

MANAGEMENT OF OFFENDERS (SCOTLAND) ACT 2019

EXPLANATORY NOTES

THE STRUCTURE AND A SUMMARY OF THE ACT

Part 2 – Disclosure of Convictions

Rules relating to disclosure

Section 17 - Effect of expiry of disclosure periods

64. Section 17 of the Bill amends section 1 of the Rehabilitation of Offenders Act 1974, (“the 1974 Act”), by substituting subsection (1) with new subsections (1), (1A), (1B) and (1C).
65. New section 1(1) provides that new subsections 1(1A) and 1(1B) will apply where:
 - an individual has at any time been convicted of any offence, and
 - an excluded sentence was not imposed on the individual in respect of the conviction.
66. ‘At any time’ in new section 1(1)(a) retains the effect of the opening words of the current section 1(1) which refers to an individual having been convicted of an offence “whether before or after the commencement of this Act”. New section 1(1)(b) refers to an ‘excluded sentence’ rather than a ‘sentence excluded from rehabilitation’ in accordance with the changes made to the terminology used in the 1974 Act by the Bill. An “excluded sentence” is one that is never treated as spent for the purposes of the 1974 Act. Other changes made to the terminology used in the 1974 Act are also reflected, with references now being to ‘disclosure period’ and ‘protected person’ as opposed to ‘rehabilitation period’ and ‘rehabilitated person’.
67. The application of new section 1(1A) and (1B) changes the effect of receiving an excluded sentence. This is to ensure it will only be ‘excluded sentences’ that can never become spent (subject to the rules under the 1974 Act). This means that any conviction other than an ‘excluded sentence’ can become spent even if a subsequent conviction results in an excluded sentence being given during the disclosure period for a previous conviction. The 1974 Act currently provides that any subsequent conviction resulting in an excluded sentence, during a period in which a person was still required to disclose earlier convictions would mean that neither the earlier nor later conviction could become spent.
68. New section 1(1A) provides that, after the disclosure period applicable to a conviction has expired, the convicted person shall be treated as a protected person and their conviction is to be treated as spent. Section 6(4) of the 1974 Act sets out the rules for when one conviction can extend the disclosure period of another. Section 1(1A) makes clear that the reference to the expiry of a disclosure period includes any period extended under section 6(4).

*These notes relate to the Management of Offenders (Scotland)
Act 2019 (asp 14) which received Royal Assent on 30 July 2019*

69. New section 1(1B) ensures that, where a person's conviction would have been spent prior to commencement of the 1974 Act, they are not a protected person and the conviction is not spent, until commencement of the 1974 Act. This is to retain the effect of existing section 1(1).
70. New section 1(1C) provides that the new subsections (1) to (1B) are subject to subsections (2), (5) and (6) in the same way subsection 1(1) is currently subject to these subsections.