Draft Order laid before the Scottish Parliament under section 10(2) of the Rehabilitation of Offenders Act 1974 (c. 53) for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2025 No.

REHABILITATION OF OFFENDERS

The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment (No. 2) Order 2025

Made - - - - 2025

Coming into force in accordance with article 1(1)

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 4(4), 7(4), 10(1) and 10A(1) of the Rehabilitation of Offenders Act 1974(**a**) and all other powers enabling them to do so.

In accordance with section 10(2) of that Act(**b**), a draft of this Order has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment (No. 2) Order 2025 and comes into force on the same day as paragraph 3 of schedule 5 of the Disclosure (Scotland) Act 2020(**c**).

(2) In this Order, "the 2013 Order" means the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013(**d**).

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

2. The 2013 Order is amended in accordance with articles 3 to 11.

Amendment of article 2

3. In article 2(1) (interpretation)(**e**) of the 2013 Order—

(a) for "regulated work with adults" substitute "a regulated role with adults",

(**a**) 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 S.I. 2003/415. Section 10A was inserted by section 32 of the Management of Offenders (Scotland) Act 2019 (asp 14).

(**b**) Section 10(2) has been amended by paragraph 5 of schedule 3 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

(**c**) 2020 asp 13.

(**d**) S.S.I. 2013/50 as relevantly amended by S.S.I. 2015/329, S.S.I. 2016/91, S.S.I. 2018/51, S.S.I. 2019/396, S.S.I. 2020/45, S.S.I. 2020/103, S.S.I. 2022/378, S.S.I. 2024/374 and S.S.I. 2025/XXX.

(**e**) Article 2 was relevantly amended by S.S.I. 2015/329.

(b) for "regulated work with children" substitute "a regulated role with children",

(c) in the appropriate places insert, in alphabetical order, the following definitions—

""accredited body" has the meaning given in section 46(2) of the Disclosure Act,",

""children's hearing outcome" means anything treated as a conviction for the purposes of section 3 (special provision with respect to certain disposals by children's hearings) of the Act(**a**),",

""Disclosure Act" means the Disclosure (Scotland) Act 2020(**b**),",

""Level 2 disclosure" has the meaning given in section 8 of the Disclosure Act,",

""made available" means, in relation to a Level 2 disclosure, provided to the accredited body that countersigned the application in accordance with section 18(1)(a) of the Disclosure Act,",

""school" has the meaning given in section 135(1) of the Education (Scotland) Act 1980(**c**),",

""school care accommodation service" has the meaning given in paragraph 3 of schedule 12 of the Public Services Reform (Scotland) Act 2010(**d**),".

(d) omit the definitions of the following expressions—

""the 1997 Act"",

""higher level disclosure"",

""protected conviction"",

""sent"".

Amendment of article 2A

4. In article 2A (protected convictions) of the 2013 Order(**e**)—

(a) in paragraph (1), for "protected" substitute "non-disclosable",

(b) after paragraph (1) insert—

"(1A) For the purposes of this Order, a person's children's hearing outcome is a non-disclosable children's hearing outcome if—

(a) the offence which led to the children's hearing outcome is not an offence listed in schedule A1 or B1, or

(b) the offence which led to the children's hearing outcome is an offence listed in schedule B1 and either of the conditions in paragraph (2A) is satisfied.",

(c) in paragraph (2)—

(i) in sub-paragraph (b), for "7" substitute "5",

(ii) in sub-paragraph (c), for "15" substitute "11",

(d) after paragraph (2) insert—

"(2A) The conditions are—

(a) the referral to the children's hearing which led to the children's hearing outcome was discharged under—

(i) section 69(1)(b) and (12) of the Children (Scotland) Act 1995(**f**), or

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(**a**) 1974 c. 53. Section 3 was amended by paragraph 23(2) of schedule 4 of the Children (Scotland) Act 1995 (c. 36), section 4(3) of the Age of Criminal Responsibility (Scotland) Act 2019 (asp 7) and paragraph 1(5) of schedule 2 of the Management of Offenders (Scotland) Act 2019 (asp 14).
(**b**) 2020 asp 13.
(**c**) 1980 c. 44.
(**d**) 2010 asp 8.
(**e**) Article 2A was inserted by S.S.I. 2015/329 and amended by S.S.I. 2016/91.
(**f**) 1995 c. 36. Section 69 was repealed by schedule 6 of the Children's Hearings (Scotland) Act 2011.

