

EXECUTIVE NOTE

DRAFT : THE REHABILITATION OF OFFENDERS ACT 1974 (EXCLUSIONS AND EXCEPTIONS) (SCOTLAND) AMENDMENT ORDER 2007

1. The above instrument will be made in exercise of the powers conferred by virtue of sections 4(4), 7(4) and 10(1) of the Rehabilitation of Offenders Act 1974 (c.53). The instrument is subject to draft affirmative resolution procedure.

Policy Objectives

2. The purpose of this instrument is amend the current Rehabilitation of Offenders Act 1974 (Exclusion and Exceptions) (Scotland) Order 2003 (“the 2003 Order”) to take account of changes in legislation, to allow spent conviction information to be disclosed in further proceedings before “a judicial authority” (within the meaning of ROA), and to enable questions about spent convictions to be asked of any person otherwise than in such proceedings, all so as to ensure that various agencies and bodies are able to fulfil their functions effectively. The amendments also add to the categories of excepted professions, offices, employments and occupations in the 2003 Order; their inclusion in the Order means that spent convictions - or the failure to disclose a spent conviction – can be a proper ground for dismissing or excluding a person from a specified profession, office employment or occupation.

Background

3. The Rehabilitation of Offenders Act 1974 (ROA) sets out to improve the rehabilitation prospects of people who have been convicted of a criminal offence, served their sentence and have since lived on the right side of the law. The ROA provides that anyone who has been convicted of a criminal offence and sentenced to less than two and a half years in prison can be regarded as rehabilitated after a specified period with no further convictions. After the specified period the original conviction is considered to be spent. (There are, however, certain sentences which are so serious that the convictions to which they relate shall never become spent.)

4. The ROA generally prevents evidence of spent convictions being admitted in proceedings, whether before judicial authorities or otherwise, but there are specified types of proceedings for which those provisions of the ROA are “excluded” and where details of spent convictions can therefore be disclosed, e.g. applications for licences.

5. The ROA also provides that once a conviction is spent the convicted person does not have to reveal it and cannot be prejudiced by it. However, there are some categories of employment to which the Act does not apply and for the purposes of which convictions otherwise defined as spent have still to be disclosed. These categories of employment are defined as “exceptions” to the ROA. The types of employment where questions about spent convictions can be asked include work in the financial sector, in child care positions, care services, and health professions.

Control of Explosives Regulations 1991

6. Amendment to the 2003 Order is considered appropriate as a result of the updating of explosives legislation in the Control of Explosives Regulations 1991¹. There are 3 references to explosives in the order which relate to the previous provisions contained in Orders in Council made under section 43 of the Explosives Act 1875. The amendments will restore the position that existed before 1991 that spent convictions have to be declared in applications for the equivalent of explosives certificates.

Gambling Commission

7. An amendment is required to replace the references to the “Gaming Board for Great Britain” with the “Gambling Commission”. The Gambling Act 2005² received Royal Assent on 7 April 2005. The Act’s provisions transforming the Gaming Board into the Gambling Commission (sections 20 and 21) are among the first to come into force. The Gambling Commission became a legal entity in October 2005.

Addition of references to contracted staff

8. In the 2003 Order there are currently a number of exceptions that refer only to ‘offices and employment’ and not ‘work’. In order to ensure that, where necessary, the 2003 Order also applies to contracted staff, amendments have been made to the 2003 Order concerning the following: those working in the precincts of a prison, or in its administration, those working for the Scottish Society for the Prevention of Cruelty to Animals, those working for the Serious Fraud Office, and those working for Her Majesty’s Revenue and Customs.

Mental Health (Care and Treatment) (Scotland) Act 2003

9. The Mental Health (Care and Treatment) Act 2003 came into force on 5 October 2005. SSI 2005/445 amended the 2003 Order to take account of the new Act, and enabled the Mental Health Tribunal to admit in the course of their proceedings evidence of spent convictions. However further amendments are considered appropriate in relation to the appointment of Mental Welfare Commissioners.

