

EXECUTIVE NOTE

DRAFT : THE REHABILITATION OF OFFENDERS ACT 1974 (EXCLUSIONS AND EXCEPTIONS) (SCOTLAND) ORDER 2006

1. The above instrument will be made in exercise of the powers conferred by virtue of sections 4(4), 7(4) and 10(1) of the Rehabilitation of Offenders Act 1974 (c.53). The instrument is subject to draft affirmative resolution procedure.

Policy Objectives

2. The purpose of this instrument is amend the current the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 to take account of the establishment of the Serious Organised Crime Agency on 1 April 2006; to amend some minor errors and make minor textual amendments; and to take account of some new regulations on the registration of private landlords that has effect from 31 March 2006.

Abortion

3. The existing Order allows spent convictions to be referred to in proceedings in respect of an application for, or cancellation of the Secretary of State's approval of a place under section 1 of the Abortion Act 1967. It also allows spent convictions, or failure to disclose spent convictions, to be a ground for dismissal for any occupation which is concerned with the management of a place in respect of which the approval of the Secretary of State is required under section 1.

4. Section 1(3) of the Abortion Act is executively devolved to the Scottish Ministers. An amendment is therefore required to correct the reference to the Secretary of State and to reflect the executive devolution in 1999 of functions under section 1(3) of the Abortion Act 1967.¹

Serious Organised Crime Agency and Her Majesty's Revenue and Customs

5. The existing order allows spent convictions or failure to disclose spent convictions to be a ground for dismissal for any office or employment in the National Crime Squad or the National Criminal Intelligence Service or any office or employment in Her Majesty's Customs and Excise.

6. The new Serious Organised Crime Agency, (SOCA), will come into force on 1 April 2006 and as a result, the National Crime Squad (NCS) and the National Criminal Intelligence Service (NCIS) will be abolished. The functions and staff of the NCS and NCIS will be absorbed into SOCA under Section 1 of the Serious and Organised Crime and Police Act 2005². Therefore, the references to NCIS and NCS in the 2003 Order need to be substituted with a reference to SOCA with effect from 1 April.

7. Her Majesty's Customs and Excise (HMC&E) was dissolved when Her Majesty's Revenue and Customs came into existence on 18 April 2005. Many of the law enforcement

¹ 1967 c.87

² 2005 c.15

functions of HMC&E (i.e. customs crime, drug trafficking) have been absorbed by the Serious Organised Crime Agency. Other parts of the organisation have been absorbed into Her Majesty's Revenue and Customs (HMRC).

8. Therefore, reference to HMC&E in the existing 2003 Order will need to be replaced with a reference to HMRC, given the significant law enforcement function retained across the new organisation (including in that part formerly referred to as the Inland Revenue).

9. Section 50 (1) of the Commissioners for Revenue and Customs Act 2005 provides that - in so far as is appropriate in consequence of section 5 (which provides for the new Commissioners to be responsible for the functions of the previous bodies) - "a reference in an enactment, instrument or other document to the Commissioners of Customs and Excise, to customs and excise or to the Commissioners of Inland Revenue (however expressed) shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs".

10. The reference to the previous Commissioners has therefore been read as a reference to the new Commissioners but the opportunity is being taken to textually amend the reference to assist the user of the Order.

Protection of Children (Scotland) Act 2003

11. An amendment is required due to an error in the 2003 Order. The current definition of "work" contained in the Interpretation, under part 4 of Schedule 4, refers to section 16 of the Protection of Children (Scotland) Act 2003³. Schedule 4 sets out the professions, offices, employments and occupations that are excepted from the 1974 Act to enable spent convictions to be used as grounds of dismissal. The reference should instead be to section 18 of the Protection of Children (Scotland) Act 2003.

Registration of Private Landlords

12. The Antisocial Behaviour etc. (Scotland) Act 2004⁴ provides for the registration of private landlords in Scotland. It will apply to almost all landlords in the private sector, there being some exceptions set out in the Act and in regulations⁵. The exceptions are landlords who only let part of their own home, and some other minor categories.

13. Registration will be carried out by local authorities. When applying, the landlord must provide certain information specified in the Act which includes the identity of any agent and a list of properties let. The local authority will register the landlord unless it considers that the landlord (or the landlord's agent) is not a fit and proper person to be letting houses.

14. Ministers have made regulations⁶ specifying additional information that applicants are required to supply. This is mainly to assist the local authority to make its judgement whether the applicant is a fit and proper person. The information specified includes information about the applicant's relevant unspent convictions. Most applications will be dealt with on the basis of that information, but if the local authority has suspicions about the applicant they may wish to ask the applicant to seek a standard disclosure. Any relevant convictions (including

³ 2003 asp 5

⁴ 2004 asp 8

⁵ The Private Landlord Registration (Modification) (Scotland) Order 2005: SSI 2005 no. 650

⁶ The Private Landlord Registration (Information and Fees) (Scotland) Regulations 2005: SSI 2005 no. 558

spent convictions where a standard disclosure is obtained) will be a material consideration in the local authority's decision whether to refuse registration. The same considerations apply if a person is already registered and the local authority is contemplating removing registration. If the applicant or registered person is not prepared to co-operate in requesting a standard disclosure the local authority is likely to regard that as evidence in support of a decision to refuse or remove registration. Any decision to refuse or to remove registration can be appealed to the sheriff.

15. The purpose of the amendment in regulation 4 is to allow a local authority to seek standard disclosures in relation to applicants and registered persons. This is to allow the local authority to take into account all relevant convictions when it has reason to believe that such a person may not be fit and proper to be letting houses. A spent conviction may be relevant because the existence of a pattern of offending, including offences which would otherwise be spent under the Rehabilitation of Offenders Act, could well be a strong indicator of future behaviours which could abuse the interests of tenants. For the same reason, relevant convictions including spent convictions should be admissible in the event of an appeal, in terms of the amendment in regulation 3(3).

16. The commencement date is 31 March 2006 as this is the date on which the new scheme comes into operation.

Consultation

17. Consultation for the minor amendments was not necessary. For the registration of Private Landlords however, the decision not to obtain disclosures routinely, and to seek disclosures where necessary based on the local authority's doubts about the applicant, was taken in the light of a public consultation on the mechanics of the registration process (*'Regulation of Private Landlords under the Antisocial Behaviour etc. (Scotland) Act 2004'*, June 2005) and detailed work with a working group including local authority, landlord, agent and other stakeholder representatives.

Commencement

It is intended that the amendments that relate to SOCA should come into force on 1 April 2006. The amendments relating to landlord registration will come into force on 31 March 2006. All other amendments will come into force as soon as possible, namely the day after the day on which the Order is signed by the Minister.

Jurisdiction

Article 1(3) provides that the Order extends to Scotland and, in so far as it extends beyond Scotland, it does so only as a matter of Scots law. This provision is designed to ensure that there is no doubt about the applicability of the Order if, for example, a person in England wishes to apply for a post in Scotland that is covered by the Exceptions Order.

Financial Effects

18. For the minor amendments there are no financial implications for local authorities or businesses. For the registration of private landlords, the costs to local authorities of registration (including any need to obtain standard disclosures) will be covered by income from applicants or from central government grant.

Scottish Executive Criminal Law Division
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