(ii) section 91(3)(b), 93(2)(b), 108(3)(b) or 119(3)(b) of the Children's Hearings (Scotland) Act 2011(**a**),

(b) at least 5 years and 6 months have passed since the date of the children's hearing outcome.",

(e) omit paragraph (3),

(f) the heading of the article becomes "Non-disclosable convictions and non-disclosable children's hearing outcomes".

Amendment of article 3

5. In article 3(2) (exclusion of section 4(1) of the Act) of the 2013 Order(**b**)—

(a) for "protected conviction" substitute "non-disclosable conviction or non-disclosable children's hearing outcome",

(b) after "such a conviction", insert "or outcome".

Amendment of article 4

6. In article 4 (exclusion of section 4(2)(a) and (b) of the Act) of the 2013 Order(**c**)—

(a) for paragraph (2) substitute—

"(2) But the application of section 4(2)(a) and (b) of the Act is not excluded in relation to any question relating to a spent conviction or a children's hearing outcome, or any circumstance ancillary to that conviction or outcome, if that conviction or outcome is—

(a) a non-disclosable conviction,

(b) a conviction which—

(i) falls within paragraph (2A), and

(ii) is not included in a Level 2 disclosure made available in connection with the purpose for which the question is put,

(c) a non-disclosable children's hearing outcome, or

(d) a children's hearing outcome which—

(i) falls within paragraph (2B), and

(ii) is not included in a Level 2 disclosure made available in connection with the purpose for which the question is put.",

(b) in paragraph (2A)—

(i) in sub-paragraph (a)(i), for "7" substitute "5",

(ii) in sub-paragraph (a)(ii), for "15" substitute "11",

(iii) in sub-paragraph (b), for "protected" substitute "non-disclosable",

(c) after paragraph (2A) insert—

"(2B) A children's hearing outcome falls within this paragraph if—

(a) the offence which led to the children's hearing outcome is an offence listed in schedule A1 and at least 5 years and 6 months have passed since the date of the children's hearing outcome, or

(b) the offence which led to the children's hearing outcome is an offence listed in schedule B1 and it is not a non-disclosable children's hearing outcome.",

(d) for paragraph (4) substitute—

(**a**) 2011 asp 1.
(**b**) Article 3 was amended by S.S.I. 2015/329 and S.S.I. 2020/45.
(**c**) Article 4 was amended by S.S.I. 2015/239, S.S.I. 2016/147, S.S.I. 2018/51, S.S.I. 2020/45 and S.I. 2020/103.

"(4) If a spent conviction which falls within paragraph (2A) or a children's hearing outcome which falls within paragraph (2B) is included in a Level 2 disclosure, the application of section 4(2)(a) and (b) of the Act is not excluded in relation to any failure to disclose that conviction or outcome, or any circumstances ancillary to that conviction or outcome, which occurred before that Level 2 disclosure was made available.",

(e) in paragraph (5)—

(i) after "disclose the conviction" insert "or children's hearing outcome",

(ii) after "when the conviction" insert "or outcome",

(iii) after "(2A)" insert "or (2B)".

Amendment of article 5

7. In article 5 (exceptions from section 4(3) of the Act) of the 2013 Order(**a**)—

(a) for paragraph (2) substitute—

"(2) But the exceptions in paragraphs (1)(a) and (c) do not apply in relation to a spent conviction or a children's hearing outcome, or any circumstances ancillary to that conviction or outcome, if that conviction or outcome is—

(a) a non-disclosable conviction,

(b) a conviction which—

(i) falls within paragraph (2A), and

(ii) is not included in a Level 2 disclosure made available in connection with the profession, office, employment, occupation, decision or proposed decision to which the exception would otherwise apply,

(c) a non-disclosable children's hearing outcome, or

(d) a children's hearing outcome which—

(i) falls within paragraph (2B), and

(ii) is not included in a Level 2 disclosure made available in connection with the profession, office, employment, occupation, decision or proposed decision to which the exception would otherwise apply.",

