
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2016 No.

**The Rehabilitation of Offenders Act 1974 (Exclusions
and Exceptions) (Scotland) Amendment Order 2016**

Substitution of Schedule A1 to the 2013 Order

4. For Schedule A1 to the 2013 Order (offences which must always be disclosed) substitute—

“SCHEDULE A1

Article 2A

OFFENCES WHICH MUST ALWAYS BE DISCLOSED

Common law offences

1. Abduction.
2. Abortion.
3. Assault to the danger of life.
4. Assault to severe injury.
5. Assault with intent to rape or ravish.
6. Assault with intent to commit the statutory offence of rape.
7. Bestiality.
8. Cruel and unnatural treatment of persons.
9. Culpable homicide.
10. Drugging.
11. Extortion.
12. Hamesucken.
13. Hijacking.
14. Piracy.
15. Plagium.
16. Reset of plagium.
17. Treason.
18. Uttering threats.

Statutory offences

Armed forces

19. An offence under section 42 of the Armed Forces Act 2006⁽¹⁾ (criminal conduct) where the corresponding offence under the law of England and Wales is, or corresponds to, an offence listed in this Schedule.

Aviation and maritime

20. An offence under the Piracy Act 1837⁽²⁾.

21. An offence under any of the following provisions of the Aviation Security Act 1982⁽³⁾—

- (a) section 1 (hijacking);
- (b) section 2 (destroying, damaging or endangering safety of aircraft);
- (c) section 3 (other acts endangering or likely to endanger safety of aircraft); and
- (d) section 4 (offences in relation to certain dangerous articles).

22. An offence under section 9 of the Aviation and Maritime Security Act 1990⁽⁴⁾ (hijacking of ships).

23. An offence under article 241 of the Air Navigation Order 2009⁽⁵⁾ in respect of a contravention of article 137 of that Order (endangering safety of aircraft).

Children

24. An offence under section 12 of the Children and Young Persons (Scotland) Act 1937⁽⁶⁾ (cruelty to persons under 16).

Explosives

25. An offence under the Explosive Substances Act 1883⁽⁷⁾.

Firearms and other weapons

26. An offence under any of the following provisions of the Firearms Act 1968⁽⁸⁾—

- (a) section 4 (conversion of weapons)⁽⁹⁾;

(1) 2006 c.52.

(2) 1837 c.88. The Act was relevantly amended by the Statute Law Revision (No. 2) Act 1890 (c.51).

(3) 1982 c.36.

(4) 1990 c.31.

(5) S.I. 2009/3015. Article 241 was amended by S.I. 2012/1751 and S.I. 2014/3302.

(6) 1937 c.37. Section 12 was amended by the Criminal Procedure (Scotland) Act 1975 (c.21), section 289B; the Children Act 1975 (c.72), Schedule 4; the Criminal Justice Act 1988 (c.33), section 45; the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 7; the Criminal Justice (Scotland) Act 2003 (asp 7), section 51(5) and S.I. 1951/1974.

(7) 1883 c.3. The Act was relevantly amended as follows. Section 2 was substituted by the Criminal Jurisdiction Act 1975 (c.59) (“the 1975 Act”), section 7 and extended by the Internationally Protected Persons Act 1978 (c.17), section 1; the Aviation Security Act 1982 (c.36), section 6(1); the United Nations Personnel Act 1997 (c.13), section 1; and the Terrorism Act 2000 (c.11) (“the 2000 Act”), section 62. Section 3 was substituted by the 1975 Act, section 7, extended by the 2000 Act, section 62 and amended by the Criminal Law Act 1977 (c.45), Schedule 12 and the Terrorism Act 2006 (c.11), section 17. Section 4 was amended by the Criminal Procedure (Scotland) Act 1975 (c.21), section 221 and by the Criminal Justice and Courts Act 2015 (c.2), section 1. Section 5 was extended by the 2000 Act, section 62.

