

Dear Sir or Madam

THE POLICE ACT 1997 AND THE PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007 REMEDIAL ORDER 2015

I enclose a copy of a notice in relation to the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order ("the 2015 Order") which makes amendments to the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007.

The 2015 Order came into force on Thursday 10 September 2015. In line with the requirements of section 14(2) of the Convention Rights Compliance (Scotland) Act 2001 the attached notice invites you to make written observations on the 2015 Order by 24 November 2015.

It would be helpful us if you could send your responses using the electronic format provided on the Scottish Government's website.

Please send your response with the completed [Respondent Information Form](#) (see "Handling your response" below) to Disclosure Scotland's Policy Team:

Online here <https://consult.scotland.gov.uk/>

By Email to: DisclosureScotland2015Order@disclosurescotland.gsi.gov.uk

We would prefer to receive electronic responses. However, you may wish to provide a response by hard copy and this can be done by addressing your response to:

Anna Bulik
Policy Team
Disclosure Scotland
Pacific Quay
Glasgow
G51 1DZ

We would be grateful if you would please clearly indicate in your response which parts of the 2015 Order you are responding to, as this will aid collation of the responses received.

This document, and other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>.

The Scottish Government has an email alert system for consultations <http://register.scotland.gov.uk>. This system allows stakeholders, individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). This system complements, but in no way replaces Scottish Government distribution lists. It is designed to allow stakeholders to keep up to date with all Scottish Government consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the associated [Respondent Information Form](#) questionnaire as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly. All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002. We would therefore have to consider any request made to it under the Act for information relating to responses made to this exercise.

Where respondents have given permission for their response to be made public (see the attached Respondent Information Form), these will be made available on the Scottish Government consultation web pages three weeks after consultation.

What happens next?

Following the closing date of the Consultation, all responses will be analysed and considered. The Scottish Ministers are required under section 14(4) of the Convention Rights Compliance (Scotland) Act 2001 to lay before Parliament a statement summarising all observations and specifying any modifications they might make to the remedial order.

Yours Faithfully

Diane Machin
Policy Manager

**THE POLICE ACT 1997 AND THE
PROTECTION OF VULNERABLE GROUPS
(SCOTLAND) ACT 2007 REMEDIAL ORDER
2015**

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Purpose

This document gives public notice of the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order (“the 2015 Order”) as is required under section 14(2) of the Convention Rights (Compliance) (Scotland) Act 2001 (“the 2001 Act”). This document also seeks written observations on the 2015 Order.

The last date on which we will accept written observations on the 2015 Order is **24 November 2015**. We welcome your observations/views on all aspects of the 2015 Order.

All observations will be considered by the Scottish Ministers and, as soon as practicable after 24 November 2015, we will lay a statement before the Scottish Parliament. That statement will summarise all the observations which have been considered and will also specify whether or not any modifications will be made to the 2015 Order.

A copy of the 2015 Order and the associated Policy Note which explains the amendments in detail can be found below.

Introduction

Standard and enhanced disclosures are issued under the Police Act 1997 (“the 1997 Act”) and disclosures of PVG scheme records are issued under the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”) - these types of disclosures are referred to collectively as ‘higher level disclosures’. Until these Acts were amended by the 2015 Order, higher level disclosures contained all spent convictions regardless of the nature and age of the conviction or the penalty. Under the Rehabilitation of Offenders Act 1974 (“the 1974 Act”) an individual was similarly required to self-disclose all previous convictions (whether spent or unspent) in certain circumstances. Under the PVG Scheme all previous criminal conviction information could be used in deciding when it might be appropriate to consider an individual for listing in the children’s list, adult’s list or both lists.

In the case *R (on the application of T and another) (FC) (Respondents) v Secretary of State for the Home Department and another (Appellants)* [2014] UKSC 35, the United Kingdom Supreme Court (“UKSC”) made a declaration of incompatibility under section 4 of the Human Rights Act 1998 that the provisions of sections 113A and 113B of the Police Act 1997 (as applicable in England and Wales) were incompatible with Article 8 (the right to respect for private and family life) of the European Convention on Human Rights (“the Convention”) because the requirements in those sections in relation to blanket disclosure of all spent convictions on higher level disclosures were not in accordance with the law.

