

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

2007 No.

REHABILITATION OF OFFENDERS

**The Rehabilitation of Offenders Act 1974 (Exclusions
and Exceptions) (Scotland) Amendment Order 2007**

Made - - - - 2007

Coming into force in accordance with article 1(1)

The Scottish Ministers, in exercise of the powers conferred by sections 4(4), 7(4) and (10)(1) of the Rehabilitation of Offenders Act 1974(1) and of all other powers enabling them in that behalf, hereby make the following Order, a draft of which has, in accordance with section 10(2) of that Act, 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) Amendment Order 2007 and shall come into force on 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.

**Amendment of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions)
(Scotland) Order 2003**

2. The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003(2) is amended in accordance with the following provisions of this Order.

Amendment of Schedule 1

3. In Schedule 1—

(a) in paragraph 3, for “Gaming Board for Great Britain” substitute “Gambling Commission”;

(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) S.S.I. 2003/231, amended by S.I. 2003/1590, S.S.I. 2005/445 and 2006/194. Prospectively amended by S.I. 2005/2011.

- (b) in paragraph 9–
- (i) after “under” where it first appears insert “Part 1 of”; and
 - (ii) omit from “in respect of” to the end;
- (c) for paragraph 10 substitute–
- “**10.** Proceedings under the Control of Explosives Regulations 1991**(3)** (“the 1991 Regulations”) in respect of–
- (a) the application to the chief officer of police for an explosives certificate pursuant to regulation 4 of the 1991 Regulations certifying a person to be a fit person to acquire or acquire and keep explosives; or
 - (b) the revocation of such certificates pursuant to regulation 5 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.”; and
- (d) after paragraph 16**(4)**insert–
- “**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**(5)**.
- 19.** The following proceedings under the Proceeds of Crime Act 2002**(6)**–
- (a) proceedings under Chapters 2 or 3 of Part 5;
 - (b) proceedings in relation to a notice under sections 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**(7)**.
- 21.** Proceedings before the Sheriff in respect of applications for intervention orders or guardianship orders within the meaning of the Adults with Incapacity (Scotland) Act 2000**(8)**.
- 22.** Proceedings for or in connection with the recovery of compensation under sections 7A to 7D of the Criminal Injuries Compensation Act 1995**(9)**.
- 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**(10)** 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.”.

(3) S.I. 1991/1531; relevantly amended by S.I. 2005/1082.

(4) Paragraph 16 was inserted by S.S.I. 2006/194.

(5) 2003 asp 7; section 11 was amended by section 13 of the *Management of Offenders etc. (Scotland) Act 2005* (asp 14).

(6) 2002 c. 29.

(7) 2001 c. 12. The Private Security Industry Act 2001 was extended to Scotland by the Serious Organised Crime and Police Act 2005 (c. 15), section 171 and Schedule 15.

(8) 2000 asp 4.

(9) 1995 c. 53. Sections 7A to 7D were inserted by section 57 of the Domestic Violence, Crime and Victims Act 2004 (c. 28) and extended to Scotland by section 20 of the *Management of Offenders etc. (Scotland) Act 2005* (asp 14).

(10) 1988 c. 33.

Amendment of Schedule 3

4. In Schedule 3—

- (a) in paragraph 2, after the definition of “adopt” insert—
- ““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;
- “Directive 2004/17/EC” means Directive 2004/17/EC of the European Parliament and of the Council of 31st March 2004(11);
- “Directive 2004/18/EC” means Directive 2004/18/EC of the European Parliament and of the Council of 31st March 2004(12);”;
- (b) in paragraph 4(3), for “paragraph (d)” substitute “sub paragraph (1)(d)”;
- (c) for paragraph 4(3)(c) and the word “or” immediately preceding it, substitute—
- “(c) explosives certificates issued by a chief officer of police pursuant to regulation 4 of the Control of Explosives Regulations 1991 as to the fitness of a person to acquire or acquire and keep explosives; or
- (d) licences granted under section 8 of the Private Security Industry Act 2001.”; and
- (d) after paragraph 10(13) insert—

“Public procurement

11. Any question asked by or on behalf of a contracting authority or contracting entity in relation to a conviction within the meaning of regulation 23(1) of the Public Contracts (Scotland) Regulations 2006 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:

- (i) for the purposes of regulation 23 of the Public Contracts (Scotland) Regulations 2006(14) or regulation 26 of the Utilities Contracts (Scotland) Regulations 2006(15); or
- (ii) to participate in a design contest for the purposes of regulation 33 of the Public Contracts (Scotland) Regulations 2006 or regulation 34 of the Utilities Contracts (Scotland) Regulations 2006,

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 2006 which are spent convictions are to be disclosed.

The Risk Management Authority

12. 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.”.

(11) O.J. No. L 134, 30.4.2004, p.1.

(12) O.J. No. L 134, 30.4.2004, p.114.

(13) Paragraph 10 was inserted by S.S.I. 2006/194.

(14) S.S.I. 2006/1.

(15) S.S.I. 2006/2.

