

# Management of Offenders (Scotland) Act 2019

## 2019 asp 14

### PART 2

#### DISCLOSURE OF CONVICTIONS

PROSPECTIVE

#### *Rules relating to disclosure*

#### **17 Effect of expiry of disclosure periods**

- (1) The Rehabilitation of Offenders Act 1974 (“the 1974 Act”) is amended as follows.
- (2) In section 1, for subsection (1) there is substituted—
- “(1) Subsections (1A) and (1B) apply where—
- (a) an individual has at any time been convicted of any offence, and
  - (b) an excluded sentence was not imposed on the individual in respect of the conviction.
- (1A) After the expiry of the disclosure period applicable to the conviction in accordance with section 6 (including any extension under subsection (4) of that section)—
- (a) the individual is, for the purposes of this Act, to be treated as a protected person in respect of the conviction, and
  - (b) the conviction is, for the purposes of this Act, to be treated as spent.
- (1B) But where the disclosure period so applicable expired before commencement of this Act, the individual and conviction are to be treated as mentioned in subsection (1A) from the date of commencement of this Act.
- (1C) Subsections (1) to (1B) are subject to subsections (2), (5) and (6).”

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## **18 Excluded sentences: convictions prevented from becoming spent**

- (1) The 1974 Act is amended as follows.
- (2) In section 5, in subsection (1)—
  - (a) in paragraph (b)—
    - (i) the words “, youth custody” are repealed,
    - (ii) for “thirty” there is substituted “ 48 ”,
  - (b) in paragraph (d)—
    - (i) the words from “under” in the first place where it occurs to “or” in the third place where it occurs are repealed,
    - (ii) for the words “1975” in the first place where they occur there is substituted “ 1995 ”,
    - (iii) the words “section 91 of the said Act of 2000 or” are repealed,
    - (iv) the words from “or under section 206” to the end are repealed,
  - (c) after paragraph (d) there is inserted—
    - “(da) a sentence of detention for a term exceeding 48 months passed under section 207 (detention of young offenders) or 208 (detention of children convicted on indictment) of the Criminal Procedure (Scotland) Act 1995;”.

## **19 Disclosure periods for particular sentences**

- (1) The 1974 Act is amended as follows.
- (2) In section 5, for subsections (2) to (10) there is substituted—
  - “(2A) For the purposes of this Act, the disclosure period applicable to a sentence specified in the first column of Table A is—
    - (a) where the sentence was imposed on a person who was 18 years of age or older at the date of the conviction in respect of which the sentence was imposed, the period specified in the second column of Table A in relation to that sentence,
    - (b) where the sentence was imposed on a person who was under 18 years of age at the date of the conviction in respect of which the sentence was imposed, the period specified in the third column of Table A in relation to that sentence.
  - (2B) For the purposes of subsection (2A), the disclosure period applicable to a sentence is to be reckoned from the date of the conviction in respect of which the sentence was imposed.
  - (2C) Subsection (2A) applies to Table B as it applies to Table A.
  - (2D) This subsection applies to a sentence which is—
    - (a) not dealt with in—
      - (i) subsections (1) to (2C) (including in Table A or Table B), or
      - (ii) any of sections 5C to 5J,
    - (b) imposed on a person in respect of a conviction, and
    - (c) given by way of an order—
      - (i) imposing on the person any disqualification, disability, prohibition, requirement or restriction, or

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(ii) which is otherwise intended to regulate the person's behaviour.

(2E) The disclosure period applicable to a sentence to which subsection (2D) applies is—

(a) in the case of an order—

(i) containing provision enabling the date on which the disqualification, disability, prohibition, requirement, restriction or regulation (as the case may be) ceases or ceased to have effect to be determined, or

(ii) containing provision for the disqualification, disability, prohibition, requirement, restriction or regulation (as the case may be) to have effect for an indefinite period (including the lifetime of a person) or without limit of time,

the period beginning with the date of the conviction and ending on the date on which the disqualification, disability, prohibition, requirement, restriction or regulation (as the case may be) ceases or ceased to have effect,

(b) in the case of any other order, a period of 2 years beginning with the date of the conviction.