The UKSC was clear that it was appropriate for a system of higher level disclosures to operate when that person wanted to work in certain roles involving contact with

vulnerable groups or in other sensitive roles. However, the UKSC accepted that when a conviction becomes spent within the meaning of the 1974 Act it should usually become part of private personal history and that the system of automatic disclosure of all such spent convictions in higher level disclosures breached Article 8.

In light of the decision, the Scottish Ministers undertook a detailed assessment of the operation of the 1997 Act as it applied in Scotland and concluded that changes should be made to it to take account of the UKSC decision. The Scottish Ministers also undertook a detailed assessment of the closely related PVG Scheme operated under the 2007 Act and concluded that it should also be amended. The functions of the Scottish Ministers under the 1997 Act and the 2007 Act are exercised through Disclosure Scotland.

The 1997 Act and the 2007 Act regulate what can be disclosed in a higher level disclosure, but the 1974 Act together with the Rehabilitation of Offenders Act (Exclusions and Exceptions) (Scotland) Order 2013 (“the 2013 Order”) regulate what convictions an individual must disclose when asked about their previous convictions in certain circumstances. The Scottish Ministers therefore also undertook a detailed assessment of the 2013 Order and concluded that it should also be amended. The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2015 (“the ROA Order”) was made and came into force at the same time as the 2015 Order. (If Scottish Ministers think that it is appropriate for the remedial order to be modified following consideration of the observations, consideration will be necessary to assess whether a further order is required to amend provisions in the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2015.)

Summary of the 2015 Order

The 2015 Order came into force on 10 September 2015. It amends the 1997 Act and the 2007 Act. It also makes consequential amendments to the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010 (“the 2010 Regulations”).

The 2015 Order provides that:

- certain spent convictions will continue always to be disclosed due to the serious nature of the offence (these are the offences set out in the ‘offences which must always be disclosed’ list);
- rules will be applied to certain spent convictions to determine the content of higher level disclosures when the conviction is for an offence on the ‘offences which are to be disclosed subject to rules’ list;
- the ‘offences which must always be disclosed’ list and the ‘offences which are to be disclosed subject to rules’ list are set out in article 3(8) of the 2015 Order and are inserted into the 1997 Act as new schedules 8A and 8B;

- certain spent convictions which are not for offences on the lists of 'offences which must always be disclosed' or 'offences which are to be disclosed subject to rules' will generally not be disclosed due to the minor nature of the offence;
- all spent cautions (within the meaning given in schedule 3 of the 1974 Act) will never be disclosed;
- individuals who have a spent conviction for offences on the list of 'offences which are to be disclosed subject to rules' and which have not yet reached the point at which the rules would prevent disclosure of the conviction can indicate to Scottish Ministers that they intend to make an application to a sheriff for a new certificate from which that information has been removed;
- the issue of a higher level disclosure to the person who countersigned the disclosure application or request will not take place until that application to the sheriff is finally determined;
- where the higher level disclosure contains no convictions from the 'offences which are to be disclosed subject to rules' list or where the applicant does not intend to apply to the sheriff for a new certificate for offences on the 'offences which are to be disclosed subject to rules' list, the higher level disclosure will be issued to the person who countersigned the disclosure application or request;
- there is a new test in section 113B(4) of the 1997 Act and section 49(1)(c) of the 2007 Act for the provision of other relevant information by the chief officer of a relevant police force in connection with higher level disclosure applications;
- a short scheme record disclosure issued under section 53 of the 2007 Act will only be available to scheme members who have no vetting information in their PVG scheme record; and that Scottish Ministers must treat a short scheme record disclosure request for a scheme member with vetting information in their scheme record information as a disclosure request for a scheme record (and that will be at no extra cost to the scheme member).

Impact Assessments

In line with usual practice, Partial Impact Assessments have been prepared. We have prepared a partial Business and Regulatory Impact Assessment or BRIA and a partial Equality Impact Assessment or EQIA.

A partial BRIA and a partial EQIA can be found here <https://consult.scotland.gov.uk/disclosure-scotland/protection-of-vulnerable-groups>

Legislation

A copy of the Police Act 1997, the Protection of Vulnerable Groups (Scotland) Act 2007 and the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010 can be found at:

<http://www.legislation.gov.uk/ukpga/1997/50/contents>

<http://www.legislation.gov.uk/asp/2007/14/contents>

<http://www.legislation.gov.uk/ssi/2010/167/contents/made>

Consultation on the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 remedial order 2015

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Children and Young People's Commissioner Scotland

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Baillie

Forename

Tam

2. Postal Address

Rosebery House

Ground Floor

9 Haymarket Terrace

EDINBURGH

Postcode EH12 5EZ

Phone 0131 346 5350

Email

pauline.mcintyre@cypcs.org.uk

3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

QUESTION 1

Do you have any views/observations on this Order?

