

*This draft Order replaces the one laid on 11th December 2012 and is being issued free of charge to all known recipients of that draft Order.*

*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.*

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## DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2013 No.**

# REHABILITATION OF OFFENDERS

## The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013

<i>Made</i>	- - - -	2013
<i>Coming into force</i>	- -	2013

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 4(4), 7(4) and 10(1) of the Rehabilitation of Offenders Act 1974<sup>(1)</sup> and all other powers enabling them to do so.

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

### **Citation, commencement and extent**

1.—(1) This Order may be cited as the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013, and comes into force the day after the day on which it is made.

(2) This Order extends to Scotland and, in so far as it extends beyond Scotland, it does so only as a matter of Scots law.

### **Interpretation**

2.—(1) In this Order—

“the 2000 Act” means the Financial Services and Markets Act 2000<sup>(3)</sup>;

“the 2001 Act” means the Regulation of Care (Scotland) Act 2001<sup>(4)</sup>;

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(1) 1974 c.53. 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 the Scotland Act 1998 (Transfer of functions to the Scottish Ministers etc.) Order 2003 (S.I. 2003/415).

(2) Section 10(2) has been modified by paragraph 5 of Schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

(3) 2000 c.8.

(4) 2001 asp 8.

- “the 2007 Act” means the Protection of Vulnerable Groups (Scotland) Act 2007**(5)**;
- “the 2010 Act” means the Public Services Reform (Scotland) Act 2010**(6)**;
- “the Act” means the Rehabilitation of Offenders Act 1974;
- “actuary” means a member of the Institute and Faculty of Actuaries;
- “accountant” means a member of—
- (a) the Association of Chartered Certified Accountants;
  - (b) the Institute of Chartered Accountants of Scotland;
  - (c) the Institute of Chartered Accountants in England and Wales;
  - (d) the Chartered Institute of Public Finance and Accountancy; or
  - (e) the Chartered Institute of Management Accountants;
- “adopt” includes any arrangements to adopt a child, including arrangements for adoption where the proposed adopter is a relative of the child, whether under the Adoption and Children (Scotland) Act 2007**(7)** or the Adoptions with a Foreign Element (Scotland) Regulations 2009**(8)**;
- “approved regulator” has the meaning given in Part 2 of the Legal Services (Scotland) Act 2010**(9)**;
- “associate”, in relation to a person (“A”), means someone who is a controller, director or a manager of A or, where A is a partnership, any partner of A;
- “authorised electronic money institution” has the meaning given by regulation 2(1) of the Electronic Money Regulations 2011**(10)**;
- “authorised payment institution” has the meaning given by regulation 2(1) of the Payment Services Regulations 2009**(11)**;
- “care service” has the meaning given in section 47 of the 2010 Act;
- “collective investment scheme” has the meaning given in section 235 of the 2000 Act;
- “the competent authority for listing” means the competent authority for the purposes of Part VI of the 2000 Act (official listing);
- “contracting authority” means a contracting authority within the meaning of Article 1(9) of [Directive 2004/18/EC](#);
- “contracting entity” means a contracting entity within the meaning of Article 2(2) of [Directive 2004/17/EC](#);
- “controller” has the meaning given in section 422 of the 2000 Act**(12)**;
- “Council of Lloyd’s” means the council constituted by section 3 of the Lloyd’s Act 1982**(13)**;
- “[Directive 2004/17/EC](#)” means [Directive 2004/17/EC](#) of the European Parliament and of the Council of 31st March 2004**(14)**;

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**(5)** 2007 asp 14.

**(6)** 2010 asp 8.

**(7)** 2007 asp 4.

**(8)** S.S.I. 2009/182.

**(9)** 2010 asp 16.

**(10)** S.I. 2011/99.

**(11)** S.I. 2009/209.

**(12)** Section 422 was substituted by the Financial Services and Markets Act 2000 (Controllers) Regulations (S.I. 2009/534), Schedule 3, paragraph 1.

**(13)** 1982 c.xiv.

**(14)** O.J. L 134, 30.4.2004, p.1-113, as last amended by Commission Regulation (EU) No. 1251/2011 of 30th November 2011 (O.J. L 319, 2.12.2011, p.43).

“[Directive 2004/18/EC](#)” means [Directive 2004/18/EC](#) of the European Parliament and of the Council of 31st March 2004(**15**);

“director” has the meaning given in section 417 of the 2000 Act;

“electronic money institution” has the meaning given in regulation 2(1) of the Electronic Money Regulations 2011(**16**);

“enactment” includes an Act of the Scottish Parliament and any order, regulation or other instrument having effect by virtue of such an Act;

“firearms dealer” has the meaning given in section 57(4) of the Firearms Act 1968(**17**);

“Head of Practice” has the meaning given in Part 2 of the Legal Services Act;

“health services” means services provided under the National Health Service (Scotland) Act 1978(**18**) and similar services provided otherwise than under the National Health Service;

“Her Majesty’s Inspectors” has the meaning given in section 135 of the Education (Scotland) Act 1980(**19**);

“judicial appointment” means an appointment to any office by virtue of which the holder has power (whether alone or with others) under any enactment or rule of law to determine any question affecting the rights, privileges, obligations or liabilities of any person;

“key worker”, in relation to any body (“A”), means any individual who is likely, in the course of the duties of that individual’s office or employment—

(a) where A is the Financial Services Authority, to play a significant role in the decision making process of the Authority in relation to the exercise of the Authority’s public functions (within the meaning of section 349(5) of the 2000 Act) under any provision of the 2000 Act other than Part VI, or to support directly such a person;

(b) where A is the competent authority for listing, to play a significant role in the decision making process of the competent authority for listing in relation to the exercise of its functions under Part VI of the 2000 Act, or to support directly such a person;

“lay representative”, for the purposes of sheriff court proceedings, has the meaning given in section 32A(3) of the Sheriff Courts (Scotland) Act 1971(**20**) and, for the purposes of Court of Session proceedings, has the meaning given in section 5A(3) of the Court of Session Act 1988(**21**);

“the Legal Services Act” means the Legal Services (Scotland) Act 2010(**22**);

“licensed legal services provider” has the meaning given in Part 2 of the Legal Services Act(**23**);

“manager” has the meaning given in section 423 of the 2000 Act;

“non-solicitor investor” has the meaning given in Part 2 of the Legal Services Act(**24**);

“open-ended investment company” has the meaning given in section 236 of the 2000 Act;

“Part IV permission” has the meaning given in section 40(4) of the 2000 Act;

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(15) O.J. L 134, 30.4.2004, p.114-240, as last amended by Commission Regulation (EU) No. 1251/2011 of 30th November 2011 (O.J. L 319, 2.12.2011, p.43).

(16) S.I.2011/99

(17) 1968 c.27. The definition of “firearms dealer” in section 57(4) was amended by the Violent Crime Reduction Act 2006 (c.38) section 31(3).

(18) 1978 c.29.

(19) 1980 c.44. The definition of “Her Majesty’s inspectors” in section 135 was amended by the Scotland Act 1998 (c.46) Schedule 9, paragraph 1.

(20) 1971 c.58. Section 32A was inserted by the Legal Services (Scotland) Act 2010(asp16), section 127(b).

(21) 1988 c.36. Section 5A was inserted by the Legal Services (Scotland) Act 2010 (asp16), section 126(b).

(22) 2010 asp 16.

(23) See section 6 (approved regulators).

