



Northern  
Ireland  
Office

**Consultation on  
proposals to amend the  
Rehabilitation of  
Offenders (Exceptions)  
Order (N.I.) 1979**

**Summary of Responses  
and Way Forward**

**June 2009**

# Summary of responses to consultation on proposals to amend the Rehabilitation of Offenders (Exceptions) Order (N.I.) 1979

## The Rehabilitation Regime

The Rehabilitation of Offenders (NI) Order 1978 makes it possible for certain convictions to become “spent” and for a convicted person to become “rehabilitated”. In certain circumstances and after a specified period a person can be treated for certain purposes as if the conviction had not been recorded. So, for example, s/he will not have to tell an employer about the conviction when applying for a job.

To ensure that the public is adequately protected, however, certain exceptions to the 1978 Order are set out in subordinate legislation. For instance there are certain professions and occupations (e.g. police, doctors, etc.) for which applicants must declare all past convictions when asked and where employers may then consider them as part of the recruitment process.

## Background

A consultation exercise was completed to ascertain views on proposals to update the list of excepted occupations, by amendment to the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 (the “Exceptions Order”). The Exceptions Order was last updated in 2003.

The proposed changes to the Exceptions Order arose for three main reasons:

- as a result of new employing offices, bodies and employment patterns;
- to strengthen measures for dealing with the proceeds of crime; and
- to maintain parity with legislative developments in England and Wales.

In terms of *new offices and bodies*, the replacement of the Inland Revenue and HM Customs and Excise with the single body, Her Majesty’s Revenue and Customs, was one example that required legislative amendment. In terms of dealing with the *proceeds of crime*, the amendments would allow civil courts to admit evidence of full previous convictions in various proceedings under the Proceeds of Crime Act 2002.

With regard to *employment patterns*, the consultation proposed to amend the legislation by adding the term “or other work” to several existing excepted areas of employment. This included employment in any of the following: the Northern Ireland Prison Service; the office of the Public Prosecution Service for Northern Ireland (PPS); the Northern Ireland Court Service; the Serious Fraud Office; the National Crime Squad; and the National Criminal Intelligence Service. This would bring all those working in an organisation, regardless of their employment status, within the scope of the legislation. For example, a consultant “working for” e.g. the PPS could now be covered even though s/he is not “employed” by the PPS.

The consultation also contained proposals to reflect changes as a result of the commencement of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003. A long list of professions/occupations was detailed, including directors of social services, members of Health and Social Services Boards and Trusts, right down to those working on a day to day basis in care work. None of the jobs or professions proposed for inclusion currently avoids declaration, so this proposal was primarily a procedural change.

There was one proposed amendment in the consultation that was specific to Northern Ireland. We proposed adding employment in the Electoral Office for Northern Ireland (EONI) to the list of exceptions to allow the Chief Electoral Officer (CEO) to carry out the full range of checks on prospective employees.

Employees of EONI, whether they work as canvassers collecting information for the Electoral Register or as administrative staff processing electoral registration forms, have access to personal details (date of birth, National Insurance number and signature) of everyone who applies to be included on the Electoral Register. With access to such sensitive and portable information, it was felt that the existing mechanisms for vetting staff needed to be enhanced.

Since the consultation, representations were made to include registration by the Security Industry Authority.

Details of all of the proposals contained in the original consultation exercise, including a list of the authorities and occupations to be added to the Exceptions Order, are attached at Annex A

This document summarises the responses received and sets out how the Government intends to proceed in this regard.

## **Summary of Responses**

The consultation exercise closed with only six responses received. Of the six, three supported the proposals without any additional comment; two supported the proposals while providing additional, minor comments in relation to the operation of the legislation; and one commented on the operation of the exceptions scheme generally, citing it as a barrier to the re-integration of ex-offenders.

## **Responses on Specific Proposals**

### **Proposal**

A response was received that sought the inclusion of and Police Community Safety Officers (PCSOs) and Restorative Justice posts as additions to the list of excepted occupations.

### **Response**

The Government's view is that PCSOs are already covered by the existing provisions of Part 2, Schedule 1, Offices and Employment, which includes 'persons employed for the purposes of, or to assist the constables of, a police force established under any enactment'.

In relation to Community Based Restorative Justice (CBRJ) positions, our view is that the legislation already contains definitions which will cover the role of Community-based Restorative Justice practitioners in appropriate circumstances.

As such, we do not believe that any additional, specific listing for CBRJ positions or PCSOs, once established, is necessary as both PCSOs and CBRJ are already provided for under appropriate regulatory systems.

### **Proposal**

One response suggested that explicit reference to 'unpaid' work should be made to capture volunteers; that vetting should cover self employed tutors; and noted that caretakers in community based centres were not covered.