Comment

I welcome the opportunity to comment on the Police Act 1997/Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order. I believe it is important the children and young people's life chances should not be unduly restricted by a conviction obtained at a young age.

My comments on the Remedial Order are outlined below:

Rights Focus

I acknowledge that the Remedial Order has arisen as a direct result of the UK Supreme Court's findings in *R (on the application of T and another) (FC) (Respondents) v Secretary of State for the Home Department and another (Appellants) [2014] UKSC*. As such, I welcome the Scottish Government's commitment to ensuring that Scotland's own system of higher level disclosures is EHRC compliant. I would suggest, however, that the approach taken towards bringing these changes via sections 13 and 14 of the Convention Rights (Compliance) (Scotland) Act 2001, rather than through primary or secondary legislation, has meant that the full implications of this Remedial Order on children and young people have yet to be fully explored.

Children's Hearings (Scotland) Act 2011

I note that extensive work has already been carried out in respect of the impact of convictions or the acceptance or establishment of offence grounds on children and young people's future life chances, in relation to the Children's Hearings (Scotland) Act 2011.

Sections 187 and 188 of the 2011 Act remains to be commenced. As with the Remedial Order, these sections seek to amend the Rehabilitation of Offenders Act 1974. These provisions will allow some offences dealt with through the Children's Hearings system to be recorded as Alternatives to Prosecution. For the purposes of the 2011 Act, offences have been categorised and divided into lists, to ensure that the most serious of offences continue to be disclosed, and lesser offences are removed from disclosures more quickly. A Scottish Government led expert stakeholder group, of which my office was part, carefully considered which offences should appear on which list, taking into account spectrum offences (that is, those ranging from a very minor incident to a more serious event) and the likely risk of a child or young person re-offending.

It is not immediately apparent what consideration, if any, has been made of the lists created for the purposes of the Children's Hearings (Scotland) Act 2011, or of the broader work of the expert working group, in drawing up the schedules of offences contained in the Remedial Order and whether there is consistency between the two sets of lists.

Given the additional protections sections 187 and 188 of the Children's Hearings (Scotland) Act 2011 will offer to children and young people, I would urge the Scottish Government to consider what amendments (if any) may be required in light of the Remedial Order to ensure that these provisions can be commenced as soon as possible.

Other Relevant Information

I note that the Remedial Order does make some amendments in relation to the provision of 'other relevant information' (ORI), That is, non-conviction information that can be released where a Chief Officer believes that it may be relevant to a higher level disclosure. This remains a significant issue for children and young people across Scotland. Unlike the provisions of the Remedial Order, where it is clear what should and should not be disclosed, ORI may or may not be disclosed for many years after an incident has taken place (often exceeding the 7.5/15 year limits stated in the Remedial Order). Given the discretionary nature of this process, it can prove difficult to challenge any information shared or seek to have it amended or removed.

Whilst I recognise that the Order makes some changes in this respect, it does not reflect the comprehensive changes previously agreed to Police Scotland's weeding and retention rules, in relation to the Children's Hearings (Scotland) Act 2011. Again, I would urge the Scottish Government to work with Police Scotland to ensure that these changes are implemented as soon as possible.

The Remedial Order also states that where a case has been discharged or admonished by a Children's Hearing, then the intention is that nothing will then appear in the convictions section of the higher level disclosure. This is welcome. I would seek clarification, however, as to whether other information connected to the case could potentially still appear as Other Relevant Information. For example, where a young person has been arrested or referred to the Children's Reporter on offence grounds, would this still appear as ORI? If that is the case, then I would suggest that it risks undermining the policy intention of the Remedial Order.

15 years/7.5 years Rule

Whilst I recognise that Scottish Ministers have provided some rationale for having a 15 year rule (and 7.5 year rule for those convicted under the age of 18), I note that this is out of step with the equivalent processes in England and Wales, where the limits are much lower. I would urge the Scottish Government to consider whether there is any way to ensure a shorter time limit is applied for those convicted under the age of 18 in Scotland. If the Scottish Government is committed to ensuring that children and young people's life chances are not unduly restricted by what may be a one-off offence, then it would seem sensible that a shorter time frame be employed.

