



# Management of Offenders (Scotland) Act 2019 2019 asp 14

## PART 2

### DISCLOSURE OF CONVICTIONS

#### *Applications for certain convictions to be treated as spent*

#### **33 Excluded sentences: applications for convictions to be treated as spent**

- (1) The Scottish Ministers may make regulations for or in connection with the purpose mentioned in subsection (2).
- (2) The purpose is allowing a person on whom a relevant sentence was imposed in respect of a conviction to apply (both)—
  - (a) to be treated as a protected person in respect of the conviction for the purposes of the 1974 Act, and
  - (b) for the conviction to be treated as spent for the purposes of the 1974 Act.
- (3) A relevant sentence is—
  - (a) a sentence mentioned in section 5(1)(b) or (da) of the 1974 Act, or
  - (b) a sentence imposed by a court outwith Scotland which, by virtue of section 5(2F)(d) of the 1974 Act, falls to be treated as such a sentence.
- (4) The regulations must contain provision—
  - (a) for—
    - (i) an application to be made to a specified reviewer, and
    - (ii) the application to be determined by the specified reviewer,
  - (b) excluding someone who is, for whatever reason, subject to notification requirements under Part 2 of the Sexual Offences Act 2003 from making an application,
  - (c) preventing an application from being made until the expiry of the appropriate period, and
  - (d) setting, or for ascertaining, the relevant date.

*Changes to legislation: There are currently no known outstanding effects for the Management of Offenders (Scotland) Act 2019, Cross Heading: Applications for certain convictions to be treated as spent. (See end of Document for details)*

- (5) In subsection (4)—
- (a) in paragraph (c), “the appropriate period” is—
    - (i) in the case of an applicant who was 18 years of age or older on the date of the conviction to which the application relates, the term of the sentence imposed in respect of the conviction plus 6 years,
    - (ii) in the case of an applicant who was under 18 years of age on the date of the conviction to which the application relates, the term of the sentence imposed in respect of the conviction plus 3 years,
  - (b) in paragraph (d), “the relevant date” is the date from which (both)—
    - (i) an applicant's conviction is to be treated as spent, and
    - (ii) the applicant is to be treated as a protected person.
- (6) In this section and section 34, the references to—
- (a) a protected person, or
  - (b) a conviction being treated as spent,
- are to be construed in accordance with the 1974 Act.

#### Commencement Information

**II** S. 33 in force at 30.11.2020 by S.S.I. 2020/245, reg. 2, sch. (with reg. 3)

### 34 Regulations under section 33: general details

- (1) Regulations under section 33 may contain provision about (in particular)—
- (a) the process for applications, including as to—
    - (i) the way of applying,
    - (ii) information to be supplied by applicants,
  - (b) eligibility to make applications, including exceptions and exclusions,
  - (c) fees payable in connection with applications,
  - (d) the functions of the specified reviewer concerning applications, including as to—
    - (i) giving notifications,
    - (ii) obtaining information,
  - (e) the procedure for determining applications, including matters—
    - (i) to which the specified reviewer is to have regard,
    - (ii) which the specified reviewer is to take particularly into account,
  - (f) the types of determinations to be available in respect of applications, and the functions of the specified reviewer concerning determinations,
  - (g) the issuing of, and making of requests for, reasons for determinations,
  - (h) notifications of determinations,
  - (i) time limits in relation to—
    - (i) notifications of applications and determinations,
    - (ii) supplying information in connection with applications,
  - (j) second or subsequent applications relating to the same conviction, including setting a period that must expire before such applications may be made,
  - (k) reconsideration, or consideration afresh, of determinations,

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- (l) reports to be produced by the specified reviewer, or guidance to be given to the reviewer by the Scottish Ministers, on the exercise of the reviewer's functions concerning applications and determinations,
  - (m) appeals against determinations, including—
    - (i) entitlement to appeal,
    - (ii) grounds, time limits and procedure for appeal,
  - (n) the legal effect of determinations, arrived at initially or on appeal, including the result that (both)—
    - (i) a person is to be treated as a protected person, and
    - (ii) a conviction is to be treated as spent.
- (2) In relation to a conviction that is, by virtue of the operation of regulations made under section 33, to be treated as a spent conviction, provision which may be made about the legal effect of determinations extends to (any of)—
- (a) provision that the conviction is to be, or is not to be, treated as a protected conviction within the meaning of—
    - (i) section 126ZA of the Police Act 1997,
    - (ii) section 57A of the Protection of Vulnerable Groups (Scotland) Act 2007, or
    - (iii) article 2A of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (S.S.I. 2013/50),
  - (b) provision as to the time from which the conviction is to be, or before which the conviction is not to be, treated as a protected conviction, and
  - (c) provision that the conviction is to be treated as if it were a conviction for an offence of a particular kind prescribed in the provision.
- (3) In this section and section 33, “the specified reviewer” means whoever is specified as such in regulations made under section 33.

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**Commencement Information**

**I2** S. 34 in force at 30.11.2020 by S.S.I. 2020/245, reg. 2, sch. (with reg. 3)

**35 Regulations under section 33: appropriate period**

The Scottish Ministers may by regulations modify section 33(5)(a) by amending—

- (a) an age stated in sub-paragraph (i) or (ii),
- (b) a number of years stated in sub-paragraph (i) or (ii).

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**Commencement Information**

**I3** S. 35 in force at 30.11.2020 by S.S.I. 2020/245, reg. 2, sch. (with reg. 3)

**36 Regulations under sections 33 and 35: procedure etc.**

- (1) Regulations under section 33 may—
- (a) modify any enactment (including the 1974 Act),
  - (b) make different provision for different purposes.

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(2) Regulations under sections 33 and 35 are subject to the affirmative procedure.

**Commencement Information**

**I4** S. 36 in force at 30.11.2020 by S.S.I. 2020/245, reg. 2, sch. (with reg. 3)

**Changes to legislation:**

There are currently no known outstanding effects for the Management of Offenders (Scotland) Act 2019, Cross Heading: Applications for certain convictions to be treated as spent.