(2F) For the purposes of this section—

(a) consecutive terms of—

(i) imprisonment or other custodial sentences, or

(ii) detention under section 209 of the Armed Forces Act 2006, are to be treated as a single term,

(b) terms of imprisonment, or of detention, which are—

(i) wholly or partly concurrent, and

(ii) imposed in respect of offences of which a person was convicted in the same proceedings,

are to be treated as a single term,

(c) no account is to be taken of any subsequent variation, made by a court in dealing with a person in respect of a suspended sentence of imprisonment, of the term originally imposed, and

(d) a sentence imposed by a court outwith Scotland is to be treated as the sentence mentioned—

(i) in this section,

(ii) in Table A or Table B, or

(iii) in any of sections 5C to 5J,

to which it most closely corresponds.

(2G) References in this section, Table A, sections 5D to 5H and section 5J to a sentence provided for in a particular enactment include references to any sentence of a kind superseded (whether directly or indirectly) by such a sentence.”.

(3) In subsection (11)—

(a) in paragraph (a), for “(8) above” there is substituted “ (2E), in Table A or Table B or in any of sections 5C, 5D, 5H and 5I; ”,

(b) in paragraph (b), for “(2)(a) above” there is substituted “ (2A) ”.

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(4) After subsection (11) there is inserted—

“(12) In this section—

“Table A” means the table in section 5A,

“Table B” means the table in section 5B,

“custodial sentence” means—

(a) a sentence of imprisonment,

(b) a sentence of detention under section 44, 207 or 208 of the Criminal Procedure (Scotland) Act 1995,

(c) a sentence of Borstal training,

(d) a sentence of corrective training,

“sentence of imprisonment” includes a sentence of penal servitude (and references to terms of imprisonment are to be read accordingly).”.

## 20 Table A – disclosure periods: ordinary cases

(1) The 1974 Act is amended as follows.

(2) After section 5 there is inserted—

### “5A Table A – disclosure periods: ordinary cases

(1) This is Table A as referred to in section 5(2A)—

TABLE A

#### DISCLOSURE PERIODS: ORDINARY CASES

<i>Sentence</i>	<i>Disclosure period – aged 18 or over</i>	<i>Disclosure period – aged under 18</i>
A custodial sentence not exceeding 12 months	The term of the sentence plus 2 years	The term of the sentence plus 1 year
A custodial sentence exceeding 12 months but not exceeding 30 months	The term of the sentence plus 4 years	The term of the sentence plus 2 years
A custodial sentence exceeding 30 months but not exceeding 48 months	The term of the sentence plus 6 years	The term of the sentence plus 3 years
A fine	12 months	6 months
A compensation order under section 249 of the Criminal Procedure (Scotland) Act 1995	12 months	6 months
An order for endorsement made by a court in relation to an offence mentioned in schedule 2 of the Road Traffic Offenders Act 1988	5 years	2½ years

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Any sentence—	12 months	6 months
(a) not mentioned above in this Table or in Table B, or		
(b) other than one to which section 5(2D), or any of sections 5C to 5J, applies		

(2) In Table A, “custodial sentence” and “Table B” have the same meanings as given by section 5(12).”.

## **21 Table B – disclosure periods: service sentences**

- (1) The 1974 Act is amended as follows.
- (2) After section 5A (inserted by section 20) there is inserted—

### **“5B Table B – disclosure periods: service disciplinary sentences**

This is Table B as referred to in section 5(2C)—

## **22 Disclosure period: caution for good behaviour**

- (1) The 1974 Act is amended as follows.
- (2) After section 5B (inserted by section 21) there is inserted—

### **“5C Disclosure period: caution for good behaviour**

- (1) Subsection (2) applies where, in respect of a conviction, a person was ordained to find caution for good behaviour in respect of a period (“the caution period”).
- (2) The disclosure period applicable to the sentence is—
  - (a) where the person was 18 years of age or older at the date of the conviction, whichever is the longer of—
    - (i) 6 months from the date of the conviction,
    - (ii) the length of the caution period,
  - (b) where the person was under 18 years of age at the date of the conviction, whichever is the longer of—
    - (i) 3 months from the date of the conviction,
    - (ii) the length of the caution period.”.