Again, I would highlight that commencing sections 187 and 188 of the Children's Hearings (Scotland) Act 2011 would offer additional protection to those under 18s accepting (or having offence grounds established) via the Children's Hearings system.

Removal of Conviction Subject to Rules

The Remedial Order allows for someone with a conviction listed in Schedule 8B to apply to the Sheriff for this conviction to be removed from their higher level disclosure. The Order states that if this request is refused, then the applicant may not appeal against this decision.

I note from discussions at the Delegated Powers and Law Reform Committee (Official Report, 27/10/15, Col), that this request to the Sheriff can be made at any point (i.e. it does not have to happen close to the 7.5 or 15 year cut-off point).

It would be helpful if the Scottish Government could clarify whether this means that an applicant who was under 18 at the point of conviction who then applies for a conviction to be removed in order to access a particular college/university course, e.g. 3- 4 years after conviction, has his/her request refused, would then have no further option to apply for it to be removed until the 7.5 year period is complete?

Alternatively, would it be possible to make another approach to the Sheriff, say if the young person subsequently chose to apply to study a different subject area?

Impact on Particular Groups of Children and Young People

Some groups of children and young people are statistically much more likely to obtain a criminal conviction before the age of 18, than their peers. For example, a dispute in a residential unit may lead to the Police being called and a looked after young person ending up with a criminal record. Were the same dispute to happen in a home setting, it would normally be dealt with without Police involvement.

With this in mind, it would be helpful to know how the Scottish Government has taken the specific needs of this group of children and young people into account when drafting the Remedial Order.

Young People Committing an Offence Aged 17

I note that the Remedial Order recognises the need to offer additional protections to under-18s. However, I am concerned that where a young person commits an offence at the age of 17, but s/he is not convicted until the age of 18, then they will be subject to the 15 year rule, rather than the 7.5 year rule. This appears to run counter to the spirit in which the two rules were created. For this reason, I would be interested to know if there are plans to expedite cases where the person is aged 17 at the time of the offence.

Provision of Information

Given the unusual process that has been used in order to introduce these changes, I am conscious that many people who may be directly affected by these provisions, and in particular young people and young adults, will be unaware that the changes have come into force. Even where they may have some awareness of the changes, the complexity of the Order means that they may find it difficult to establish what the implications of the Order are for them personally.

My office has heard anecdotal evidence that some young people/young adults may have been deterred from pursuing particular college/university courses or professions as a result of convictions obtained or offence grounds established via a Children's Hearing at a young age. Even one incident of offending can completely change the direction of a child or young person's life, particularly where they had previously wanted to pursue a career in a caring profession, in teaching or working with children or vulnerable adults.

I would also highlight that anecdotal evidence received by my office suggests that many children and young people do not fully understand the long-term implications of accepting an offence ground (or having it established by the Sheriff) via a Children's Hearing.

The Remedial Order creates a very complex system which is likely to be even more challenging for adults to explain to a child or young person, and for that child or young person to understand.

There is a need therefore for a range of clear information materials to inform those directly

affected by the Order.

These information materials should be offered pro-actively (i.e. it is insufficient to rely on people finding this information out when they next apply for a higher level disclosure).

In saying this, I am conscious that there are resource implications in the provision of such information and the provision of information may need to be staggered in order to avoid any potential influx of new higher level disclosure applications. I would suggest that the needs of children and young people should be prioritised in this respect.

Conclusion

The Remedial Order does provide some benefits to those who have committed an offence at a young age. However, the commencement of sections 187 and 188 of the Children's Hearings (Scotland) Act 2011 and the accompanying improvements to Police Scotland's Weeding and Retention rules, will bring significantly greater benefits to children and young people. I would urge the Scottish Government to progress with these changes as soon as possible.

Should you have any further questions about the content of this response, please contact Pauline McIntyre via pauline.mcintyre@cypcs.org.uk or (0131) 346 5350.

QUESTION 2

In relation to the Equality Impact Assessment, please tell us about any potential impacts, either positive or negative; you feel the amendments to legislation in this consultation document may have on any particular groups of people?

Comment

Please refer to my comments in Question 1.

QUESTION 3

In relation to the Equality Impact Assessment, please tell us what potential there may be within these amendments to legislation to advance equality of opportunity between different groups and to foster good relations between different groups?

Comment

Please refer to my comments in Question 1.

QUESTION 4

In relation to the Business Regulatory Impact Assessment, please tell us about any potential impacts you think there may be to particular business or organisations?

