



# Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

## PART 5

### CRIMINAL JUSTICE

#### *Rehabilitation of offenders*

#### **109 Spent alternatives to prosecution: Rehabilitation of Offenders Act 1974**

- (1) The Rehabilitation of Offenders Act 1974 (c.53) is amended as follows.
- (2) After section 8A (protection afforded to spent cautions), insert—

#### **“8B Protection afforded to spent alternatives to prosecution: Scotland**

- (1) For the purposes of this Act, a person has been given an alternative to prosecution in respect of an offence if the person (whether before or after the commencement of this section)—
  - (a) has been given a warning in respect of the offence by—
    - (i) a constable in Scotland, or
    - (ii) a procurator fiscal,
  - (b) has accepted, or is deemed to have accepted—
    - (i) a conditional offer issued in respect of the offence under section 302 of the Criminal Procedure (Scotland) Act 1995 (c.46), or
    - (ii) a compensation offer issued in respect of the offence under section 302A of that Act,
  - (c) has had a work order made against the person in respect of the offence under section 303ZA of that Act,
  - (d) has been given a fixed penalty notice in respect of the offence under section 129 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),

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- (e) has accepted an offer made by a procurator fiscal in respect of the offence to undertake an activity or treatment or to receive services or do any other thing as an alternative to prosecution, or
  - (f) in respect of an offence under the law of a country or territory outside Scotland, has been given, or has accepted or is deemed to have accepted, anything corresponding to a warning, offer, order or notice falling within paragraphs (a) to (e) under the law of that country or territory.
- (2) In this Act, references to an “alternative to prosecution” are to be read in accordance with subsection (1).
- (3) Schedule 3 to this Act (protection for spent alternatives to prosecution: Scotland) has effect.”.
- (3) After section 9A (unauthorised disclosure of spent cautions), insert—

**“9B Unauthorised disclosure of spent alternatives to prosecution:  
Scotland**

- (1) In this section—
- (a) “official record” means a record that—
    - (i) contains information about persons given an alternative to prosecution in respect of an offence, and
    - (ii) is kept for the purposes of its functions by a court, police force, Government department, part of the Scottish Administration or other local or public authority in Scotland,
  - (b) “relevant information” means information imputing that a named or otherwise identifiable living person has committed, been charged with, prosecuted for or given an alternative to prosecution in respect of an offence which is the subject of an alternative to prosecution which has become spent,
  - (c) “subject of the information”, in relation to relevant information, means the named or otherwise identifiable living person to whom the information relates.
- (2) Subsection (3) applies to a person who, in the course of the person's official duties (anywhere in the United Kingdom), has or has had custody of or access to an official record or the information contained in an official record.
- (3) The person commits an offence if the person—
- (a) obtains relevant information in the course of the person's official duties,
  - (b) knows or has reasonable cause to suspect that the information is relevant information, and
  - (c) discloses the information to another person otherwise than in the course of the person's official duties.
- (4) Subsection (3) is subject to the terms of an order under subsection (6).
- (5) In proceedings for an offence under subsection (3), it is a defence for the accused to show that the disclosure was made—

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- (a) to the subject of the information or to a person whom the accused reasonably believed to be the subject of the information, or
  - (b) to another person at the express request of the subject of the information or of a person whom the accused reasonably believed to be the subject of the information.
- (6) The Scottish Ministers may by order provide for the disclosure of relevant information derived from an official record to be excepted from the provisions of subsection (3) in cases or classes of cases specified in the order.
- (7) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (8) A person commits an offence if the person obtains relevant information from an official record by means of fraud, dishonesty or bribery.
- (9) A person guilty of an offence under subsection (8) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding 6 months, or to both.”.
- (4) After Schedule 2 (protection for spent cautions) insert—

### “SCHEDULE 3

*(introduced by section 8B(3))*

## PROTECTION FOR SPENT ALTERNATIVES TO PROSECUTION: SCOTLAND

### *Preliminary*

- 1 (1) For the purposes of this Act, an alternative to prosecution given to any person (whether before or after the commencement of this Schedule) becomes spent—
- (a) in the case of—
    - (i) a warning referred to in paragraph (a) of subsection (1) of section 8B, or
    - (ii) a fixed penalty notice referred to in paragraph (d) of that subsection,at the time the warning or notice is given,
  - (b) in any other case, at the end of the relevant period.
- (2) The relevant period in relation to an alternative to prosecution is the period of 3 months beginning on the day on which the alternative to prosecution is given.
- (3) Sub-paragraph (1)(a) is subject to sub-paragraph (5).
- (4) Sub-paragraph (2) is subject to sub-paragraph (6).
- (5) If a person who is given a fixed penalty notice referred to in section 8B(1)(d) in respect of an offence is subsequently prosecuted and convicted of the offence, the notice—
- (a) becomes spent at the end of the rehabilitation period for the offence, and