(24) See section 67 (more about investors).

“payment services” has the meaning given in regulation 2(1) of the Payment Services Regulations 2009**(25)**;

“personal information” means any information (in any form) which relates to a living individual who can be identified from that data, which is of a confidential nature and is not in the public domain;

“Practice Committee” has the meaning given in Part 2 of the Legal Services Act**(26)**;

“private hire driver” means a driver of a private hire car, as defined by section 23(1) of the Civic Government (Scotland) Act 1982**(27)**, who is required to be licensed by a licensing authority under the provisions of that Act;

“prosecutor” has the meaning given in section 307 of the Criminal Procedure (Scotland) Act 1995**(28)**;

“registered chiropractor” has the meaning given in section 43 of the Chiropractors Act 1994**(29)**;

“registered European lawyer” has the meaning given in section 65 of the Solicitors (Scotland) Act 1980**(30)**;

“registered foreign lawyer” has the meaning given in section 65 of the Solicitors (Scotland) Act 1980**(31)**;

“registered osteopath” has the meaning given in section 41 of the Osteopaths Act 1993**(32)**;

“registered pharmacist” means a person who is registered as a pharmacist in Part 1 or 4 of the register maintained under article 19 of the Pharmacy Order 2010**(33)**;

“registered pharmacy technician” means a person who is registered in Part 2 or 5 of the register maintained under article 19 of the Pharmacy Order 2010;

“registered teacher” means a teacher registered under the Public Services Reform (General Teaching Council for Scotland) Order 2011**(34)**;

“regulated work with adults” has the meaning given in section 91(3) of the 2007 Act;

“regulated work with children” has the meaning given in section 91(2) of the 2007 Act;

“relevant collective investment scheme” means a collective investment scheme which is recognised under section 264 (schemes constituted in other EEA States)**(35)**, 270 (schemes authorised in designated countries or territories) or 272 (individually recognised overseas schemes) of the 2000 Act;

“Scottish Social Services Council” has the meaning given in section 43 of the 2001 Act;

“small electronic money institution” has the meaning given in regulation 2(1) of the Electronic Money Regulations 2011;

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**(25)** S.I.2009/209.

**(26)** See section 53 (Practice Committee).

**(27)** 1982 c.45.

**(28)** 1995 c.46.

**(29)** 1994 c.17. The definition of “registered chiropractor” in section 43 was amended by the European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regulation 226(c).

**(30)** 1980 c.46. The definition of “registered European lawyer” in section 65 was amended by the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000 (S.S.I. 2000/121), Schedule 1, paragraph 1(12)(a).

**(31)** The definition of “registered foreign lawyer” in section 65 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40) Schedule 8(II), paragraph 29(15)(d).

**(32)** 1993 c.21. The definition of “registered osteopath” in section 41 was amended by the European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regulation 214(c).

**(33)** S.I. 2010/231.

**(34)** S.S.I. 2011/215.

**(35)** Section 264 was amended by the Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I.2011/1613), regulation 2(24).

“small payment institution” has the meaning given in regulation 2(1) of the Payment Services Regulations 2009;

“Social Care and Social Work Improvement Scotland” has the meaning given in section 44 of the 2010 Act;

“social service worker” has the meaning given in section 77 of the 2001 Act;

“social worker” has the meaning given in section 77 of the 2001 Act<sup>(36)</sup>;

“taxi driver” means a driver of a taxi as defined by section 23(1) of the Civic Government (Scotland) Act 1982, who is required to be licensed by a licensing authority under the provisions of that Act;

“trustee”, in relation to a unit trust scheme, has the meaning given in section 237(2) of the 2000 Act;

“UK recognised clearing house” means a clearing house in relation to which a recognition order under section 290 of the 2000 Act<sup>(37)</sup>, otherwise than by virtue of section 292(2) (overseas clearing houses) of that Act, is in force;

“UK recognised investment exchange” means an investment exchange in relation to which a recognition order under section 290 of the 2000 Act, otherwise than by virtue of section 292(2) (overseas investment exchanges) of that Act, is in force;

“work” includes work of any kind, whether paid or unpaid and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract.

(2) Any reference in this Order to a numbered article or Schedule is, unless the context otherwise requires, a reference to the article or Schedule so numbered in this Order.

### **Exclusion of section 4(1) of the Act**

3. The application of section 4(1) of the Act is excluded in relation to—
  - (a) any proceedings specified in Schedule 1; and
  - (b) any proceedings with respect to a decision or a proposed decision specified in Part 1 of Schedule 2—
    - (i) to the extent that there falls to be determined in those proceedings any issue relating to a spent conviction or to circumstances ancillary thereto; and
    - (ii) to the extent that section 4(1) renders inadmissible any evidence relating to the conviction or circumstances or removes the requirement to answer any question relating to the conviction or circumstances.

### **Exclusion of section 4(2)(a) and (b) of the Act**

4. The application of section 4(2)(a) and (b) of the Act is excluded in relation to questions put in the circumstances to which Schedule 3 applies.

### **Exceptions from section 4(3) of the Act**

5. There is excepted from the provisions of section 4(3)(b) of the Act—
  - (a) any profession, office, employment or occupation specified in Schedule 4;
  - (b) any action taken for the purpose of safeguarding national security; and

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<sup>(36)</sup> Section 77 was substituted by the Public Services Reform (Scotland) Act 2010 (Consequential Modifications) Order 2011 (S.S.I. 2011/211), Schedule 1(1), paragraph 9.

<sup>(37)</sup> Section 290 was amended by the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), Schedule 2, paragraph 4.

- (c) any decision or proposed decision taken by a person specified in Part 1 of Schedule 2 to do or to refuse to do anything specified in that Part.

**Revocation**

6. The instruments specified in column 1 of the table in Schedule 5 are revoked to the extent specified in column 2 of that table.

St Andrew's House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

## SCHEDULE 1

Article 3(a)

### PROCEEDINGS

1. Proceedings in respect of a person's admission to, or disciplinary proceedings against a member of, any profession specified in Part 1 of Schedule 4 to this Order.
2. Disciplinary proceedings against a constable.
3. Proceedings before the Gambling Commission.
4. Proceedings under the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>(38)</sup> before the Mental Health Tribunal for Scotland or the Mental Welfare Commission for Scotland.
5. Proceedings under the Firearms Act 1968<sup>(39)</sup> in respect of—
  - (a) the registration of a person as a firearms dealer, the removal of a person's name from a register of firearms dealers or the imposition, variation or revocation of conditions of any such registration;
  - (b) the grant, renewal, variation or revocation of a firearm certificate;
  - (c) the grant, renewal or revocation of a shot gun certificate; or
  - (d) the grant of a permit under section 7(1), 9(2) or 13(1)(c) of that Act<sup>(40)</sup>.
6. Proceedings in respect of the grant, renewal or variation of a licence under section 25 (restrictions on persons under eighteen going abroad for the purpose of performing for profit) of the Children and Young Persons Act 1933<sup>(41)</sup>.
7. Proceedings in respect of a determination by the Scottish Ministers as to the suitability of a person to be the proprietor of an independent school within the meaning of section 135 of the Education (Scotland) Act 1980<sup>(42)</sup> including proceedings before the sheriff principal in respect of the above matters under section 102 of the Education (Scotland) Act 1980<sup>(43)</sup>.
8. Proceedings in respect of an application for, or cancellation of the Scottish Ministers' approval of a place under section 1 of the Abortion Act 1967<sup>(44)</sup>.
9. Proceedings before Social Care and Social Work Improvement Scotland under Part 5 of the 2010 Act.
10. Proceedings under the Control of Explosives Regulations 1991 ("the 1991 Regulations")<sup>(45)</sup> in respect of—

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<sup>(38)</sup> 2003 asp 13.

