

POLICY NOTE

THE REHABILITATION OF OFFENDERS ACT 1974 (EXCLUSIONS AND EXCEPTIONS) (HOMES FOR UKRAINE SPONSORSHIP SCHEME) (SCOTLAND) AMENDMENT ORDER 2022

SSI 2022/164

The above instrument was made in exercise of the powers conferred by sections 4(4), 10(1), 10A(1) and paragraph 6 of schedule 3 of the Rehabilitation of Offenders Act 1974 (“the 1974 Act”). The instrument is subject to affirmative procedure.

This Order amends the Rehabilitation of Offenders Act (Exclusions and Exceptions) (Scotland) Order 2013 SSI (2013/50) (“the 2013 Order”) to bring all individuals who are offering to provide accommodation (and those individuals over the age of 16 years where they, and the individual offering the accommodation, reside within the accommodation to be provided) to a person who has permission to enter into or to stay in the United Kingdom granted under immigration rules in relation to the Homes for Ukraine Sponsorship Scheme within the excluded circumstances set out in schedule 3 of the 2013 Order.

Policy Objectives

1. This Order has been made by the Scottish Government in response to the Homes for Ukraine Sponsorship Scheme (“the scheme”) announced by the UK Government and the Scottish Government’s intention to act as a “super sponsor” for those fleeing the war in Ukraine. This Order is the second instrument to amend the 2013 Order in response to the scheme. The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2022 (SSI 2022/110) was made on 23 March 2022 and came into force on 24 March 2022.
2. The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2022 made provision to bring individuals – offering to provide accommodation within premises that they also reside in (and those individuals over the age of 16 years residing within the same premises) to Ukrainian nationals, and their immediate family members, who had left Ukraine in connection with the Russian invasion – within the scope of the exceptions set out in the 2013 Order, requiring them to self-disclose spent convictions.
3. The amendments in this Order substitute the amendments made by the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2022, reflecting the developing and current policy position of the Scottish Government.
4. This Order makes provision so that any individual, providing accommodation to a person who has permission to enter into or stay in the United Kingdom in relation to the Homes for Ukraine Sponsorship Scheme, will be required to self-disclose spent convictions provided those individuals are being assessed as suitable to do so under the scheme. Connected amendments to the statutory framework in relation to self and state disclosure (see paragraph 10 for more detail) are being made by the Police Act 1997 (Criminal Records) (Homes for Ukraine Sponsorship Scheme) (Scotland) Amendment Regulations 2022.

5. This Order also takes account of the accurate and up to date immigration status of displaced Ukrainians arriving in the United Kingdom through the Homes for Ukraine Scheme.
6. The Scottish Ministers consider that, as the scheme is likely to predominantly involve women and children fleeing the war, the safeguarding needs are paramount in order to ensure an adequate level of protection. Whilst recognising that the vast majority of people volunteering to accommodate Ukrainian refugees will present no risk of harm to them, the Scottish Ministers are aware from previous similar schemes that people may seek to exploit vulnerabilities in the system and seek opportunities to cause harm.
7. In the private sector, different types of housing can be considered as suitable housing options as part of the scheme including individuals offering spare rooms within their own homes and individuals offering whole properties, such as second home/holiday lets/empty homes. Second homes etc. are particularly useful as they provide self-contained accommodation. This is likely to be more attractive for accommodating families or vulnerable people in particular and, as there is no requirement to share with others, placements are more likely to be sustained as the risk of tenant/host relationship breakdowns through living in close proximity is reduced. In addition, such properties do not exacerbate an already pressured private rented sector (unlike landlords offering empty properties to the scheme which will reduce private rented sector housing stock and potentially put further pressure on market rents).
8. The Scottish Ministers consider that the level of disclosure checks that an individual offering to provide accommodation asked to undertake as part of the suitability assessment for the scheme should be the same no matter the type of accommodation offered.
9. Occupancy arrangements in relation to second homes etc. under the Homes for Ukraine Scheme will not be the same as standard tenancy agreements, and individuals offering whole properties under the scheme will not have entry to their property restricted by the terms of any lease. The Scottish Government considers that there is a significant risk that the scheme could attract individuals who are seeking to exploit this opportunity to gain access to vulnerable people. Further examination of the risks and emerging evidence of those risks materialising in other parts of the UK, as well as information of concern being disclosed on those checks already happening on those offering rooms, has led the Scottish Ministers to conclude an enhanced disclosure with suitability information relating to children and adults on everyone offering accommodation through the scheme (whether that be within personal homes or via second properties) offers the appropriate level of safeguarding in these circumstances.

