POLICY NOTE

THE MANAGEMENT OF OFFENDERS (SCOTLAND) ACT 2019 (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2020

SSI 2020/311

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by section 62(1) of the Management of Offenders (Scotland) Act 2019 and all other powers enabling them to do so. The instrument is subject to affirmative procedure.

Purpose of instrument:

To amend Part II of schedule 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 to maintain consistency with the terminology of the Rehabilitation of Offenders Act 1974 following that Act's amendment by the Management of Offenders (Scotland) Act 2019.

Policy Objectives

1. As a result of changes to the Rehabilitation of Offenders Act 1974 ("the 1974 Act") made by the Management of Offenders (Scotland) Act 2019 ("the 2019 Act"), it is necessary to adjust the terminology in Part II of schedule 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 ("the 1980 Act") so that it refers to "protected person" rather than "rehabilitated person". The need for this change is to maintain consistency with the terminology now provided for in the 1974 Act.

Amendment to the 1974 Act

2. The provisions in Part 2 of the 2019 Act reforms the 1974 Act so that it achieves a more appropriate balance between the rights of people not to disclose their previous offending behaviour and to move on with their lives while ensuring the rights of the public to be protected are effectively maintained. The provisions also increase the clarity of the legislation and make it more accessible to those required to understand it.

3. Therefore, the provisions can be split into the following five broad areas:

    - reduce the period of disclosure for the majority of sentences,
    - bring more people within the scope of the protections under the 1974 Act,
    - provide an enabling power to bring forward regulations to create an independent review mechanism for certain sentences greater than 48 months,
    - increase the clarity and accessibility of the legislation, and
    - change the terminology used within the legislation to reduce confusion about the purpose of disclosure.

4. In respect of terminology, the changes make the 1974 Act much clearer as to the purposes of a disclosure requirement. The 2019 Act makes the following changes to the terminology in the 1974 Act:

- "rehabilitated person" will become "protected person".
- "rehabilitation period" will become "disclosure period".
- "sentence excluded from rehabilitation under this act" will become "excluded sentence".
- "a sentence subject to rehabilitation under this Act" will become "disclosable sentence".
- "rehabilitated living persons" will become "living protected persons".

Amendment to the 1980 Act

5. As referred to above, the 1974 Act refers to "rehabilitated persons". The 1974 Act is amended by the 2019 Act to instead refer to "protected persons". Part II of schedule 1 of the 1980 Act currently refers to persons who are "rehabilitated persons" for the purposes of the 1974 Act. These Regulations amend Part II of schedule 1 of the 1980 Act to the effect that it will instead refer to persons who are "protected persons" for the purpose of the 1974 Act.

Consultation

6. As these Regulations make provision in consequence of the 2019 Act no formal consultation was necessary.

Impact Assessments

7. An EQIA and a CRWIA in relation to the Bill for the 2019 Act were completed and published prior to the Bill being introduced into the Scottish Parliament.

Financial Effects

8. The financial effects of this policy are set out under the financial memorandum which accompanied the Bill for the 2019 Act. The Cabinet Secretary for Justice confirmed prior to the 2019 Act being introduced to Parliament that no BRIA was necessary.

Scottish Government
Justice Directorate
19 August 2020