 2003 .
- g) The amendments fall into three main categories. Firstly, those required to reflect the creation of new employing offices and bodies and employment patterns. Secondly, those needed to strengthen measures dealing with the proceeds of crime and lastly to maintain parity with legislative developments in England and Wales.

4. PROPOSED CHANGES

Amendments to reflect the creation of new offices or new legislation

1. The Director and any office or employment or other work in the Revenue and Customs Prosecutions Office.
2. The Commissioners for Her Majesty's Revenue and Customs and any office or employment or other work in their service.
3. EU Public Sector Procurement Directive - for the award of public works contracts, public supply contracts and public service contracts. The directive states that a contracting authority must exclude from the tendering process for a public works, services or supply contract, a candidate or tenderer who has been the subject of certain convictions of which the contracting authority is aware. To be EU compliant, access to the full criminal records of these individuals should be available.

Amendments required to improve measures for dealing with the proceeds of crime

4. Proceedings for recovery orders under **Part 5 (Civil Recovery of the Proceeds etc. of Unlawful Conduct) of the Proceeds of Crime Act 2002** .
5. Revenue (taxation) proceedings under **Part 6 (Revenue Functions)** of the Proceeds of Crime Act 2002.

Amendments required to reflect changes in employment practices

6. Currently the exception in relation to prison work refers only to “employment”, not “work”. The problem is that arguably it does not include contracted staff since contracted staff are not directly employed, and therefore are not employees. The proposal is to introduce the phrase “or other work” after “employment”.

A comprehensive revision of this part of the Order is needed so that “work” is used in all exceptions. The relevant employment areas that need to be included are:

- The Director of Public Prosecutions for Northern Ireland and any employment “or other work” in his office; employment “or other work” in the Northern Ireland Court Service; any office or employment “or other work” in the Serious Fraud Office; any office or employment “or other work” in the National Crime Squad or the National Criminal Intelligence Service.

Amendments specific to Northern Ireland

7. Any employment or other work in The Electoral Office for Northern Ireland.

Amendments proposed as a result of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003

8. Any employment or other work which is work in a regulated position as defined by Article 31 of the **Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003** .This would include:
 - 8.1. a position whose normal duties include work in any of the following establishments;
 - 8.1.1. an institution which is exclusively or mainly for the detention of children by virtue of an order of a court or under any statutory provision;

- 8.1.2. a hospital which is exclusively or mainly for the reception and treatment of children;
 - 8.1.3. a residential care home or nursing home which is exclusively or mainly for children;
 - 8.1.4. an educational institution;
 - 8.1.5. a children's home;
 - 8.2. a position whose normal duties include work on day care premises;
 - 8.3. a position whose normal duties include caring for, training, advising, counselling, supervising or being in sole charge of children;
 - 8.4. a position whose normal duties involve unsupervised contact with children under arrangements made by a responsible person;
 - 8.5. a position whose normal duties include caring for children under the age of 16 in the course of the children's employment;
 - 8.6. a position a substantial part of whose normal duties includes supervising or training children under the age of 16 in the course of the children's employment;
 - 8.7. a member of a Health and Social Services Board or a Health and Social Services trust;
 - 8.8. a Director of social services;
 - 8.9. a member, or chief education officer, of an education and library board established under **Article 3 of the Education and Libraries (Northern Ireland) Order 1986 (NI 3)**;
 - 8.10. a member of the governing body of an educational institution;
 - 8.11. a trustee of a children's charity;
 - 8.12. a Commissioner for Children and Young People for Northern Ireland; and
 - 8.13. a position whose normal duties include supervising or managing an individual in his work in a regulated position.
9. Any employment or other work which is concerned with a care position as defined by the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 and which is of such a kind as to enable the holder of

that employment or the person engaged in that work to have access to vulnerable adults in receipt of such services in the course of his normal duties. This includes:

- 9.1. an individual who is or has been employed in a position which is such as to enable him to have regular contact in the course of his duties with adults to whom accommodation is provided at a residential care home or nursing home;
- 9.2. an individual who is or has been employed in a position which is such as to enable him to have regular contact in the course of his duties with adults to whom prescribed services are provided by a health services body or at a private hospital; and
- 9.3. an individual who is or has been employed in a position which is concerned with the provision of any prescribed service in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.

Amendments to bring Northern Ireland in line with England and Wales

10. Any employment or other work which is concerned with the monitoring, for the purposes of child protection, of communications by means of the internet e.g. chat room moderators.
11. Taxi Drivers as licensed by the Department of the Environment pursuant to **Articles 59 and 79A of the Road Traffic (Northern Ireland) Order 1981.**

It should be stressed that the public is already well protected by the current Exceptions provisions and these amendments aim to provide clarity and certainty that working with children and vulnerable adults is covered.