10. The purpose of the amendment is therefore to ensure that questions may be asked about spent convictions in order to assess the suitability for appointment of prospective members of the Mental Welfare Commission for Scotland, who may be involved in investigations, visits, interviews, medical examinations or inspection of medical records concerning persons who have, or may have, a mental disorder as defined by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003. The amendment to the 2003 Order also ensures that failure to disclose a spent conviction in response to such a question may be a proper ground for dismissal or exclusion from such a post.

¹ SI 1991/1531

² 2005 c. 19

Fire and Rescue Service Staff

11. After consultation it was agreed that an amendment is required to the 2003 Order to ensure that questions may be asked of fire fighters and other relevant staff in relation to spent convictions. The policy intention is that individuals applying to join the service would have to disclose any conviction, including spent ones, as part of the assessment of their suitability. It was also agreed that this requirement should be extended to existing staff. This is considered essential because the changing role of fire personnel now requires them to carry out community fire safety work, deal with children, give one-to-one advice, and increasingly become involved in youth training, all of which brings them into closer, more frequent contact with the most vulnerable members of the community. In addition, fire fighters may exercise statutory powers to enter into private as well as business premises in certain circumstances set out in the Fire (Scotland) Act 2005, placing them in a position of trust. It is therefore considered appropriate for spent conviction information to be available as part of the appointment process, and for the failure to disclose spent conviction information in response to such a question to be regarded as a proper ground for dismissing or excluding a person from such a position.

Parole Board

12. The Prisons (Scotland) Act 1989 and the Prisoners and Criminal Proceedings (Scotland) Act 1993 (as amended) give the Parole Board for Scotland the power (subject to the provisions covering the automatic release at 2/3rds of sentence of those sentenced to terms of imprisonment of 4 years or more) to consider the suitability of release of long term and life prisoners, and, if satisfied that such a prisoner does not present an unacceptable risk to the public, to direct his release on licence. The Board is also empowered to direct revocation of an offender's licence and his recall to custody and to consider whether or not to direct his re-release on licence following recall. The Parole Board (Scotland) Rules 2001 set out the proceedings to be followed in these circumstances.

13. At present, the Parole Board cannot admit evidence of spent convictions when considering the suitability of the release of a person on licence. The policy intention is for spent conviction information to be made available to the Parole Board as part of this assessment and as such an amendment to the 2003 Order is required in order to exclude these proceedings from the effects of section 4(1) of the ROA.

14. In addition to this, given the level of responsibility they are exercising in relation to offenders, it is considered appropriate that persons applying to become Parole Board members should be asked to disclose all previous convictions, including those which are spent, and that the fact that such a person does have spent convictions, or fails to disclose them, may be a proper ground upon which to dismiss or exclude that person from office.

Risk Management Authority

15. The Risk Management Authority ("the RMA") is set up by section 3 of the Criminal Justice (Scotland) Act 2003 ("the 2003 Act"), which provides that its functions are to be exercised for the purpose of ensuring the effective assessment and minimisation of risk. The RMA has a number of functions under the 2003 Act including the development of policy and carrying out of research, and the preparation and issue of guidelines and standards.

16. It is considered that the RMA requires access to spent conviction information in relation to its function of deciding whether to approve or reject a Risk Management Plan because they need to have a full picture of the offender's history to allow it to decide whether the plan is adequate: a sex offender might have been convicted of a number of sexual offences, all but the most recent of which are spent.

17. The RMA also have power to give directions to the lead authority and other persons, following the rejection of a revised plan. Such a direction might take the form of an instruction to the lead authority that the plan is to contain a particular provision, eg that the offender should be provided with a particular sort of support, where that had not been provided in the rejected plan. Just as the decision to reject the plan needs to be informed by information about spent convictions, so to does the decision on whether to issue a direction and on the content of any direction.

18. The RMA also has a power to give guidance "either generally or in a particular case". In relation to guidance on specific cases, it is considered that the RMA cannot give meaningful guidance unless it is fully informed. In light of these views, the policy intention is to ensure that spent conviction information is available to the Risk Management Authority in carrying out its functions in relation to risk management plans.