## **23 Disclosure period: particular court orders**

- (1) The 1974 Act is amended as follows.
- (2) After section 5C (inserted by section 22) there is inserted—

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#### **“5D Disclosure period: particular court orders**

- (1) Where, in respect of a conviction, an order listed in subsection (2) was imposed on a person, the disclosure period applicable to the sentence is—
  - (a) where the person was 18 years of age or older at the date of the conviction, whichever is the longer of—
    - (i) one year from the date of the conviction,
    - (ii) a period beginning with that date and ending when the order ceases to have effect,
  - (b) where the person was under 18 years of age at the date of the conviction, whichever is the longer of—
    - (i) six months from the date of the conviction,
    - (ii) a period beginning with that date and ending when the order ceases to have effect.
- (2) The orders are—
  - (a) a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995,
  - (b) a drug treatment and testing order under section 234B of that Act,
  - (c) a restriction of liberty order under section 245A of that Act.
- (3) In subsection (1)(a)(ii) and (b)(ii), the reference to when the order ceases to have effect is—
  - (a) in the case of a community payback order, a reference to when the requirement imposed by the order ceases or ceased to have effect or otherwise requires or required to be complied with,
  - (b) in the case of a drug treatment and testing order or restriction of liberty order, a reference to when the order ceases or ceased to have effect.”.

#### **24 Disclosure period: adjournment or deferral**

- (1) The 1974 Act is amended as follows.
- (2) After section 5D (inserted by section 23) there is inserted—

#### **“5E Disclosure period: adjournment or deferral**

- (1) Where, after convicting a person, a court adjourns a case under section 201 of the Criminal Procedure (Scotland) Act 1995 or defers sentence under section 202 of that Act, the adjournment or deferral is to be treated as a sentence for the purposes of this Act.
- (2) The disclosure period applicable to a sentence mentioned in subsection (1) is a period beginning with the date of the conviction and ending on the date a relevant sentence in respect of the conviction is imposed on the person.
- (3) In subsection (2), a “relevant sentence” is any sentence other than an adjournment or deferral (or, where applicable, a further adjournment or deferral) imposed on the person in respect of the conviction.”.

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## **25 Disclosure period: mental health orders**

- (1) The 1974 Act is amended as follows.
- (2) After section 5E (inserted by section 24) there is inserted—

### **“5F Disclosure period for certain mental health orders**

- (1) Subsection (2) applies where, further to the making of a compulsion order as mentioned in subsection (1) of section 59 of the Criminal Procedure (Scotland) Act 1995 in relation to a person, a restriction order under that section is made in respect of the person.
- (2) The disclosure period applicable to the restriction order is a period beginning with the date of the person's conviction in respect of which the compulsion order was made and ending on the date the restriction order ceases or ceased to have effect.
- (3) Subsection (4) applies where, by virtue of subsection (1)(b) of section 57 of the Criminal Procedure (Scotland) Act 1995—
  - (a) a compulsion order is made under subsection (2)(a) of that section in relation to a person authorising the person's detention in a hospital, and
  - (b) a restriction order under subsection (2)(b) of that section is, in addition to the compulsion order, made in respect of the person.
- (4) The disclosure period applicable to the restriction order is a period beginning with the date of the person's conviction in respect of which the compulsion order was made and ending on the date the restriction order ceases or ceased to have effect.
- (5) Where, in respect of a conviction, an order listed in subsection (6) was made in relation to a person, the disclosure period applicable to the sentence is a period beginning with the date of the conviction and ending on the date a relevant sentence in respect of the conviction is imposed on the person.
- (6) The orders are—
  - (a) an assessment order under section 52D or 52E of the Criminal Procedure (Scotland) Act 1995,
  - (b) a treatment order under section 52M or 52N of that Act, or
  - (c) an interim compulsion order—
    - (i) under section 53 of that Act, or
    - (ii) if arising by virtue of subsection (1)(b) of section 57 of that Act, under subsection (2)(bb) of that section.
- (7) In subsection (5), a “relevant sentence” is any sentence other than an order mentioned in subsection (6) (or, where applicable, a further such order).”.

