

MANAGEMENT OF OFFENDERS (SCOTLAND) ACT 2019

EXPLANATORY NOTES

THE STRUCTURE AND A SUMMARY OF THE ACT

Part 2 – Disclosure of Convictions

Rules relating to disclosure

Section 19 - Disclosure periods for particular sentences

74. Section 19 further amends section 5 of the 1974 Act.
75. New section 5(2A) relates to the disclosure periods for the sentences set out in new Table A and signals that the columns of Table A provide different disclosure periods for those below the age of 18 at the date of their conviction and those 18 or over at the date of their conviction. Currently section 5(2) of the 1974 Act provides that those under the age of 18 at the date of their conviction have to disclose their conviction for half the period that applies to a person who was 18 or over. Although this age distinction is retained in Table A, some of the disclosure periods set out in the table for under 18's are not a simple 50% reduction of the period applicable to persons aged 18 or above. The distinction between under 18s and persons that age or over also applies to the sentences in Table B, by virtue of new subsection (2C).
76. New subsection (2B) restates the current rule that the disclosure period for a sentence starts from the date of the conviction for which the sentence was imposed.
77. New subsections (2D) and (2E) are included to prescribe a disclosure period for certain court orders. These are orders which are not mentioned in subsections (1) to (2C) of section 5, including Table A or Table B, or in sections 5C to 5J (as inserted by sections 22 to 29 of the Bill). They are imposed by a court as part of its dealing with a person for their conviction and they impose a disqualification, prohibition, requirement or restriction or, in some other way, regulate the person's behaviour. This broadly captures orders currently provided for under section 5(8) of the 1974 Act.
78. However, new subsections (2D) and (2E) will also include orders now available to the courts in Scotland which were not available when the 1974 Act was commenced. They will include those which are preventative in character as well as those which are penal. For example, this could include non-harassment orders imposed under section 234A of the Criminal Procedure (Scotland) Act 1995. The disclosure period for such orders which is set out in the new section (2E) begins on the date of conviction and ends when the order ceases to have effect. If the order is imposed indefinitely, then section (2E) (a)(ii) will apply with the effect that it is disclosed until revocation or until the person is deceased.
79. In the case of any other order the disclosure period will be two years from the date of conviction with this disclosure period being set out in the proposed new subsection (2E) (b) of the 1974 Act. This will therefore apply in a scenario where it is not possible to

*These notes relate to the Management of Offenders (Scotland)
Act 2019 (asp 14) which received Royal Assent on 30 July 2019*

determine the point at which the conditions of the order no longer require to be complied with.

80. New subsection (2F) replaces the current sections 5(9)(b), (5)(9)(c) and 5(9)(d) of the 1974 Act.
81. New subsection (2F)(a) and (b) replaces section 5(9)(b) and explains when consecutive or concurrent sentences are to be treated as a single term. This is not intended to change the effect of existing section 5(9)(b); rather it is to clarify the rules in relation to when a sentence can be treated as a single term.
82. Consecutive terms of imprisonment or detention as provided for in new section 5(2F) (a) can be treated as a single term whether they are imposed in the same or in different proceedings. Terms of imprisonment or detention which are wholly or partly concurrent can only be single termed if they are in respect of offences for which a person was convicted in the same proceedings.
83. The effect of sentences being treated as a single term is that the accumulation of sentences which are not, individually, excluded sentences, can mean that taken together, they would amount to an excluded sentence. For example, if a person was sentenced on four different occasions to a custodial sentence which exceeded 12 months, each one to run consecutively to the last, this could be treated as a single term and would result in a custodial sentence which exceeded 48 months, which would be an excluded sentence.
84. New section 5(2F)(d) retains the 'closest equivalent rule'. However this rule is amended by this Bill and now provides that a sentence imposed by a court outside Scotland shall be treated as a sentence mentioned in the relevant provision to which it most closely corresponds. This is because as a result of changes made to the 1974 Act there is no longer a single text for all sections of the 1974 Act which applies to the whole of Great Britain. Instead, in some places there are two sets of texts, one of which is the law in Scotland and the other, the law in England and Wales. It is therefore necessary to make provision for convictions not just from outwith Great Britain, but for convictions from England and Wales too.
85. New section 5(2G) recognises that whilst there are disposals which are no longer available to the courts, (for example because they were statutory disposals and have since been repealed), there may be people to whom these disposals have been given, prior to their repeal. To ensure that they still qualify for the protections of the 1974 Act, new section 5(2G) provides that any disposals which have been superseded by a newer disposal specified in an enactment will be covered by the rule that applies to the newer disposal.
86. Section 19(3) of the Bill amends the power contained in current section 5(11) of the 1974 Act. This power enables the Secretary of State, (and by virtue of the operation of the Scotland Act 1998, the Scottish Ministers in relation to devolved matters), to amend the periods set out in current section 5 of the 1974 Act and the age mentioned in subsection (2A)(a) of the 1974 Act. The amendments made to section 5(11) do not modify the power or what it can be used for; however, they are necessary as a consequence of the structural changes made to the 1974 Act which mean that the periods which can be amended using this power are no longer confined to section 5.
87. Section 19(4) inserts a new section 5(12) into the 1974 Act which includes definitions. It states that Table A means the table in section 5A, Table B means the table in section 5B and it defines what a custodial sentence and sentence of imprisonment means for the purposes of the section 5 of the 1974 Act as amended.