(b) in paragraph (2A) insert—

(i) in sub-paragraph (a)(i), for "7" substitute "5",

(ii) in sub-paragraph (a)(ii), for "15" substitute "11",

(iii) in sub-paragraph (b), for "protected" substitute "non-disclosable",

(c) after paragraph (2A) insert—

"(2B) A children's hearing outcome falls within this paragraph if—

(a) the offence which led to the children's hearing outcome is an offence listed in schedule A1 and at least 5 years and 6 months have passed since the date of the children's hearing outcome, or

(b) the offence which led to the children's hearing outcome is an offence listed in schedule B1 and it is not a non-disclosable children's hearing outcome.",

(d) for paragraph (4) substitute—

"(4) If a spent conviction which falls within paragraph (2A) or a children's hearing outcome which falls within paragraph (2B) is included in a Level 2 disclosure, the exceptions in paragraph (1)(a) and (c) do not apply to any failure to disclose that conviction or outcome, or any circumstances ancillary to that conviction or outcome, which occurred before that Level 2 disclosure was made available.",

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(**a**) Article 5 was amended by S.S.I. 2015/329, S.S.I. 2018/51 and S.S.I. 2020/45.

(e) in paragraph (5)—

(i) after "disclose the conviction" insert "or children's hearing outcome",

(ii) after "when the conviction" insert "or outcome",

(iii) after "(2A)" insert "or (2B)".

Amendment of schedule A1

8. In schedule A1 (offences which must be disclosed subject to exceptions) of the 2013 Order(**a**)—

(a) after paragraph 16A insert—

"**16AA.** Theft by housebreaking.",

(b) after paragraph 24D insert—

"**24E.** An offence under any of the following provisions of the Domestic Abuse (Protection) (Scotland) Act 2021(**b**)—

(a) section 7 (offence of breaching notice),

(b) section 17 (offence of breaching order).",

(c) in the heading before paragraph 37, before "Official Secrets" insert "National Security and"—

(d) after paragraph 37B insert—

"**37BA.** An offence under any of the following provisions of the National Security Act 2023(**c**)—

(a) section 1 (obtaining or disclosing protected information),

(b) section 2 (obtaining or disclosing trade secrets),

(c) section 3 (assisting a foreign intelligence service),

(d) section 4 (entering etc a prohibited place for a purpose prejudicial to the UK),

(e) section 12 (sabotage),

(f) section 13 (foreign interference: general),

(g) section 17 (obtaining etc material benefits from a foreign intelligence service),

(h) section 18 (preparatory conduct).",

(e) in paragraph 43, before sub-paragraph (a), insert—

"(za) section 66A (sending etc. photograph or film of genitals)(**d**),

(zb) section 66B (sharing or threatening to share intimate photograph or film)(**e**),",

(f) after paragraph 46 insert—

"**46ZA.** An offence under any of the following provisions of the Hate Crime and Public Order (Scotland) Act 2021(**f**)—

(a) section 3 (racially aggravated harassment),

(b) section 4(1) or (2) (offence of stirring up hatred).",

(g) after paragraph 56 insert—

(**a**) Schedule A1 was amended by S.S.I. 2015/329, S.S.I. 2016/91, S.S.I. 2018/51, S.S.I. 2019/396, S.S.I. 2022/378 and S.S.I. 2024/374.
(**b**) 2021 asp 16.
(**c**) 2023 c. 32.
(**d**) Section 66A of the Sexual Offences Act 2003 (c. 42) was inserted by section 187 of the Online Safety Act 2023 (c. 50).
(**e**) Section 66B of the 2003 Act was inserted by section 188 of the Online Safety Act 2023 (c. 50).
(**f**) 2021 asp 14.

"**Miscellaneous statutory offences**

56A. An offence under section 184(1) of the Online Safety Act 2023 (offence of encouraging or assisting serious self-harm)(**a**).".

