
SCOTTISH STATUTORY INSTRUMENTS

2003 No. 231

REHABILITATION OF OFFENDERS

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

Made - - - - 28th March 2003

Coming into force - - 29th March 2003

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) Order 2003, and shall come 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 Act” means the Rehabilitation of Offenders Act 1974;

“the 2001 Act” means the Regulation of Care (Scotland) Act 2001(2), and the following expressions have the meaning given—

- (a) by section 1 of that Act, “Scottish Commission for the Regulation of Care”;
- (b) by section 2 of that Act, “care service” and “child minding”;
- (c) by section 43 of that Act, “Scottish Social Services Council”; and
- (d) by section 77 of that Act, “social worker” and “social service worker”;

“administration of justice offence” means—

(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) 2001 asp 8.

- (a) an offence against the course of justice including attempting to pervert the course of justice and attempting to defeat the ends of justice;
- (b) perjury and subornation of perjury; or
- (c) any offence committed under the law of any part of the United Kingdom (other than Scotland) or of any other country where the conduct which constitutes the offence would, if it all took place in Scotland, constitute one or more of the offences specified by paragraphs (a) and (b);

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

“private hire driver” means a driver of a private hire car, as defined by section 23(1) of the Civic Government (Scotland) Act 1982(3), who is required to be licensed by a licensing authority under the provisions of that Act;

“relevant offence” means–

- (a) an offence involving fraud or other dishonesty;
- (b) an offence under legislation (whether or not of the United Kingdom) relating to building societies, companies (including insider dealing), industrial and provident societies, credit union, friendly societies, insurance, banking or other financial services, money laundering, insolvency, consumer credit or consumer protection;
- (c) an administration of justice offence; or
- (d) an offence committed (whether or not under the law of, or of any part of, the United Kingdom) in connection with, or in relation to, taxation for which a person of 21 years of age or over may be sentenced to imprisonment for a term of 2 years or more; and

“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.

(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) (effect of rehabilitation generally and in proceedings before a judicial authority) 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 for any relevant offence or to circumstances ancillary thereto; and
 - (ii) to the extent that section 4(1) renders inadmissible any evidence relating to such 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 provisions of section 4(2)(a) and (b) (questions seeking information with respect to previous convictions) of the Act are 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) (effect of rehabilitation on grounds of dismissal or exclusion from an office, profession, occupation or employment) 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
- (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 following Orders are hereby revoked–

- (a) The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(4);
- (b) The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 1986(5); and
- (c) The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment No. 2) Order 1986(6).

St Andrew's House, Edinburgh
28th March 2003

JAMES WALLACE
A member of the Scottish Executive

(4) S.I. 1975/1023.
(5) S.I. 1986/1249.
(6) S.I. 1986/2268.

SCHEDULE 1

Article 3

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 Gaming Board for Great Britain.
4. Proceedings under the Mental Health (Scotland) Act 1984(7) before the Sheriff or the Mental Welfare Commission for Scotland.
5. Proceedings under the Firearms Act 1968(8) 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; or
 - (b) the grant, renewal, variation or revocation of a firearm certificate; or
 - (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.
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(9).
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(10) including proceedings before an Independent Schools Tribunal in respect of the above matters under section 102 of the Education (Scotland) Act 1980.
8. Proceedings in respect of an application for, or cancellation of the Secretary of State's approval of a place under section 1 of the Abortion Act 1967(11).
9. Proceedings before the Scottish Commission for the Regulation of Care under the 2001 Act in respect of applications for registration under sections 7 or 8 of that Act or variation or removal of a condition, or cancellation of registration under section 14 of that Act.
10. Proceedings on an application to the police or a court of summary jurisdiction for a certificate under any Order in Council made under section 43 of the Explosives Act 1875(12) as to the fitness of the applicant to keep explosives.
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—

(7) 1984 c. 36.

(8) 1968 c. 27.

(9) 1933 c. 12.

(10) 1980 c. 44.

(11) 1967 c. 87.

(12) 1875 c. 17.

- (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⁽¹³⁾; or
- (b) by way of appeal to the Secretary of State 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.

SCHEDULE 2

Articles 3, 5 and Schedule 3, paragraph 8

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 or;
 - (c) to make, or to refuse to vary or revoke, an order under section 56 (prohibition orders) of that Act;
 - (d) to refuse an application for the 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 of the 2000 Act or to refuse to give its approval under section 251 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 (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⁽¹⁴⁾ or to refuse to give its approval under regulation 21 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 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 of the 2000 Act;

⁽¹³⁾ 1993 c. 39.

