

POLICY NOTE

THE REHABILITATION OF OFFENDERS ACT 1974 (EXCLUSIONS AND EXCEPTIONS) (SCOTLAND) AMENDMENT (No. 2) ORDER 2016

SSI 2016/

1. The above instrument is made in exercise of the powers conferred by sections 4(4), 7(4) and 10(1) of the Rehabilitation of Offenders Act 1974 (“the 1974 Act”). It is subject to the affirmative procedure. For the purposes of this note the instrument will be called “the amending Order”.

Background

2. The 1974 Act contains protections that support the rehabilitation of offenders. It allows criminal convictions to be treated as “spent” after a certain period of time. Section 4(1) and (2) of the 1974 Act provide that once a conviction is spent, the convicted person can withhold information about it and cannot be prejudiced by it or by a failure to disclose it. However, this is subject to limitations which are aimed at striking a fair balance between (a) respecting a rehabilitated person’s privacy, and (b) permitting those with a legitimate interest to ask about, and take account of, a person’s criminal history in order to protect public safety.

3. In particular, the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (“the 2013 Order”) specifies certain categories of proceedings and questions which are excluded from the protections under section 4(1) and (2) of the 1974 Act. These include (a) proceedings under the Firearms Act 1968 (“the 1968 Act”) in respect of the grant, renewal, variation or revocation of a firearm certificate, shot gun certificate or specified permit, and (b) any question asked, say in an application form, for the purpose of assessing a person’s suitability to hold such a certificate or permit. Accordingly, applicants for a firearm or shot gun certificate must disclose *all* spent convictions when asked for this information, and the police may consider this information (regardless of the nature and date of the conviction(s)) when determining the application. Although recent amendments¹ to the 2013 Order have qualified the requirement to disclose *all* spent convictions, those qualifications do not apply to the exclusions relating to firearms licensing, which is about protecting the public from lethal weapons falling into the wrong hands.

4. Part 1 of the Air Weapons and Licensing (Scotland) Act 2015 (“the 2015 Act”) introduces new controls on the use, possession, purchase and acquisition of air weapons. Under section 2 anyone wishing to possess an air weapon in Scotland will be required to hold a valid air weapon certificate (AWC) or a permit issued under specific circumstances, subject to a number of exemptions set out in schedule 1 to the Act. As is the case with applications for a firearm or shot gun certificate under the 1968 Act, applications for an AWC or permit will be made to, and determined by, the Chief Constable of the Police Service of Scotland. The Scottish Government therefore considers it necessary to make the amending Order so that the Chief Constable is able to perform his licensing functions under Part 1 of the 2015 Act as effectively as those under the 1968 Act.

¹ See the amendments in [S.S.I. 2015/329](#) and the proposed amendments in [the Draft Rehabilitation of Offenders Act 1974 \(Exclusions and Exceptions\) \(Scotland\) Amendment Order 2016](#).

Policy Objectives

5. The purpose of the amending Order, as part of a series of instruments which implement Part 1 of the 2015 Act, is to exclude air weapons licensing from the protections under section 4(1) and (2) of the 1974 Act in the same way as firearms licensing under the 1968 Act is currently excluded.

6. The amending Order adds to the list of excluded proceedings in Schedule 1 to the 2013 Order, proceedings under Part 1 of the 2015 Act in respect of the grant, renewal, variation or revocation of an AWC or specified permit. This is to allow the Chief Constable to ask about, and take account of, an individual's spent convictions when determining whether to grant an AWC or permit. An individual must disclose *all* spent convictions if asked about these during such proceedings. The amending Order also adds to the list of excluded questions in Schedule 3 to the 2013 Order, any question asked outwith those proceedings (say in an application form) to assess an individual's suitability to hold an AWC or specified permit granted under Part 1 of the 2015 Act. An individual must disclose *all* spent convictions in response to a question about such convictions or, otherwise, potentially face prosecution for an offence under section 31(1) of the 2015 Act (making false statements for the purpose of procuring an AWC or permit).

7. These amendments ensure that the licensing of air weapons under Part 1 of the 2015 Act is treated consistently with the licensing of other firearms and shot guns under the 1968 Act. This reflects the Scottish Government's view that, as air weapons are potentially lethal firearms, access to them should be subject to appropriate controls. Since public safety is paramount when determining whether to authorise the possession and use (etc.) of lethal firearms, the Scottish Government considers it necessary to require applicants for an AWC or permit to disclose all information about spent convictions. This will allow the Chief Constable to take the applicant's entire offending history into account when assessing whether or not the applicant is a fit and proper person to possess an air weapon.

8. The Police Service of Scotland has advised that it is possible that a significant number of new applicants for AWCs may have spent convictions. Not creating an exclusion in respect of air weapons licensing could, for example, result in situations where the Chief Constable is aware that an applicant has a number of previous convictions for animal cruelty but, due to the convictions' status as spent, is unable to consider this information when determining the application for an AWC. In deciding whether an individual is fit to be entrusted with an air weapon, and can be permitted to possess one without danger to the public safety or the peace, it is important that the Chief Constable is able to consider any and all spent convictions which might reveal a pattern of behaviour that indicates otherwise.

9. In addition, the Scottish Government believes that many AWC applicants will also hold a firearm or shot gun certificate and will seek to align their certificates under the provisions of section 9 of the 2015 Act. It would be inconsistent to allow the Chief Constable to take spent convictions into account when granting or renewing a firearm or shot gun certificate under the 1968 Act, but not when granting or renewing an AWC under Part 1 of the 2015 Act.

10. However, there are safeguards to these exclusions. Each case will be considered on its individual merits and the existence of a previous conviction will not be an automatic bar to obtaining an AWC or permit (unless the conviction results in the applicant being prohibited from possessing a firearm under section 21 of the 1968 Act). The exclusions apply for limited purposes only, and do not involve further disclosure of any information concerning spent convictions to third parties. Under section 6(1) of the Human Rights Act 1998, the Chief Constable must act compatibly with the Convention rights (including the right to respect for private and family life under Article 8 of the European Convention on Human Rights) when exercising any of his functions. Furthermore, section 34 of the 2015 Act provides for a person aggrieved by a decision of the Chief Constable (for example, a refusal to grant an AWC) to appeal against the decision to the sheriff.

Consultation

11. No formal consultation was carried out in relation to this Order. However, formal consultation took place before the Bill for the 2015 Act was introduced. Informal consultation with stakeholders took place during the Bill's parliamentary passage, and will continue during the implementation process. The relevant consultation documentation can be found at:

<http://www.scotland.gov.uk/Topics/Justice/crimes/Firearms/governmentaction/airweaponlicensing>

Financial Effects

12. The Cabinet Secretary for Justice confirms that no Business & Regulatory Impact Assessment (BRIA) is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Safer Communities Division
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