Responses from the Ministry of Justice to suggestions made in the letter from Unlock received by the Secondary Legislation Scrutiny Committee

1. The mechanism is limited to one conviction only. This fails to recognise how two identical cases may end up in court, one as one conviction only, one as multiple 'charges'. One 'sentencing event' would seem to be a more sensible threshold.

In responding to all these comments, we think it is worth prefacing our remarks by saying that these Orders deal with the disclosure of spent caution and conviction information for the purposes of sensitive areas of employment. In relation to most other purposes, including for most jobs and for insurance purposes, spent cautions and convictions are never subject to disclosure. In designing the amendments, we sought to secure a balance between benefiting individuals, maintaining appropriate safeguards in relation to sensitive positions and occupations, and ensuring a workable system which could be implemented within a reasonable time. We consider that these interests are best served by a conviction, rather than sentencing event, based regime, especially as in some instances a single sentencing event could deal with a number of offences arising from different offending occasions. We will also keep the operation of the amendments under review and, where appropriate, will engage our law enforcement partners with a view to ensuring that the provisions operate as consistently as possible.

2. Such a 'one conviction' limit ignores the reality of the majority of petty offending committed by people, particularly when they are young, where they get dealt with by way of a small number of minor convictions. The example of Bob Ashford, prospective PCC candidate, is a perfect example of this discrepancy.

We consider it right to give people more than one chance if they have been given a caution or equivalent. But where offending behaviour has been deemed serious enough to pass the public interest test for prosecution and resulted in a court conviction that is a different matter. Nevertheless, we will be keeping the policy under review. The policy on eligibility to be a PCC was passed by Parliament in the Police Reform and Social Responsibility Act 2011 and is not affected by these proposals.

3. The list of 'specified offences' (i.e. those exempt) includes some minor offences which are exempt from filtering which, given the level of disposal, should benefit from it, e.g. affray.

Affray is a violent offence with a maximum penalty of three years' imprisonment. It is listed on Schedule 15 to the Criminal Justice Act 2003, which means that Parliament has deemed it serious enough to be a specified violent offence which may attract a public protection sentence. All the offences which remain subject to disclosure are the subject of legislative measures dealing with dangerous offenders or measures to ensure

the protection of people in vulnerable circumstances and, as such, we consider it right that they should not be filtered.

4. Given custodial sentences are exempt from filtering, this leaves people with suspended prison sentences outside of scope, despite having received a 'community sentence' in practice. This will lead to confusion amongst people with convictions and employers alike. It also fails to recognise the discernable differences of the individual case which led to the court giving what is essentially a 'community sentence'.

A suspended sentence order may only be imposed where the custodial threshold has been met, ie the offence is so serious that neither a fine alone nor a community sentence can be justified. It is a custodial sentence and has always been treated as such under the Rehabilitation of Offenders Act 1974, and under other legislative provisions. There will, of course, be guidance available for employers and individuals on the application of the provisions contained in the Orders.

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