

Draft Order laid before the Scottish Parliament under section 10(2) of the Rehabilitation of Offenders Act 1974, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2012 No.

REHABILITATION OF OFFENDERS

The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2012

<i>Made</i>	-	-	-	-	2012
<i>Coming into force</i>	-	-			2012

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 4(4), 7(4) and 10(1) of, and paragraph 6 of Schedule 3 to, the Rehabilitation of Offenders Act 1974⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 10(2) of that Act, a draft of this Order has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2012, and comes into force the day after the day on which it is made.

(2) This Order extends to Scotland and, in so far as it extends beyond Scotland, it does so only as a matter of Scots law.

Interpretation

2.—(1) In this Order—

“the 2000 Act” means the Financial Services and Markets Act 2000⁽²⁾;

“the 2001 Act” means the Regulation of Care (Scotland) Act 2001⁽³⁾;

“the 2007 Act” means the Protection of Vulnerable Groups (Scotland) Act 2007⁽⁴⁾;

(1) 1974 c.53. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46) and the Scotland Act 1998 (Transfer of functions to the Scottish Ministers etc.) Order 2003 (S.I. 2003/415). Paragraph 8(3) of Schedule 3 to the 1974 Act applies section 7(4) for the purpose of excluding the application of paragraph 3 of Schedule 3 to the 1974 Act.

(2) 2000 c.8.

(3) 2001 asp 8.

(4) 2007 asp 14.

“the 2010 Act” means the Public Services Reform (Scotland) Act 2010⁽⁵⁾;

“the Act” means the Rehabilitation of Offenders Act 1974;

“actuary” means a member of the Institute and Faculty of Actuaries;

“accountant” means a member of—

- (a) the Association of Certified Accountants;
- (b) the Institute of Chartered Accountants in Scotland;
- (c) the Institute of Chartered Accountants in England and Wales;
- (d) the Chartered Institute of Public Finance Accountants; or
- (e) the Chartered Institute of Management Accountants;

“adopt” includes any arrangements to adopt a child, including arrangements for adoption where the proposed adopter is a relative of the child, whether under the Adoption and Children (Scotland) Act 2007⁽⁶⁾ or the Adoptions with a Foreign Element (Scotland) Regulations 2009⁽⁷⁾;

“approved regulator” has the meaning given in Part 2 of the Legal Services (Scotland) Act 2010⁽⁸⁾;

“associate”, in relation to a person (“A”), means someone who is a controller, director or a manager of A or, where A is a partnership, any partner of A;

“authorised electronic money institution” has the meaning given by regulation 2(1) of the Electronic Money Regulations 2011⁽⁹⁾;

“authorised payment institution” has the meaning given by regulation 2(1) of the Payment Services Regulations 2009⁽¹⁰⁾;

“care service” has the meaning given in section 47 of the 2010 Act;

“collective investment scheme” has the meaning given in section 235 of the 2000 Act;

“the competent authority for listing” means the competent authority for the purposes of Part I of the 2000 Act (listing);

“contracting authority” means a contracting authority within the meaning of Article 1(9) of Directive 2004/18/EC;

“contracting entity” means a contracting entity within the meaning of Article 2(2) of Directive 2004/17/EC;

“controller” has the meaning given in section 422 of the 2000 Act⁽¹¹⁾;

“Council of Lloyd’s” means the council constituted by section 3 of the Lloyd’s Act 1982⁽¹²⁾;

“Directive 2004/17/EC” means Directive [2004/17/EC](#) of the European Parliament and of the Council of 31st March 2004⁽¹³⁾; and

⁽⁵⁾ 2010 asp 8.

⁽⁶⁾ 2007 asp 4.

⁽⁷⁾ S.S.I. 2009/182.

⁽⁸⁾ 2010 asp 16.

⁽⁹⁾ S.I. 2011/99.

⁽¹⁰⁾ S.I. 2009/209.

⁽¹¹⁾ Section 422 was substituted by the [Financial Services and Markets Act 2000 \(Controllors\) Regulations 2009/534](#), Schedule 3, paragraph 1.

⁽¹²⁾ 1982 c.xiv.

⁽¹³⁾ O.J. L 134, 30.4.2004, p.1-113, as last amended by Commission Regulation (EU) No. 1251/2011 of 30th November 2011 (O.J. L 319, 2.12.2011, p.43).