19. In addition, the RMA administers the accreditation scheme for the processes of assessing and monitoring risk and practitioners who work in the area of risk assessment and minimisation. The RMA may award, suspend or withdraw accreditation. It is considered prudent to ensure that spent conviction information is available during these proceedings.

20. As the members of the Risk Management Authority hold positions of responsibility in directing treatment of offenders, it is also considered appropriate that they may be the subject of questions about their own criminal history, including any spent convictions they may have. Linked to this, failure to disclose a spent conviction in response to questioning is also to be treated as a proper ground for excluding or dismissing a person from joining the Authority.

Her Majesty's Inspectorate of Education

21. The provision in the 2003 Order is being amended in order to protect the integrity of the Management Board, particularly in relation to sensitive information about children and young people. Her Majesty's Inspectorate of Education ("HMIE") itself is an Executive Agency of the Scottish Executive and it operates independently and impartially whilst remaining directly accountable to Scottish Ministers for the standards of its work. The Agency's Framework Document sets out HMIE's core objectives and the responsibilities delegated by Scottish Ministers to HM Senior Chief Inspector as the Agency's Chief Executive. Provision for a Management Board is made within that Framework Document. It states that HM Senior Chief Inspector will be assisted in his responsibilities by a Management Board which will meet four times a year and will comprise HMSCI, Chief Inspectors and Directors, and other key HMIE personnel as determined by HMSCI. In addition, external members will be appointed to the Board to provide an independent perspective on HMIE work. The policy intention of the amendment is to ensure that all those carrying out duties on behalf of HMIE, including the Management Board (however it may from time to time be comprised) are subject to the requirement to disclose spent convictions. The current wording of the order covers permanently employed staff but is not sufficiently clear about staff seconded from other organisations and those employed as Associate

Assessors, Assistant Inspectors or Lay Members. The amendment also aims to reflect the full range of inspections and work in which such individuals may be involved. This amendment would be in the interest of children and young people to protect them fully in the work of HMIE.

Proceeds of Crime

22. Amendments are made to the 2003 Order in relation to proceedings under the Proceeds of Crime Act 2002, relating to civil recovery and taxation of property obtained through criminal conduct. The policy intention is to ensure that spent conviction information can be relied upon when applications are made for investigative orders under Part 8 of the Proceeds of Crime Act and where raising proceedings under Part 5 of the Act, which concerns the civil recovery of the proceeds of criminal conduct.

23. The object of civil recovery would be defeated if the Civil Recovery Unit could not rely upon evidence concerning offences from which offenders have profited but which must nevertheless be regarded as convictions which are now spent. It would also be peculiar if the Civil Recovery Unit could rely upon the conduct which resulted in a conviction although it could not rely upon that conviction itself.

24. The amendments to the 2003 Order enable evidence of spent convictions to be admitted in relation to a number of aspects of the recovery of the proceeds of crime. As well as covering the civil recovery sections in chapter 2 of Part 5, it is thought that it may be necessary to rely on previous convictions which have become spent when seeking, under chapter 3 of Part 5 of the Proceeds of Crime Act 2002, the detention of cash (section 295) or the forfeiture of cash (section 298). Spent conviction information may also be used in relation to investigative orders sought under Part 8 of the Proceeds of Crime Act 2002; such orders are sought in order to assist with civil recovery applications.

25. In addition to these circumstances in which spent conviction information may be taken into account, an amendment is being made to the 2003 Order to enable spent conviction information to be sought where notices are served to enable the Assets Recovery Agency to take on certain revenue functions under Part 6 of the Proceeds of Crime Act 2002. Unlike the civil recovery system dealt with above, these revenue proceedings are dealt with in Scotland by the Assets Recovery Agency instead of the Civil Recovery Unit in Crown Office – the only work that the ARA carries out in Scotland. It is considered that availability of spent conviction information in these circumstances would ensure that the ARA can carry out its functions effectively.