<sup>(39)</sup> 1968 c.27.

<sup>(40)</sup> Section 13(1)(c) was amended by the Firearms (Amendment) Act 1988 (c.45), section 23(3).

<sup>(41)</sup> 1933 c.12. Section 25 was amended by the Children (Protection at Work) Regulations 1998 (S.I. 1998/276), regulation 5, by the Employment Act 1989 (c.38), section 10(2) and Schedule 3, Part III, paragraph 6(b), and by the Courts Act 2003 (c.39), Schedule 8, paragraph 73.

<sup>(42)</sup> 1980 c.44. The definition of "independent school" in section 135 was amended by the School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004 (asp 12), section 3, and by the Standards in Scotland's Schools etc. Act 2000(asp 6), Schedule 2, paragraph 3(9).

<sup>(43)</sup> Section 102 was amended by the School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004 (asp 12), section 6(1); Schedule 1, paragraph 1(6); Schedule 2, paragraph 1.

<sup>(44)</sup> 1967 c.87. Section 1 was amended by the Human Fertilisation and Embryology Act 1990 (c.37), section 37; by the Health Services Act 1980 (c.53), sections 1 and 2 and Schedule 1, paragraph 17(1); by the National Health Service (Consequential Provisions) Act 2006 (c.43), Schedule 1, paragraph 30; by the National Health Service and Community Care Act 1990 (c.19), section 66(1) and Schedule 9, paragraph 8; by the Health Act 1999 (Supplementary, Consequential etc. Provisions) Order 2000 (S.I. 2000/90), Schedule 1, paragraph 6 and by the Health and Social Care (Community Health and Standards) Act 2003 (c.43), Schedule 4, paragraph 10.

<sup>(45)</sup> S.I. 1991/1531.

- (a) the application to the chief officer of police for an explosives certificate pursuant to regulation 4**(46)** of the 1991 Regulations certifying a person to be a fit person to acquire or acquire and keep explosives;
- (b) the revocation of such certificates pursuant to regulation 5**(47)** of the 1991 Regulations; or
- (c) the application to the sheriff pursuant to regulation 6(4) of the 1991 Regulations against application of the provisions relating to prohibited persons.

**11.** Proceedings by way of appeal against, or review of, any decision taken, by virtue of any of the provisions of this Order, on consideration of a spent conviction.

**12.** Proceedings held for the receipt of evidence affecting the determination of any question arising in any proceedings specified in this Schedule.

**13.** Proceedings held in respect of an application for the grant, renewal, or cancellation of a licence to be a taxi driver or private hire driver.

**14.** Proceedings—

- (a) before the National Lottery Commission in respect of the grant or revocation of a licence under Part 1 of the National Lottery etc. Act 1993**(48)**; or
- (b) by way of appeal to the Court of Session against the revocation of any such licence by the National Lottery Commission.

**15.** Proceedings in connection with a decision of the Scottish Social Services Council under Part 3 of the 2001 Act.

**16.** Proceedings in respect of a decision by a local authority to—

- (a) refuse to enter a person in; or
- (b) remove a person from,

the register maintained by the authority under section 82(1) of the Antisocial Behaviour etc. (Scotland) Act 2004**(49)**.

**17.** Proceedings before the Parole Board for Scotland.

**18.** Proceedings in respect of the award, suspension or withdrawal of accreditation under any accreditation scheme made by the Scottish Ministers under section 11(1) of the Criminal Justice (Scotland) Act 2003**(50)**.

**19.** The following proceedings under the Proceeds of Crime Act 2002**(51)**—

- (a) proceedings under Chapters 2 or 3 of Part 5;
- (b) proceedings in relation to a notice under section 317(2), 321(2) or 322(2); and
- (c) proceedings in respect of an application made under Part 8 in connection with a civil recovery investigation (within the meaning of section 341).

**20.** Proceedings under section 11 of the Private Security Industry Act 2001**(52)**.

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**(46)** Regulations 4 was amended by the Manufacture and Storage of Explosives Regulations 2005 (S.I. 2005/1082) Schedule 5(2) paragraph 34(4) and by the Health and Safety (Miscellaneous Amendments and Revocations) Regulations 2009 (S.I. 2009/693), Schedule 1, paragraph 1(4).

**(47)** Regulation 5 was amended by the Health and Safety (Miscellaneous Amendments and Revocations) Regulations 2009 (S.I.2009/693), Schedule 1, paragraph 1(5).

**(48)** 1993 c.39.

**(49)** 2004 asp 8.

**(50)** 2003 asp 7.

**(51)** 2002 c.29.

**(52)** 2001 c.12. Section 11 was amended by the Courts Act 2003 (c.39), Schedule 8, paragraph 395; by the Serious Organised Crime and Police Act 2005 (c.15), Schedule 15, paragraph 6; and by the Justice and Security (Northern Ireland) Act 2007 (c.6), section 49(2).



- 21.** The following proceedings under the Adults with Incapacity (Scotland) Act 2000(**53**)—
- (a) proceedings before the sheriff under section 20(**54**) of that Act;
  - (b) proceedings before the Public Guardian or the sheriff under Part 3 of that Act; and
  - (c) proceedings before the sheriff in respect of intervention orders or guardianship orders within the meaning of that Act.
- 22.** Proceedings for or in connection with the recovery of compensation under sections 7A to 7D of the Criminal Injuries Compensation Act 1995(**55**).
- 23.** Proceedings before the Scottish Criminal Cases Review Commission.
- 24.** Proceedings before the assessor appointed either by the Scottish Ministers under section 133(4) of the Criminal Justice Act 1988(**56**) or in accordance with any scheme operated by the Scottish Ministers for the payment of compensation to a person who has spent time in custody following a wrongful conviction or charge.
- 25.** Proceedings before the NHS Tribunal under Part II of the National Health Service (Scotland) Act 1978(**57**).
- 26.** Proceedings before the Court of Session or the sheriff in respect of a guardianship order made under section 11 of the Children (Scotland) Act 1995(**58**).
- 27.** Proceedings under Part 1 (consideration as to listing) of the 2007 Act.
- 28.** Proceedings before the Court of Session or the sheriff in order to determine the suitability of a person to become a lay representative.

## SCHEDULE 2

Article 3(b)

### FINANCIAL SERVICES

#### PART 1

##### Decisions referred to at Articles 3(b) and 5(c)

- 1.** Any decision by the Financial Services Authority—
- (a) to refuse an application for Part IV permission under the 2000 Act;
  - (b) to vary or to cancel such permission (or to refuse to vary or cancel such permission) or to impose a requirement under section 43 of that Act;
  - (c) to make, or to refuse to vary or revoke, an order under section 56 (prohibition orders) of that Act;

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(53) [2000 asp 4](#).

(54) Section 20 was amended by the Adult Support and Protection (Scotland) Act 2007 ([asp 10](#)), section 57(5).

(55) [1995 c.53](#). Sections 7A to 7D were added by the Domestic Violence, Crime and Victims Act 2004 ([c.28](#)), section 57(2) as applied to Scotland by the Management of Offenders etc. (Scotland) Act 2005 ([asp 14](#)), section 20(1) and amended by the Management of Offenders etc. (Scotland) Act 2005 ([asp 14](#)), section 20(2).

