

## 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<sup>(1)</sup>;
- (c) explosives certificates issued by a chief officer of police pursuant to regulation 4 of the Control of Explosives Regulations 1991<sup>(2)</sup> 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<sup>(3)</sup>; or
- (e) licences issued under, and the register of approved instructors referred to in, Part V (driving instruction) of the Road Traffic Act 1988<sup>(4)</sup>.

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(1) 1933 c.12.  
(2) S.I. 1991/1531.  
(3) 2001 c.12.  
(4) 1988 c.52.

### 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(5) 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(6); or
- (b) a fostering panel or joint fostering panel under regulation 17 or 19 of the Looked After Children (Scotland) Regulations 2009(7).

### 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(8), 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;

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(5) 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.

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

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

(8) 2011 c.5.

- (c) any other person authorised to provide air traffic services under section 4 or 5 of the Transport Act 2000<sup>(9)</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>(10)</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>(11)</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—

- (a) a relevant person within the meaning of section 83(8) of the Antisocial Behaviour etc. (Scotland) Act 2004<sup>(12)</sup> (“the 2004 Act”); or
- (b) a person acting for that person within the meaning of section 83(1)<sup>(13)</sup> 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.

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(9) 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.

(10) 2006 c.46.

(11) 1993 c.39.

(12) 2004 asp 8.

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

**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<sup>(14)</sup> 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<sup>(15)</sup>; 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<sup>(16)</sup>; 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<sup>(17)</sup>.

(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<sup>(18)</sup>.

**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>(19)</sup>) to have access to information released under section 113A<sup>(20)</sup>, 113B<sup>(21)</sup>, 113CA<sup>(22)</sup> or 113CB<sup>(23)</sup> of that Act or sections 52 to 54 of the 2007 Act.

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<sup>(14)</sup> S.S.I. 2012/88.

<sup>(15)</sup> S.S.I. 2012/89.

<sup>(16)</sup> 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.

<sup>(17)</sup> 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.

<sup>(18)</sup> 2003 asp 7.

<sup>(19)</sup> 1997 c.50.

<sup>(20)</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>(21)</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>(22)</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

### **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.

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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.

(23) 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.