Private Security Industry

26. The Private Security Industry Act 2001³ (“PSIA 2001”) created the Security Industry Authority (“SIA”) to regulate and licence the private security industry in England and Wales. The Serious Organised Crime and Police Act 2005 (“SOCAP”) which received Royal Assent on 7th April 2005 amends the PSIA 2001 and extends it to Scotland. The provisions of SOCAP extending PSIA 2001 to Scotland and the bulk of the provisions of PSIA 2001 came into force for Scotland in June and July 2006. A further order will be made to designate the

³ 2001 c. 12

activities subject to regulation thereby creating offences of working in a licensable sector without an SIA-issued licence. This will come into force in November 2007.

27. Licences will cover a number of sectors of the private security industry and will be issued by the SIA to individuals rather than to organisations or companies. Before issuing a licence under section 8 of PSIA 2001 the SIA require to be satisfied that an applicant meets a number of criteria including whether or not the applicant is a fit and proper person to engage in licensable conduct, in terms of criminality and non conviction information.

28. In order to be so satisfied the SIA require to have full disclosure of an applicant's criminal history, so as to decide whether that history precludes the applicant from holding a licence to operate within the sector applied for. Currently in England and Wales the SIA has the ability to require full disclosure of spent and unspent convictions.

29. Applicants who are refused the grant of a licence, or licence holders whose licences are modified or revoked, may appeal to the Sheriff against that decision under section 11 of the PSIA 2001.

30. The policy intention is to ensure that the SIA can:

- a. require an applicant to fully disclose all convictions whether spent or not in their application for grant of a licence under section 8 of the PSIA 2001;
- b. require an applicant to answer questions about those convictions;
- c. use the conviction/s as grounds for not granting a licence to the applicant if appropriate under section 8 of the PSIA 2001;
- d. consider a licence holder's criminal history in determining, under section 10 of the PSIA 2001, whether to modify or revoke a licence;
- e. ask questions about those convictions in determining whether to revoke or modify a licence;
- f. use as grounds for revocation or modification a licence holder's criminal history;
- g. apply for criminal record certificates from both the Criminal Record Bureau and Disclosure Scotland and to use the information supplied as grounds for granting, not granting, revoking or modifying a licence; and
- h. produce information regarding criminal history obtained above as admissible evidence during appeal proceedings under section 11 of the PSIA 2001.

31. Amendments are made to Schedules 1, 3 and 4 of the 2003 Order in order to achieve this result.

Independent Custody Visitors

32. Independent custody visiting was introduced into Scotland in 2000. It is a system where volunteers attend police stations to check on the treatment of persons held there and the conditions in which they are held. Independent custody visiting has steadily developed into an essential aspect of the scrutiny of police practice and procedures. As well as the protection it offers to those held at police stations, it draws on the concerned commitment of volunteers and helps to build partnerships between the police and the communities they serve. It is strongly supported by the police and the overwhelming majority of officers welcome independent custody visiting as a necessary and normal part of the arrangements for securing the accountability of the police.

33. The system of independent custody visiting in Scotland is run on a voluntary basis. Volunteers from the community are trained and approved by the police authority/joint board and suitably organised to visit police stations within the force area. Unannounced visits are made at varying times of the day and night, with volunteers having immediate access to the custody area. The conditions of detention and the treatment of individual detainees are checked. As part of that process there will usually be discussion with custody staff and detainees who are required to give their consent before being spoken to. Independent custody visitors may raise issues needing immediate attention by the police. After every visit they will produce a written report of their findings. Arrangements will be in place for output from visits to be discussed by groups of visitors and communicated to the police at local, area and force level. There will also be regular feedback to the police authority/joint board and a commitment to publicising the work and, where appropriate, the findings of independent custody visitors.

34. All 8 police authorities/joint boards in Scotland, which are responsible for recruiting, selecting and appointing independent custody visitors, have established clear policies and procedures covering these processes. A key policy objective is to ensure that adequate numbers of suitably accredited and trained independent custody visitors are available at all times and throughout the police authority/joint board area to carry out the required programme of visits.