(56) [1988 c.33](#).

(57) [1978 c.29](#).

(58) [1995 c.36](#). Section 11 was amended by the European Communities (Matrimonial and Parental Responsibility Jurisdiction and Judgments) (Scotland) Regulations ([S.S.I. 2005/42](#)), regulation 9; by the Adoption and Children (Scotland) Act 2007 ([asp 4](#)), section 107, Schedule 2, paragraph 9(2), Schedule 3 paragraph 1; by the Human Fertilisation and Embryology Act 2008 ([c.22](#)), Schedule 6(2), paragraph 52(2) and the Family Law (Scotland) Act 2006 ([asp 2](#)), section 24.

- (d) to refuse an application for the Financial Services Authority's approval under section 59 of that Act or to withdraw such approval;
- (e) to refuse to make, or to revoke, an order declaring a unit trust scheme to be an authorised unit trust scheme under section 243(59) of the 2000 Act or to refuse to give its approval under section 251(60) of the 2000 Act to a proposal to replace the manager or trustee of such a scheme;
- (f) to give a direction under section 257(61) (authorised unit trust schemes) of the 2000 Act, or to vary (or to refuse to vary or revoke) such a direction;
- (g) to refuse to make, or to revoke, an authorisation order under regulation 14 of the Open-Ended Investment Companies Regulations 2001(62) or to refuse to give its approval under regulation 21(63) of those Regulations to a proposal to replace a director or to appoint an additional director of an open-ended investment company;
- (h) to give a direction to an open-ended investment company under regulation 25 of those Regulations or to vary (or refuse to vary or revoke) such a direction;
- (i) to refuse to give its approval to a collective investment scheme being recognised under section 270 of the 2000 Act or to direct that such a scheme cease to be recognised by virtue of that section or to refuse to make, or to revoke an order declaring a collective investment scheme to be a recognised scheme under section 272 of that Act;
- (j) to refuse to make, or to revoke, a recognition order under section 290(64) of the 2000 Act, otherwise than by virtue of section 292(2) of that Act, or to give a direction to a UK recognised investment exchange or UK recognised clearing house under section 296(65) of the 2000 Act;
- (k) to make, or to refuse to vary or to revoke, an order under section 329 of the 2000 Act (orders in respect of members of a designated professional body in relation to the general prohibition);
- (l) to dismiss, exclude or fail to promote a person from being a key worker of the Financial Services Authority;
- (m) to refuse an application for registration as an authorised electronic money institution or a small electronic money institution under the Electronic Money Regulations 2011;
- (n) to vary or cancel such registration (or to refuse to vary or cancel such registration) or to impose a requirement under regulation 7 of the Electronic Money Regulations 2011;
- (o) to refuse an application for registration as an authorised payment institution or a small payment institution under the Payment Services Regulations 2009; or
- (p) to vary or cancel such registration (or to refuse to vary or cancel such registration) or to impose a requirement under regulation 7 of the Payment Services Regulations 2009,

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(59) Section 243 was amended by the Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I.2011/1613), regulation 2(15).

(60) Section 251 was amended by the Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I.2011/1613), regulation 2(17).

(61) Section 257 was amended by the Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I.2011/1613), regulation 2(20).

(62) S.I. 2001/1228. Regulation 14 was amended by the Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), regulation 3(2).

(63) Regulation 21 was amended by the Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), regulation 3(3); and by the Open-Ended Investment Companies (Amendment) Regulations 2011 (S.I.2011/3049), regulation 3(4).

(64) Section 290 was amended by the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), Schedule 2, paragraph 4.

(65) Section 296 was amended by the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), Schedule 2, paragraph 7.

by reason of, or partly by reason of, a spent conviction of an individual, or of any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.

2. Any decision by the scheme operator within the meaning of section 225 of the 2000 Act of the Financial Ombudsman Service to dismiss, or not to appoint an individual as, an ombudsman (within the meaning of Schedule 17 to the 2000 Act) of the Financial Ombudsman Service by reason of, or partly by reason of, his spent conviction, or of any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.

3. Any decision of the competent authority for listing—

- (a) to refuse an application for listing under Part VI of the 2000 Act or to discontinue or suspend the listing of any securities under section 77 of that Act<sup>(66)</sup>;
- (b) to refuse to grant a person's application for approval as a sponsor under section 88<sup>(67)</sup> of the 2000 Act or to cancel such approval; or
- (c) to dismiss, exclude or fail to promote a person from being a key worker of the competent authority for listing,

by reason of, or partly by reason of, a spent conviction of an individual, or of any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.

4. Any decision of anyone who is specified in any of paragraphs 2 to 7 of the second column of the table in Part 2 of this Schedule, other than the Financial Services Authority, to dismiss an individual who has, or to exclude or fail to promote an individual who is seeking to obtain, the status specified in the corresponding entry in the first column of that table (but not, where applicable, the status of being an associate of another person), by reason of, or partly by reason of, a spent conviction of that individual or of that individual's associate, or of any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.

5. Any decision of anyone who is specified in paragraphs 8(1) or 16(1) of the second column of the table in Part 2 of this Schedule to dismiss an individual who has, or to exclude or fail to promote an individual who is seeking to obtain, the status specified in the corresponding entry in sub-paragraph (2) of the first column of that table (associate), by reason of, or partly by reason of, a spent conviction of that individual, or of any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.

6. Any decision of the Council of Lloyd's—

- (a) to refuse to admit any person as, or to exclude, an underwriting agent (within the meaning of section 2 of the Lloyd's Act 1982<sup>(68)</sup>), where that person has, or has applied for, Part IV permission;
- (b) to dismiss any person who is, or to exclude or fail to promote an individual who is seeking to become, an associate of a person who has Part IV permission and who is admitted to Lloyd's as an underwriting agent (within the meaning of section 2 of the Lloyd's Act 1982); or
- (c) to dismiss, or to exclude a person from being, an associate of the Council of Lloyd's,

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<sup>(66)</sup> Section 77 was amended by the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (S.I.2007/1973), article 5.

<sup>(67)</sup> Section 88 was amended by the [Regulatory Reform \(Financial Services and Markets Act 2000\) Order 2007 \(S.I. 2007/1973\)](#), article 9.

<sup>(68)</sup> 1982 c.xiv.

by reason of, or partly by reason of, a spent conviction of an individual, or of any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.

7. Any decision of a UK recognised investment exchange or UK recognised clearing house to refuse to admit any person as, or to exclude, a member by reason of, or partly by reason of, a spent conviction of an individual, or of any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.