(8) 1968 c.27.

(9) Section 4 was amended by the Firearms (Amendment) Act 1988 (c.45) (“the 1988 Act”), section 23(1).

- (b) section 5 (weapons subject to a general prohibition)(**10**);
 - (c) section 16 (possession of firearm with intent to injure);
 - (d) section 16A(**11**) (possession of firearm with intent to cause fear or violence);
 - (e) section 17(**12**) (use of firearm to resist arrest);
 - (f) section 18 (carrying firearm with criminal intent);
 - (g) section 19(**13**) (carrying firearm in a public place);
 - (h) section 20(**14**) (trespassing with firearm);
 - (i) section 21(**15**) (possession of firearm by persons previously convicted of crime);
 - (j) section 24(**16**) (supplying firearms to minors);
 - (k) section 25 (supplying firearm to person drunk or insane);
 - (l) section 28A(7)(**17**) (certificates: supplementary);
 - (m) section 29(**18**) (variation of firearm certificates);
 - (n) section 30D(3) (revocation of certificates: supplementary)(**19**);
 - (o) section 39(**20**) (offences in connection with registration);
 - (p) section 40(**21**) (compulsory register of transactions in firearms);
 - (q) section 46(5) (power of search with warrant);
 - (r) section 47 (powers of constables to stop and search); and
 - (s) section 48 (production of certificates).
- 27.** An offence under the Chemical Weapons Act 1996(**22**).

Forced marriage

- 28.** An offence under section 122 of the Anti-social Behaviour, Crime and Policing Act 2014 (offence of forced marriage: Scotland)(**23**).

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- (10) Section 5 was amended by the 1988 Act, section 1(2); the Firearms (Amendment) Act 1997 (c.5), sections 1 and 9 and Schedule 3; the Firearms (Amendment) (No. 2) Act 1997 (c.64), Schedule 1; the Anti-social Behaviour, Crime and Policing Act 2014 (c.12), sections 108 and 109; and by S.I. 1968/1200 and S.I. 1992/2823.
 - (11) Section 16A was inserted by the Firearms (Amendment) Act 1994 (c.31) (“the 1994 Act”), section 1.
 - (12) Section 17 was amended by the Theft Act 1968 (c.60), Schedule 3.
 - (13) Section 19 was inserted by Anti-social Behaviour Act 2003 (c.38), section 37.
 - (14) Section 20 was amended by the 1994 Act, section 2.
 - (15) Section 21 was amended by the Criminal Justice Act 1972 (c.71), sections 29 and 66(7)(a); the Criminal Justice Act 1982 (c.48), Schedule 14, paragraph 24; the Criminal Justice Act 1988 (c.33), Schedule 8, paragraphs 6 and 16 and Schedule 16; the Criminal Justice and Public Order Act 1994 (c.33), Schedule 10, paragraph 24(2); the Crime and Disorder Act 1998 (c.37), Schedule 8, paragraph 14; the Criminal Justice Act 2003 (c.44), Schedule 32, Part 1, paragraph 12; the Criminal Justice and Immigration Act 2008 (c.4), Schedule 4, Part 1, paragraph 6; the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”); and by S.I. 2014/2522.
 - (16) Section 24 was amended by the Firearms (Amendment) Act 1988 (c.45) (“the 1988 Act”), section 23(4); the Anti-social Behaviour Act 2003 (c.38), section 38(4)(b); the Violent Crime Reduction Act 2006 (c.38) (“the 2006 Act”), section 33(5); and by S.I. 2010/1759.
 - (17) Section 28A was inserted by the Firearms (Amendment) Act 1997 (c.5) (“the 1997 Act”), Schedule 2, paragraph 4(1).
 - (18) Section 29 was amended by the 1997 Act, Schedule 2, paragraph 2(2).
 - (19) Section 30D was inserted by the 1997 Act, section 40.
 - (20) Section 39 was amended by the 1997 Act, Schedule 2, paragraph 2(3).
 - (21) Section 40 was amended by the 1988 Act, sections 13(4) and 23(3), the 1997 Act, Schedule 2, paragraph 8 and the 2006 Act, Schedule 5.
 - (22) 1996 c.6. The Act was relevantly amended as follows. Section 2 was amended by the Terrorism Act 2000 (c.11), section 62. Section 32 was extended by the Anti-Terrorism, Crime and Security Act 2001 (c.24), section 16.
 - (23) 2014 c.12.

