
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.

The 2013 Order was amended by the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2015 (“the 2015 Order”) in order to disapply the exclusions and exceptions in the 2013 Order in respect of convictions for certain offences (known as “protected convictions”). This disapplication was based on two lists of offences, one of offences convictions for which continue to require always to be disclosed in the circumstances described in the 2013 Order (Schedule A1 to that Order) and one of offences convictions for which may become protected subject to certain specified conditions being met (Schedule B1 to that Order). A conviction for any offence not on either list becomes protected once spent.

Articles 4 and 5 of this Order update the lists of offences in Schedules A1 and B1 by substituting new Schedules A1 and B1 in their place. The changes to these lists of offences follow the consultation on the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2015 (“the remedial Order”) which made changes to the system of state disclosure of previous convictions operated by Disclosure Scotland equivalent to those made in respect of individual disclosure by the 2015 Order. Modifications are now being made to the remedial Order by the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial (No. 2) Order 2015 and those require to be mirrored, so far as relevant, in the 2013 Order.

Articles 2 and 3 of this Order make minor technical changes to the 2013 Order correcting errors and omissions.