Amendment of schedule B1

9. In schedule B1 (offences which are to be disclosed subject to rules) of the 2013 Order(**b**)—

(a) after paragraph 5A insert—

"**5B.** Culpable and reckless discharge of a firearm.",

(b) after paragraph 10A insert—

"**10B.** Opening a lockfast place.",

(c) in paragraph 93A(**c**) insert—

"(d) section 38 (delivery of bladed products to residential premises etc),

(e) section 39 (delivery of bladed products to persons under 18),

(f) section 42 (delivery of bladed articles to persons under 18).",

(d) after paragraph 93A insert—

"**93B.** An offence under section 21(1) of the Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (prohibition on providing fireworks or pyrotechnics to children)(**d**).",

(e) in paragraph 102, after paragraph (e), insert—

"(ea) section 4B (intentional harassment, alarm or distress on account of sex)(**e**);",

(f) after paragraph 102A insert—

"**102B.** An offence under any of the following provisions of the Abortion Services (Safe Access Zones) (Scotland) Act 2024(**f**)—

(a) section 4(1) (offence of influencing, preventing access or causing harassment etc. in safe access zone),

(b) section 5(1) (offence of influencing, preventing access or causing harassment etc. in area visible or audible from safe access zone).",

(g) after paragraph 106A insert—

"**Treason**

106B. An offence under the Treason Act 1351(**g**).

106C. An offence under the Treason Act 1708(**h**).

106D. An offence under section 2 of the Treason Act 1842(**i**).",

(h) after paragraph 111 insert—

"**111A.** An offence under any of the following provisions of the Online Safety Act 2023(**j**)—

(**a**) 2023 c. 50.
(**b**) Schedule B1 was amended by S.S.I. 2015/329, S.S.I. 2016/91, S.S.I. 2018/51 and S.S.I. 2022/378.
(**c**) Paragraph 93A was inserted by S.S.I. 2022/378.
(**d**) 2022 asp 9.
(**e**) Section 4B of the Public Order Act 1968 (c. 64) was inserted by section 1 of the Sex-based Harassment in Public Act 2023.
(**f**) 2024 asp 10.
(**g**) 1351 c. 2.
(**h**) 1708 c. 21.
(**i**) 1842 c. 51.
(**j**) 2023 c 50.

(a) section 179(1) (false communications offence),

(b) section 181(1) (threatening communications offence),

(c) section 183(1) or (8) (offences of sending or showing flashing images electronically).",

(i) after paragraph 115 insert—

"**115A.** An offence of culpable and reckless conduct, the conviction for which indicates that it resulted in any of the following—

(a) injury,

(b) severe injury,

(c) disfigurement (permanent or otherwise).",

(j) in paragraphs 116 and 117, for "115" substitute "115A".

Amendment of schedule 3

10. In schedule 3 (exclusions of section 4(2)(a) and (b) of the Act) of the 2013 Order(**a**)—

(a) in paragraph 5 (adoption and fostering)—

(i) in sub-paragraph (1), for "sub-paragraph (3)" substitute "sub-paragraphs (3)(a) or (b)",

(ii) omit sub-paragraph (2)(b),

(iii) after sub-paragraph (2)(b) insert—

"(c) be a shared lives carer within the meaning of paragraphs 16 and 24 of schedule 2 of the 2007 Act,",

(iv) after sub-paragraph (2) insert—

"(2A) Any question asked by or on behalf of any person for the purposes of assessing, investigating, reviewing or confirming the suitability of any person to be in charge of or caring for children, within the meaning of paragraph 12 of schedule 2 of the 2007 Act, in the circumstance set out in sub-paragraph (3)(c).",

(v) the "or" immediately following sub-paragraph (3)(a) is omitted,

(vi) after sub-paragraph (3)(b) insert—

"; or

(c) the question relates to a person over the age of 16 residing in the same household premises as the person whose suitability is being assessed, investigated, reviewed or confirmed and the activity in sub-paragraph (2A) takes place solely or mainly on the household premises.",

(vii) omit paragraph (4),

(b) the heading of paragraph 5 becomes "Adoption, fostering etc.",

(c) after paragraph (5) insert—

"**School care accommodation services**

(5A) Any question asked by or on behalf of any person for the purposes of assessing, investigating, reviewing or confirming the suitability of any individual to be in charge of or caring for children, within the meaning of paragraph 12 of schedule 2 of the 2007 Act and the question relates to an individual over the age of 16 who—

(a) resides in residential accommodation where a school care accommodation service is being provided,

(b) is not a pupil to whom the school care accommodation service is being provided,

---

(**a**) There are amendments to schedule 3 which are not relevant to this Order.