Human trafficking and exploitation

29. An offence under section 22 of the Criminal Justice (Scotland) Act 2003**(24)** (traffic in prostitution etc.).

30. An offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004**(25)** (trafficking people for exploitation).

31. An offence under section 47 of the Criminal Justice and Licensing (Scotland) Act 2010**(26)** (slavery, servitude and forced or compulsory labour).

32. An offence under the Prohibition of Female Genital Mutilation (Scotland) Act 2005**(27)**.

Medical professions etc.

33. An offence under section 10Z9 of the National Health Service (Scotland) Act 1978**(28)** (offences in relation to registration).

34. An offence under any of the following provisions of the Medical Act 1983**(29)**—

(a) section 49 (penalty for pretending to be registered)**(30)**; and

(b) section 49A (penalty for pretending to hold a licence to practise)**(31)**.

35. An offence under article 38 (offences relating to the Register) of the Pharmacy Order 2010**(32)**.

Medicines

36. An offence under any of the following provisions of the Medicines Act 1968**(33)**—

(a) section 67(1A) and (1B) (offences under Part III)**(34)**; and

(b) section 78 (restrictions on use of titles, descriptions and emblems)**(35)**.

Official Secrets

37. An offence under the Official Secrets Act 1911**(36)**.

Prostitution

38. An offence under any of the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995**(37)**—

(24) 2003 asp 7. Section 22 was amended by the 2010 Act, section 46.

(25) 2004 c.19. Section 4 was amended by the 2010 Act, section 46.

(26) 2010 asp 13.

(27) 2005 asp 8.

(28) 1978 c.29. Section 10Z9 was inserted by the Public Services Reform (Scotland) Act 2010 (asp 8), section 108.

(29) 1983 c.54.

(30) Section 49 was amended by the Statute Law (Repeals) Act 1993 (c.50) (“the 1993 Act”), Schedule 1 and by S.I. 2007/3101.

(31) Section 49A was inserted by S.I. 2002/3135.

(32) S.I. 2010/231.

(33) 1968 c.67.

(34) Section 67(1A) and (1B) was inserted by the Health and Social Care Act 2001 (c.15), section 63(7)(a) and amended by S.I. 2012/1916.

(35) Section 78 was amended by the 1993 Act, Schedule 1, Part XII; the Health Act 2006 (c.28), section 27(2); and S.I. 2010/231.

(36) 1911 c.28. The Act was relevantly amended by the Official Secrets Act 1920 (c.75), Schedules 1 and 2; the Atomic Energy Authority Act 1954 (c.32), section 6; the Nuclear Installations Act 1965 (c.7), Schedule 1, paragraph 3; the Criminal Law Act 1967 (c.58), Schedule 3; the Criminal Law Act (Northern Ireland) 1967 (c.18), Schedule 2; the European Communities Act 1972 (c.68), section 11(2); the Civil Aviation Act 1982 (c.16), section 18; the Telecommunications Act 1984 (c.12), section 109 and Schedules 4 and 5; the Official Secrets Act 1989 (c.6), section 16(4) and Schedule 2; the Serious Organised Crime and Police Act 2005 (c.15), Schedule 17, paragraph 1; and S.I. 1972/971.

(37) 1995 c.39.

- (a) section 7**(38)** (procuring);
- (b) section 11**(39)** (trading in prostitution and brothel-keeping); and
- (c) section 12 (allowing child to be in brothel).