35. Given the nature of the voluntary work concerned, assessing a person's suitability has to involve checking the person's background. Currently the precise format is a matter for the discretion of the police authority/ joint board. It is also a matter for the police authority/ joint board whether, as part of these background checks, they wish to examine an individual's criminal record for unspent convictions.

36. The policy intention is to formalise these arrangements by enabling questions about spent convictions to be asked as part of the assessment of a candidate's suitability for the occupation of an independent custody visitor, and by ensuring that a spent conviction – or a failure to disclose such a conviction – may be considered in excluding a person from such a post. However, past offending will not be an automatic barrier to acceptance.

Proceedings before the Scottish Commission for the Regulation of Care

37. The 2003 Order does not enable evidence of spent convictions to be relied upon in Care Commission proceedings under sections 12 (cancellation of registration), 13 (condition notices) and 18 (urgent procedures for cancellation of registration). Nor does it enable spent

conviction information to be made available in complaint procedures and proceedings under section 6, where arguably the Care Commission might require to investigate an unregistered care service and establish whether employees there had spent convictions. At present, only proceedings in respect of sections 7 and 8 (applications for registration) and section 14 (variation or removal of a condition, or cancellation of registration) are currently covered by the 2003 Order.

38. The extension of the 2003 Order to all proceedings covered by Part 1 of the 2001 Act would include proceedings in respect of sections 6, 10, 12, 13 and 18, and will provide the Care Commission with sufficient authority to ask any questions and admit any evidence that would otherwise relate to a spent conviction, in respect of proceedings in respect of cancellation of registration, condition notices, and urgent procedures for cancellation where an improvement notice under section 10 of the Regulation of Care (Scotland) Act 2001 has been issued in respect of employees' fitness.

Proceedings under the Adults with Incapacity (Scotland) Act 2000 before a Sheriff

39. The Adults with Incapacity (Scotland) Act 2000⁴ ("the 2000 Act") provides arrangements whereby others can be appointed to take action or decisions on behalf of adults (a person aged 16 or over) who lack the capacity to take some or all of the decisions themselves. Under the 2000 Act, a sheriff may, on application, make an intervention or guardianship order appointing an individual or office holder where it is necessary for the protection of the property, financial affairs or personal welfare of an adult who lacks capacity. Proceedings under the 2000 Act provide protections regarding the suitability of the applicant during the application process and after an appointment has been made:

- a. All applicants for welfare guardianship are subject to an independent report on their suitability, carried out by a Mental Health Officer (MHO). In assessing the suitability of the applicant the MHO has to interview other interested parties with knowledge of the applicant. All applicants for financial guardianship are subject to an independent report by a person with sufficient knowledge as to the general appropriateness of the order sought and of the suitability of the individual nominated in the application. All interested parties are intimated about the application and have the opportunity to make an objection. The sheriff can call for further reports or investigations to be carried out as to the suitability of the applicant.
- b. The 2000 Act established supervisory arrangements, welfare guardians and adults are visited by the Mental Welfare Commission (MWC), and subject, by regulation, to a specified number of visits per year by the local authority (this number may be increased at the discretion of the local authority). The Public Guardian supervises financial guardians who have to submit annual accounts relating to the exercise of their authority to her.
- c. Anyone with an interest can request an investigation by the MWC and local authority if there is suspicion of abuse or neglect regarding the welfare of the adult; and with regard to financial powers, request investigation by the Office of the Public Guardian (OPG). The 2000 Act empowers the local authorities and the OPG to increase the level of supervision or have the powers revoked.

⁴ 2000 asp 4

- d. If the guardian is found to be deliberately abusing or neglecting the adult then criminal proceedings can be brought against them under the 2000 Act.

40. The inclusion of an amendment to Schedule 1 of the 2003 Order to ensure that spent conviction information is available for proceedings under the 2000 Act before a sheriff would offer an additional safeguard by providing further information to assess the suitability of a person applying for an intervention or guardianship order in relation to the welfare and protection of property and financial affairs of adults who lack capacity.

