
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2018 No.

**The Rehabilitation of Offenders Act 1974 (Exclusions
and Exceptions) (Scotland) Amendment Order 2018**

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

2.—(1) The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013(1) is amended as follows.

(2) In article 4 (exclusion of section 4(2)(a) and (b) of the Act)—

(a) for paragraph 2(b) substitute—

“(b) a conviction which—

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

(ii) is not included in a higher level disclosure sent in connection with the purpose for which the question is put.”;

(b) after paragraph (2) insert—

“(2A) A spent conviction falls within this paragraph if it is—

(a) a conviction for an offence listed in schedule A1 and either—

(i) the person was aged under 18 on the date of conviction and at least 7 years and 6 months have passed since the date of conviction; or

(ii) the person was aged 18 or over on the date of conviction and at least 15 years have passed since the date of conviction; or

(b) a conviction for an offence listed in schedule B1 which is not a protected conviction.”;

(c) in paragraph (4), for “for an offence listed in Schedule B1” substitute “which falls within paragraph (2A)”;

(d) after paragraph (4) insert—

“(5) Paragraph (4) does not apply if the failure to disclose the conviction related to a question asked when the conviction did not fall within paragraph (2A).”.

(3) In article 5 (exceptions from section 4(3) of the Act)—

(a) in paragraph (2), for sub-paragraph (b) substitute—

“(b) a conviction which—

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

(ii) is not included in a higher level disclosure sent in connection with the profession, office, employment, occupation, decision or proposed decision to which the exception would otherwise apply.”;

(b) after paragraph (2) insert—

(1) [S.S.I. 2013/50](#). Relevant amendments have been made by [S.I. 2014/1942](#) and by [S.S.I. 2015/329](#), [S.S.I. 2015/968](#), [S.S.I. 2016/91](#) and [S.S.I. 2016/147](#).

- “(2A) A spent conviction falls within this paragraph if it is—
- (a) a conviction for an offence listed in schedule A1 and either—
 - (i) the person was aged under 18 on the date of conviction and at least 7 years and 6 months have passed since the date of conviction; or
 - (ii) the person was aged 18 or over on the date of conviction and at least 15 years have passed since the date of conviction; or
 - (b) a conviction for an offence listed in schedule B1 which is not a protected conviction.”;
 - (c) in paragraph (4), for “for an offence listed in Schedule B1” substitute “which falls within paragraph (2A)”;
 - (d) after paragraph (4) insert—

“(5) Paragraph (4) does not apply if the failure to disclose the conviction related to a question asked when the conviction did not fall within paragraph (2A).”.
 - (4) The title of schedule A1 (offences which must always be disclosed)⁽²⁾ becomes “Offences which must be disclosed subject to exceptions”.
 - (5) In schedule B1 (offences which are to be disclosed subject to rules)⁽³⁾—
 - (a) in paragraph 75, for “and” substitute “or”; and
 - (b) in paragraph 81, omit sub-paragraph (c) and the word “and” immediately preceding it.

⁽²⁾ Schedule A1 was inserted by [S.S.I. 2015/329](#) and substituted by [S.S.I. 2016/91](#).

⁽³⁾ Schedule B1 was inserted by [S.S.I. 2015/329](#) and substituted by [S.S.I. 2016/91](#).