(c) is not employed by the school, and

(d) is not being assessed as to their suitability to carry out a regulated role with children.",

(d) in paragraph 12 (access to information), for "of a registered person" to the end of the paragraph substitute ", for the purpose of considering the suitability, for the purposes of section 47(5) or 48(2) of the Disclosure Act, of a relevant individual to have access to disclosure information (within the meaning of section 47(10) of that Act).".

(e) in paragraph 13 (personnel suppliers), for "to do regulated work with adults or regulated work with children" substitute "to carry out a regulated role with adults or a regulated role with children".

Amendment of schedule 4

11. In Part 2 (offices and employments) of schedule 4 (excepted professions, offices, employments and occupations) of the 2013 Order(**a**)—

(a) in paragraph 11 for "Any regulated work" substitute "A regulated role",

(b) in paragraph 25 for "Any regulated work" substitute "A regulated role".

Name
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
Date

(**a**) There are amendments to schedule 4 which are not relevant to this Order.

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").

Non-disclosable convictions and non-disclosable children's hearing outcomes

Article 4 of this Order amends article 2A of the 2013 Order to replace references to protected convictions with references to "non-disclosable convictions" and "non-disclosable children's hearing outcomes" for the purposes of the exclusions and exceptions in the 2013 Order. This reflects the changes made to the disclosure system and the operation of the Protecting Vulnerable Groups Scheme ("the PVG Scheme") and barring service by the Disclosure (Scotland) Act 2020 ("the Disclosure Act").

Article 6 substitutes paragraph (2) of article 4 of the 2013 Order, amends paragraph (2A) and inserts new paragraph (2B) to provide when convictions and children's hearing outcomes are not caught by the exclusion in paragraph (2). The amendments made by article 6 also substitute references to "higher level disclosure" with references to "Level 2 disclosure" to reflect the changes made to the disclosure system and the operation of the PVG Scheme and barring service by the Disclosure Act. Article 7 makes equivalent amendments to article 5 of the 2013 Order.

Article 8 amends schedule A1 of the 2013 Order to update the list of offences for which convictions must and children's hearing outcomes may be disclosed subject to the exceptions specified in the 2013 Order. Article 9 amends schedule B1 of the 2013 Order to update the list of offences for which convictions must and children's hearing outcomes may be disclosed subject to the rules set out in the 2013 Order.

Schedule 3 of the 2013 Order

Article 10 amends schedule 3 of the 2013 Order, which describes circumstances in which questions can be put to someone about spent convictions which would not normally need to be disclosed. In certain circumstances these questions can be asked of the individual whose suitability is being assessed, investigated, reviewed or confirmed for a particular role, position or employment, or of another individual who is over the age of 16 and who resides in the same household as the individual being assessed.

Article 10(a)(i) and (iii) to (vi) insert provision in respect of new types of regulated roles in relation to which questions can be asked of individuals over the age of 16 who are residing in the same household as the person whose suitability is being assessed, investigated, reviewed or confirmed for those roles.

Article 10(a)(ii) omits circumstances which are now regulated roles under the Disclosure Act and for which PVG scheme membership will be required.

Article 10(c) inserts a new paragraph 5A, which makes provision for questions asked in the context of an individual over the age of 16 (who is not a pupil receiving a school care accommodation service or whose suitability to carry out a regulated role is not being assessed) living in school care accommodation.

Article 10(b), (d) and (e) makes various consequential amendments and substitutions to reflect the changes made to the disclosure system and the operation of the PVG Scheme and barring service by the Disclosure Act.

Miscellaneous amendments

Article 3 amends article 2 of the 2013 Order to omit and insert relevant definitions to reflect the repeal of Part 5 of the Police Act 1997 (certificates of criminal records etc.) by the Disclosure Act and amendments made elsewhere in this Order.

Articles 5 and 11 make consequential substitutions which reflect the changes made to the disclosure system and the operation of the PVG Scheme and barring service by the Disclosure Act.

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