

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

2010 No.

REHABILITATION OF OFFENDERS

**The Rehabilitation of Offenders Act 1974 (Exclusions
and Exceptions) (Scotland) Amendment Order 2010**

Made - - - - 2010

Coming into force in accordance with article 1(1)

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, a draft of this Order has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2010 and comes into force on the same day as section 91 of the Protection of Vulnerable Groups (Scotland) Act 2007⁽²⁾.

(2) This Order extends to Scotland and, in so far as it extends beyond Scotland, it does so only as a matter of Scots law.

**Amendment of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions)
(Scotland) Order 2003**

2. The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003⁽³⁾ is amended in accordance with articles 3 to 6.

3. In article 2(1) (interpretation)—

(a) in the definition of “the 2001 Act” omit “and “child minding””;

(1) 1974 c.53. 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 the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2003 (S.I. 2003/415).

(2) 2007 asp 14.

(3) S.S.I. 2003/231 as amended by S.I. 2003/1590, 2004/1771, 2005/2011, 2007/289, 2009/1182 and 2010/231, and S.S.I. 2005/445, 2006/194, 2007/75, 2009/271, 334 and 429; prospectively amended by S.I. 2010/231.

- (b) after the definition of “the 2001 Act” insert—
 - ““the 2007 Act” means the Protection of Vulnerable Groups (Scotland) Act 2007(4);”; and
 - (c) omit the definitions of “adult at risk” and “social care service”.
4. In Schedule 1 (proceedings)—
- (a) for paragraph 21 substitute—
 - “**21.** The following proceedings under the Adults with Incapacity (Scotland) Act 2000(5)—
 - (a) proceedings before the sheriff under section 20 of that Act;
 - (b) proceedings before the Public Guardian or the sheriff under Part 3 of that Act; and
 - (c) proceedings before the sheriff in respect of intervention orders or guardianship orders within the meaning of that Act.”; and
 - (b) after paragraph 24 insert—
 - “**25.** Proceedings before the NHS Tribunal under Part II of the National Health Service (Scotland) Act 1978(6).
 - 26.** Proceedings before the Court of Session or the sheriff in respect of a guardianship order made under section 11 of the Children (Scotland) Act 1995(7).
 - 27.** Proceedings under Part 1 (consideration as to listing) of the 2007 Act.”.
5. In Schedule 3 (exclusion of section 4(2)(a) and (b) of the Act)—
- (a) in paragraph 1 for “9” substitute “14”;
 - (b) in paragraph 2 omit the definitions of “foster”, “foster carer” and “private foster carer”;
 - (c) in paragraph 4—
 - (i) for sub-paragraph (1)(d) substitute—
 - “(d) of the person to whom the question relates or of any other person to be placed on a register or to hold a licence, certificate or permit specified in sub-paragraph (3) or to be placed on it or hold it subject to a particular condition or restriction.”;
 - (ii) in sub-paragraph (3) before “licences, certificates or permits” insert “register, ”; and
 - (iii) after sub-paragraph (3)(d) insert—
 - “; or
 - (e) licences issued under, and the register of approved instructors referred to in, Part V (driving instruction) of the Road Traffic Act 1988(8).”;
 - (d) for paragraph 5 substitute—
 - “**5. Child minding**
 - Any question asked in order to assess the suitability of a person to act as a child minder (within the meaning of section 2(17) of the 2001 Act) where the person whose suitability is being assessed resides on the premises where the child minding would normally take

(4) 2007 asp 14.
 (5) 2000 asp 4.
 (6) 1978 c.29.
 (7) 1995 c.36.
 (8) 1988 c.52.

place and the question relates to a person aged 16 or over who resides in the same premises as that person or to a person aged 16 or over who regularly works on them at a time when the child minding takes place.”;

(e) in paragraph 6—

(i) omit sub-paragraph (1)(b) and (c);

(ii) after sub-paragraph (1) insert—

“(1A) Any question asked by or on behalf of any person for the purpose of assessing, investigating, reviewing or confirming the suitability of any person to—

(a) be a foster carer (within the meaning of section 96 of the 2007 Act); or

(b) be a host parent (within the meaning of paragraph 11A of schedule 2 to the 2007 Act),

in the circumstance set out in sub-paragraph (2)(b).”;

(iii) in sub-paragraph (2)(b) for “living” substitute “residing”; and

(iv) after sub-paragraph (2) insert—

“(3) Any question asked in order to assess the suitability of an individual seeking appointment as a member of—

(a) an adoption panel or joint adoption panel under regulation 3 or 5 of the Adoption Agencies (Scotland) Regulations 2009⁽⁹⁾; or

(b) a fostering panel or joint fostering panel under regulation 17 or 19 of the Looked After Children (Scotland) Regulations 2009⁽¹⁰⁾.”; and

(f) after paragraph 12 insert—

“Access to information

13. Any question asked by the Scottish Ministers for the purpose of considering the suitability of a registered person or a nominee of a registered person (within the meaning of the Police Act 1997⁽¹¹⁾) to have access to information released under section 113A, 113B, 113CA or 113CB of that Act or sections 52 to 54 of the 2007 Act.

Personnel suppliers

14. Any question asked by or on behalf of a personnel supplier (within the meaning of section 97(1) of the 2007 Act) in order to assess the suitability of a person to be supplied by the personnel supplier to do regulated work with adults or regulated work with children for another person.”.

