

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

2019 No.

REHABILITATION OF OFFENDERS

**The Rehabilitation of Offenders Act 1974 (Exclusions
and Exceptions) (Scotland) Amendment Order 2019**

Made - - - - 2019
Coming into force - - 26th November 2019

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 4(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⁽²⁾, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2019 and comes into force on 26 November 2019.

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

2.—(1) The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013⁽³⁾ is amended as follows.

(2) In the list of statutory offences in schedule A1 (offences which must be disclosed subject to exceptions)⁽⁴⁾, after paragraph 55 insert—

(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) 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. 2015/329, S.S.I. 2016/91 and S.S.I. 2018/51.

(4) Schedule A1 of the Order was added by article 6 of S.S.I. 2015/329. The heading of the schedule was subsequently substituted by article 2(4) of S.S.I. 2018/51. The lists of common law and statutory offences contained within the schedule were substituted by article 4 of S.S.I. 2016/91.

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 2019 No. 396

“**55A.** An offence under section 26 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (care worker offence)(**5**)

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

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 principal Order”). The principal Order disapplies specified provisions of the Rehabilitation of Offenders Act 1974 (“the Act”) which would otherwise prevent a person from having to disclose a spent conviction and which protect that person from being prejudiced by that conviction or any failure to disclose it.

Section 4(1) of the Act relates to judicial proceedings. It sets out a general rule that a spent conviction is not admissible in evidence and that a person who has obtained such a conviction should neither be asked nor required to answer questions about it or circumstances ancillary to it. Section 4(2) of the Act relates to questions about spent convictions asked outwith judicial proceedings. Section 4(2)(a) provides that a person is entitled to treat such a question as if it does not relate to a spent conviction and section 4(2)(b) sets out that they must not be prejudiced by a failure to disclose a spent conviction in response to such a question. Section 4(3)(b) provides that a spent conviction or a failure to disclose it is not a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing them in any way in any occupation or employment.

This Order adds the care worker offence in section 26 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (“the offence”) into the list in schedule A1 of the principal Order. This means that a spent conviction for the offence does not fall within the definition of “protected conviction” set out in article 2 of the principal Order.

The first effect of this is that, in relation to any spent conviction for the offence or any circumstances ancillary to it, the application of section 4(1) of the Act will be excluded in relation to the proceedings mentioned in regulation 3(1)(a) and (b) of the principal Order.

The second effect is to restrict the circumstances in which a person with a spent conviction for the offence will benefit from the exception to the exclusion of the application of section 4(2)(a) and (b) of the Act in article 4(2) of the principal Order. A person will benefit from this exception (insofar as it is not dis-applied by article 4(3)) if the conviction meets the requirements outlined in article 4(2)(b) of the principal Order.

The final effect is to restrict the circumstances in which a person with a conviction for the offence will benefit from the provisions of section 4(3)(b) of the Act. This is because the protection afforded by article 5(2) of the principal Order will only apply (insofar as it is not dis-applied by article 5(3)) if the conviction meets the requirements outlined in article 5(2)(b).