## **26 Disclosure period: compulsion orders**

- (1) The 1974 Act is amended as follows.
- (2) After section 5F (inserted by section 25) there is inserted—

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### **“5G Disclosure period: compulsion orders**

- (1) The disclosure period applicable to a compulsion order—
  - (a) if arising by virtue of subsection (1)(b) of section 57 of the Criminal Procedure (Scotland) Act 1995, under subsection (2)(a) of that section, or
  - (b) under section 57A of that Act,
 is a period beginning with the date of the conviction in respect of which the order was made and ending on the date the order ceases or ceased to have effect.
- (2) Subsection (1) is subject to sections 164A and 167A of the Mental Health (Care and Treatment) (Scotland) Act 2003.
- (3) Where the Mental Health Tribunal for Scotland makes a determination under section 167A(3) of that Act in relation to a person—
  - (a) the person is, with effect from the date on which the disclosure period applicable to the compulsion order ends by virtue of that section, to be treated for the purposes of this Act as a protected person, and
  - (b) the person's conviction in respect of which the compulsion order was made is for those purposes to be treated as spent.
- (4) Subsection (3) is subject to section 6(2).”.

- (3) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (4) After section 164 there is inserted—

### **“164A Application to end disclosure period for compulsion order**

- (1) This section applies where a patient is subject to a relevant compulsion order.
- (2) Either of the persons mentioned in subsection (3) may make an application under this section to the Tribunal for a determination under section 167A that the disclosure period applicable to the compulsion order is to come to an end.
- (3) The persons referred to in subsection (2) are—
  - (a) the patient, and
  - (b) the patient's named person.
- (4) An application under this section may not be made until the expiry of the period of 12 months beginning with the day on which the order is made (or is deemed under section 198(2) to be made).
- (5) Where an application under this section relating to a compulsion order has already been refused by the Tribunal, a further such application relating to the order may not be made until the expiry of the period of 12 months beginning with the date of such refusal (or, where applicable, the date of the most recent such refusal).
- (6) An application under this section must be accompanied by such documents as may be prescribed by regulations.”.

- (5) After section 167 there is inserted—



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### **“167A Duties of Tribunal on application under section 164A**

- (1) This section applies where an application is made under section 164A in respect of a patient.
- (2) If the Tribunal is satisfied that, without the provision of medical treatment of the kind mentioned in section 139(4)(b) to the patient, there would be a significant risk to the safety of other persons, it must refuse the application.
- (3) If the Tribunal is not satisfied as mentioned in subsection (2), it must determine that the disclosure period applicable to the compulsion order ends with immediate effect.
- (4) Before refusing an application under subsection (2) or making a determination under subsection (3), the Tribunal must afford the persons mentioned in subsection (5) the opportunity—
  - (a) of making representations (whether orally or in writing), and
  - (b) of leading, or producing, evidence.
- (5) Those persons are—
  - (a) the patient,
  - (b) the patient's named person,
  - (c) any guardian of the patient,
  - (d) any welfare attorney of the patient,
  - (e) the mental health officer,
  - (f) the patient's responsible medical officer,
  - (g) the patient's primary carer,
  - (h) any curator ad litem appointed in respect of the patient by the Tribunal, and
  - (i) any other person appearing to the Tribunal to have an interest in the application.
- (6) In this section and section 164A—
  - (a) “disclosure period”, in relation to a compulsion order, is to be construed in accordance with the Rehabilitation of Offenders Act 1974,
  - (b) references to the disclosure period applicable to a compulsion order are to be construed in accordance with section 5G(1) of that Act.

### **167B Duty to notify outcome of applications under section 164A**

- (1) The Scottish Ministers may require the Tribunal to provide the information mentioned in subsection (3) in respect of a person.
- (2) Where a requirement is made under subsection (1), the Tribunal must, before the expiry of the period of 15 working days beginning with the day on which the requirement is made, provide the Scottish Ministers with the information.
- (3) The information is whether a refusal under subsection (2) of section 167A has been given, or a determination under subsection (3) of that section has been made, in relation to the person to whom the request relates.

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(4) In subsection (2), “working day” has the meaning given by section 47(8).”.

(6) In section 257A (ability to act if no named person), in subsection (3), after “164(2)” there is inserted “ 164A, ”.