## PART 2

Table referred to in Part 1 of this Schedule and in paragraph 7 of Schedule 3

<i>Column 1</i>	<i>Column 2</i>
<i>(Status)</i>	<i>(Questioner)</i>
1. A person with Part IV permission.	The Financial Services Authority.
2.—(1) An approved person within the meaning of Part V of the 2000 Act (performance of regulated activities). (2) An associate of the person (whether or not an individual) mentioned in sub-paragraph (1).	The Financial Services Authority or the authorised person within the meaning of section 31(2) of the 2000 Act or the applicant for Part IV permission who made the application for the Authority's approval under section 59 of the 2000 Act in relation to the person mentioned in sub-paragraph (1) of the first column.
3.—(1) The manager or trustee of an authorised unit trust scheme, within the meaning of section 237 of the 2000 Act. (2) An associate of the person (whether or not an individual) mentioned in sub-paragraph (1).	The Financial Services Authority or the unit trust scheme mentioned in the first column.
4.—(1) A director of an open-ended investment company. (2) An associate of the person (whether or not an individual) mentioned in sub-paragraph (1).	The Financial Services Authority or the open-ended investment company mentioned in the first column.
5. An associate of the operator or trustee of a relevant collective investment scheme.	The Financial Services Authority or the collective investment scheme mentioned in the first column.
6. An associate of a UK recognised investment exchange or UK recognised clearing house.	The Financial Services Authority or the investment exchange or clearing house mentioned in the first column.
7. A controller of a person with Part IV permission.	The Financial Services Authority or the person with Part IV permission mentioned in the first column.
8.—(1) A person who carries on a regulated activity within the meaning of section 22 of the 2000 Act but to whom the general prohibition does not apply by virtue of section 327 (exemption from the general prohibition for	(1) The Financial Services Authority.

<i>Column 1</i>	<i>Column 2</i>
<i>(Status)</i>	<i>(Questioner)</i>
members of a designated professional body) of the 2000 Act.	
(2) An associate of the person (whether or not an individual) mentioned in sub-paragraph (1).	(2) In the case of a person mentioned in sub-paragraph (2) of the first column, the person mentioned in sub-paragraph (1) of that column.
<b>9.</b> A key worker of the Financial Services Authority.	The Financial Services Authority.
<b>10.</b> An ombudsman (within the meaning of Schedule 17 to the 2000 Act) of the Financial Ombudsman Service.	The scheme operator (within the meaning of section 225 of the 2000 Act) of the Financial Ombudsman Service.
<b>11.</b> An associate of the issuer of securities which have been admitted to the official list maintained by the competent authority for listing under section 74(69) of the 2000 Act.	The competent authority for listing.
<b>12.</b> A sponsor within the meaning of section 88(2) of the 2000 Act.	The competent authority for listing.
<b>13.</b> A key worker of the competent authority for listing.	The competent authority for listing.
<b>14.</b> An associate of a person who has Part IV permission and who is admitted to Lloyd's as an underwriting agent (within the meaning of section 2 of Lloyd's Act 1982).	(1) The Council of Lloyd's. (2) The person with Part IV permission specified in the first column (or a person applying for such permission).
<b>15.</b> An associate of the Council of Lloyd's.	The Council of Lloyd's.
<b>16.</b> —(1) Any member of a UK recognised investment exchange or UK recognised clearing house. (2) Any associate of the person (whether or not an individual) mentioned in sub-paragraph (1).	(1) The UK recognised investment exchange or UK recognised clearing house specified in the first column. (2) In the case of a person mentioned in sub-paragraph (2) of the first column, the person mentioned in sub-paragraph (1) of that column.
<b>17.</b> A director or manager responsible for the management of the electronic money or payment services business of an electronic money institution.	The Financial Services Authority.
<b>18.</b> A controller of an electronic money institution.	The Financial Services Authority.
<b>19.</b> A director or a person responsible for the management of an authorised payment institution or a small payment institution.	The Financial Services Authority.

(69) Section 74 was amended by the [Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), Schedule 1, paragraph 3; and by the [Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), Schedule 1, paragraph 2.

<i>Column 1</i>	<i>Column 2</i>
<i>(Status)</i>	<i>(Questioner)</i>
20. A person responsible for the management of payment services provided, or to be provided, by an authorised payment institution or a small payment institution.	The Financial Services Authority.
21. A controller of an authorised payment institution or a small payment institution.	The Financial Services Authority.

## SCHEDULE 3

Article 4

## EXCLUSIONS OF SECTION 4(2)(a) AND (b) OF THE ACT

**Application**

1. Subject to paragraph 2, this Schedule applies, for the purposes of article 4, to the circumstances set out in paragraphs 3 to 15.

**Requirements to inform**

2.—(1) This Schedule applies only where the person questioned is informed at the time the question is asked that, by virtue of this Order, spent convictions are to be disclosed.

(2) In the case of questions put in the circumstances to which paragraph 6 applies, the person questioned is also to be informed at that time that spent convictions are to be disclosed in the interests of national security.

**Specified professions etc.**

3.—(1) Any question asked in order to assess the suitability—

- (a) of the person to whom the question relates for a profession specified in Part 1 of Schedule 4;
- (b) of the person to whom the question relates for any office or employment specified in Part 2 of Schedule 4;
- (c) of the person to whom the question relates or of any other person to pursue any occupation specified in Part 3 of Schedule 4 or to pursue it subject to a particular condition or restriction; and
- (d) of the person to whom the question relates or of any other person to be placed on a register or to hold a licence, certificate or permit specified in sub-paragraph (3) or to be placed on it or hold it subject to a particular condition or restriction.

(2) For the avoidance of doubt, references in sub-paragraph (1) to the suitability of a person for any profession or for any office, employment or occupation include the suitability of that person for training for such profession or, as the case may be, for training for such office, employment or occupation.

(3) The register, licences, certificates or permits referred to in sub-paragraph (1)(d) are—

- (a) firearm certificates and shot gun certificates issued under the Firearms Act 1968, and permits issued under section 7(1), 9(2) or 13(1)(c) of that Act;

- (b) licences issued under section 25 (restrictions on persons under eighteen going abroad for the purpose of performing for profit) of the Children and Young Persons Act 1933(70);
- (c) explosives certificates issued by a chief officer of police pursuant to regulation 4 of the Control of Explosives Regulations 1991(71) as to the fitness of a person to acquire or acquire and keep explosives;
- (d) licences granted under section 8 of the Private Security Industry Act 2001(72); or
- (e) licences issued under, and the register of approved instructors referred to in, Part V (driving instruction) of the Road Traffic Act 1988(73).

### **Child minding**

4. Any question asked in order to assess the suitability of a person to act as a child minder (within the meaning of paragraph 12(1) of schedule 12 to the 2010 Act) where that person resides on the premises where the child minding would normally take place (“the premises”) and the question relates either—

- (a) to a person aged 16 or over who resides on the premises; or
- (b) to a person aged 16 or over who regularly works in the premises at a time when the child minding takes place.

### **Adoption and fostering**

5.—(1) Any question asked by or on behalf of any person for the purpose of assessing, investigating, reviewing or confirming the suitability of any person to adopt children in general or a child in particular, in either of the circumstances set out in sub-paragraph (3).

(2) Any question asked by or on behalf of any person for the purpose of assessing, investigating, reviewing or confirming the suitability of any person to—

- (a) be a foster carer (within the meaning of section 96 of the 2007 Act); or
- (b) be a host parent (within the meaning of paragraph 11A(74) of schedule 2 to the 2007 Act),

in the circumstance set out in sub-paragraph (3)(b).

(3) The circumstances are that—

- (a) the question relates to the person whose suitability is being assessed, investigated, reviewed or confirmed; or
- (b) the question relates to a person over the age of 16 residing in the same household as the person whose suitability is being assessed, investigated, reviewed or confirmed.

(4) Any question asked in order to assess the suitability of an individual seeking appointment as a member of—

- (a) an adoption panel or joint adoption panel under regulation 3 or 5 of the Adoption Agencies (Scotland) Regulations 2009(75); or
- (b) a fostering panel or joint fostering panel under regulation 17 or 19 of the Looked After Children (Scotland) Regulations 2009(76).