Amendment of Schedule 4

5. In Schedule 4—

(a) in Part 1, for paragraph 4 substitute—

“**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**(16)** (professions complementary to dentistry) by virtue of section 36A(3) of that Act.”;

(b) in Part 2—

(i) in paragraph 7, for “employment” substitute “office, employment or work”;

(ii) in paragraph 13, after “employment” insert “or work”;

(iii) in paragraph 14, for “or employment” substitute “, employment or work”;

(iv) in paragraph 15**(17)**, for “or employment” substitute “, employment or work”;

(v) in paragraph 16**(18)**, for “or employment” substitute “, employment or work”;

(vi) for paragraph 19, substitute—

“**19.** Her Majesty’s Inspectors, or any person appointed by the Scottish Ministers for the purposes of section 66 of the Education (Scotland) Act 1980**(19)** or section 9 of the Standards in Scotland’s Schools etc. Act 2000**(20)**, 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 1 of the Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Act 2006**(21)**, or otherwise in regard to matters associated with such inspections.”; and

(vii) after paragraph 21 insert—

“**22.** Any office or employment in the Risk Management Authority.

23. Any office or employment in the Scottish Criminal Cases Review Commission.

24. Members of the Mental Welfare Commission appointed under paragraph 3(1) of Part 1 of schedule 1 to the Mental Health (Care and Treatment) (Scotland) Act 2003**(22)**.

25. Any office or employment in a relevant authority as defined in section 6 of the Fire (Scotland) Act 2005**(23)**.

26. Social work inspectors appointed under section 4 of the Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Act 2006, or members of any Management Board established to assist the social work inspectors, or any individual undertaking employment or work for the social work inspectors in relation to the carrying out of inspections, or otherwise in regard to matters associated with such inspections.

(16) 1984 c. 24. Section 36A was inserted by S.I. 2005/2011.

(17) Paragraph 15 was amended by S.S.I. 2006/194.

(18) Paragraph 16 was amended by S.S.I. 2006/194.

(19) 1980 c. 44.

(20) 2000 asp 6.

(21) 2006 asp 3.

(22) 2003 asp 13.

(23) 2005 asp 5.

27. 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.”;

(c) in Part 3–

(i) in paragraph 2, for “Gaming Board for Great Britain” substitute “Gambling Commission”;

(ii) in paragraph 4, for the words from “, as occupier” to the end substitute “ is required pursuant to regulation 4 of the Control of Explosives Regulations 1991 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”;

(iii) after paragraph 5, insert–

“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.

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.”; and

(d) in Part 4, after the definition of “judicial appointment”, insert–

““personal information” means any information 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, and it includes information in any form;”.

St Andrew’s House,
Edinburgh
2007

A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 (“the 2003 Order”).

Section 4(1) of the Rehabilitation of Offenders Act 1974 (“the Act”) concerns the effects of rehabilitation and the treatment of spent convictions in proceedings before a judicial authority. This Order amends Schedule 1 to the 2003 Order, which lists the proceedings in relation to which section 4(1) is excluded. Article 3 of this Order updates the reference in that Schedule to the Gaming Board for Great Britain with a reference to the Gambling Commission, and includes in that Schedule the following types of proceedings: those before the Scottish Commission for the Regulation of Care under Part 1 of the Regulation of Care (Scotland) Act 2001, those in respect of an application for an explosives certificate under the Control of Explosives Regulations 1991, those before the Parole Board for Scotland, those for accreditation under section 11(1) of the Criminal Justice (Scotland) Act 2003, certain proceedings under the Proceeds of Crime Act 2002, those under section 11 of the Private Security Industry Act 2001, those in respect of applications for intervention orders or guardianship orders under the Adults with Incapacity (Scotland) Act 2000, those for the recovery of compensation under the Criminal Injuries Compensation Act 1995, those before the Scottish Criminal Cases Review Commission and proceedings before an assessor appointed under schemes for the payment of compensation to those who have spent time in custody following wrongful conviction or charge.

Section 4(2)(a) and (b) of the Act concerns the treatment of spent convictions in relation to questions asked otherwise than in the course of judicial proceedings. This Order amends Schedule 3 to the 2003 Order, which lists the circumstances in which questions asked about spent convictions are excluded from the effect of section 4(2)(a) and (b). Article 4 of this Order amends Schedule 3 to enable questions asked in the following circumstances to be excluded from the effects of section 4(2): those asked in order to assess a person’s suitability to hold an explosives certificate or to hold a licence under the Private Security Industry Act 2001, those asked in relation to public contract tendering under European Community law and those asked by the Risk Management Authority in carrying out its functions under the Criminal Justice (Scotland) Act 2003.

Professions, offices, employments and occupations set out in Schedule 4 to the 2003 Order are excepted from section 4(3)(b) of the Act, which concerns the effect of a spent conviction on dismissal, and exclusion, from work. Article 5 of this Order updates the entry in respect of dentists and those working in professions complementary to dentistry and it ensures that spent conviction information is available in respect of contractors working in prisons, remand centres, young offender institutions, detention centres or removal centres, the Scottish Society for the Prevention of Cruelty to Animals, the Serious Fraud Office, the Serious Organised Crime Agency and Her Majesty’s Revenue and Customs. Article 5 amends the entry relating to Her Majesty’s Inspectors of education, updates the reference to the Gambling Commission, and to the Control of Explosives Regulations 1991 and inserts new provisions into Schedule 4 concerning the Risk Management Authority, the Scottish Criminal Cases Review Commission, the Mental Welfare Commission, those working for fire and rescue authorities and joint fire and rescue boards, social work inspectors, bodies which support victims of crime, holders of licences under the Private Security Industry Act 2001, and independent custody visitors.