## **27 Disclosure period: juvenile offenders**

(1) The 1974 Act is amended as follows.

(2) After section 5G (inserted by section 26) there is inserted—

### **“5H Disclosure period: orders relating to juvenile offenders**

(1) Where, in respect of a conviction, an order mentioned in subsection (2) was imposed on a person, the disclosure period applicable to the sentence is 1 year from the date of the conviction.

(2) The order is an order under section 61 of the Children and Young Persons (Scotland) Act 1937—

- (a) to send the person to an approved school, or
- (b) to commit the person to the care of a fit person.”.

## **28 Disclosure period: service discipline**

(1) The 1974 Act is amended as follows.

(2) After section 5H (inserted by section 27) there is inserted—

### **“5I Disclosure period: service disciplinary orders**

(1) Where, in respect of a conviction, a service community order, or an overseas community order, under the Armed Forces Act 2006 was made, the disclosure period applicable to the sentence is—

- (a) where the person was 18 years of age or older at the date of the conviction, 5 years from the date of the conviction,
- (b) where the person was under 18 years of age at the date of the conviction, whichever is the longer of—
  - (i) 2½ years from the date of the conviction,
  - (ii) a period beginning with that date and ending when the order in question ceases or ceased to have effect.

(2) Where, in respect of a conviction, a community supervision order under schedule 5A of the Army Act 1955 or the Air Force Act 1955 or under schedule 4A of the Naval Discipline Act 1957 was imposed, the disclosure period applicable to the sentence is whichever is the longer of—

- (a) 1 year from the date of the conviction,
- (b) a period beginning with that date and ending when the order ceases or ceased to have effect.

(3) Where, in respect of a conviction, an order under section 211 of the Armed Forces Act 2006 was made in respect of a person, the disclosure period applicable to the sentence is—

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- (a) where the person was 15 years of age or older at the date of the conviction—
  - (i) 5 years if the order was for a term exceeding 6 months,
  - (ii) 3½ years if the order was for a term of 6 months or less,
- (b) where the person was under 15 years of age at the date of the conviction, a period beginning with that date and ending 1 year after the date on which the order ceases to have effect.”.

## **29 Sentences to which no disclosure period applies**

- (1) The 1974 Act is amended as follows.
- (2) After section 5I (inserted by section 28) there is inserted—

### **“5J Sentences to which no disclosure period applies**

- (1) There is no disclosure period applicable to—
  - (a) an order discharging a person absolutely for an offence,
  - (b) the dismissal of a person with an admonition,
  - (c) a guardianship order—
    - (i) if arising by virtue of subsection (1)(b) of section 57 of the Criminal Procedure (Scotland) Act 1995, under subsection (2)(c) of that section, or
    - (ii) under section 58(1A) or (3) of the Criminal Procedure (Scotland) Act 1995,
  - (d) the discharge by a children's hearing under section 69(1)(b) and (12) of the Children (Scotland) Act 1995 of the referral of a child's case,
  - (e) a supervision requirement under any provision of that Act,
  - (f) the discharge by a children's hearing or, as the case may be, by the sheriff of the referral of a child's case to a children's hearing under section 91(3)(b), 93(2)(b) or 119(3)(b) of the Children's Hearings (Scotland) Act 2011, or
  - (g) a compulsory supervision order under any provision of that Act.
- (2) In relation to any of the cases mentioned in subsection (1), references in this Act to any disclosure period are to be read as if the period of time were nil.”.

## **30 Disclosure periods applicable to convictions**

- (1) The 1974 Act is amended as follows.
- (2) In section 6, for the words “section 5” where occurring in each of subsections (1) and (2) there is substituted “ sections 5 to 5I ”.
- (3) Subsection (3) of section 6 is repealed.
- (4) After subsection (3) of section 6 there is inserted—
  - “(3ZA) Subsection (3ZB) applies where—
    - (a) an order listed in subsection (3ZC) is imposed on a person in respect of a conviction for an offence,

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- (b) after the expiry of the disclosure period applicable to the conviction in accordance with subsection (1) or (2) (“the original disclosure period”), a further sentence for the offence is imposed on the person in consequence of breaching the order, and
- (c) by virtue of the further sentence, the disclosure period applicable to the conviction in accordance with subsection (2) (“the new disclosure period”) ends later than the original disclosure period.

