

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

2018 No.

REHABILITATION OF OFFENDERS

**The Rehabilitation of Offenders Act 1974 (Exclusions
and Exceptions) (Scotland) Amendment Order 2018**

Made - - - - 2018
Coming into force - - 17th February 2018

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

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

Citation and commencement

1. This Order may be cited as the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2018 and comes into force on 17th February 2018.

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 as follows.

(2) In article 4 (exclusion of section 4(2)(a) and (b) of the Act)—

(a) for paragraph 2(b) substitute—

“(b) a conviction which—

(i) falls within paragraph (2A); and

(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 S.I. 2003/415.
(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. Relevant amendments have been made by S.I. 2014/1942 and by S.S.I. 2015/329, S.S.I. 2015/968, S.S.I. 2016/91 and S.S.I. 2016/147.

- (ii) is not included in a higher level disclosure sent in connection with the purpose for which the question is put.”;
- (b) after paragraph (2) insert—
 - “(2A) A spent conviction falls within this paragraph if it is—
 - (a) a conviction for an offence listed in schedule A1 and either—
 - (i) the person was aged under 18 on the date of conviction and at least 7 years and 6 months have passed since the date of conviction; or
 - (ii) the person was aged 18 or over on the date of conviction and at least 15 years have passed since the date of conviction; or
 - (b) a conviction for an offence listed in schedule B1 which is not a protected conviction.”;
 - (c) in paragraph (4), for “for an offence listed in Schedule B1” substitute “which falls within paragraph (2A)”;
 - (d) after paragraph (4) insert—
 - “(5) Paragraph (4) does not apply if the failure to disclose the conviction related to a question asked when the conviction did not fall within paragraph (2A).”.
- (3) In article 5 (exceptions from section 4(3) of the Act)—
 - (a) in paragraph (2), for sub-paragraph (b) substitute—
 - “(b) a conviction which—
 - (i) falls within paragraph (2A); and
 - (ii) is not included in a higher level disclosure sent in connection with the profession, office, employment, occupation, decision or proposed decision to which the exception would otherwise apply.”;
 - (b) after paragraph (2) insert—
 - “(2A) A spent conviction falls within this paragraph if it is—
 - (a) a conviction for an offence listed in schedule A1 and either—
 - (i) the person was aged under 18 on the date of conviction and at least 7 years and 6 months have passed since the date of conviction; or
 - (ii) the person was aged 18 or over on the date of conviction and at least 15 years have passed since the date of conviction; or
 - (b) a conviction for an offence listed in schedule B1 which is not a protected conviction.”;
 - (c) in paragraph (4), for “for an offence listed in Schedule B1” substitute “which falls within paragraph (2A)”;
 - (d) after paragraph (4) insert—
 - “(5) Paragraph (4) does not apply if the failure to disclose the conviction related to a question asked when the conviction did not fall within paragraph (2A).”.
- (4) The title of schedule A1 (offences which must always be disclosed)(4) becomes “Offences which must be disclosed subject to exceptions”.
- (5) In schedule B1 (offences which are to be disclosed subject to rules)(5)—
 - (a) in paragraph 75, for “and” substitute “or”; and

(4) Schedule A1 was inserted by [S.S.I. 2015/329](#) and substituted by [S.S.I. 2016/91](#).

(5) Schedule B1 was inserted by [S.S.I. 2015/329](#) and substituted by [S.S.I. 2016/91](#).

(b) in paragraph 81, omit sub-paragraph (c) and the word “and” immediately preceding it.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

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”). The 2013 Order disapplies specified provisions of the Rehabilitation of Offenders Act 1974 (“the 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. Section 4(2) of the Act relates to questions about spent convictions asked outwith judicial proceedings and provides that a person is entitled to treat such a question as if it does not relate to a spent conviction and must not be prejudiced by a failure to disclose a spent conviction in response to such a question. Section 4(3)(b) provides that a spent conviction or a failure to disclose it is not a proper ground for dismissing or excluding a person from any office, profession, occupation or employment or for otherwise prejudicing a person in respect of any of those things.

Article 4 of the 2013 Order excludes the application of section 4(2) of the Act in relation to questions put in the circumstances specified in schedule 3 of the 2013 Order. But that exception does not apply to all convictions. Convictions which are “protected convictions” (as defined in articles 2 and 2A) are subject to the section 4(2) protection, as are other spent convictions for offences listed in schedule B1 of the 2013 Order which are not included in a higher level disclosure sent in connection with the purpose for which a question about the conviction has been put. Article 2(2)(a) and (b) of this Order amends article 4 of the 2013 Order to specify further categories of conviction which fall outwith the scope of the exclusion of the application of section 4(2). Those are spent convictions under schedule A1 of the 2013 Order where the person was aged under 18 on the date of conviction and at least 7 years and 6 months have passed since that date, and spent convictions under that schedule where the person was aged 18 or over on the date of conviction and at least 15 years have passed since that date.

These spent convictions for most purposes only fall outwith the scope of the exclusion of the application of section 4(2) if they are not included in a higher level disclosure sent in connection with the purpose for which a question about the conviction has been put. But where these spent convictions are included in a relevant higher level disclosure, any failure to disclose them before that higher level disclosure was sent also falls outwith the scope of that exclusion and therefore remains subject to the protections in section 4(2). Article 2(2)(c) and (d) of this Order amends the 2013 Order to give effect to that.

Article 5 of the 2013 Order excepts from the protection given by section 4(3)(b) of the Act a number of professions, offices, types of employment and occupations and decisions. Again, that exception does not apply to all convictions. Protected convictions and other spent convictions for offences listed in schedule B1 of the 2013 Order which are not included in a relevant higher level disclosure remain subject to the section 4(3)(b) protection. Article 2(3)(a) and (b) of this Order amends article 5 of the 2013 Order to specify further categories of conviction which fall outwith the scope of the exception from the protection in section 4(3)(b). Those are spent convictions under schedule A1 of the 2013 Order where the person was aged under 18 on the date of conviction and at least 7 years and 6 months have passed since that date, and spent convictions under that schedule where the person was aged 18 or over on the date of conviction and at least 15 years have passed since that date.

These spent convictions for most purposes only fall outwith the scope of the exception of section 4(3)(b) if they are not included in a higher level disclosure sent in connection with the profession, office, type of employment, occupation, decision or proposed decision to which the exception would otherwise apply. But where these spent convictions are included in a relevant higher level disclosure, any failure to disclose them before that higher level disclosure was sent falls outwith the scope of

that exception and therefore remains subject to the protection in section 4(3)(b). Article 2(3)(c) and (d) of this Order amends the 2013 Order to give effect to that.

Article 2(4) changes the title of schedule A1 of the 2013 Order to reflect the amendments made elsewhere in this Order. Article 2(5) corrects minor errors in paragraphs 75 and 81 of schedule B1 of the 2013 Order.