
EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 (“the 2003 Order”). This Order makes amendments in consequence of the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”). It also makes some minor amendments on miscellaneous matters.

Section 4(1) of the Rehabilitation of Offenders Act 1974 (“the 1974 Act”) provides that spent convictions may not be admissible in evidence in any proceedings before a judicial authority nor shall a person be asked or required to answer any question in such proceedings about his or her spent conviction. Section 4(2) of the 1974 Act provides that in any proceeding, other than a judicial one, any question asked of a person about his or her convictions shall not be taken to relate to any of his or her spent convictions nor shall the person be subject to any liability or prejudice for not disclosing a spent conviction. Section 4(3)(b) of the 1974 Act provides that not disclosing a spent conviction shall not be a proper ground for dismissing, excluding or prejudicing the person in relation to any office, profession, occupation or employment.

Section 4(4) of the 1974 Act allows the Scottish Ministers to make exclusions, modifications and exceptions from section 4(2) and (3). Section 7(4) of the 1974 Act allows the Scottish Ministers to make exclusions in relation to section 4(1).

Article 3 makes changes to the definitions of terms in the 2003 Order and removes the terms “adult at risk” and “social care service”. It inserts a new general definition for the 2007 Act.

Article 4 makes amendments so as to exclude the application of section 4(1) of the 1974 Act in relation to certain proceedings under the Adults with Incapacity (Scotland) Act 2000; proceedings before the NHS Tribunal; proceedings in respect of child guardianship orders under the Children (Scotland) Act 1995; and proceedings about listing of individuals under Part 1 of the 2007 Act. This means spent convictions are admissible in these proceedings and questions can be asked about them.

Article 5 makes amendments in relation to the exclusions and modifications of section 4(2) of the 1974 Act provided for in the 2003 Order. Paragraph (c) provides that a person may be asked about his or her spent convictions in assessing suitability to be registered or to hold a licence to be an approved driving instructor under Part V of the Road Traffic Act 1988. Paragraph (d) makes provision consequential to the 2007 Act so that only questions about individuals over 16 years of age residing with a child minder (where the child minder resides on the premises where the child minding takes place) or who work on the premises where the child minding takes place may be asked. Questions about child minders in their own right are now caught elsewhere in the 2003 Order by the insertion of a reference to “regulated work with children” in Schedule 4 to the 2003 Order. Paragraph (e) makes equivalent provision in relation to foster care and also provides for the asking of questions about spent convictions in assessing suitability to be appointed to adoption panels and fostering panels. Paragraph (f) provides that questions about spent convictions may be asked in considering suitability to have access to conviction information and suitability to be supplied by a person to do regulated work for a third party.

Article 6 amends Parts 2, 3 and 4 of Schedule 4 to the 2003 Order. An exception listed in Part 2 or 3 means that section 4(3)(b) of the 1974 Act does not apply. Also questions about spent convictions may be asked in connection with suitability for a role mentioned (by virtue of paragraph 4(1)(b) of Schedule 3 to the 2003 Order). Article 6(a) lists anyone who is a clerk or officer of the Courts or officer assisting the clerk or other support officer assisting in the work of the Scottish Court Service; anyone doing any regulated work with children or adults; anyone who holds office or employment

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with the Scottish Commission for the Regulation of Care or the General Teaching Council for Scotland. Article 6(b) lists anyone providing paid instruction in a motor vehicle. Article 6(c) makes changes to definitions.

Article 7 makes consequential revocations of provisions.