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- (b) is to be treated as not having become spent in relation to any period before the end of that rehabilitation period.
- (6) If a person who is given an alternative to prosecution (other than one to which sub-paragraph (1)(a) applies) in respect of an offence is subsequently prosecuted and convicted of the offence—
- (a) the relevant period in relation to the alternative to prosecution ends at the same time as the rehabilitation period for the offence ends, and
  - (b) if the conviction occurs after the end of the period referred to in sub-paragraph (2), the alternative to prosecution is to be treated as not having become spent in relation to any period before the end of the rehabilitation period for the offence.
- 2 (1) In this Schedule, “ancillary circumstances”, in relation to an alternative to prosecution, means any circumstances of the following—
- (a) the offence in respect of which the alternative to prosecution is given or the conduct constituting the offence,
  - (b) any process preliminary to the alternative to prosecution being given (including consideration by any person of how to deal with the offence and the procedure for giving the alternative to prosecution),
  - (c) any proceedings for the offence which took place before the alternative to prosecution was given (including anything that happens after that time for the purpose of bringing the proceedings to an end),
  - (d) any judicial review proceedings relating to the alternative to prosecution,
  - (e) anything done or undergone in pursuance of the terms of the alternative to prosecution.
- (2) Where an alternative to prosecution is given in respect of two or more offences, references in sub-paragraph (1) to the offence in respect of which the alternative to prosecution is given includes a reference to each of the offences.
- (3) In this Schedule, “proceedings before a judicial authority” has the same meaning as in section 4.

*Protection for spent alternatives to prosecution and ancillary circumstances*

- 3 (1) A person who is given an alternative to prosecution in respect of an offence is, from the time the alternative to prosecution becomes spent, to be treated for all purposes in law as a person who has not committed, been charged with or prosecuted for, or been given an alternative to prosecution in respect of, the offence.
- (2) Despite any enactment or rule of law to the contrary—
- (a) where an alternative to prosecution given to a person in respect of an offence has become spent, evidence is not admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in Scotland to prove that the person has committed, been charged with or prosecuted for, or been given an alternative to prosecution in respect of, the offence,
  - (b) a person must not, in any such proceedings, be asked any question relating to the person's past which cannot be answered without

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- acknowledging or referring to an alternative to prosecution that has become spent or any ancillary circumstances, and
- (c) if a person is asked such a question in any such proceedings, the person is not required to answer it.
- (3) Sub-paragraphs (1) and (2) do not apply in relation to any proceedings—
- (a) for the offence in respect of which the alternative to prosecution was given, and
- (b) which are not part of the ancillary circumstances.
- 4 (1) This paragraph applies where a person (“A”) is asked a question, otherwise than in proceedings before a judicial authority, seeking information about—
- (a) A's or another person's previous conduct or circumstances,
- (b) offences previously committed by A or the other person, or
- (c) alternatives to prosecution previously given to A or the other person.
- (2) The question is to be treated as not relating to alternatives to prosecution that have become spent or to any ancillary circumstances and may be answered accordingly.
- (3) A is not to be subjected to any liability or otherwise prejudiced in law because of a failure to acknowledge or disclose an alternative to prosecution that has become spent or any ancillary circumstances in answering the question.
- 5 (1) An obligation imposed on a person (“A”) by a rule of law or by the provisions of an agreement or arrangement to disclose any matter to another person does not extend to requiring A to disclose an alternative to prosecution (whether one given to A or another person) that has become spent or any ancillary circumstances.
- (2) An alternative to prosecution that has become spent or any ancillary circumstances, or any failure to disclose an alternative to prosecution that has become spent or any ancillary circumstances, is not a ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing the person in any way in any occupation or employment.
- 6 The Scottish Ministers may by order—
- (a) exclude or modify the application of either or both of sub-paragraphs (2) and (3) of paragraph 4 in relation to questions put in such circumstances as may be specified in the order,
- (b) provide for exceptions from any of the provisions of paragraph 5 in such cases or classes of case, or in relation to alternatives to prosecution of such descriptions, as may be specified in the order
- 7 Paragraphs 3 to 5 do not affect—
- (a) the operation of an alternative to prosecution, or
- (b) the operation of an enactment by virtue of which, because of an alternative to prosecution, a person is subject to a disqualification, disability, prohibition or other restriction or effect for a period extending beyond the time at which the alternative to prosecution becomes spent
- 8 (1) Section 7(2), (3) and (4) apply for the purpose of this Schedule as follows.

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- (2) Subsection (2), apart from paragraphs (b) and (d), applies to the determination of any issue, and the admission or requirement of evidence, relating to alternatives to prosecution previously given to a person and to ancillary circumstances as it applies to matters relating to a person's previous convictions and circumstances ancillary thereto.
- (3) Subsection (3) applies to evidence of alternatives to prosecution previously given to a person and ancillary circumstances as it applies to evidence of a person's previous convictions and the circumstances ancillary thereto.
- (4) For that purpose, subsection (3) has effect as if—
  - (a) a reference to subsection (2) or (4) of section 7 were a reference to that subsection as applied by this paragraph, and
  - (b) the words “or proceedings to which section 8 below applies” were omitted.
- (5) Subsection (4) applies for the purpose of excluding the application of paragraph 3.
- (6) For that purpose, subsection (4) has effect as if the words “(other than proceedings to which section 8 below applies)” were omitted.
- (7) References in the provisions applied by this paragraph to section 4(1) are to be read as references to paragraph 3.”.

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**Commencement Information**

**II** S. 109 in force at 1.11.2011 by S.S.I. 2011/354, art. 2, Sch. (with Sch.)

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