“Directive 2004/18/EC” means Directive [2004/18/EC](#) of the European Parliament and of the Council of 31st March 2004([14](#));

“director” has the meaning given in section 417 of the 2000 Act;

“electronic money institution” has the meaning given in regulation 2(1) of the Electronic Money Regulations 2011([15](#));

“enactment” includes an Act of the Scottish Parliament and any order, regulation or other instrument having effect by virtue of such an Act;

“firearms dealer” has the meaning given in section 57(4) of the Firearms Act 1968([16](#));

“Head of Practice” has the meaning given in Part 2 of the Legal Services Act;

“health services” means services provided under the National Health Service (Scotland) Act 1978([17](#)) and similar services provided otherwise than under the National Health Service;

“Her Majesty’s Inspectors” has the meaning given in section 135 of the Education (Scotland) Act 1980([18](#));

“judicial appointment” means an appointment to any office by virtue of which the holder has power (whether alone or with others) under any enactment or rule of law to determine any question affecting the rights, privileges, obligations or liabilities of any person;

“key worker”, in relation to any body (“A”), means any individual who is likely, in the course of the duties of that individual’s office or employment—

(a) where A is the Authority, to play a significant role in the decision making process of the Authority in relation to the exercise of the Authority’s public functions (within the meaning of section 349(5) of the 2000 Act) under any provision of the 2000 Act other than Part VI, or to support directly such a person;

(b) where A is the competent authority for listing, to play a significant role in the decision making process of the competent authority for listing in relation to the exercise of its functions under Part VI of the 2000 Act, or to support directly such a person;

“lay representative”, for the purposes of sheriff court proceedings, has the meaning given in section 32A(3) of the Sheriff Court (Scotland) Act 1971([19](#)) and, for the purposes of Court of Session proceedings, has the meaning given in section 5A(3) of the Court of Session Act 1988([20](#));

“the Legal Services Act” means the Legal Services (Scotland) Act 2010([21](#));

“licensed legal services provider” has the meaning given in Part 2 of the Legal Services Act([22](#));

“manager” has the meaning given in section 423 of the 2000 Act;

“non-solicitor investor” has the meaning given in Part 2 of the Legal Services Act([23](#));

“open-ended investment company” has the meaning given in section 236 of the 2000 Act;

“Part IV permission” has the meaning given in section 40(4) of the 2000 Act;

(14) O.J. L 134, 30.4.2004, p.114-240, as last amended by Commission Regulation (EU) No. 1251/2011 of 30th November 2011 (O.J. L 319, 2.12.2011, p.43).

(15) [S.I. 2011/99](#).

(16) [1968 c.27](#). The definition of “firearms dealer” in section 57(4) was amended by the Violent Crime Reduction Act [2006 \(c.38\)](#) section 31(3).

(17) [1978 c.29](#).

(18) [1980 c.44](#). The definition of “Her Majesty’s inspectors” in section 135 was amended by the Scotland Act [1998 \(c.46\)](#) Schedule 9, paragraph 1.

(19) [1971 c.58](#).

(20) [1988 c.36](#).

(21) [2010 asp 16](#).

(22) See section 6 (approved regulators).

(23) See section 67 (more about investors).

“payment services” has the meaning given in regulation 2(1) of the Payment Services Regulations 2009⁽²⁴⁾;

“personal information” means any information (in any form) which relates to a living individual who can be identified from that data, which is of a confidential nature and is not in the public domain;

“Practice Committee” has the meaning given in Part 2 of the Legal Services Act⁽²⁵⁾;

“private hire driver” means a driver of a private hire car, as defined by section 23(1) of the Civic Government (Scotland) Act 1982⁽²⁶⁾, who is required to be licensed by a licensing authority under the provisions of that Act;

“prosecutor” has the meaning given in section 307 of the Criminal Procedure (Scotland) Act 1995⁽²⁷⁾;

“registered chiropractor” has the meaning given in section 43 of the Chiropractors Act 1994⁽²⁸⁾;

“registered European lawyer” has the meaning given in section 65 of the Solicitors (Scotland) Act 1980⁽²⁹⁾;

“registered foreign lawyer” has the meaning given in section 65 of the Solicitors (Scotland) Act 1980⁽³⁰⁾;

“registered osteopath” has the meaning given in section 41 of the Osteopaths Act 1993⁽³¹⁾;

“registered pharmacist” means a person who is registered as a pharmacist in Part 1 or 4 of the register maintained under article 19 of the Pharmacy Order 2010⁽³²⁾;

“registered pharmacy technician” means a person who is registered in Part 2 or 5 of the register maintained under article 19 of the Pharmacy Order 2010;