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(70) 1933 c.12.

(71) S.I. 1991/1531.

(72) 2001 c.12.

(73) 1988 c.52.

(74) Paragraph 11A of Schedule 2 was added by Protection of Vulnerable Groups (Scotland) Act 2007 (Modification of Regulated Work with Children) Order 2010 (S.S.I. 2010/240), article 7.

(75) S.S.I. 2009/154.

(76) S.S.I. 2009/210.

## National security

6.—(1) Any question asked by or on behalf of—

- (a) the Crown, the United Kingdom Atomic Energy Authority, the Financial Services Authority or a universal service provider within the meaning of section 65 of the Postal Services Act 2011<sup>(77)</sup>, in order to assess, for the purpose of safeguarding national security, the suitability of the person to whom the question relates or of any other person for any office or employment;
- (b) the Civil Aviation Authority;
- (c) any other person authorised to provide air traffic services under section 4 or 5 of the Transport Act 2000<sup>(78)</sup> (in any case where such person is a company, an “authorised company”); or
- (d) subject to sub-paragraph (3)—
  - (i) any company which is a subsidiary, within the meaning given by section 1159(1) of the Companies Act 2006<sup>(79)</sup>, of an authorised company; and
  - (ii) any company of which an authorised company is a subsidiary,

in the circumstances set out in sub-paragraph (2).

(2) The circumstances are that the question is put in order to assess, for the purpose of safeguarding national security, the suitability of the person to whom the question relates or of any other person for any office or employment.

(3) Where the question is put on behalf of a company mentioned in sub-paragraph (1)(d), this paragraph applies only where the question is put in relation to the provision of air traffic services.

## Financial services

7. Any question asked in order to assess the suitability of the individual to whom the question relates to have the status specified in the first column of the table in Part 2 of Schedule 2 by, or on behalf of, the person listed in relation to that status in the second column of that table.

## The National Lottery Commission

8. Any question asked by or on behalf of the National Lottery Commission for the purpose of determining whether to grant or revoke a licence under Part I of the National Lottery etc. Act 1993<sup>(80)</sup> where the question relates to an individual—

- (a) who manages the business or any part of the business carried on under the licence (or who is likely to do so if the licence is granted); or
- (b) for whose benefit that business is carried on (or is likely to be carried on if the licence is granted).

## Registration of certain landlords

9. Any question asked by or on behalf of a local authority in order to assess whether—

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<sup>(77)</sup> 2011 c.5.

<sup>(78)</sup> 2000 c.38. Section 5 was amended by the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), Schedule 1, paragraph 184(2); and by the Transport Act 2000 (Amendment of section 5(4)) Regulations 2011 (S.I. 2011/205), regulation 2.

<sup>(79)</sup> 2006 c.46.

<sup>(80)</sup> 1993 c.39.



- (a) a relevant person within the meaning of section 83(8) of the Antisocial Behaviour etc. (Scotland) Act 2004~~(81)~~ (“the 2004 Act”); or
- (b) a person acting for that person within the meaning of section 83(1)~~(82)~~ or 88(1) of the 2004 Act,

is a fit and proper person for the purpose of determining whether the relevant person should be entered in or removed from the register maintained by the local authority under section 82(1) of the 2004 Act.

### Public procurement

**10.**—(1) Any question asked by or on behalf of a contracting authority or contracting entity in relation to a conviction specified in regulation 23(1) of the Public Contracts (Scotland) Regulations 2012~~(83)~~ which is a spent conviction (or any circumstances ancillary to such a conviction) for the purpose of determining whether or not to treat a person as ineligible—

- (a) for the purposes of regulation 23 of the Public Contracts (Scotland) Regulations 2012 or regulation 26 of the Utilities Contracts (Scotland) Regulations 2012~~(84)~~; or
- (b) to participate in a design contest for the purposes of regulation 33 of the Public Contracts (Scotland) Regulations 2012 or regulation 34 of the Utilities Contracts (Scotland) Regulations 2012,

where the person questioned is informed at the time the question is asked that, by virtue of this Order, convictions within the meaning of regulation 23(1) of the Public Contracts (Scotland) Regulations 2012, which are spent convictions, are to be disclosed.

(2) For the purposes of contract award procedures or design contests commenced before 1st May 2012—

- (a) the references in sub-paragraph (1) to regulations 23 and 33 of the Public Contracts (Scotland) Regulations 2012 are to be read as references to regulations 23 and 33 of the Public Contracts (Scotland) Regulations 2006~~(85)~~; and
- (b) the references in sub-paragraph (1) to regulations 26 and 34 of the Utilities Contracts (Scotland) Regulations 2012 is to be read as references to regulations 26 and 34 of the Utilities Contracts (Scotland) Regulations 2006~~(86)~~.

(3) For the purposes of sub-paragraph (2), the commencement of a contract award procedure or design contest is to be interpreted in accordance with—

- (a) regulation 52(2) of the Public Contracts (Scotland) Regulations 2012; and
- (b) regulation 49(2) of the Utilities Contracts (Scotland) Regulations 2012.

### The Risk Management Authority

**11.** Any question asked by or on behalf of the Risk Management Authority in carrying out its functions in relation to risk management plans under the Criminal Justice (Scotland) Act 2003~~(87)~~.

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~~(81)~~ 2004 asp 8.

~~(82)~~ Section 83(1) was amended by the Housing (Scotland) Act 2006 (asp 1), section 176(3)(b).

~~(83)~~ S.S.I. 2012/88.

~~(84)~~ S.S.I. 2012/89.

~~(85)~~ S.S.I. 2006/1. Regulations 23 and 33 were repealed by the Public Contracts (Scotland) Regulations 2012 (S.S.I. 2012/88), Schedule 7(A), paragraph 1, subject to savings and transitional provisions in regulation 52 of those Regulations.

~~(86)~~ S.S.I. 2006/2; regulations 26 and 34 were repealed by the Utilities Contracts (Scotland) Regulations 2012 (S.S.I. 2012/89), Schedule 5(A), paragraph 1, subject to savings and transitional provisions in regulation 49 of those Regulations.

~~(87)~~ 2003 asp 7.

**Access to information**

12. Any question asked by the Scottish Ministers for the purpose of considering the suitability of a registered person or a nominee of a registered person (within the meaning of the Police Act 1997<sup>(88)</sup>) to have access to information released under section 113A<sup>(89)</sup>, 113B<sup>(90)</sup>, 113CA<sup>(91)</sup> or 113CB<sup>(92)</sup> of that Act or sections 52 to 54 of the 2007 Act.

**Personnel suppliers**

13. Any question asked by or on behalf of a personnel supplier (within the meaning of section 97(1) of the 2007 Act) in order to assess the suitability of a person to be supplied by the personnel supplier to do regulated work with adults or regulated work with children for another person.

**Non-solicitor investors in licensed legal services providers**

14. Any question asked by, or on behalf of, an approved regulator where it is asked for the purposes of section 62 of the Legal Services Act (fitness for involvement) in order to assess the fitness of a non-solicitor investor in a licensed legal services provider for having an interest in a licensed legal services provider.

**Lay representatives**

15. Any question asked in order to assess the suitability of the person to whom the question relates to act as a lay representative.