General background to state and self-disclosure

10. The disclosure regime in Scotland is comprised of two broadly aligned parts: self and state disclosure. The Rehabilitation of Offenders Act 1974 (“the 1974 Act”) and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (“the 2013 Order”) regulate self-disclosure the obligation placed on an individual to admit or declare previous convictions if asked in certain circumstances. Self-disclosure by the individual is then verified by disclosures provided by the state. Disclosure Scotland, an executive agency of the Scottish Ministers, carries out functions on behalf of the Scottish

Ministers under the Police Act 1997 (“the 1997 Act”) and the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”) in relation to the disclosure of conviction information and other criminal history. The 1997 Act and the 2007 Act set out the statutory framework for state disclosure of an individual’s previous criminal history.

11. A conviction may become spent if a certain length of time has elapsed since the date of conviction, with different periods of time applying to different disposals, as set out in section 5 of the 1974 Act. Once a conviction is spent, an individual becomes a “protected person”. The 1974 Act provides that such a person is not normally required to disclose their spent conviction and that they generally cannot be prejudiced by its existence. The purpose of this approach is to appropriately allow an individual to move away from their past criminal activity so that they can contribute effectively to society while also ensuring that people with a legitimate interest, such as employers, are able to understand an individual’s background.
12. Section 4 of the 1974 Act sets out the effect of becoming a protected person. Broadly speaking, section 4 permits such persons not to disclose spent convictions in certain circumstances (e.g. when asked to do so by a prospective employer), prevents others from asking about those spent convictions and prohibits reliance on spent convictions in certain legal proceedings or to prejudice an individual in an employment context. However, there are certain exceptions and exclusions to this general approach when the interests of public safety are paramount.
13. There are some categories of employment and proceedings to which the rules in the 1974 Act do not apply as it is considered appropriate that disclosure of spent conviction information continues to be available. This is because the employment positions and proceedings involve a high degree of sensitivity or there is an expectation of integrity or for the purposes of public protection. These positions and proceedings are subject to what is known as ‘enhanced disclosures’ which contain details of unspent convictions and other relevant information. Enhanced disclosures with suitability information relating to children and adults provides that, where an applicant for enhanced disclosure is barred from regulated work with children or protected adults, the information on the disclosure includes the details of the barring.

The 2013 Order

14. Article 4 of the 2013 Order excludes the application of section 4(2)(a) and (b) of the 1974 Act in relation to questions put in the circumstances set out in its schedule 3.
15. 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. The circumstances in schedule 3 include the assessment of a person’s suitability for a profession, office, employment or occupation set out in schedule 4, or to hold a licence, certificate or permit set out in paragraph 3(3) of schedule 3. Provision is made in schedule 3 for other special circumstances that arise – for example, in the context of child minding, adoption and fostering.

What this Order does to the 2013 Order

16. Article 2(2) of this Order modifies schedule 3 of the 2013 Order so as to add any question asked to assess the suitability of an individual, to provide accommodation to a person who has permission to enter into or to stay in the United Kingdom granted under the Homes for Ukraine Sponsorship Scheme, in specified circumstances. Those circumstances being that the question relates to the individual whose suitability is being assessed, or where the individual being assessed resides in the accommodation to be provided, the question relates to any other individual who is over the age of 16 years and who also resides in the accommodation being provided.
17. This substitution has the effect that, when an individual is offering to provide shared accommodation (i.e. when an applicant to the scheme is offering to provide accommodation in the premises where they also reside) or a whole property accommodation (such as second home and holiday lets or empty homes), they can be subject to an appropriate level of checks and an enhanced criminal record certificate with suitability information relating to children and adults can be issued under sections 113B, 113CA and 113CB of the Police Act 1997. Where the individual offering the accommodation is offering a room in their own home, any other individual over the age of 16 years also residing in the household with that individual, can also be subject to the same level of check. The Scottish Ministers consider that this level of vetting is necessary in these circumstances to minimise any risk of displaced Ukrainians being accommodated by an unsuitable individual while allowing for the scheme to continue to achieve its aims.

Consultation

18. In ordinary circumstances, the Scottish Ministers would consult with stakeholders to inform the determinations that they make in this context. However, they are continuing to respond at speed in this situation, recognising the vulnerable status of the displaced Ukrainians in these circumstances and the urgent need to them to be accommodated. The Scottish Ministers are of the view that this enhanced level of vetting of individuals is a proportionate and necessary response to the circumstances.
19. No consultation has been carried out due to the pace at which a legislative response was needed in order to respond to the circumstances. However, it is intended that consultation and review will form part of the scheme as continues to develop.

Impact Assessments

20. No impact assessments for this Order has been published yet but they will follow in due course. The Scottish Government is working with key partners, such as COSLA, the Scottish Refugee Council and Police Scotland, to ensure effective coordination of plans to address the practical challenges of resettling those coming to Scotland.

Financial Effects

21. The fee that is charged for enhanced disclosures certificates in relation to those individuals offering to provide accommodation under the Scheme will be met by the Scottish Government. This will ensure that organisations, such as local authorities and NGOs, are not burdened by the costs of disclosure checks and the administrative process associated with the fee being paid.

Scottish Government
Disclosure Scotland
6 May 2022