

Draft Order laid before the Scottish Parliament under section 10(2) of the Rehabilitation of Offenders Act 1974 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

REHABILITATION OF OFFENDERS

The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2020

Made - - - - 2020
Coming into force - - 28th February 2020

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 4(4), 7(4), 10(1), 10A(1) and paragraph 6 of schedule 3 of the Rehabilitation of Offenders Act 1974(1) and all other powers enabling them to do so.

In accordance with section 10(2)(2) of that Act, a draft of this Order has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2020.

(2) This Order comes into force on 28 February 2020.

(3) In this Order—

“the 2013 Order” means the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013(3),

“ATP” means an alternative to prosecution(4).

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- (1) [1974 c.53](#) (“the 1974 Act”). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 ([c.46](#)) and [S.I. 2003/415](#). Section 10A was inserted by section 32 of the Management of Offenders (Scotland) Act 2019 ([asp 14](#)). Paragraphs 1 to 8 of schedule 3 were inserted by section 109(4) of the Criminal Justice and Licensing (Scotland) Act 2010 ([asp 13](#)) and paragraph 9 of schedule 3 was inserted by section 19 of the Criminal Justice and Courts Act 2015 ([c.2](#)). Paragraph 8(5) of schedule 3 modifies section 7(4) to the effect that the power in section 7(4) applies for the purpose of excluding the application of paragraph 3 of schedule 3.
- (2) Section 10(2) has been modified by paragraph 5 of schedule 3 of the Interpretation and Legislative Reform (Scotland) Act 2010 ([asp 10](#)).
- (3) [S.S.I. 2013/50](#), as relevantly amended by [S.S.I. 2015/329](#), [S.S.I. 2016/91](#) and [S.S.I. 2018/51](#).
- (4) Section 8B(2) of the 1974 Act provides that references in that Act (and by extension this Order) to an “alternative to prosecution” are to be read in accordance with section 8B(1) of that Act.

Amendment of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013

2.—(1) The 2013 Order is amended in accordance with paragraphs (2) to (6).

(2) In article 3(2)(a) (exclusion of section 4(1) of the Rehabilitation of Offenders Act 1974), omit “2, ”.

(3) In article 4(3) (exclusion of section 4(2)(a) and (b) of the Rehabilitation of Offenders Act 1974)—

(a) omit “or” after sub-paragraph (b),

(b) after sub-paragraph (b), insert—

“(ba) any question put to assess the suitability of a person for an office or employment mentioned in paragraph 6 of Part 2 of schedule 4, or”.

(4) For article 5(3) (exceptions from section 4(3) of the Rehabilitation of Offenders Act 1974) substitute—

“(3) Paragraph (2) does not apply in relation to—

(a) an office or employment mentioned in paragraph 6 of Part 2 of schedule 4, or

(b) an occupation listed in paragraph 1 or 4 of Part 3 of schedule 4.”.

(5) After article 5, insert—

“Exclusion of paragraphs 3 and 4(2) and (3), and exception from paragraph 5(2), of schedule 3 of the Act

5A.—(1) The application of paragraph 3 of schedule 3 of the Act is excluded in relation to proceedings specified in paragraph 2 of schedule 1.

(2) The application of paragraph 4(2) and (3) of schedule 3 of the Act is excluded in relation to any question put to assess the suitability of a person for an office or employment mentioned in paragraph 6 of Part 2 of schedule 4.

(3) There is excepted from the provisions of paragraph 5(2) of schedule 3 of the Act any office or employment mentioned in paragraph 6 of Part 2 of schedule 4.

(4) Paragraphs (1), (2) and (3) do not apply in relation to an alternative to prosecution, or to any ancillary circumstances, given to a person when that person was under the age of 18.”.

(6) In Part 2 of schedule 4 (excepted offices and employments), for paragraph 6 substitute—

“6. Constables, police custody and security officers, persons appointed as police cadets to undergo training with a view to becoming constables and naval, military and air force police.

6A. Persons employed for the purposes of a police force established under any enactment and persons appointed to assist in the carrying out of police functions.”.

Saving provisions

3.—(1) Article 2(2) has no effect in relation to a constable’s conviction, or any circumstances ancillary to that conviction, where—

(a) the constable was appointed as a constable before this Order comes into force, and

(b) the date of the conviction was before this Order comes into force.