## SCHEDULE 4

Article 5(a)

## EXCEPTED PROFESSIONS, OFFICES, EMPLOYMENTS AND OCCUPATIONS

## PART 1

## Professions

1. Medical practitioner.
2. Advocate, solicitor.
3. Accountant.

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<sup>(88)</sup> 1997 c.50.

<sup>(89)</sup> Section 113A was added by the Serious Organised Crime and Police Act 2005 (c.15), section 163(2) and amended by the Criminal Justice and Immigration Act 2008 (c. 4), section 50(3) and by the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14), sections 79(1) and 78(2) and Schedule 4, paragraph 28.

<sup>(90)</sup> Section 113B was added by the Serious Organised Crime and Police Act 2005 (c.15), section 163(2) and amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 108(2).

<sup>(91)</sup> Section 113CA was added by the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14), Schedule 4, paragraph 29 and amended by the Police Act 1997 (Alteration of the Meaning of Suitability Information relating to Children and Protected Adults) (Scotland) Order 2010 (S.S.I. 2010/190), article 2 and the Police Act 1997 (Alteration of the Meaning of Suitability Information relating to Children and Protected Adults) (Scotland) (No. 2) Order 2010 (S.S.I. 2010/382), article 2.

<sup>(92)</sup> Section 113CB was added by the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14) Schedule 4, paragraph 29 and amended by the Police Act 1997 (Alteration of the Meaning of Suitability Information relating to Children and Protected Adults) (Scotland) Order 2010 (S.S.I. 2010/190), article 3 and the Police Act 1997 (Alteration of the Meaning of Suitability Information relating to Children and Protected Adults) (Scotland) (No. 2) Order 2010 (S.S.I. 2010/382), article 3.

4. Dentist or any profession complementary to dentistry for which a title is specified in regulations under section 36A(2) of the Dentists Act 1984<sup>(93)</sup> (professions complementary to dentistry) by virtue of section 36A(3) of that Act.

5. Veterinary surgeon.

6. Nurse or midwife.

7. Ophthalmic optician, dispensing optician.

8. Registered pharmacist.

9. Registered pharmacy technician.

10. Registered teacher.

11. Any profession to which the Health Professions Order 2001<sup>(94)</sup> applies and which is undertaken following registration under that Order.

12. Registered osteopath.

13. Registered chiropractor.

14. Actuary.

15. Registered European lawyer, registered foreign lawyer.

16. Social worker.

17. Social service worker.

## PART 2

### Offices and employments

1. Judicial appointments.

2. Prosecutors, officers assisting prosecutors, and officers assisting in the work of the Crown Office.

3. Justices of the Peace and members of local authorities with signing functions under section 76 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007<sup>(95)</sup>.

4. Clerks (including depute and assistant clerks) and officers of the High Court of Justiciary, the Court of Session and the justice of the peace court, sheriff clerks (including sheriff clerks depute) and their clerks and assistants and other support officers assisting in the work of the Scottish Court Service.

5. Precognition agents.

6. Constables, police custody and security officers, persons appointed as police cadets to undergo training with a view to becoming constables, persons employed for the purposes of a police force established under any enactment, persons appointed to assist in the carrying out of police functions and naval, military and air force police.

7. Any office, employment or work which is concerned with the administration of, or is otherwise normally carried out wholly or partly within the precincts of a prison, remand centre, young offenders institution, detention centre or removal centre, and members of visiting committees for

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<sup>(93)</sup> 1984 c.24. Section 36A was added by the Dentists Act 1984 (Amendment) Order 2005 (S.I. 2005/2011), article 29.

<sup>(94)</sup> S.I. 2002/254.

<sup>(95)</sup> 2007 asp 6.

prisons appointed under rules made under section 39 of the Prisons (Scotland) Act 1989<sup>(96)</sup> and members of visiting committees for remand centres and young offenders institutions appointed under section 19(3)<sup>(97)</sup> of that Act.

8. Traffic wardens appointed under or in accordance with section 95 of the Road Traffic Regulation Act 1984<sup>(98)</sup>.

9. Any employment or work which is concerned with the provision of a care service.

10. Any employment or work which is concerned with the provision of health services and which is of such a kind as to enable the holder to have access to persons in receipt of such services in the course of that person's normal duties.

11. Any regulated work with children.

12. Any employment or work in the Scottish Society for the Prevention of Cruelty to Animals where the person employed or working, as part of his or her duties, may carry out the killing of animals.

13. Any office, employment or work in the Serious Fraud Office.

14. Any office, employment or work in the Serious Organised Crime Agency.

15. Any office, employment or work in Her Majesty's Revenue and Customs.

16. Any employment which is concerned with the monitoring, for the purposes of child protection, of communications by means of the internet.

17. Any office or employment in the Scottish Social Services Council.

18. Her Majesty's Inspectors, or any person appointed by the Scottish Ministers for the purposes of section 66 of the Education (Scotland) Act 1980<sup>(99)</sup> or section 9 of the Standards in Scotland's Schools etc. Act 2000<sup>(100)</sup>, or members of any Management Board established to assist either Her Majesty's Inspectors or any such person, or any individual undertaking employment or work for Her Majesty's Inspectors or any such person in relation to the carrying out of inspections under section 66 of the Education (Scotland) Act 1980, section 9 of the Standards in Scotland's Schools etc. Act 2000 or section 115 of the 2010 Act<sup>(101)</sup>, or otherwise in regard to matters associated with such inspections.

19. The Principal Reporter or officers appointed under section 128(5) of the Local Government etc. (Scotland) Act 1994<sup>(102)</sup> to assist that officer.

20. Members of a panel established by virtue of section 101(1) of the Children (Scotland) Act 1995<sup>(103)</sup> (panels for curators *ad litem*, reporting officers and safeguarders).

<sup>(96)</sup> 1989 c.45. Section 39 was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9), section 24 and 25, Schedule 5, paragraph 6(6)(b) and Schedule 7, paragraph 1; by the Criminal Justice and Public Order Act 1994 (c.33), section 116(4); by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), Schedule 4, paragraph 75(4) (a); and by the Crime and Disorder Act 1998 (c.37), Schedule 8, paragraph 71 and Schedule 10, paragraph 1.

<sup>(97)</sup> Section 19(3) was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9), Schedule 5, paragraph 6(4) (a).

<sup>(98)</sup> 1984 c.27. Section 95 was amended by the Police Reform and Social Responsibility Act 2011 (c.13), Schedule 16(3), paragraph 166; and by the Greater London Authority Act 1999 (c.29), section 290(2).

<sup>(99)</sup> 1980 c.44. Section 66 was amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c.39), section 82(1) and Schedule 10, paragraph 8(14); by the Further and Higher Education (Scotland) Act 1992 (c.37), Schedule 9, paragraph 7(5); by the Standards in Scotland's Schools etc. Act 2000 (asp 6), section 11 and 36 and Schedule 2, paragraph 3(7); by the Teaching and Higher Education Act 1998 (c.30), section 21; by the Education (Scotland) Act 1981 (c.58), Schedule 9 and by the Criminal Procedure (Scotland) Act 1975 (c.21), section 289H and Schedule 7D item 54 (as inserted by Criminal Justice Act 1982 (c.48), sections 54 and 56(2) and Schedule 6).

<sup>(100)</sup> 2000 asp 6.

<sup>(101)</sup> Section 115 was amended by the Housing (Scotland) Act 2010 (asp 17), schedule 2, paragraph 15(2).

<sup>(102)</sup> 1994 c.39.

