

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

2022 No.

REHABILITATION OF OFFENDERS

The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Homes for Ukraine Sponsorship Scheme) (Scotland) Amendment Order 2022

<i>Made</i>	- - - -	2022
<i>Coming into force</i>	- -	2022

The Scottish Ministers make the following Order in exercise of the powers conferred on them by sections 4(4), 10(1), 10A(1) and paragraph 6 of schedule 3 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.—(1) This Order may be cited as the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Homes for Ukraine Sponsorship Scheme) (Scotland) Amendment Order 2022.

(2) This Order comes into force on the day after the day on which it is made.

Amendment of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013

2.—(1) The Rehabilitation of Offenders Act 1974 (Exclusion and Exceptions) (Scotland) Order 2013(3) is amended in accordance with paragraph 2.

(1) 1974 c. 53 (“the 1974 Act”). 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 S.I. 2003/415. Section 10A of the 1974 Act was inserted by section 32 of the Management of Offenders (Scotland) Act 2019 (asp 14). Paragraphs 1 to 8 of schedule 3 of the 1974 Act were inserted by section 109(4) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).

(2) Section 10(2) has been modified by paragraph 5 of schedule 3 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

(3) S.S.I. 2013/50, as relevantly amended by S.S.I. 2013/204, S.S.I. 2015/329, S.S.I. 2016/91, S.S.I. 2018/51, S.S.I. 2019/396, S.S.I. 2020/45 and S.S.I. 2022/110.

(2) In schedule 3 (exclusions of section 4(2)(a) and (b) of the Rehabilitation of Offenders Act 1974) for paragraph 17(4) substitute—

“Homes for Ukraine Sponsorship Scheme

17.—(1) Any question asked, in order to assess the suitability of an individual to provide accommodation to a person who has permission to enter into or to stay in the United Kingdom granted under the immigration rules laid down under section 3(2) of the Immigration Act 1971(5) in relation to the Homes for Ukraine Sponsorship Scheme(6), in the circumstances set out in sub-paragraph (2).

(2) The circumstances are that—

- (a) the question relates to the individual whose suitability is being assessed, or
- (b) where the individual being assessed resides in the accommodation to be provided, the question relates to any other individual who is over the age of 16 years and who also resides in the accommodation being provided.”.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

(4) Paragraph 17 was inserted by S.S.I 2022/110.

(5) 1971 c. 77.

(6) The rules in relation to the Homes for Ukraine Sponsorship Scheme are set out at UKR 11.1 to UKR 20.2 of the Appendix Ukraine Scheme of the Immigration Rules (HC 395). <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-ukraine-scheme>. “Permission to enter” and “permission to stay” are defined at paragraph 6.2 of the Immigration Rules: Introduction (<https://www.gov.uk/guidance/immigration-rules/immigration-rules-introduction#intro6>).

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”) to bring individuals who are offering to provide accommodation to a person who has permission to enter into or to stay in the United Kingdom granted under immigration rules in relation to the Homes for Ukraine Sponsorship Scheme within the excluded circumstances set out in schedule 3 of 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. The general effect of the disapplication of certain provisions is that, in specified circumstances, questions about spent convictions are permitted to be asked in order to assess a person’s suitability for admission to certain professions or occupations or to hold certain offices, types of employment, licences or permits.

Section 4(2)(a) and (b) of the 1974 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 various circumstances specified in schedule 3 of the 2013 Order. The questions to which schedule 3 applies include questions on the assessment of a person’s suitability for various professions, offices, employments, occupations or to hold certain licences, certificates or permits.

The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2022 (which came into force on 24 March 2022) inserted a new paragraph 17 into the 2013 Order to bring individuals offering to provide accommodation within premises that they also resided in (along with those individuals over the age of 16 years residing within the same premises) to Ukrainian nationals, and their immediate family members, who had left Ukraine in connection with the Russian invasion (and being provided accommodation via the Homes for Ukraine Sponsorship Scheme) within the scope of the exceptions set out in the 2013 Order, requiring them to self-disclose spent convictions.

Article 2(2) of this Order modifies schedule 3 of the 2013 Order to substitute a new paragraph 17 so that any question asked to assess the suitability of an individual offering to provide accommodation (whether residing in that accommodation or not) to a person who has permission to enter into or to stay in the United Kingdom, granted under immigration rules in relation to the Homes for Ukraine Sponsorship Scheme, is included. These circumstances also continue to extend to those individuals, who are over the age of 16 years who are also residing in the accommodation to be provided.