
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 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.

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 inserts a number of new definitions into article 2 of the 2013 Order, including a definition of a “higher level disclosure” for the purposes of that Order, meaning a criminal record certificate issued under the Police Act 1997, an enhanced criminal record certificate issued under section 113B of that Act and a scheme record issued under section 52 of the Protection of Vulnerable Groups (Scotland) Act 2007.

Article 2 also inserts a new article 2A. New article 2A introduces the concept of a “protected conviction” into the 2013 Order. These are, in effect, convictions in relation to which the disapplications contained in the 2013 Order will not apply (and in relation to which the protections in the 1974 Act will continue to apply). Protected convictions include convictions which are spent and which are not listed in either Schedule A1 or B1 of the 2013 Order (as inserted by this Order). They also include convictions which are listed in Schedule B1, but in respect of which a sentence of admonition or absolute discharge was given (which includes for these purposes the discharge of the referral of a child’s case to a children’s hearing) or in relation to which 7 ½ years have passed since the date of conviction if the person was under 18 on the date of conviction, or 15 years have passed if the person was 18 or over on that date.

Article 3 amends article 3 of the 2013 Order which excludes from the protection given by section 4(1) of the Act a range of specified proceedings. The amendment provides that the exclusion does not apply in relation to a number of listed proceedings in relation to protected convictions, with the effect that evidence of such convictions will not be admissible in those proceedings and a person must not be asked (and if asked need not answer) any question about such convictions in those proceedings.

Article 4 amends article 4 of the 2013 Order which excludes from the protection given by section 4(2) of the Act questions put in a range of specified circumstances. New paragraph (2) of article 4 of the 2013 Order provides that the exclusion does not apply in respect of protected convictions. This paragraph also disapplies the exclusion in respect of convictions for offences listed in Schedule B1

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which are not protected convictions, but which are not included in a higher level disclosure which has been sent in connection with the purpose for which the question has been asked. This ensures that an individual is not required to disclose a conviction for an offence listed in Schedule B1 which is not protected, but in respect of which the individual may be entitled to apply for its removal from a higher level disclosure before it is sent or in respect of which the individual has already successfully applied for such removal. New paragraph (4) ensures that the exclusion of the protection in section 4(2) of the Act remains disappplied in respect of a failure to disclose a conviction which has taken place before a higher level disclosure was sent if that conviction subsequently appears in that disclosure. New paragraph (3) provides that the disapplication of the exclusion by new paragraph (2) does not have effect in relation to a range of specified questions, with the effect that all spent convictions must continue to be disclosed in response to those questions.

Article 5 amends article 5 of the 2013 Order which excepts from the protection given by section 4(3)(b) of the Act a number of professions, offices, types of employment and occupations and decisions. There is also excepted from that protection any action taken for the purpose of safeguarding national security, but nothing in this Order affects that.

New paragraph (2) of Article 5 of the 2013 Order provides that the exception does not apply in respect of protected convictions. This paragraph also disappplies the exception in respect of convictions for offences listed in Schedule B1 which are not protected convictions, but which are not included in a higher level disclosure which has been sent in connection with the profession, office, employment, occupation, decision or proposed decision to which the exception would otherwise apply. This ensures that an individual may not be dismissed or excluded from any office, profession occupation or employment on the basis of a conviction listed in Schedule B1 which is not protected but in respect of which the individual may be entitled to apply for its removal from a higher level disclosure before it is sent, or in respect of which the individual has already successfully applied for such removal. This applies equally to any failure to disclose such a conviction. New paragraph (4) ensures that the exceptions from the protection in section 4(3)(b) of the Act remain disappplied in respect of a failure to disclose a conviction which has taken place before a higher level disclosure was sent if that conviction subsequently appears in that disclosure. New paragraph (3) provides that the disapplication of the exceptions does not have effect in relation to the occupations listed in paragraph 1 or 4 of Part 3 of Schedule 4 to the 2013 Order (firearms dealer and occupations requiring an explosives certificate).

Article 6 inserts new Schedules A1 (containing a list of offences conviction of which must always be disclosed in the circumstances described in the 2013 Order even when spent) and B1 (containing a list of offences conviction of which may not be disclosed in those circumstances as set out above).