

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

2016 No.

REHABILITATION OF OFFENDERS

The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment (No. 2) Order 2016

Made - - - - 2016
Coming into force - - 1st July 2016

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 and commencement

1. This Order may be cited as the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment (No. 2) Order 2016 and comes into force on 1st July 2016.

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⁽³⁾ is amended in accordance with articles 3 and 4.

Amendment of article 4 and Schedule 3 (exclusion of section 4(2)(a) and (b) of the Rehabilitation of Offenders Act 1974 in relation to specific questions)

3.—(1) In article 4(3)(a)(i)⁽⁴⁾, after “paragraph 3(3)(a)” insert “or (aa)”.

(1) 1974 c.53. The functions of the Secretary of State, in or as regards Scotland, 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) S.S.I. 2013/50; relevant amending instruments are S.I. 2014/1638, S.I. 2014/1942, S.S.I. 2015/329 and S.I. 2015/968.

(4) Article 4(3) was inserted by article 4 of S.S.I. 2015/329.

(2) After paragraph 3(3)(a) of Schedule 3, insert—

- “(aa) air weapon certificates granted or renewed under section 5 of the Air Weapons and Licensing (Scotland) Act 2015⁽⁵⁾, and permits granted under section 12, 13 or 17 of that Act;”.

Amendment of Schedule 1 (exclusion of section 4(1) of the Rehabilitation of Offenders Act 1974 in relation to specific proceedings)

4. After paragraph 5 of Schedule 1, insert—

“**5A.** Proceedings under Part 1 of the Air Weapons and Licensing (Scotland) Act 2015 in respect of—

- (a) the grant or renewal of an air weapon certificate under section 5 of that Act;
- (b) the variation of an air weapon certificate under section 10 of that Act;
- (c) the revocation of an air weapon certificate under section 11 of that Act;
- (d) the grant of a permit under section 12, 13 or 17 of that Act; or
- (e) the variation or revocation of a permit under section 16 of that Act.”.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

(5) 2015 asp 10.

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”). The 2013 Order disapplies certain provisions of the Rehabilitation of Offenders Act 1974 (“the 1974 Act”) which would otherwise prevent a person from having to disclose a spent conviction and protect that person from being prejudiced by that conviction or any failure to disclose it.

Article 3 (as read with article 2) of the Order amends the 2013 Order to exclude the application of section 4(2) of the 1974 Act in relation to specific questions. Section 4(2) concerns questions about previous convictions asked otherwise than in proceedings before a judicial authority (as defined by section 4(6) of the 1974 Act). It provides that a person is entitled to treat such a question as if it does not relate to spent convictions, and must not be prejudiced by a failure to disclose a spent conviction in response to such a question. Article 4(1) of the 2013 Order disapplies that protection (subject to certain qualifications) in relation to questions put in the various circumstances specified in Schedule 3 to that Order. Schedule 3 to the 2013 Order includes any question asked to assess a person’s suitability to hold a firearm certificate, shot gun certificate or specified permit issued under the Firearms Act 1968 (c.27) (“the 1968 Act”). Article 3 of this Order amends Schedule 3 so as to add any question asked to assess a person’s suitability to hold an air weapon certificate or a specified permit granted under Part 1 of the Air Weapons and Licensing (Scotland) Act 2015 (“the 2015 Act”). It also amends article 4(3) of the 2013 Order in consequence of this. The effect of this is that all spent convictions must be disclosed in response to a question about such convictions in an application form for an air weapon certificate or permit under Part 1 of the 2015 Act. Failure to do so could result in prosecution for an offence under section 31(1) of that Act (the maximum penalty for which is 12 months’ imprisonment and/or a fine of level 5 on the standard scale).

Article 4 (as read with article 2) of the Order amends the 2013 Order to exclude the application of section 4(1) of the 1974 Act in relation to specific proceedings. Section 4(1) provides that evidence about spent convictions is not admissible in any proceedings before a judicial authority. It also provides that a person must not be asked in such proceedings (and, if asked, may refuse to answer) any question about a spent conviction. Article 3(1) of the 2013 Order disapplies that protection (subject to certain qualifications) in relation to the proceedings specified in Schedule 1, and Part 1 of Schedule 2, to that Order. Schedule 1 to the 2013 Order includes proceedings under the 1968 Act in respect of the grant, renewal, variation or revocation (as the case may be) of a firearm certificate, shot gun certificate or specified permit. Article 4 of this Order amends Schedule 1 so as to add proceedings under Part 1 of the 2015 Act in respect of the grant, renewal, variation or revocation (as the case may be) of an air weapon certificate or specified permit. The effect of this is that evidence of spent convictions is admissible in such proceedings and they must be disclosed in response to any question asked about spent convictions.