6. In Schedule 4 (excepted professions, offices, employments, and occupations)—

(a) in Part 2—

(i) for paragraph 4 substitute—

“**4.** Clerks (including depute and assistant clerks) and officers of the High Court of Justiciary, the Court of Session and the justice of the peace court, sheriff clerks (including sheriff clerks depute) and their clerks and assistants and other support officers assisting in the work of the Scottish Court Service.”;

⁽⁹⁾ S.S.I. 2009/154.

⁽¹⁰⁾ S.S.I. 2009/210.

⁽¹¹⁾ 1997 c.50. Sections 113A and 113B were inserted by the Serious Organised Crime and Police Act 2005 (c.15), section 163(2); sections 113CA and 113CB were inserted by the Protection of Vulnerable Groups (Scotland) Act 2007, section 88 and schedule 4, paragraph 29.

- (ii) for paragraph 11 substitute—
 - “**11.** Any regulated work with children.”;
- (iii) omit paragraphs 12 and 24;
- (iv) for paragraph 28 substitute—
 - “**28.** Any regulated work with adults.”; and
- (v) after paragraph 32 insert—
 - “**33.** Any office or employment in the Scottish Commission for the Regulation of Care.
 - 34.** Any office or employment in the General Teaching Council for Scotland.”;
- (b) in Part 3 after paragraph 7 insert—
 - “**8.** Any occupation in respect of which a licence or registration is required by or under Part V (driving instruction) of the Road Traffic Act 1988.”; and
- (c) in Part 4—
 - (i) omit the definition of “child care position”;
 - (ii) after the definition of “registered teacher” insert—
 - ““regulated work with adults” and “regulated work with children” have the meanings given by section 91(3) and (2), respectively, of the 2007 Act.”; and
 - (iii) for the definition of “work” substitute—
 - ““work” includes work of any kind, whether paid or unpaid and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract.”.

Revocations

7.—(1) The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2009(**12**) is revoked.

(2) Article 5(d) of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Amendment) (Scotland) Order 2006(**13**) is revoked.

St Andrew’s House,
 Edinburgh
 Date

Authorised to sign by the Scottish Ministers

(12) S.S.I. 2009/271.

(13) S.S.I. 2006/194.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 (“the 2003 Order”). This Order makes amendments in consequence of the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”). It also makes some minor amendments on miscellaneous matters.

Section 4(1) of the Rehabilitation of Offenders Act 1974 (“the 1974 Act”) provides that spent convictions may not be admissible in evidence in any proceedings before a judicial authority nor shall a person be asked or required to answer any question in such proceedings about his or her spent conviction. Section 4(2) of the 1974 Act provides that in any proceeding, other than a judicial one, any question asked of a person about his or her convictions shall not be taken to relate to any of his or her spent convictions nor shall the person be subject to any liability or prejudice for not disclosing a spent conviction. Section 4(3)(b) of the 1974 Act provides that not disclosing a spent conviction shall not be a proper ground for dismissing, excluding or prejudicing the person in relation to any office, profession, occupation or employment.

Section 4(4) of the 1974 Act allows the Scottish Ministers to make exclusions, modifications and exceptions from section 4(2) and (3). Section 7(4) of the 1974 Act allows the Scottish Ministers to make exclusions in relation to section 4(1).

Article 3 makes changes to the definitions of terms in the 2003 Order and removes the terms “adult at risk” and “social care service”. It inserts a new general definition for the 2007 Act.

Article 4 makes amendments so as to exclude the application of section 4(1) of the 1974 Act in relation to certain proceedings under the Adults with Incapacity (Scotland) Act 2000; proceedings before the NHS Tribunal; proceedings in respect of child guardianship orders under the Children (Scotland) Act 1995; and proceedings about listing of individuals under Part 1 of the 2007 Act. This means spent convictions are admissible in these proceedings and questions can be asked about them.

Article 5 makes amendments in relation to the exclusions and modifications of section 4(2) of the 1974 Act provided for in the 2003 Order. Paragraph (c) provides that a person may be asked about his or her spent convictions in assessing suitability to be registered or to hold a licence to be an approved driving instructor under Part V of the Road Traffic Act 1988. Paragraph (d) makes provision consequential to the 2007 Act so that only questions about individuals over 16 years of age residing with a child minder (where the child minder resides on the premises where the child minding takes place) or who work on the premises where the child minding takes place may be asked. Questions about child minders in their own right are now caught elsewhere in the 2003 Order by the insertion of a reference to “regulated work with children” in Schedule 4 to the 2003 Order. Paragraph (e) makes equivalent provision in relation to foster care and also provides for the asking of questions about spent convictions in assessing suitability to be appointed to adoption panels and fostering panels. Paragraph (f) provides that questions about spent convictions may be asked in considering suitability to have access to conviction information and suitability to be supplied by a person to do regulated work for a third party.

Article 6 amends Parts 2, 3 and 4 of Schedule 4 to the 2003 Order. An exception listed in Part 2 or 3 means that section 4(3)(b) of the 1974 Act does not apply. Also questions about spent convictions may be asked in connection with suitability for a role mentioned (by virtue of paragraph 4(1)(b) of Schedule 3 to the 2003 Order). Article 6(a) lists anyone who is a clerk or officer of the Courts or officer assisting the clerk or other support officer assisting in the work of the Scottish Court Service; anyone doing any regulated work with children or adults; anyone who holds office or employment

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument:
The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2010 No. 243

with the Scottish Commission for the Regulation of Care or the General Teaching Council for Scotland. Article 6(b) lists anyone providing paid instruction in a motor vehicle. Article 6(c) makes changes to definitions.

Article 7 makes consequential revocations of provisions.