POLICY NOTE

THE REHABILITATION OF OFFENDERS ACT 1974 (EXCLUSIONS AND EXCEPTIONS) (SCOTLAND) AMENDMENT ORDER 2025

SSI 2025/XXX

The above instrument was made in exercise of the powers conferred by sections 7(4) and 10(1) of the Rehabilitation of Offenders Act 1974. The instrument is subject to affirmative procedure.

Summary Box

This Order ensures that limitations on protections under section 4 of the Rehabilitation of Offenders Act 1974 apply to the new behavioural orders (Sexual Harm Prevention Orders (SHPOs) and Sexual Risk Orders (SROs)) introduced by the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.

Policy Objectives

The main policy objective of this Order is to allow Police Scotland to request relevant extract conviction information from Scottish Courts and Tribunals Service (SCTS) to support applications for Sexual Harm Prevention Orders (SHPO) and Sexual Risk Orders (SROs).

On 31 March 2023 Sections 10-40 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 ('the 2016 Act') were commenced, introducing two new behavioural orders, SHPOs and SROs. These orders replaced Sexual Offences Prevention Orders (SOPOs) and Risk of Sexual Harm Orders (RoSHOs).

Section 4 of the Rehabilitation of Offenders Act 1974 provides that once an individual's conviction has become 'spent' they shall be treated for all purposes in law as a person who has not committed or been charged with, or prosecuted for or convicted of, or sentenced, for the offence which was the subject of that conviction.

There are exceptions to this rule – the 1974 Act provides that proceedings under the Sexual Offences Act 2003 and Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (i.e., applications for SOPOs and RoSHOs) don't fall under the section 4 rehabilitation provision. This means that nothing in section 4 of the 1974 Act shall affect the determination of any issue, or prevent the admission or requirement of any evidence, relating to a person's previous convictions on an application for a SOPO or RoSHO. In practical terms, this allows Police Scotland to request relevant extract conviction information from Scottish Courts and Tribunal Services for the purposes of applying for these behavioural orders.

The relevant sections of the 2016 Act introducing SHPOs and SROs came into force in March 2023. A consequential amendment could have been made to amend the 1974 Act or make provision under it to ensure that these behavioural orders were treated in the same way as the previous sexual behavioural orders, and could also be exempt from section 4 of the 1974 Act. Such an amendment could equally have been made as part of the 2016 Act, which has a list of consequential amendments in schedule 2.

Following a period of operational running, it has become apparent that making this change would be helpful to allow Police Scotland to request relevant extract conviction information from SCTS for the purposes of applying for SHPOs and SROs. It is unlikely that a circumstance would arise whereby the Police are wholly reliant on the details of a spent conviction to secure an application for an order and presently, SCTS can and do share details of unspent convictions. However, this change will help ensure a comprehensive set of information can be assembled when applying for these orders.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

The issue was first raised by Police Scotland (PS) who identified this as an improvement that would assist them when seeking court extracts from SCTS. Officials have discussed intentions to bring forward the regulations with both PS and SCTS and both are content with this proposed change.

Impact Assessments

The Scottish Government considers that an Equality Impact Assessment (EQIA), Island Communities Impact Assessment (ICIA), Fairer Scotland Duty (FSD), Strategic Environmental Assessment (SEA) and Data Protection Impact Assessment (DPIA) are not required for these regulations. This Order is implementing a consequential amendment which should have taken place during the passage of the 2016 Act. No new policy is being proposed by this SSI.

Financial Effects

The Scottish Government considers that a Business and Regulatory Impact Assessment (BRIA) is not required for this Order. The impact of this policy on business is neutral and there are no costs associated with taking forward this SSI. Conviction information is already exchanged between SCTS and Police Scotland and this just marginally alters the scope of what is covered.

Scottish Government
Public Protection Unit
Community Justice Division
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