“registered teacher” means a teacher registered under the Public Services Reform (General Teaching Council for Scotland) Order 2011⁽³³⁾;

“regulated work with adults” has the meaning given in section 91(3) of the 2007 Act;

“regulated work with children” has the meaning given in section 91(2) of the 2007 Act;

“relevant collective investment scheme” means a collective investment scheme which is recognised under sections 264 (schemes constituted in other EEA States)⁽³⁴⁾, 270 (schemes authorised in designated countries or territories) or 272 (individually recognised overseas schemes) of the 2000 Act;

“Scottish Social Services Council” has the meaning given in section 43 of the 2001 Act;

“small electronic money institution” has the meaning given in regulation 2(1) of the Electronic Money Regulations 2011;

(24) [S.I. 2009/209](#).

(25) See section 53 (Practice Committee).

(26) [1982 c.45](#).

(27) [1995 c.46](#).

(28) [1994 c.17](#). The definition of “registered chiropractor” in section 43 was amended by the European Qualifications (Health and Social Care Professions) Regulations 2007 ([S.I. 2007/3101](#)), regulation 226(c).

(29) [1980 c.46](#). The definition of “registered European lawyer” in section 65 was amended by the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000 ([S.S.I. 2000/121](#)), Schedule 1, paragraph 1(12)(a).

(30) The definition of “registered foreign lawyer” in section 65 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 ([c.40](#)) Schedule 8(II), paragraph 29(15)(d).

(31) [1993 c.21](#). The definition of “registered osteopath” in section 41 was amended by the European Qualifications (Health and Social Care Professions) Regulations 2007 ([S.I. 2007/3101](#)), regulation 214(c).

(32) [S.I. 2010/231](#).

(33) [S.S.I. 2011/215](#).

(34) Section 264 was amended by the [Undertakings for Collective Investment in Transferable Securities Regulations 2011](#) ([S.I. 2011/1613](#)), regulation 2(24).

“small payment institution” has the meaning given in regulation 2(1) of the Payment Services Regulations 2009;

“Social Care and Social Work Improvement Scotland” has the meaning given in section 44 of the 2010 Act;

“social service worker” has the meaning given in section 77 of the 2001 Act;

“social worker” has the meaning given in section 77 of the 2001 Act⁽³⁵⁾;

“taxi driver” means a driver of a taxi as defined by section 23(1) of the Civic Government (Scotland) Act 1982, who is required to be licensed by a licensing authority under the provisions of that Act;

“trustee”, in relation to a unit trust scheme, has the meaning given in section 237(2) of the 2000 Act;

“UK recognised clearing house” means a clearing house in relation to which a recognition order under section 290 of the 2000 Act⁽³⁶⁾, otherwise than by virtue of section 292(2) (overseas clearing houses) of that Act, is in force;

“UK recognised investment exchange” means an investment exchange in relation to which a recognition order under section 290 of the 2000 Act, otherwise than by virtue of section 292(2) (overseas investment exchanges) of that Act, is in force;

“work” includes work of any kind, whether paid or unpaid and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract.

(2) Any reference in this Order to a numbered article or Schedule is, unless the context otherwise requires, a reference to the article or Schedule so numbered in this Order.

Exclusion of section 4(1) of the Act

3. The application of section 4(1) of the Act is excluded in relation to—
 - (a) any proceedings specified in Schedule 1; and
 - (b) any proceedings with respect to a decision or a proposed decision specified in Part 1 of Schedule 2—
 - (i) to the extent that there falls to be determined in those proceedings any issue relating to a spent conviction or to circumstances ancillary thereto; and
 - (ii) to the extent that section 4(1) renders inadmissible any evidence relating to the conviction or circumstances or removes the requirement to answer any question relating to the conviction or circumstances.

Exclusion of section 4(2)(a) and (b) of the Act

4. The application of section 4(2)(a) and (b) of the Act is excluded in relation to questions put in the circumstances to which Schedule 3 applies.

Exceptions from section 4(3) of the Act

5. There is excepted from the provisions of section 4(3)(b) of the Act—
 - (a) any profession, office, employment or occupation specified in Schedule 4;
 - (b) any action taken for the purpose of safeguarding national security; and

⁽³⁵⁾ Section 77 was substituted by the Public Services Reform (Scotland) Act 2010 (Consequential Modifications) Order 2011 (S.S.I. 2011/211), Schedule 1(1), paragraph 9.

⁽³⁶⁾ Section 290 was amended by the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), Schedule 2, paragraph 4.