5. SECTION 75 EQUALITY STATEMENT

- h) The Statutory Equality requirements of **Section 75 of the Northern Ireland Act 1998** require public authorities to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations between the nine categories listed below:

- Religious belief
 - Political opinion
 - Race or ethnic group
 - Age
 - Marital status
 - Sexual orientation
 - Gender
 - Disability
 - Dependency
- i) The Northern Ireland Office is fully committed to promoting equality of opportunity and good community relations in all its policies.
- j) The Rehabilitation of Offenders (Exception) Order (Northern Ireland) 1979 is legislation aimed at helping employers and organisations assess the suitability of applicants for employment and to make safer and better recruitment decisions.
- k) As part of this consultation process, the Northern Ireland Office has conducted an Equality Screening Assessment, which indicates that the proposed amendments to this legislation should not have an adverse impact on any of the categories listed above.
- l) It is acknowledged that persons with criminal convictions may be effected by the proposed amendments. In practice this is likely to lead to a higher impact on men than women, as men have historically been convicted of criminal offences in greater numbers than women. The proportions of male offenders sentenced to female offenders in Northern Ireland is 86.4 to 13.6. However, this consideration must be balanced against the need to make better and more informed recruitment decisions which help safeguard the employer, the public and in particular, children and vulnerable adults.
- m) Further, it must also be remembered that a disclosure of a conviction should never be the deciding factor in an employment decision, save for instances where there is a Statutory Disqualification. An employer must consider any material disclosed within the context of good employment practice. Therefore the fact that an employer is aware of a criminal conviction will not automatically prevent a candidate from being successful in an employment competition. Balanced against the aims of the legislation, it is the Government's opinion that the proposed amendments will not have an adverse impact on anyone within the scope of Section 75.
- n) As part of this consultation exercise we would welcome your views in this area, particularly in relation to the following two questions:

- Do you believe that the proposed amendments to the Rehabilitation of Offenders (Exception) Order (Northern Ireland) 1979 will have an adverse impact on individuals within the scope of section 75?
- If you disagree with our assessment, are there measures that should be implemented to mitigate against adverse impact on people in the Section 75 equality groups.

6. NEXT STEPS

- o) The Northern Ireland Office will make a summary of responses from Northern Ireland available in due course on the Northern Ireland Office website.
- p) Subject to views expressed it is intended that the outcome will result in legislative proposals for a new Exceptions Amendment Order. This will be laid before Parliament when Parliamentary time allows.

7. HOW TO RESPOND

Comments on the proposals can be submitted in writing to:-

**Criminal Law Branch
Northern Ireland Office
Massey House
Stoney Road
BELFAST
BT4 3SX**

**Tel: 028 90527442
Fax: 028 90527507
E-Mail: cjpd@nio.x.gsi.gov.uk**

Written comments should be submitted by post, fax or e-mail to arrive no later than **25 August 2006**.

The consultation document will also be available on request from the address above in Cantonese, Hindi, Urdu, Arabic, Irish, Ulster-Scots, Braille, large type and audio tape. A child friendly version can be made available. A text-phone facility is also available by phoning **02890 527668**.

We are committed to publishing a list of those organisations that comment on these proposals and to making available, to anyone who asks for it, a copy of the comments and of our response to them. If you are responding on behalf of a number of people or organisations please provide a summary of the people or organisations you represent.

Further copies of the consultation document are also available on the Northern Ireland Office [website](#) .

If you have any concerns about the consultation process in Northern Ireland, you should contact the Northern Ireland Office's consultation co-ordinator; **Dr. Jim Alford**, on **02890 527015** or email him at jim.alford@nio.x.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

Dr. Jim Alford
Central Management Unit
Northern Ireland Office
Stormont House
Stormont Estate
Belfast
BT4 3SH

8. LIST OF CONSULTEES

The Office of the Lord Chief Justice of Northern Ireland
The Council of Her Majesty's County Court Judges in Northern Ireland
The Northern Ireland Resident Magistrates Association
The Northern Ireland Juvenile Courts Association
The Office of the Director of Public Prosecutions
The Crown Solicitor's Office
The Northern Ireland Court Service
The General Council of the Bar of Northern Ireland
The Law Society of Northern Ireland
The Office of Law Reform
The Legal Secretariat to the Law Officers
The Office of Legislative Counsel
Children's Law Centre
Queen's University Belfast Law School
University of Ulster Law School
The Law Centre (Northern Ireland)
The Police Service of Northern Ireland
The Northern Ireland Policing Board
The Police Ombudsman for Northern Ireland
The Probation Board for Northern Ireland
The Northern Ireland Prison Service
The Criminal Compensation Agency
The Justice Oversight Commissioner
The Criminal Cases Review Commission
The Association of Chief Police Officers
The Police Federation for Northern Ireland
The Superintendents' Association for Northern Ireland
The Northern Ireland Affairs Committee
Northern Ireland Westminster MPs
Westminster Party Spokespersons on Northern Ireland
Northern Ireland political parties
The British-Irish Intergovernmental Secretariat

Northern Ireland Government Departments
Northern Ireland District Councils
The Northern Ireland Human Rights Commission
British Irish Rights Watch
Human Rights Watch
Justice
The Equality Commission
NI Commissioner for Children and Young People
The Northern Ireland Association of Citizens' Advice Bureaux
The Northern Ireland Housing Executive
The Association of Chief Officers of Voluntary Associations (ACOVO)
The Northern Ireland Council for Voluntary Action (NICVA)
The Committee for the Administration of Justice (CAJ)
The General Consumer Council for Northern Ireland
The Northern Ireland Council for Ethnic Minorities (NICEM)
The Northern Ireland Association for the Care and Resettlement of Offenders
The Extern Organisation
Victim Support (Northern Ireland)
Tar Anall
Teach Na Failte
An Eochair
Coiste na n-Iarchimi
Linc Resource Centre
Post-Conflict Resettlement Group
EPIC
Employment Services Board
Northern Ireland Committee of the Irish Congress of Trade Unions
Community Foundation for Northern Ireland
The Federation of Small Businesses
The Institute of Directors Northern Ireland
The Northern Ireland Chamber of Commerce and Industry
The Confederation of British Industry
The Institute of Business Advisors
The Electoral Office for Northern Ireland