Victim Support Organisations

41. In recent years there has been an attempt to provide greater support for victims of, or witnesses to crime, principally through provision of information, greater involvement in the criminal justice system and also through increased funding for support groups, such as Victim Support Scotland (VSS), Rape Crisis Scotland and Scottish Women's Aid.

42. Under the terms of the Criminal Justice (Scotland) Act 2003, the police now have a duty, under certain circumstances and with the victim's consent, to refer victims of crime to prescribed organisations and to provide information about these victims (so far, only Victim Support Scotland has been so prescribed, but other organisations could be added in due course). It is therefore important that staff and volunteers in organisations that support victims have gone through proper selection procedures, including the disclosure of previous offences, before being appointed. The intention, therefore, is to ensure that spent conviction information is available to those appointing staff and volunteers whose primary or main duties are providing support to victims of, or witnesses to, crime, who work in organisations the primary function of which is to provide support to victims of crime, and who have access to personal information about those individuals.

Social Work Inspectors

43. Section 6(1) of the Social Work (Scotland) Act 1968 provides that any person duly authorised by the Scottish Ministers may enter various residential and other establishments for the purpose of making such examinations into the state and management of the place, the facilities and services provided therein, and the condition and treatment of the persons in it, as they think necessary and for the purpose of inspecting any records or registers. The persons appointed under this section are referred to as Social Work Inspectors. In practice most of them will be social workers, about whom questions may already be asked concerning spent convictions under the provisions of the 2003 Order. However, it is desirable also to ensure high standards of probity apply to those employed as inspectors, who may not be social workers.

44. On the basis that Social Work Inspectors are afforded considerable access to children and other vulnerable people, and to sensitive information about them, an amendment has been prepared to add them to the list of those about whom spent conviction information may be sought.

45. An amendment has also been prepared to ensure that all those carrying out duties on behalf of SWIA in relation to inspections are subject to the requirement to disclose spent convictions. This is to include not only permanently employed staff but also staff seconded

from other organisations and those employed as Associate, Sessional or Lay Inspectors. This amendment would be in the interests of children and young people to protect them fully in the work of SWIA.

46. The SWIA Management Board has responsibility for overseeing the work of the Agency. It comprises senior managers and other key Agency personnel as determined by the Chief Social Work Inspector. In addition, two external independent advisers are invited to attend meetings of the Board to provide an independent perspective on SWIA's work. A further amendment has been prepared in order to ensure that spent conviction information is available in connection with these appointments. The purpose of this exception is to protect the integrity of the Management Board, particularly in relation to sensitive information about children and young people.

Criminal Injuries Compensation Authority

47. The Criminal Injuries Compensation Scheme, set up under powers conferred by the Criminal Injuries Compensation Act 1995, provides payment from public funds to victims of crimes of violence and those injured in trying to apprehend criminals or prevent crime.

48. Sections 7A to 7D of the Criminal Injuries Compensation Act 1995 now extend to Scotland, allowing CICA, at their discretion in appropriate cases, to recover (through civil court proceedings) monies paid to victims of crime under the Scheme from the person convicted of that crime. Civil recovery must commence within 5 years of the later of conviction or payment to a victim under the Scheme. It will be rare, but possible, that a conviction is sufficiently serious to warrant compensation but will have become spent before the right of recovery becomes prescribed. The policy intention is therefore to ensure that convictions which have become spent are not excluded from the application of the recovery scheme set out in sections 7A to 7D.

The Scottish Criminal Cases Review Commission

49. The primary function of the Scottish Criminal Cases Review Commission ("SCCRC"), as set out in the Criminal Procedure (Scotland) Act 1995, is to determine whether a miscarriage of justice may have occurred in a particular case, and to refer deserving cases to the High Court for determination. The intention of the amendments made to the 2003 Order in relation to the SCCRC is two-fold. Firstly, in ensuring that the SCCRC has access in the course of its proceedings to applicants' spent convictions, in addition to unspent convictions, it will be able properly to fulfil its statutory functions.

50. Moreover, it is considered that persons applying to be Board member or employees of the SCCRC should be asked to disclose all previous convictions, including those which are spent, and that the fact that such a person does have spent convictions, or fails to disclose them, should be a proper ground upon which to dismiss or exclude that person from office.