Comment

No comment

List of Consultees

Education

Principals and Vice Principals of Scotland's Colleges and Universities
The Open University in Scotland
Educational Institute of Scotland
General Teaching Council Scotland

Health

Health Boards
Special Health Boards
British Medical Association
General Dental Council
General Medical Council
Mental Welfare Commission
Royal College of Psychiatrists

Local Authorities

Chief Executives
Directors of Social Work
Directors of Education
Association of Directors of Education
Association of Directors of Social Work
CoSLA
SoLACE

Justice

Chief Executive, Crown Office and Procurator Fiscal Service
Chief Executive, Scottish Courts and Tribunal Service
Children's Hearings Scotland
Faculty of Advocates
Law Society of Scotland
Lord President and Lord Justice General
Parole Board for Scotland
Sheriffs Principal
Sheriffs' Association
Scottish Law Commission
Scottish Children's Reporter Administration

Police

Chief Constable of Police Scotland
Scottish Police Authority
Scottish Police Federation
Association of Scottish Police Superintendents
HM Inspectorate of Constabulary Scotland

Prisons

Chief Executive, Scottish Prison Service
HM Inspectorate of Prisons
Scottish Prison Officers Association

Other Organisations including Voluntary Organisations

Apex Scotland

Barnardos

Children 1st

Howard League for Penal Reform

SACRO

Scottish Association for Mental Health

Scottish Commission for Human Rights

Scottish Commissioner for Children and Young People

Scottish Council for Voluntary Organisations

Scottish Social Services Council

The Prince's Trust

Victim Support Scotland

Volunteer Scotland Disclosure Services

Young Scot

Order made by the Scottish Ministers, laid before the Scottish Parliament under section 14(5)(b) of the Convention Rights (Compliance) (Scotland) Act 2001 for approval by resolution of the Scottish Parliament within 120 days beginning with the date on which the order was made, not taking into account periods of dissolution or recess for more than 4 days.

SCOTTISH STATUTORY INSTRUMENTS

2015 No.

**The Police Act 1997 and the Protection of Vulnerable Groups
(Scotland) Act 2007 Remedial Order 2015**

Made - - - - [*September 2015*]

Coming into force - - [*September 2015*]

The Scottish Ministers make the following remedial Order in exercise of the powers conferred by section 12(1) and (3) of the Convention Rights (Compliance) (Scotland) Act 2001⁽¹⁾ (“the 2001 Act”) and all other powers enabling them to do so.

The Scottish Ministers consider the provision made by this Order to be necessary or expedient in consequence of the provisions in the Police Act 1997⁽²⁾ and the Protection of Vulnerable Groups (Scotland) Act 2007⁽³⁾ in relation to disclosure of spent criminal convictions and other related matters which may be incompatible with Convention rights⁽⁴⁾.

In accordance with section 12(2) of the 2001 Act the Scottish Ministers are of the opinion that there are compelling reasons for making a remedial order as distinct from taking any other action.

In accordance with section 14(1) of the 2001 Act it appears to the Scottish Ministers that, for reasons of urgency, it is necessary to make a remedial order without following the procedure under section 13(2) to (4) of the 2001 Act.

Citation and commencement

1.—(1) This Order may be cited as the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2015.

(1) 2001 asp 7.
(2) 1997 c.50. 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).
(3) 2007 asp 14.
(4) The “Convention rights” has the meaning given by section 1 of the Human Rights Act 1998 (c.42). In the case of *R (on the application of T and another) v Secretary of State for the Home Department and another* [2014] UKSC 35 (judgment of 18th June 2014), the Supreme Court made a declaration of incompatibility under section 4 of the Human Rights Act 1998 that the provisions of sections 113A and 113B of the Police Act 1997 (as applicable in England and Wales) were incompatible with article 8 of the Convention because the requirements in relation to blanket disclosure of all spent convictions were not in accordance with the law. Similar provisions in sections 113A and 113B of the Police Act 1997 (as applicable in Scotland) may be incompatible with article 8 of the Convention. Section 49(1)(a) of the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”) relies on section 113A(3)(a) of the Police Act 1997 and may also be incompatible with article 8 of the Convention.

(2) This Order comes into force on 10th September 2015.

Interpretation

2. In this Order—

“the 1997 Act” means the Police Act 1997;

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

“the relevant date” means 10th September 2015.