(3ZB) Despite the expiry of the original disclosure period, the person is not to be treated for the purposes of this Act as a protected person in respect of the conviction until the expiry of the new disclosure period (and accordingly the conviction is not to be treated as spent until that period has expired).

(3ZC) The list is—

- (a) an order for conditional discharge,
- (b) a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995,
- (c) a drug treatment and testing order under section 234B of that Act,
- (d) a restriction of liberty order under section 245A of that Act.

(3ZD) The Scottish Ministers may by regulations modify the list in subsection (3ZC) by—

- (a) amending an entry,
- (b) removing an entry,
- (c) adding an entry.

(3ZE) Regulations under subsection (3ZD) are subject to the affirmative procedure.”.

(5) For subsection (4) of section 6 there is substituted—

“(4) Where—

- (a) during the disclosure period applicable to a conviction, the person convicted is convicted of a further offence, and
- (b) the disclosure periods applicable to the two convictions under this section would end on different dates,

the disclosure period which would end earlier is extended so as to end at the same time as the other disclosure period (but this rule is subject to subsections (4A) to (5B)).”.

(6) After subsection (4) of section 6 there is inserted—

“(4A) Subsection (4B) applies where—

- (a) in relation to the conviction of a person (“the first conviction”) the court adjourns the case, or defers sentence,
- (b) during the disclosure period applicable to the adjournment or deferral, the person is convicted of a further offence,
- (c) a relevant sentence is imposed on the person in respect of the first conviction, and
- (d) there is, by virtue of section 5J, no disclosure period applicable to that sentence.

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(4B) Section 4 does not operate so as to extend the disclosure period applicable to the first conviction.

(4C) In subsection (4A)—

- (a) references to adjournments and deferrals are to those matters as mentioned in section 5E(1),
- (b) a “relevant sentence” is any sentence other than an adjournment or deferral (as mentioned in section 5E(1)) or, where applicable, a further such adjournment or deferral.”.

(7) For subsection (5) of section 6 there is substituted—

“(5) A disclosure period is not extended in accordance with subsection (4) so as to end at the same time as another disclosure period if—

- (a) the other disclosure period is applicable in accordance with section 5(2E) to an order—
  - (i) imposing on a person any disqualification, disability, prohibition, requirement or restriction, or
  - (ii) which is otherwise intended to regulate behaviour, and
- (b) that order is the only sentence imposed in respect of the conviction to which the other disclosure period is applicable.

(5A) Subsection (5B) applies where—

- (a) more than one sentence is imposed in respect of a conviction (whether or not in the same proceedings),
- (b) none of the sentences is an excluded sentence, and
- (c) one of the sentences is an order mentioned in subsection (5) in respect of which the disclosure period is applicable in accordance with section 5(2E).

(5B) In determining whether the disclosure period applicable to another conviction is, in accordance with subsection (4), extended by virtue of the disclosure period applicable to the conviction mentioned in subsection (5A)(a), the disclosure period applicable to the order is to be disregarded.”.

(8) In subsection (6) of section 6—

- (a) for the words “For the purposes of subsection (4)(a) above there shall be disregarded—” there is substituted “ In subsection (4)(a), the reference to a conviction for a further offence does not include— ”,
- (b) for paragraph (b) there is substituted—
  - “(b) any conviction by or before a criminal court in summary proceedings;”,
- (c) in paragraph (c)—
  - (i) for the words “Great Britain” there is substituted “ Scotland ”,
  - (ii) for the words “any part of Great Britain” there is substituted “ Scotland ”,
  - (iii) for the words “that part of Great Britain” there is substituted “ Scotland ”.