Road traffic

- 39.** An offence under any of the following provisions of the Road Traffic Act 1988**(40)**—
- (a) section 1**(41)** (causing death by dangerous driving);
 - (b) section 3ZC**(42)** (causing death by driving: disqualified drivers); and
 - (c) section 3A**(43)** (causing death by careless driving when under influence of drink or drugs).

Serious organised crime

- 40.** An offence under any of the following provisions of the Criminal Justice and Licensing (Scotland) Act 2010**(44)**—
- (a) section 28 (involvement in serious organised crime);
 - (b) section 30 (directing serious organised crime); and
 - (c) section 31 (failure to report serious organised crime).

Sexual offences

41. An offence under section 50(3) of the Customs and Excise Management Act 1979**(45)** (penalty for improper importation of goods) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876**(46)**, but only where the prohibited goods include indecent photographs of persons.

42. A sexual offence within the meaning given by section 210A(10) of the Criminal Procedure (Scotland) Act 1995**(47)** other than an offence mentioned in paragraph (xxvii)(ZF) or (ZG) of that section (engaging while an older child in sexual conduct with or towards another older child).

43. An offence under section 113 of the Sexual Offences Act 2003**(48)** (breach of sexual offences prevention order or interim sexual offences prevention order, etc.).

(38) Section 7 was amended by the Sexual Offences (Scotland) Act 2009 (asp 9), schedule 6, paragraph 1.

(39) Section 11 was amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 45.

(40) 1988 c.52.

(41) Section 1 was substituted by the Road Traffic Act 1991 (c.40) (“the 1991 Act”), section 1.

(42) Section 3ZC was inserted by the Criminal Justice and Courts Act 2015 (c.2) (“the 2015 Act”), section 29.

(43) Section 3A was inserted by the 1991 Act, section 3 and amended by the Road Safety Act 2006 (c.49), section 31 and the 2015 Act, Schedule 22, paragraph 2.

(44) 2010 asp 13.

(45) 1979 c.2. Section 50 was amended by the Criminal Procedure (Scotland) Act 1975 (c.21), section 289F and 289G; the Police and Criminal Evidence Act 1984 (c.60), section 114(1); the Finance Act 1988 (c.33), section 12; the Criminal Justice Act 2003 (c.44), section 293; the Criminal Justice and Immigration Act 2008 (c.4), Schedule 17; the Anti-social Behaviour, Crime and Policing Act 2014 (c.12), section 111; and S.I. 1996/2686.

(46) 1876 c.36. Section 42 was amended by the Customs and Excise Act 1952 (c.44), Schedule 12; the Statute Law (Repeals) Act 1993 (c.50), Schedule 1; and the Statute Law (Repeals) Act 2008 (c.12), Schedule 2.

(47) 1995 c.46. Section 210A was inserted by the Crime and Disorder Act 1998 (c.37), section 86 and was amended by the Sexual Offences (Amendment) Act 2000 (c.44), section 6(2); the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), section 312; the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), section 21; the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), Schedule 1; the Sexual Offences (Scotland) Act 2009 (asp 9), Schedules 5 and 6; the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”), section 23; and by S.S.I. 2003/48 and S.S.I. 2010/421.

(48) 2003 c.42. Section 113 was amended by the Anti-social Behaviour, Crime and Policing Act 2014 (c.12), Schedule 11; and by S.S.I. 2011/25.

44. An offence under section 7 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (offence: breach of RSHO or interim RSHO etc.)(**49**).

Stalking and harassment

45. An offence under section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995(**50**) (racially aggravated harassment).

46. An offence under any of the following provisions of the Criminal Justice and Licensing (Scotland) Act 2010(**51**)—

- (a) section 38 (threatening or abusive behaviour); and
- (b) section 39 (offence of stalking).