⁽¹⁴⁾ S.I. 2001/1228.

(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); or

(l) to dismiss, fail to promote or exclude a person from being a key worker of the Authority, by reason of, or partly by reason of, a spent conviction of an individual for a relevant offence, 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 for a relevant offence, 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;

(b) to refuse to grant a person's application for approval as a sponsor under section 88 of the 2000 Act or to cancel such approval; or

(c) to dismiss, fail to promote or exclude 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 for a relevant offence, 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 sub-paragraphs 2 to 7 of the second column of the table in Part 2 of this Schedule, other than the Authority, to dismiss an individual who has, or to fail to promote or exclude 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 his associate for a relevant offence, 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 sub paragraph 8(a), 14(a) or 16(a) of the second column of the table in Part 2 of this Schedule to dismiss an individual who has, or to fail to promote or exclude an individual who is seeking to obtain, the status specified in the corresponding entry in sub-paragraph (b) of the first column of that table (associate), by reason of, or partly by reason of, a spent conviction of that individual for a relevant offence, 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—

(i) 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(15)), where that person has, or who has applied for, Part IV permission; or

(ii) to dismiss, or to exclude a person from being, an associate of the Council of Lloyd's,

by reason of, or partly by reason of, a spent conviction of an individual for a relevant offence, 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.

(15) 1982 c. 14.

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 for a relevant offence, 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 8 of Schedule 3

<i>Column 1 (Status)</i>	<i>Column 2 (Questioner)</i>
1. A person with Part IV permission.	The Financial Services Authority.
(a) (a) An approved person within the meaning of Part V of the 2000 Act (performance of regulated activities);	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 (a) of the first column.
(b) An associate of the person (whether or not an individual) mentioned in sub paragraph (a).	
(a) (a) The manager or trustee of an authorised unit trust scheme, within the meaning of section 237 of the 2000 Act;	The Financial Services Authority or the unit trust scheme mentioned in the first column.
(b) An associate of the person (whether or not an individual) mentioned in sub paragraph (a).	
(a) (a) A director of an open-ended investment company;	The Financial Services Authority or the open-ended investment company mentioned in the first column.
(b) An associate of the person (whether or not an individual) mentioned in sub paragraph (a);	
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 an 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.
(a) (a) 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	(a) (a) The Financial Services Authority;
	(b) In the case of a person mentioned in sub paragraph (b) of the first

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

<i>Column 1 (Status)</i>	<i>Column 2 (Questioner)</i>
of section 327 (exemption from the general prohibition for members of a designated professional body) of the 2000 Act;	column, the person mentioned in sub-paragraph (a) of that column.
(b) An associate of the person (whether or not an individual) mentioned in sub paragraph (a).	
9. A key worker of the Financial Services Authority.	The Financial Services Authority.
10. 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.
11. 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 of the 2000 Act.	The competent authority for listing.
12. A sponsor within the meaning of section 88(2) of the 2000 Act.	The competent authority for listing.
13. A key worker of the competent authority for listing.	The competent authority for listing.
14. 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).	(a) (a) The Council of Lloyd's; (b) The person with Part IV permission specified in the first column (or a person applying for such permission).
15. An associate of the Council of Lloyd's.	The Council of Lloyd's.
(a) (a) Any member of an UK recognised investment exchange or UK recognised clearing house;	(a) (a) The UK recognised investment exchange or UK recognised clearing house specified in the first column;
(b) Any associate of the person (whether or not an individual) mentioned in sub-paragraph (a).	(b) In the case of a person mentioned in sub paragraph (b) of the first column, the person mentioned in sub paragraph (a) of that column.

Part 3

Interpretation

In this Schedule—

“the 2000 Act” means the Financial Services and Markets Act 2000(16);

“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;

“collective investment scheme” has the meaning given by section 235 of the 2000 Act;

(16) 2000 c. 8.

“the competent authority for listing” means the competent authority for the purposes of Part VI of the 2000 Act (listing);

“controller” has the meaning given by section 422 of the 2000 Act;

“Council of Lloyd's” means the council constituted by section 3 of the Lloyd’s Act 1982;

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

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

(a) where A is the 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;

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

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

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

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

“trustee”, in relation to a unit trust scheme, has the meaning given by section 237 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, 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.