Amendment of the 1997 Act

Amendment of the 1997 Act

3.—(1) The 1997 Act is amended as follows.

(2) In section 113A (criminal record certificates)(5)—

(a) after subsection (3) insert—

“(3A) But a criminal record certificate must not give the details of a relevant matter if—

(a) those details were excluded from another criminal record certificate by virtue of an order under section 116ZB(9)(b), and

(b) it appears to the Scottish Ministers that the application under subsection (1) is made for the same purpose for which the application for the other certificate was made.”;

(b) subsection (4) is repealed; and

(c) in subsection (6)—

(i) after the definition of “central records” insert—

““conviction” means a conviction within the meaning of the Rehabilitation of Offenders Act 1974(6), including a spent conviction,”;

(ii) in the definition of “relevant matter” for paragraphs (a) and (b) substitute—

“(a) a conviction which is not a protected conviction,

(b) a caution which is not spent by virtue of schedule 3 of the Rehabilitation of Offenders Act 1974(7), and”.

(3) In section 113B (enhanced criminal record certificates)(8)—

(a) after subsection (3) insert—

“(3A) But an enhanced criminal record certificate must not give the details of a relevant matter if—

(a) those details were excluded from another enhanced criminal record certificate by virtue of an order under section 116ZB(9)(b), and

(b) it appears to the Scottish Ministers that the application under subsection (1) is made for the same purpose for which the application for the other certificate was made.”;

(b) in subsection (4)—

(i) the words “, in the chief officer’s opinion” are repealed;

(ii) for paragraphs (a) and (b) substitute—

(5) Section 113A was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c.15) (“the 2005 Act”) and has been relevantly amended by sections 78(2) and 79(1) of, and paragraph 28 of schedule 4 to, the Protection of Vulnerable Groups (Scotland) Act 2007.

(6) 1974 c.53.

(7) Schedule 3 was inserted by section 109(4) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”). Caution is an alternative to prosecution by virtue of section 8B(1)(f) of the Rehabilitation of Offenders Act 1974; section 8B was inserted by section 109(2) of the 2010 Act.

(8) Section 113B was inserted by section 163(2) of the 2005 Act and has been relevantly amended by sections 79(1) and 80 of the 2007 Act and by section 108(2) of the 2010 Act.

- “(a) the chief officer reasonably believes to be relevant for the purpose described in the statement under subsection (2), and
- (b) in the chief officer’s opinion, ought to be included in the certificate.”;
- (c) subsection (5) is repealed;
- (d) in subsection (5A)(9) the words “or (5)” are repealed; and
- (e) subsection (6) is repealed.

(4) After section 116 (enhanced criminal record certificates: judicial appointments and Crown employment) insert—

“116ZA Copies of criminal record certificate or enhanced criminal record certificate

(1) Subsection (2) applies where—

- (a) the Scottish Ministers issue a criminal record certificate or an enhanced criminal record certificate, and
- (b) the certificate does not include details of a conviction for an offence listed in schedule 8B which is—
 - (i) a spent conviction, but
 - (ii) not a protected conviction.

(2) The Scottish Ministers must send a copy of the certificate to the relevant person at the same time as they issue the certificate.

(3) Subsections (4) and (5) apply where—

- (a) the Scottish Ministers issue a criminal record certificate or an enhanced criminal record certificate to an individual, and
- (b) the certificate includes details of a conviction for an offence listed in schedule 8B which is—
 - (i) a spent conviction, but
 - (ii) not a protected conviction.

(4) Where—

- (a) the individual notifies the Scottish Ministers before the end of the period mentioned in section 116ZB(3)(a) that the individual does not intend to make an application under section 116ZB(2), or
- (b) that period expires without the individual having notified the Scottish Ministers that the individual does intend to make such an application

the Scottish Ministers must send a copy of the certificate to the relevant person as soon as possible after receiving the notification or, as the case may be, the expiry of that period.

(5) The Scottish Ministers must not send a copy of the certificate to the relevant person if the individual notifies the Scottish Ministers before the end of the period mentioned in section 116ZB(3)(a) that the individual intends to make an application under section 116ZB(2).

(6) In this section, “relevant person” means—

- (a) in relation to a criminal record certificate issued under section 113A(1) or an enhanced criminal record certificate issued under section 113B(1), the person who countersigned the application for the certificate under section 113A(2)(a) or, as the case may be, 113B(2)(a),
- (b) in relation to a criminal record certificate issued under section 114(1) or an enhanced criminal record certificate issued under section 116(1), the person who made the statement in relation to the certificate under section 114(2) or, as the case may be, 116(2).