Terrorism

47. An offence under any of the following provisions of the Terrorism Act 2000(**52**)—

- (a) section 11 (membership);
- (b) section 12 (support);
- (c) section 15 (fund-raising);
- (d) section 16 (use and possession);
- (e) section 17 (funding arrangements);
- (f) section 17A(2) or (4) (insurance payments made in response to terrorist demands)(**53**);
- (g) section 18 (money laundering);
- (h) section 19(**54**) (disclosure of information: duty);
- (i) section 21A(**55**) (failure to disclose: regulated sector);
- (j) section 21D(**56**) (tipping off: regulated sector);
- (k) section 38B(**57**) (information about acts of terrorism);
- (l) section 39(**58**) (disclosure of information, &c.);
- (m) section 54 (weapons training)(**59**);
- (n) section 56 (directing terrorist organisation);
- (o) section 57 (possession for terrorist purposes)(**60**);
- (p) section 58 (collection of information)(**61**);

(49) 2005 asp 9. Section 7 was amended by the 2010 Act, section 103 and the Anti-social Behaviour, Crime and Policing Act 2014 (c.12), Schedule 11, paragraph 78.

(50) 1995 c.39. Section 50A was inserted by the Crime and Disorder Act 1998 (c.37), section 33.

(51) 2010 asp 13.

(52) 2000 c.11.

(53) Section 17A was inserted by the Counter-Terrorism and Security Act 2015 (c.6), section 42.

(54) Section 19 was amended by the Anti-terrorism, Crime and Security Act 2001 (c.24) (“the 2001 Act”), Schedule 2, paragraph 5; the Serious Organised Crime and Police Act 2005 (c.15) (“the 2005 Act”), Schedule 4, paragraph 126; the Counter-Terrorism Act 2008 (c.28) (“the 2008 Act”), section 77; and the Crime and Courts Act 2013 (c.22) (“the 2013 Act”), Schedule 8, paragraph 68.

(55) Section 21A was inserted by the 2001 Act, Schedule 2, paragraph 5 and amended by the 2005 Act, Schedule 4, paragraph 128; the 2013 Act, Schedule 8, paragraph 72; and S.I. 2007/3398.

(56) Section 21D was inserted by S.I. 2007/3398 and amended by the 2013 Act, Schedule 8, paragraph 75.

(57) Section 38B was inserted by the 2001 Act, section 117.

(58) Section 39 was amended by S.I. 2007/3398.

(59) Section 54 was amended by the 2001 Act, section 120; the 2008 Act, Schedule 9; and the Criminal Justice and Courts Act 2015 (c.2), section 1.

(60) Section 57 was amended by the Terrorism Act 2006 (c.11), section 13.

(61) Section 58 was amended by the 2008 Act, Schedule 9.

- (q) section 58A (eliciting, publishing or communicating)(**62**); and
- (r) section 61 (inciting terrorism overseas).

48. An offence under any of the following provisions of the Anti-terrorism, Crime and Security Act 2001(**63**)—

- (a) section 47 (use etc. of nuclear weapons);
- (b) section 50 (assisting or inducing certain weapons-related acts overseas);
- (c) section 52 (powers of entry);
- (d) section 54 (offences);
- (e) section 67 (offences);
- (f) section 79 (prohibition of disclosures relating to nuclear security)(**64**);
- (g) section 80 (prohibition of disclosures of uranium enrichment technology)(**65**);
- (h) section 113 (use of noxious substances or things to cause harm and intimidate)(**66**);
- (i) section 114 (hoaxes involving noxious substances or things); and
- (j) paragraph 7 of Schedule 3 (offences).

49. An offence under the Terrorism Act 2006(**67**).

50. An offence under any of the following provisions of the Counter-Terrorism Act 2008(**68**)—

- (a) section 2 (offence of obstruction);
- (b) section 54 (offences relating to notification);
- (c) paragraph 15 of Schedule 5 (breach of foreign travel restriction order and offence);
- (d) paragraph 30 of Schedule 7 (offences: failure to comply with requirement imposed by direction);
- (e) paragraph 30A of Schedule 7(**69**) (offences: relevant person circumventing requirements); and
- (f) paragraph 31 of Schedule 7 (offences in connection with licences).