EU Public Procurement Directives

51. An amendment to the 2003 Order is required to allow spent convictions to be disclosed, in order to comply with Directives 2004/18/EC and 2004/17/EC of the European Parliament and of the Council. These Directives co-ordinate the processes and procedures that must be followed when awarding public contracts for goods, services, works and utilities.

They provide for the mandatory exclusion from public tendering exercises of tenderers who have been convicted of a number of offences; these offences include participation in a criminal organisation, corruption, fraud and money laundering. No distinction is drawn between spent and unspent convictions.

52. Implementation of these Directives in Scotland was through the Public Contracts (Scotland) Regulations 2006 (SSI 2006/1) and the Utilities Contracts (Scotland) Regulations (SSI 2006/2). Regulations 23 and 26 respectively deal with mandatory exclusion criteria and, like the Directives, no distinction is made between spent and unspent convictions. Therefore to ensure that contracting authorities can determine whether a candidate or tenderer is ineligible to participate in a public tendering exercise, it will be necessary to be able to consider details of all relevant convictions and not just those which are spent.

Dentists Act 1984

53. The Dentists Act 1984 (Amendment) Order 2005 (SI 2005/2011) (“the Dentists Order”) amended the Dentists Act 1984 to provide for the regulation of professions complementary to dentistry (“PCDs”) across the UK. Two PCDs were regulated prior to the Dentists Order, namely dental hygienists and dental therapists (known collectively as dental auxiliaries), and were already covered as excepted professions in the 2003 Order (as “dental hygienist” and “dental auxiliary”). The Dentists Order amended the Dentists Act 1984 to provide the General Dental Council with powers to bring new PCDs within the scope of regulation through time. As a consequence, paragraph 14 of Schedule 6 (Minor and Consequential Amendments) to the Dentists Order made provision for amending the 2003 Order, as follows:

“14. In the Rehabilitation of Offenders 1974 (Exclusions and Exceptions) (Scotland) Order 2003, in Part 1 of Schedule 4 (excepted professions), in paragraph 4, for “dental auxiliary” substitute “dental therapist”.

54. A similar consequential amendment was made to the current rehabilitation of offenders order for England and Wales. Its aim was to ensure that the title of “dental therapist” was protected, as “dental auxiliary” is no longer a term used.

55. However, the General Dental Council (Professions Complementary to Dentistry) Regulations Order of Council 2006, made under section 36A(2) of the Dentists Act 1984, specified four new PCDs from 31st July 2006. As a result, it is necessary to amend the 2003 Order to include the new PCDs.

Claims in respect of miscarriages of justice

56. Compensation may be awarded to victims of miscarriages of justice under one of two schemes, one of which is statutory and one of which is ex gratia. Once the Minister has decided that a particular claim is eligible under either the statutory or ex gratia compensation schemes, an Independent Assessor is appointed in order to determine the amount of compensation that should be paid.

57. In assessing the compensation payable an assessor requires detailed information about the claimant including the case history, their personal history, records of convictions and current circumstances. The statutory scheme (see section 133(4A)(c) of the Criminal Justice

Act 1988) and the ex gratia scheme envisage that the assessor may have regard to a claimant's convictions.

58. The 2003 Order does not currently enable such compensation proceedings to have regard to spent conviction information in all cases. It is considered that access to this information should be provided in order to provide full information to the assessor and as such an amendment is required to the 2003 Order.

Consultation

59. Consultation for the minor amendments was not necessary although all policy officials discussed the details of the amendments with relevant bodies. The Fire Services Division consulted stakeholders in order to seek their views on whether Fire Fighters and other relevant staff should be required to disclose any criminal conviction (custodial or non-custodial). This process was completed at the end of October 2005.

Commencement

60. It is intended that the amendments will come into force by mid March 2007.

Financial Effects

61. As many of the organisations concerned already undertake disclosure checks any increase in costs will be minor as a result of the proposed amendments.

Scottish Executive Criminal Law Division
19 December 2006