116ZB Application for an order for a new criminal record certificate or enhanced criminal record certificate

(9) Subsection (5A) was inserted by section 80 of the Protection of Vulnerable Groups (Scotland) Act 2007.

- (1) This section applies where—
- (a) the Scottish Ministers issue a criminal record certificate or an enhanced criminal record certificate to an individual, and
 - (b) the certificate includes details of a conviction for an offence listed in schedule 8B which is—
 - (i) a spent conviction, but
 - (ii) not a protected conviction.
- (2) The individual may apply to the sheriff for an order requiring the Scottish Ministers to issue a new certificate that does not include those details.
- (3) An application under subsection (2)—
- (a) may only be made if the individual, before the end of the period of 10 working days beginning with the date of the issue of the certificate, notifies the Scottish Ministers of an intention to make the application, and
 - (b) must be made before the end of the period of 6 months beginning with the date on which that notification is given.
- (4) No finding of fact on which a conviction is based may be challenged in an application under subsection (2).
- (5) Proceedings in an application under subsection (2) may take place in private if the sheriff considers it appropriate in all the circumstances.
- (6) In determining an application under subsection (2) the sheriff must—
- (a) if satisfied that the details are not relevant to the purpose for which the certificate was required, allow the application,
 - (b) otherwise, refuse the application.
- (7) The sheriff may allow the application in part where it relates to details in relation to two or more convictions.
- (8) The decision of the sheriff on an application is final.
- (9) Where the sheriff allows the application, the sheriff must order the Scottish Ministers—
- (a) to issue a new certificate to the individual as if the individual had made the application for the certificate under section 113A(1), 113B(1), 114(1) or, as the case may be, 116(1) on the date on which the sheriff makes the order,
 - (b) to exclude from that certificate the details which the sheriff is satisfied are not relevant.
- (10) Where the sheriff refuses the application—
- (a) the Scottish Ministers must issue a new certificate to the individual as if the individual had made the application for the certificate under section 113A(1), 113B(1), 114(1) or, as the case may be, 116(1) on the date on which the sheriff makes the order,
 - (b) the individual may not make an application under subsection (2) in relation to the details of the conviction in connection with the new certificate (or any subsequent certificate issued in relation to the original certificate application).
- (11) In subsection (10)(b), the “original certificate application” is the application for the certificate mentioned in subsection (1)(a).
- (12) Sections 116ZA and 117 apply to a new certificate issued under subsection (9) or (10)(a) as if the certificate had been issued under section 113A(1), 113B(1), 114(1) or, as the case may be, 116(1).”
- (5) In section 117 (disputes about accuracy of certificates)(10)—
- (a) in subsection (4) for the words “thinks that the information concerned might be” substitute “reasonably believes the information concerned to be”; and
 - (b) after subsection (4) insert—

(10) Subsections (3) and (4) of section 117 were inserted by paragraph 33 of schedule 4 of the 2007 Act.

“(5) This section does not apply to any information which could be the subject of an application under section 116ZB(2).”.

(6) In section 126(1) (interpretation of Part V) after the definition of “prescribed” insert—

““protected conviction” is to be construed in accordance with section 126ZA.”.

(7) After section 126 insert—

“126ZA Protected convictions

(1) For the purposes of this Part a conviction is a protected conviction if—

- (a) it is a spent conviction, and
- (b) either—
 - (i) it is not a conviction for an offence listed in schedule 8A or 8B, or
 - (ii) it is a conviction for an offence listed in schedule 8B and at least one of the conditions specified in subsection (2) is satisfied.

(2) The conditions are—

- (a) the disposal in respect of the conviction was an admonition or an absolute discharge,
- (b) 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 the conviction,
- (c) the person was aged 18 or over on the date of conviction and at least 15 years have passed since the date of the conviction.

(3) In subsection (2)(a), the reference to an absolute discharge includes a reference to the discharge of the referral of a child’s case to a children’s hearing under—

- (a) section 69(1)(b) and (12) of the Children (Scotland) Act 1995(11), or
- (b) section 91(3)(b), 93(2)(b), 108(3)(b), or 119(3)(b) of the Children’s Hearings (Scotland) Act 2011(12).

126ZB Offences in schedules 8A and 8B

(1) The Scottish Ministers may by regulations modify schedule 8A or 8B.

