
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 2013 Order”). The 2013 Order disapplies specified provisions of the Rehabilitation of Offenders Act 1974 (“the 1974 Act”) which would otherwise prevent a person from having to disclose a spent conviction and protect that person from being prejudiced by that conviction or any failure to disclose it. Section 4(1) of the Act contains a general protection and also provides that evidence about spent convictions is not admissible in proceedings before a judicial authority and that a person must not be asked in such proceedings about a spent conviction (and if asked may refuse to answer). Section 4(2) relates to questions about spent convictions asked outwith judicial proceedings and provides that a person is entitled to treat such a question as if it does not relate to a spent conviction and 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 otherwise prejudicing a person in respect of any of those things. Similar provision is made by paragraphs 3 to 5 of schedule 3 of the 1974 Act in respect of those alternatives to prosecution specified in section 8B of that Act.

The general effect of the disapplication of these protections is that, in specified circumstances, those protections are removed so as to permit questions to be asked about spent convictions in order to assess a person’s suitability for admission to certain professions or occupations or to hold certain offices, types of employment, licences or permits. The disapplication also permits spent convictions to be a ground for excluding a person from, or otherwise prejudicing them in respect of, those professions, occupations or employments.

Article 2(2) of this Order has the effect that the application of section 4(1) of the 1974 Act is excluded in relation to disciplinary proceedings against a constable. Article 3(1) has the effect that this does not apply in respect of any existing convictions of existing constables. Article 2(3) has the effect that the application of section 4(2)(a) and (b) of the 1974 Act is excluded in relation to any question put to assess the suitability of a person for a “relevant office or employment” (meaning: constables, persons appointed as police cadets to undergo training with a view to becoming constables, police custody and security officers and naval, military and air force police). Article 3(2) has the effect that this does not apply in respect of any current applicants whose suitability is being considered. Article 2(4) has the effect that section 4(3)(b) of the 1974 Act does not apply in relation to a relevant office or employment. Article 3(3) has the effect that this does not apply to any person who currently holds a relevant office or employment in respect of any existing convictions.

Article 2(5) makes equivalent provision to article 2(2) to (4) in respect of alternatives to prosecution, although this does not apply to any alternative to prosecution given to a person when that person was aged under 18. Article 3(4) to (6) makes equivalent provision to article 3(1) to (3) in respect of alternatives to prosecution.

Article 2(6) modifies schedule 4 to ensure that the amendments to the 2013 Order only apply in relation to relevant offices or employment and that the changes do not apply in respect of other employment by a police force.