<sup>(103)</sup> 1995 c.36. Section 101(1) was substituted by the Regulation of Care (Scotland) Act 2001 (asp 8), section 75(a).

21. Any office or employment in the Risk Management Authority.
22. Any office or employment in the Scottish Criminal Cases Review Commission.
23. Any office or employment in a relevant authority as defined in section 6 of the Fire (Scotland) Act 2005(104).
24. Any employment or work in a body concerned primarily with the provision of counselling or other support to individuals who are or appear to be victims of, or witnesses to, offences, and which involves having access to personal information about such individuals.
25. Any regulated work with adults.
26. Members mentioned in section 35(4)(c) of the Judiciary and Courts (Scotland) Act 2008(105) of a tribunal constituted under section 35(1) of that Act to consider the fitness for judicial office of a person holding a judicial office mentioned in section 35(2) of that Act.
27. Members mentioned in section 12A(4)(d) of the Sheriff Courts (Scotland) Act 1971(106) of a tribunal constituted under section 12A(1) of that Act to consider the fitness for shrieval office of a person holding a shrieval office mentioned in section 12A(2) of that Act.
28. Lay members of the Judicial Appointments Board for Scotland appointed by the Scottish Ministers under paragraph 2 of schedule 1 to the Judiciary and Courts (Scotland) Act 2008.
29. Non-judicial members of the Scottish Court Service mentioned in paragraph 2(3)(d) of schedule 3 to the Judiciary and Courts (Scotland) Act 2008.
30. Any office or employment in Social Care and Social Work Improvement Scotland.
31. Any office or employment in the General Teaching Council for Scotland.
32. A Head of Practice or a member of a Practice Committee of a licensed legal services provider.

## PART 3

### Occupations

1. Firearms dealer.
2. Any occupation in respect of which an application to the Gambling Commission for a licence, certificate or registration is required by or under any enactment.
3. Any occupation which is concerned with the management of a place in respect of which the approval of the Scottish Ministers is required by section 1 of the Abortion Act 1967(107).
4. Any occupation in respect of which the holder is required pursuant to regulation 4 of the Control of Explosives Regulations 1991(108) to obtain from the chief officer of police an explosives certificate certifying that person to be a fit person to acquire or acquire and keep explosives.
5. Taxi driver or private hire driver.
6. Any occupation in respect of which an application to the Security Industry Authority for a licence is required by the Private Security Industry Act 2001(109).

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(104)2005 asp 5.

(105)2008 asp 6.

(106)1971 c.58. Section 12A was added by the Judiciary and Courts (Scotland) Act 2008 (asp 6), section 40.

(107)1967 c.87.

(108)S.I. 1991/1531.

(109)2001 c.12.

7. Any occupation which is concerned with visiting persons detained in police stations, for the purposes of examining and reporting on the conditions under which they are held.

8. Any occupation in respect of which a licence or registration is required by or under Part V (driving instruction) of the Road Traffic Act 1988(110).

## SCHEDULE 5

Article 6

## REVOCATIONS

<i>Instrument</i>	<i>Extent of revocation</i>
The Rehabilitation of Offenders Act 1974 (Exclusion and Exceptions) (Scotland) Order 2003 ( <a href="#">S.S.I. 2003/231</a> )	The whole Order
The Health Professions Order 2001 (Consequential Amendments) Order 2003 ( <a href="#">S.I. 2003/1590</a> )	Schedule, Part 2, paragraph 7
The Health Act 1999 (Consequential Amendments) (Nursing and Midwifery) Order 2004 ( <a href="#">S.I. 2004/1771</a> )	Schedule, Part 2, paragraph 17
The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Subordinate Legislation) Order 2005 ( <a href="#">S.S.I. 2005/445</a> )	Schedule, paragraph 44
The Dentists Act 1984 (Amendment) Order 2005 ( <a href="#">S.I. 2005/2011</a> )	Schedule 6, Part 2, paragraph 14
The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Amendment) (Scotland) Order 2006 ( <a href="#">S.S.I. 2006/194</a> )	The whole Order
The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2007 ( <a href="#">S.S.I. 2007/75</a> )	The whole Order
The Judiciary and Courts (Scotland) Act 2008 (Consequential Modifications) Order 2009 ( <a href="#">S.S.I. 2009/334</a> )	Article 4
The Adoption and Children (Scotland) Act 2007 (Modification of Subordinate Legislation) Order 2009 ( <a href="#">S.S.I. 2009/429</a> )	Schedule, paragraph 5
The Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 ( <a href="#">S.I. 2009/1182</a> )	Schedule 4, Part 1, paragraph 9 Schedule 4, Part 3, paragraph 28
The Pharmacy Order 2010 ( <a href="#">S.I. 2010/231</a> )	Schedule 4, Part 2, paragraph 37

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(110) 1988 c.52.

<i>Instrument</i>	<i>Extent of revocation</i>
The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2010 ( <a href="#">S.S.I. 2010/243</a> )	The whole Order
The Public Services Reform (Scotland) Act 2010 (Consequential Modifications) Order 2011 ( <a href="#">S.S.I. 2011/211</a> )	Schedule 1, Part 2, paragraph 29 Schedule 3, paragraph 1
The Public Services Reform (General Teaching Council for Scotland) Order 2011 ( <a href="#">S.S.I. 2011/215</a> )	Schedule 6, paragraph 6
The Postal Services Act 2011 (Consequential Modifications and Amendments) Order 2011 ( <a href="#">S.I. 2011/2085</a> )	Schedule 1, paragraph 55
The Public Contracts (Scotland) Regulations 2012 ( <a href="#">S.S.I. 2012/88</a> )	Schedule 7, Part B, the entry relating to the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 ( <a href="#">S.S.I. 2003/231</a> )
The Utilities Contracts (Scotland) Regulations 2012 ( <a href="#">S.S.I. 2012/89</a> )	Schedule 5, Part B, the entry relating to the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 ( <a href="#">S.S.I. 2003/231</a> )

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order consolidates the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 (“2003 Order”) which excludes and makes exceptions to the provisions of section 4 (effect of rehabilitation) of the Rehabilitation of Offenders Act 1974 (“the Act”). It excludes further proceedings and types of work from certain provisions within that section and updates the terms used to reflect recent legislation, including the Legal Services (Scotland) Act 2010 and the Electronic Money Regulations 2011.

Section 4(1) of the Act (which relates to the way in which offenders whose convictions have become spent are to be treated, particularly in judicial proceedings) is excluded in relation to the proceedings specified in Schedule 1 to the Order and, to a limited extent, the proceedings with respect to decisions specified in Part 1 of Schedule 2 (article 3).

Section 4(2)(a) and (b) of the Act (which relates to questions asked about criminal convictions otherwise than in the course of judicial proceedings) is excluded in relation to questions to which Schedule 3 applies (article 4). The questions to which Schedule 3 applies include questions on the assessment of a person’s suitability for a profession, office, employment or occupation set out in Schedule 4, or to hold certain licences, certificates or permits.

The professions, offices, employments and occupations set out in Schedule 4 are excepted from section 4(3)(b) of the Act (which relates to the effect of a spent conviction on grounds of dismissal

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 No. 50*

and exclusion of persons from certain types of work). Action taken to safeguard national security and decisions taken by persons specified in Part 1 of Schedule 2 to do anything specified in that Part are also excluded from section 4(3)(b) of the Act (article 5).

The 2003 Order and those provisions amending that Order are revoked (article 6).