SCHEDULE 3

Article 4

EXCLUSION OF SECTION 4(2)(a) AND (b) OF THE ACT

Application

1. Subject to paragraph 3, this Schedule applies, for the purposes of article 4, to questions put in the circumstances set out in paragraphs 4 to 9.

Interpretation

2. In this Schedule—

“adopt” includes any arrangements to adopt a child, including arrangements for adoption where the proposed adopter is a relative of the child, whether under section 12 or section 17 of the

Adoption (Scotland) Act 1978⁽¹⁷⁾ or in circumstances where the child is to be adopted outside of the United Kingdom;

“foster” has the meaning given by regulation 2(1) of the Fostering of Children (Scotland) Regulations 1996⁽¹⁸⁾;

“foster carer” means a person approved by a local authority in terms of regulation 7 of the Fostering of Children (Scotland) Regulations 1996; and

“private foster carer” means a person required to give notice to a local authority by virtue of section 5(1) or (2) of the Foster Children (Scotland) Act 1984⁽¹⁹⁾.

Requirements to inform

3.—(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 7 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.

(3) In the case of questions put in the circumstances to which paragraph 8 applies, the person questioned is also to be informed at that time that the question relates only to spent convictions for a relevant offence.

Specified professions etc.

4.—(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 hold a licence, certificate or permit specified in sub-paragraph (3) or to 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 licences, certificates or permits referred to in paragraph (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⁽²⁰⁾; or

⁽¹⁷⁾ 1978 c. 28.

⁽¹⁸⁾ S.I. 1996/3263.

⁽¹⁹⁾ 1984 c 56.

⁽²⁰⁾ 1933 c. 12.

- (c) certificates issued by the police or a court of summary jurisdiction under any Order in Council made under section 43 of the Explosives Act 1875(21) as to the fitness of a person to keep explosives for private use.

Child minding

- 5. Any question asked in order to assess the suitability of a person to act as a child minder, where—
 - (a) the question relates to the person whose suitability is being assessed; or
 - (b) the person whose suitability is being assessed lives on the premises where the child minding would normally take place and the question relates to a person who lives in the same premises as that person or to a person who regularly works on them at a time when the child minding takes place.

Adoption and fostering

6.—(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—

- (a) adopt children in general or a child in particular;
- (b) foster children in general or a child in particular (whether as a foster carer or as a private fosterer); or
- (c) have a child or children placed with that person by virtue of section 70 of the Children (Scotland) Act 1995(22) or in terms of regulation 14 of the Fostering of Children (Scotland) Regulations 1996,

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

- (2) 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 living in the same household as the person whose suitability is being assessed, investigated, reviewed or confirmed.

National security

- 7.—(1) Any question asked by or on behalf of—
 - (a) the Crown, the United Kingdom Atomic Energy Authority, the Financial Services Authority or the Post Office Corporation, 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(23) (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 736(1) of the Companies Act 1985(24) of an authorised company; and

(21) 1875 c17.

(22) 1995 c36.

(23) 2000 c38.

(24) 1985 c. 6.

(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

8. 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

9. 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 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).

SCHEDULE 4

Articles 5, Schedule 1, paragraph 1 and
Schedule 3, paragraph 4

EXCEPTED PROFESSIONS, OFFICES, EMPLOYMENTS, AND OCCUPATIONS

Part 1

Professions

1. Medical practitioner.
2. Advocate, solicitor.
3. Accountant.
4. Dentist, dental hygienist, dental auxiliary.
5. Veterinary surgeon.
6. Nurse, midwife, health visitor.
7. Ophthalmic optician, dispensing optician.
8. Pharmaceutical chemist.
9. Registered teacher.

10. Any profession to which the Professions Supplementary to Medicine Act 1960(25) applies and which is undertaken following registration under that Act.

11. Registered osteopath.

12. Registered chiropractor.

13. Chartered psychologist.

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. Signing justices, and their clerks and assistants.

4. Clerks (including depute and assistant clerks) and officers of the High Court of Justiciary, the Court of Session and the district court, sheriff clerks (including sheriff clerks depute) and their clerks and assistants.

5. Precognition agents.

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

7. Any employment 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 prisons appointed under rules made under section 39 of the Prisons (Scotland) Act 1989(26) and members of visiting committees for remand centres and young offenders institutions appointed under section 19(3) of that Act.

8. Traffic wardens appointed under section 95 of the Road Traffic Regulation Act 1984(27) or section 9 of the Police (Scotland) Act 1967(28).

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 employment or work in a child care position.