## **Response**

Existing exceptions legislation already caters for any employment, whether paid or not, which involves access to persons aged under 18 and to persons living in the same household as those who look after or work at home with persons aged under 18, so we do not consider there to be any gap under which volunteers, self-employed tutors or caretakers would not be covered.

## **Proposal**

One respondent had made a number of representations to the NIO and corresponded on rehabilitation legislation more generally in the past. In responding substantively to this consultation, the respondent reiterated a number of points that they have made previously, namely;

- Current legislation is a barrier to integration of ex-offenders; and
- Extending legislation will allow employers to use an excepted offence as a bar to employment

## **Response**

The Government's view is that rehabilitation legislation is not a barrier to integration but is in fact designed to facilitate that process. In its absence every conviction would have to be declared when asked on every occasion. Rehabilitation law allows a significant number of convictions to be set aside for declaration purposes. In addition, it is important to recall that the requirement to declare a conviction in 'excepted' circumstances does not automatically debar an individual from gaining employment. , When declared, it is for the employer to take on board the relevance of the conviction to the post or service in question - employment can still be offered.

Secondly, and more generally, excepted professions and occupations where convictions must be declared are an important part of the public trust and protection process. In appropriate circumstances employers need to know a full criminal record in order to make informed decisions.

## **Proposal**

The respondent also proposed that revised legislation should require employers to demonstrate why an individual with a conviction is considered unsuitable for a position; this should be made known to the applicant, and; there should be a mechanism for redress and sanctions against bodies that fail to co-operate.

## **Response**

The Government's view is that this proposal extends far beyond the scope of the current consultation which was focused simply on a desire to update the list of exception professions. The revisions sought by the respondent would require a fundamental change to core rehabilitation law - and potentially also employment law - that might in themselves require separate consultation. They would also represent a significant deviation from current rehabilitation legislation across the UK and a consistent approach across jurisdictions has been central to our policy to date. The suggestion has however been noted and can be considered at the appropriate time.

## **The Way Forward**

In overall terms the Government's view is the time is right to improve our Exceptions legislation. From the small numbers who responded, most supported the proposals, and, coupled with a desire to maintain consistency across jurisdictions, the Government has decided to proceed with its proposals.

As a result, an order to amend the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 has been made and laid before Parliament. The Rehabilitation of Offenders (Exceptions)(Amendment) Order (Northern Ireland) 2009 adds to the list of excepted professions and occupations those proposals contained in the original consultation document along with the one further addition - the Security Industry Authority – that arose in the interim

The Rehabilitation of Offenders (Exceptions)(Amendment) Order (Northern Ireland) 2009 came into force on 1 June 2009.

### DETAIL OF 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 in the Northern Ireland Prison Service 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 are proposed for similar adjustment are:

- The Office of 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 to bring Northern Ireland in line with England and Wales

7. 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.
8. Taxi Drivers as licensed by the Department of the Environment pursuant to Articles 59 and 79A of the Road Traffic (Northern Ireland) Order 1981.

Amendments specific to Northern Ireland

9. 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

10. 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:
  - 10.1. a position whose normal duties include work in any of the following establishments;
    - 10.1.1. 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;
    - 10.1.2. a hospital which is exclusively or mainly for the reception and treatment of children;
    - 10.1.3. a residential care home or nursing home which is exclusively or mainly for children;
    - 10.1.4. an educational institution;
    - 10.1.5. a children's home;
  - 10.2. a position whose normal duties include work on day care premises;
  - 10.3. a position whose normal duties include caring for, training, advising, counselling, supervising or being in sole charge of children;
  - 10.4. a position whose normal duties involve unsupervised contact with children under arrangements made by a responsible person;

- 10.5. a position whose normal duties include caring for children under the age of 16 in the course of the children's employment;
  - 10.6. 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;
  - 10.7. a member of a Health and Social Services Board or a Health and Social Services trust;
  - 10.8. a Director of social services;
  - 10.9. 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);
  - 10.10. a member of the governing body of an educational institution;
  - 10.11. a trustee of a children's charity;
  - 10.12. a Commissioner for Children and Young People for Northern Ireland; and
  - 10.13. a position whose normal duties include supervising or managing an individual in his work in a regulated position.
11. 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:
- 11.1. 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;
  - 11.2. 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
  - 11.3. 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.

**List of Respondees**

Armagh City and District Council

Equality Commission for Northern Ireland

Northern Ireland Commissioner for Children and Young People

Northern Ireland Association for the Care and Resettlement of Offenders

Police Service of Northern Ireland

Public Prosecution Service