*Status: This version of this part contains provisions that are prospective.*

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### Regulation-making and other powers

PROSPECTIVE

#### 31 Powers as to alternatives to prosecution

- (1) The 1974 Act is amended as follows.
- (2) After section 8B there is inserted—

##### “8C Modification of section 8B and schedule 3: Scotland

- (1) The Scottish Ministers may by regulations modify the list of circumstances in section 8B(1) in which a person is given an alternative to prosecution by—
  - (a) amending an entry,
  - (b) removing an entry,
  - (c) adding an entry.
- (2) The Scottish Ministers may by regulations modify paragraph 1 of schedule 3 by—
  - (a) amending provision specifying when an alternative to prosecution becomes spent,
  - (b) removing provision specifying when an alternative to prosecution becomes spent,
  - (c) adding provision specifying when an alternative to prosecution becomes spent.
- (3) Regulations under this section—
  - (a) may make different provision for different purposes,
  - (b) are subject to the affirmative procedure.”.

#### 32 How particular powers are exercisable

- (1) The 1974 Act is amended as follows.
- (2) After section 10 there is inserted—

##### “10A Order-making powers: Scottish Ministers

- (1) Any power exercisable by the Scottish Ministers to make an order under this Act includes power—
  - (a) to make different provision for different purposes,
  - (b) to make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (2) To the extent that the power to make an order under section 5(11) is exercisable by the Scottish Ministers, that power includes power exercisable by the Scottish Ministers to make consequential provision modifying any enactment (including this Act).”.

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### Commencement Information

**II** S. 32 in force at 21.12.2019 by S.S.I. 2019/413, reg. 2(a)

PROSPECTIVE

### *Applications for certain convictions to be treated as spent*

#### **33 Excluded sentences: applications for convictions to be treated as spent**

- (1) The Scottish Ministers may make regulations for or in connection with the purpose mentioned in subsection (2).
- (2) The purpose is allowing a person on whom a relevant sentence was imposed in respect of a conviction to apply (both)—
  - (a) to be treated as a protected person in respect of the conviction for the purposes of the 1974 Act, and
  - (b) for the conviction to be treated as spent for the purposes of the 1974 Act.
- (3) A relevant sentence is—
  - (a) a sentence mentioned in section 5(1)(b) or (da) of the 1974 Act, or
  - (b) 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.
- (4) The regulations must contain provision—
  - (a) for—
    - (i) an application to be made to a specified reviewer, and
    - (ii) the application to be determined by the specified reviewer,
  - (b) excluding someone who is, for whatever reason, subject to notification requirements under Part 2 of the Sexual Offences Act 2003 from making an application,
  - (c) preventing an application from being made until the expiry of the appropriate period, and
  - (d) setting, or for ascertaining, the relevant date.
- (5) In subsection (4)—
  - (a) in paragraph (c), “the appropriate period” is—
    - (i) in the case of an applicant who was 18 years of age or older on the date of the conviction to which the application relates, the term of the sentence imposed in respect of the conviction plus 6 years,
    - (ii) in the case of an applicant who was under 18 years of age on the date of the conviction to which the application relates, the term of the sentence imposed in respect of the conviction plus 3 years,
  - (b) in paragraph (d), “the relevant date” is the date from which (both)—
    - (i) an applicant's conviction is to be treated as spent, and
    - (ii) the applicant is to be treated as a protected person.
- (6) In this section and section 34, the references to—
  - (a) a protected person, or

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- (b) a conviction being treated as spent,  
are to be construed in accordance with the 1974 Act.

### **34 Regulations under section 33: general details**

- (1) Regulations under section 33 may contain provision about (in particular)—
  - (a) the process for applications, including as to—
    - (i) the way of applying,
    - (ii) information to be supplied by applicants,
  - (b) eligibility to make applications, including exceptions and exclusions,
  - (c) fees payable in connection with applications,
  - (d) the functions of the specified reviewer concerning applications, including as to—
    - (i) giving notifications,
    - (ii) obtaining information,
  - (e) the procedure for determining applications, including matters—
    - (i) to which the specified reviewer is to have regard,
    - (ii) which the specified reviewer is to take particularly into account,
  - (f) the types of determinations to be available in respect of applications, and the functions of the specified reviewer concerning determinations,
  - (g) the issuing of, and making of requests for, reasons for determinations,
  - (h) notifications of determinations,
  - (i) time limits in relation to—
    - (i) notifications of applications and determinations,
    - (ii) supplying information in connection with applications,
  - (j) second or subsequent applications relating to the same conviction, including setting a period that must expire before such applications may be made,
  - (k) reconsideration, or consideration afresh, of determinations,
  - (l) reports to be produced by the specified reviewer, or guidance to be given to the reviewer by the Scottish Ministers, on the exercise of the reviewer's functions concerning applications and determinations,
  - (m) appeals against determinations, including—
    - (i) entitlement to appeal,
    - (ii) grounds, time limits and procedure for appeal,
  - (n) the legal effect of determinations, arrived at initially or on appeal, including the result that (both)—
    - (i) a person is to be treated as a protected person, and
    - (ii) a conviction is to be treated as spent.
- (2) In relation to a conviction that is, by virtue of the operation of regulations made under section 33, to be treated as a spent conviction, provision which may be made about the legal effect of determinations extends to (any of)—
  - (a) provision that the conviction is to be, or is not to be, treated as a protected conviction within the meaning of—
    - (i) section 126ZA of the Police Act 1997,
    - (ii) section 57A of the Protection of Vulnerable Groups (Scotland) Act 2007, or



