

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

2022 No.

REHABILITATION OF OFFENDERS

**The Rehabilitation of Offenders Act 1974 (Exclusions
and Exceptions) (Scotland) Amendment Order 2022**

<i>Made</i>	- - - -	2022
<i>Coming into force</i>	- -	2022

The Scottish Ministers make the following Order in exercise of the powers conferred on them by sections 4(4) and 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) of that Act(2), a draft of this Order has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1.—(1) This Order may be cited as the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2022.

(2) This Order comes into force on the day after it is made.

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

2.—(1) The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013(3) is amended in accordance with paragraph (2).

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

-
- (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 of the 1974 Act was inserted by section 32 of the Management of Offenders (Scotland) Act 2019 (asp 14). Paragraphs 1 to 8 of schedule 3 of the 1974 Act were inserted by section 109(4) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) and paragraph 9 of schedule 3 of the 1974 Act was inserted by section 19 of the Criminal Justice and Courts Act 2015 (c. 2).
- (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. 2013/204, S.S.I. 2015/329, S.S.I. 2016/91, S.S.I. 2018/51, S.S.I. 2019/396 and S.S.I. 2020/45.

- (a) in paragraph 1 (application) after “15” insert “and 17”,
- (b) after paragraph 16, insert—

“Ukrainian Nationals

17.—(1) Any question asked in order to assess the suitability of a person seeking to provide accommodation to a Ukrainian national, or the immediate family member of a Ukrainian national, who was resident in Ukraine prior to 1 January 2022 and who has left Ukraine in connection with the Russian invasion that took place on 24 February 2022 in either of the circumstances set out in sub-paragraph (2).

(2) The circumstances are that—

- (a) the question relates to the person whose suitability is being assessed and that person resides on the premises that are to be used for the accommodation, or
- (b) the question relates to a person over the age of 16 residing on the premises that are to be used for the accommodation.”.

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”) to make provision for vetting checks in relation to individuals who are seeking to provide accommodation to Ukrainian nationals and their immediate family members.

The 2013 Order disapplies certain 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. The general effect of the disapplication of certain provisions is that, in specified circumstances, questions about spent convictions are permitted to be asked 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.

Section 4(2)(a) and (b) of the 1974 Act (which relates to questions asked about criminal convictions otherwise than in the course of judicial proceedings) is excluded in relation to questions put in the various circumstances specified in schedule 3 of the 2013 Order. The questions to which schedule 3 applies include questions on the assessment of a person’s suitability for various professions, offices, employments, occupations or to hold certain licences, certificates or permits.

Article 2(2) of this Order modifies schedule 3 of the 2013 Order so as to add any question asked to assess the suitability of a person who is seeking to provide accommodation to a Ukrainian national, or the immediate family member of a Ukrainian national, and who has left Ukraine in connection with the Russian invasion that took place on 24 February 2022, in specified circumstances. Those circumstances being that (a) the question relates to the person being assessed and that person also resides in the accommodation being provided and (b) the question relates to a person over the age of 16 who resides also in the accommodation being provided.