Violent offender orders

51. An offence under section 113(1) of the Criminal Justice and Immigration Act 2008(**70**) (breach of violent offender order or interim violent offender order).

Vulnerable persons

52. An offence under section 83 of the Adults with Incapacity (Scotland) Act 2000(**71**) (offence of ill-treatment and wilful neglect).

(62) Section 58A was inserted by the 2008 Act, section 76.

(63) 2001 c.24.

(64) Section 79 was amended by the Energy Act 2004 (c.20), Schedule 14.

(65) Section 80 was amended by the Energy Act 2013 (c.32), Schedule 12.

(66) Section 113 was amended by the Terrorism Act 2006 (c.11), section 34.

(67) 2006 c.11. The Act was relevantly amended as follows. Section 6 was amended by the Criminal Justice and Courts Act 2015 (c.2), section 1 and section 17 was amended by the Serious Crime Act 2015 (c.9), section 81 and paragraph 74 of Schedule 4.

(68) 2008 c.28.

(69) Paragraph 30A was inserted by the Terrorist Asset-Freezing etc. Act 2010 (c.38), section 50(3).

(70) 2008 c.4.

(71) 2000 asp 4.

53. An offence under section 315 of the Mental Health (Care and Treatment) (Scotland) Act 2003**(72)** (ill-treatment and wilful neglect of mentally disordered person).

54. An offence under any of the following provisions of the Protection of Vulnerable Groups (Scotland) Act 2007**(73)**—

- (a) section 34 (barred individuals not to do regulated work);
- (b) section 35 (organisations not to use barred individuals for regulated work); and
- (c) section 36 (personnel suppliers not to supply barred individuals for regulated work).

55. Any offence where the conduct in respect of which the person was convicted also constituted a breach of a banning order granted under section 19 of the Adult Support and Protection (Scotland) Act 2007**(74)** (banning orders).

Witness protection

56. An offence under any of the following provisions of the Serious Organised Crime and Police Act 2005**(75)**—

- (a) section 86 (offence of disclosing information about protection arrangements); and
- (b) section 88 (offences of disclosing information relating to persons assuming new identity).

Statutory aggravations

57. An offence in relation to which either of the following provisions applies—

- (a) section 29(1) of the Criminal Justice and Licensing (Scotland) Act 2010**(76)** (offences aggravated by connection with serious organised crime); or
- (b) section 31 of the Counter-Terrorism Act 2008 (offences aggravated by terrorism)**(77)**.

Other

Common law aggravations

58. An offence the conviction for which indicates that it was committed against a child.

59. An offence the conviction for which indicates that it included a sexual element.

Inchoate offences

60. An offence committed by aiding, abetting, counselling, procuring or inciting the commission of the offence of murder or any offence listed in paragraphs 1 to 59 of this Schedule.

61. An offence committed by attempting or conspiring to commit the offence of murder or any offence listed in paragraphs 1 to 59 of this Schedule.

(72) 2003 asp 13.

(73) 2007 asp 14.

(74) 2007 asp 10.

(75) 2005 c.15.

(76) 2010 asp 13.

(77) 2008 c.28.

Superseded offences

62. An offence superseded (whether directly or indirectly) by any offence listed in paragraphs 1 to 61 of this Schedule (and any qualification in relation to a listed offence applies to the superseded offence as it applies to the listed offence).

Combined offences

63. An offence which was charged, and the conviction for which was received, in conjunction with any offence listed in paragraphs 1 to 62 of this Schedule.

Corresponding offences elsewhere in the UK or abroad

64. An offence under the law of England and Wales or Northern Ireland, or any country or territory outside the United Kingdom, which corresponds to any offence listed in paragraphs 1 to 63 of this Schedule.”.