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- (iii) article 2A of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (S.S.I. 2013/50),
  - (b) provision as to the time from which the conviction is to be, or before which the conviction is not to be, treated as a protected conviction, and
  - (c) provision that the conviction is to be treated as if it were a conviction for an offence of a particular kind prescribed in the provision.
- (3) In this section and section 33, “the specified reviewer” means whoever is specified as such in regulations made under section 33.

### **35 Regulations under section 33: appropriate period**

The Scottish Ministers may by regulations modify section 33(5)(a) by amending—

- (a) an age stated in sub-paragraph (i) or (ii),
- (b) a number of years stated in sub-paragraph (i) or (ii).

### **36 Regulations under sections 33 and 35: procedure etc.**

- (1) Regulations under section 33 may—
- (a) modify any enactment (including the 1974 Act),
  - (b) make different provision for different purposes.
- (2) Regulations under sections 33 and 35 are subject to the affirmative procedure.

### *Transitional, schedule and definition*

PROSPECTIVE

### **37 Transitional provision**

- (1) Any amendment of the 1974 Act by a provision of this Part referring in any way to a sentence applies in relation to a sentence imposed in respect of a conviction before the date on which the provision comes into force (as well as in respect of a conviction on or after that date).
- (2) Any amendment of the 1974 Act by a provision of this Part referring to a conviction applies in relation to a conviction before the date on which the provision comes into force (as well as in relation to a conviction on or after that date).
- (3) Subsection (2) applies to the court's convicting of a person as it applies to a conviction.
- (4) The 1974 Act applies as if the amendments mentioned in subsections (1) and (2) had always had effect (but see the remaining provisions of this section).
- (5) Subsection (6) applies where, by virtue of subsection (4), a person—
- (a) would have been treated as a rehabilitated person for the purposes of the 1974 Act, and
  - (b) would have been so treated by virtue of an amendment of that Act made by a provision mentioned in subsection (1) or (2) before the date on which the provision comes into force.

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- (6) The person is, subject to any order made under section 4(4) or 7(4) of the 1974 Act, to be treated on and after that date as a protected person (within the meaning of that Act as amended by this Act).
- (7) Subsection (8) applies where, by virtue of subsection (4), a conviction—
- (a) would have been treated as spent for the purposes of the 1974 Act, and
  - (b) would have been so treated by virtue of an amendment of that Act made by a provision mentioned in subsection (1) or (2) before the date on which the provision comes into force.
- (8) The conviction is, subject to any order made under section 4(4) or 7(4), to be treated on and after that date as a spent conviction.
- (9) In subsections (5)(b) and (7)(b), the references to subsection (2) include references to that subsection as applied in subsection (3).

PROSPECTIVE

### 38 **Remainder of amendments**

Schedule 2 makes minor and consequential amendments to the 1974 Act (including changes to certain terminology).

### 39 **Meaning of the 1974 Act**

In this Part, “the 1974 Act” means the Rehabilitation of Offenders Act 1974.

#### **Commencement Information**

**I2** [S. 39](#) in force at 21.12.2019 by [S.S.I. 2019/413](#), [reg. 2\(b\)](#)

**Status:**

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**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 3(2)(g)(h) inserted by [S.S.I. 2020/309 reg. 2](#)