(2) Article 2(3) has no effect in relation to a person’s conviction, or any circumstances ancillary to that conviction, where the suitability of that person for an office or employment mentioned in

paragraph 6 of Part 2 of schedule 4 of the 2013 Order is being assessed immediately before this Order comes into force.

(3) Article 2(4) has no effect in relation to a person's conviction, or any circumstance ancillary to that conviction, where—

- (a) the person holds an office or employment mentioned in paragraph 6 of Part 2 of schedule 4 of the 2013 Order immediately before this Order comes into force, and
- (b) the date of the conviction was before this Order comes into force.

(4) Article 5A(1) of the 2013 Order has no effect in relation to an ATP, or any ancillary circumstances in relation to that ATP, given to a constable where—

- (a) the constable was appointed as a constable before this Order comes into force, and
- (b) the ATP was given before this Order comes into force.

(5) Article 5A(2) of the 2013 Order has no effect in relation to an ATP, or any ancillary circumstances in relation to that ATP, given to a person where the suitability of that person for an office or employment mentioned in paragraph 6 of Part 2 of schedule 4 of the 2013 Order is being assessed immediately before this Order comes into force.

(6) Article 5A(3) of the 2013 Order has no effect in relation to an ATP, or any ancillary circumstances in relation to that ATP, given to a person where—

- (a) the person holds an office or an employment mentioned in paragraph 6 of Part 2 of schedule 4 of the 2013 Order immediately before this Order comes into force, and
- (b) the ATP was given before this Order comes into force.

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (“the 2013 Order”). The 2013 Order disapplies specified provisions of the Rehabilitation of Offenders Act 1974 (“the 1974 Act”) which would otherwise prevent a person from having to disclose a spent conviction and protect that person from being prejudiced by that conviction or any failure to disclose it. Section 4(1) of the Act contains a general protection and also provides that evidence about spent convictions is not admissible in proceedings before a judicial authority and that a person must not be asked in such proceedings about a spent conviction (and if asked may refuse to answer). Section 4(2) relates to questions about spent convictions asked outwith judicial proceedings and provides that a person is entitled to treat such a question as if it does not relate to a spent conviction and must not be prejudiced by a failure to disclose a spent conviction in response to such a question. Section 4(3)(b) provides that a spent conviction or a failure to disclose it is not a proper ground for dismissing or excluding a person from any office, profession, occupation or employment or for otherwise prejudicing a person in respect of any of those things. Similar provision is made by paragraphs 3 to 5 of schedule 3 of the 1974 Act in respect of those alternatives to prosecution specified in section 8B of that Act.

The general effect of the disapplication of these protections is that, in specified circumstances, those protections are removed so as to permit questions to be asked about spent convictions in order to assess a person’s suitability for admission to certain professions or occupations or to hold certain offices, types of employment, licences or permits. The disapplication also permits spent convictions to be a ground for excluding a person from, or otherwise prejudicing them in respect of, those professions, occupations or employments.

Article 2(2) of this Order has the effect that the application of section 4(1) of the 1974 Act is excluded in relation to disciplinary proceedings against a constable. Article 3(1) has the effect that this does not apply in respect of any existing convictions of existing constables. Article 2(3) has the effect that the application of section 4(2)(a) and (b) of the 1974 Act is excluded in relation to any question put to assess the suitability of a person for a “relevant office or employment” (meaning: constables, persons appointed as police cadets to undergo training with a view to becoming constables, police custody and security officers and naval, military and air force police). Article 3(2) has the effect that this does not apply in respect of any current applicants whose suitability is being considered. Article 2(4) has the effect that section 4(3)(b) of the 1974 Act does not apply in relation to a relevant office or employment. Article 3(3) has the effect that this does not apply to any person who currently holds a relevant office or employment in respect of any existing convictions.

Article 2(5) makes equivalent provision to article 2(2) to (4) in respect of alternatives to prosecution, although this does not apply to any alternative to prosecution given to a person when that person was aged under 18. Article 3(4) to (6) makes equivalent provision to article 3(1) to (3) in respect of alternatives to prosecution.

Article 2(6) modifies schedule 4 to ensure that the amendments to the 2013 Order only apply in relation to relevant offices or employment and that the changes do not apply in respect of other employment by a police force.