

MANAGEMENT OF OFFENDERS (SCOTLAND) ACT 2019

EXPLANATORY NOTES

THE STRUCTURE AND A SUMMARY OF THE ACT

Part 2 – Disclosure of Convictions

Regulation-making and other powers

Section 33 – Excluded sentences: applications for convictions to be treated as spent

144. Section 33(1) enables the Scottish Ministers to make regulations for or in connection with the purpose of allowing a person on whom a relevant sentence was imposed to apply to be treated as a protected person in respect of that conviction and for the conviction to be treated as spent. Subsection (6) provides that references to protected persons and convictions being treated as spent are to be construed in accordance with the 1974 Act.
145. Subsection (3) provides a definition of what a “relevant sentence” is. That is,
- a sentence mentioned in section 5(1)(b) or (da) of the 1974 Act, or
 - a sentence imposed by a court outwith Scotland which, by virtue of section 5(2F) (d) of the 1974 Act, falls to be treated as such a sentence.
146. Subsection (4) provides the regulations must contain provision on certain matters including: that applications are to be made to a specified reviewer; that the application is to be determined by the specified reviewer; and that those subject to sex offender notification requirements cannot make an application. Under subsection (4), regulations must contain provision that an application cannot be made until the expiry of the “appropriate period”. Subsection (5)(a) defines the appropriate period as, 6 years plus the length of sentence for convictions obtained when aged 18 or older and 3 years plus the length of sentence for convictions obtained when under the age of 18 on date of conviction. Regulations made under subsection (1) must also contain provision setting, or for ascertaining, the “relevant date”. As defined by subsection (5)(b), the “relevant date” is the date from which the applicant’s conviction is to be treated as spent and on which the applicant is to be treated as a protected person in respect of that conviction.