

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

2013 No.

REHABILITATION OF OFFENDERS

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

Made - - - - 2013

Coming into force in accordance with article 1(1)

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⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 10(2) of that Act⁽²⁾, 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) Amendment Order 2013 and comes into force on the same day as section 7 (holding of children’s hearing) of the Children’s Hearings (Scotland) Act 2011⁽³⁾.

(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 2013

2. The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013⁽⁴⁾ is amended in accordance with articles 3 and 4.

(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) 2011 asp 1.

(4) S.I. 2013/50.

Amendment to Schedule 1 (proceedings)

3. In Schedule 1 (proceedings) after paragraph 28 insert—

“29. Proceedings under the Children’s Hearings (Scotland) Act 2011.”.

Amendment to Schedule 4 (excepted professions, offices, employments, and occupations)

4. In Schedule 4 (excepted professions, offices, employments, and occupations), in Part 2 (offices and employments) omit paragraph 19.

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”). It makes amendments in consequence of the Children’s Hearings (Scotland) Act 2011 (“the 2011 Act”).

Section 4(1) of the Rehabilitation of Offenders Act 1974 (“the 1974 Act”) provides that spent convictions may not be admissible in evidence in any proceedings before a judicial authority nor shall a person be asked or required to answer any question in such proceedings about his spent conviction. Section 4(2) of the 1974 Act provides that in any proceedings, other than judicial proceedings, any question asked of a person about his convictions shall not be taken to relate to any of his spent convictions nor shall the person be subject to any liability or prejudice for not disclosing a spent conviction. Section 4(3)(b) of the 1974 Act provides that not disclosing a spent conviction shall not be a proper ground for dismissing, excluding or prejudicing the person in relation to any office, profession, occupation or employment. Section 4(4) of the 1974 Act allows the Scottish Ministers to make provision for excluding, modifying or making exceptions to section 4(2) and (3). Section 7(4) of the 1974 Act allows the Scottish Ministers to make exclusions in relation to section 4(1).

Article 3 amends Schedule 1 to the 2013 Order so as to exclude the application of section 4(1) of the 1974 Act in relation to all proceedings under the 2011 Act. This means spent convictions are admissible in these proceedings and questions can be asked about them.

Article 4 amends Part 2 of Schedule 4 to the 2013 Order. An exception listed in Part 2 means that section 4(3)(b) of the 1974 Act does not apply. Article 4 removes paragraph 19 from Part 2 of Schedule 4 which referred to the Principal Reporter of the Scottish Children’s Reporter Administration or other officers appointed to assist the Principal Reporter.