(25) 1960 c. 66.

(26) 1989 c. 45.

(27) 1984 c. 27.

(28) 1967 c. 77.

12. Any person who provides a service, or who seeks to provide a service under Part 4 of the Adults with Incapacity (Scotland) Act 2000(29).
13. Any employment 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.
14. Any office or employment in the Serious Fraud Office.
15. Any office or employment in the National Crime Squad or the National Criminal Intelligence Service.
16. Any office or employment in Her Majesty's Customs and Excise.
17. Any employment which is concerned with the monitoring, for the purposes of child protection, of communications by means of the internet.
18. Any office or employment in the Scottish Social Services Council.
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(30) or section 9 of the Standards in Scotland's Schools etc. Act 2000(31).
20. The Principal Reporter or officers appointed under section 128(5) of the Local Government etc. (Scotland) Act 1994(32) to assist that officer.
21. Members of a panel established by virtue of section 101(1) of the Children (Scotland) Act 1995(33) (panels for curators ad litem, reporting officers and safeguarders).

Part 3

Occupations

1. Firearms dealer.
2. Any occupation in respect of which an application to the Gaming Board for Great Britain 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 Secretary of State is required by section 1 of the Abortion Act 1967.
4. Any occupation in respect of which the holder, as occupier of premises on which explosives are kept, is required by an Order in Council made under section 43 of the Explosives Act 1875 to obtain from the police or a court of summary jurisdiction a certificate as to his fitness to keep the explosives.
5. Taxi driver or private hire driver.

Part 4

Interpretation

In this Schedule—

(29) 2000 asp 4.
(30) 1980 c. 44.
(31) 2000 asp 6.
(32) 1994 c. 39.
(33) 1995 c. 36.

“actuary” means a member of the Institute of Actuaries or a member or student of the Faculty of Actuaries;

“accountant” means a member of—

- (a) the Association of Certified Accountants;
- (b) the Institute of Chartered Accountants in Scotland;
- (c) the Institute of Chartered Accountants in England and Wales;
- (d) the Chartered Institute of Public Finance Accountants; or
- (e) the Chartered Institute of Management Accountants;

“chartered psychologist” means a psychologist included in the British Psychological Society’s Register of Chartered Psychologists;

“child care position” has the meaning given by schedule 2 to the Protection of Children (Scotland) Act 2003(34);

“firearms dealer” has the meaning given by section 57(4) of the Firearms Act 1968(35);

“health services” means services provided under the National Health Service (Scotland) Act 1978(36) and similar services provided otherwise than under the National Health Service;

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

“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;

“prosecutors” has the meaning given by section 307 of the Criminal Procedure (Scotland) Act 1995(37)

“registered chiropractor” has the meaning given by section 43 of the Chiropractors Act 1994(38);

“registered foreign lawyer” and “registered European lawyer” have the meaning given by section 65 of the Solicitors (Scotland) Act 1980(39);

“registered osteopath” has the meaning given by section 41 of the Osteopaths Act 1993(40);

“registered teacher” means a teacher registered under the Teaching Council (Scotland) Act 1965(41);

“work” has the meaning given by section 16 of the Protection of Children (Scotland) Act 2003.

(34) 2003 asp 5.

(35) 1968 c. 27.

(36) 1978 c. 29.

(37) 1995 c. 46.

(38) 1994 c. 17.

(39) 1980 c. 46.

(40) 1993 c. 21.

(41) 1965 c. 19.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order consolidates the Orders (S.I.1975/1023, 1986/1249 and 1986/2268) that exclude and make exceptions to the provisions of section 4 (effect of rehabilitation) of the Rehabilitation of Offenders Act 1974. It excludes further proceedings and types of work from certain provisions within that section and updates the terms used to reflect recent Scottish legislation, including the Regulation of Care (Scotland) Act 2001 and the Protection of Children (Scotland) Act 2003.

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 put in the circumstances set out in Schedule 3 (article 4). The circumstances in Schedule 3 include the assessment of a person's suitability for a profession, office, employment or occupation set out in Schedule 4, or to hold a licence, certificate or permit set out in Schedule 5. Provision is made in Schedule 3 for other special circumstances that arise in the context of child minding, adoption and fostering, national security, financial services and the National Lottery Commission.

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 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 the Schedule to do anything specified in that Part are also excluded from section 4(3) (b) of the Act (article 5).

The existing Orders that exclude and make exceptions to the Act, and that extend to Scotland, are repealed (article 6).