(2) Regulations under subsection (1) are subject to the affirmative procedure.”.

(8) After Schedule 8 (the Police Information Technology Organisation)(13) insert—

“SCHEDULE 8A

OFFENCES WHICH MUST ALWAYS BE DISCLOSED

Common law offences

1. Abduction.
2. Abortion.
3. Assault to severe injury.
4. Assault with intent to rape or ravish.
5. Assault with intent to commit the statutory offence of rape.
6. Bestiality.
7. Cruel and unnatural treatment of persons.

(11) 1995 c.36. Section 69 was repealed by paragraph 1 of Schedule 6 to the Children’s Hearings (Scotland) Act 2011 (asp 1).

(12) 2011 asp 1.

(13) Schedule 8 was repealed by Part 1(A) of Schedule 15 of the Police and Justice Act 2006.

8. Culpable homicide.
9. Drugging.
10. Extortion.
11. Hamesucken.
12. Hijacking.
13. Piracy.
14. Plagium.
15. Reset of plagium.
16. Treason.
17. Uttering threats.

Statutory offences

Armed forces

18. An offence under section 42 of the Armed Forces Act 2006(14) (criminal conduct) where the corresponding offence under the law of England and Wales is, or corresponds to, an offence listed in this Schedule.

Aviation and maritime

19. An offence under the Piracy Act 1837(15).
20. An offence under any of the following provisions of the Aviation Security Act 1982(16)—
 - (a) section 1 (hijacking);
 - (b) section 2 (destroying, damaging or endangering safety of aircraft);
 - (c) section 3 (other acts endangering or likely to endanger safety of aircraft); and
 - (d) section 4 (offences in relation to certain dangerous articles).
21. An offence under section 9 of the Aviation and Maritime Security Act 1990(17) (hijacking of ships).
22. An offence under article 241 of the Air Navigation Order 2009(18) in respect of a contravention of article 137 of that Order (endangering safety of aircraft).

Children

23. An offence under section 12 of the Children and Young Persons (Scotland) Act 1937(19) (cruelty to persons under 16).
24. An offence under section 6 of the Child Abduction Act 1984(20) (offence in Scotland of parent, etc. taking or sending child out of United Kingdom).

(14) 2006 c.52.

(15) 1837 c.88. The Act was relevantly amended by the Statute Law Revision (No. 2) Act 1890 (c.51).

(16) 1982 c.36.

(17) 1990 c.31.

(18) S.I. 2009/3015. Article 241 was amended by S.I. 2012/1751 and S.I. 2014/3302.

(19) 1937 c.37. Section 12 was amended by the Criminal Procedure (Scotland) Act 1975 (c.21), section 289B; the Children Act 1975 (c.72), Schedule 4; the Criminal Justice Act 1988 (c.33), section 45; the Children (Scotland) Act 1995 (c.36) (“the 1995 Act”), Schedule 4, paragraph 7; the Criminal Justice (Scotland) Act 2003 (asp 7), section 51(5) and S.I. 1951/1974.

Explosives

25. An offence under the Explosive Substances Act 1883**(21)**.

Firearms and other weapons

26. An offence under any of the following provisions of the Firearms Act 1968**(22)**—

- (a) section 16 (possession of firearm with intent to injure);
- (b) section 16A**(23)** (possession of firearm with intent to cause fear or violence);
- (c) section 17**(24)** (use of firearm to resist arrest); and
- (d) section 18 (carrying firearm with criminal intent).

27. An offence under the Chemical Weapons Act 1996**(25)**.

Forced marriage

28. An offence under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014 (offence of forced marriage: Scotland)**(26)**.

(20) 1984 c.37. Section 6 was amended by the Law Reform (Parent and Child) (Scotland) Act 1986 (c.9), sections 9 and 10 and Schedule 1, paragraph 20; the Age of Legal Capacity (Scotland) Act 1991 (c.50), Schedule 2, paragraph 1; and the 1995 Act, Schedule 4, paragraph 34.

(21) 1883 c.3. The Act was relevantly amended as follows. Section 2 was substituted by the Criminal Jurisdiction Act 1975 (c.59) (“the 1975 Act”), section 7 and extended by the Internationally Protected Persons Act 1978 (c.17), section 1; the Aviation Security Act 1982 (c.36), section 6(1); the United Nations Personnel Act 1997 (c.13), section 1; and the Terrorism Act 2000 (c.11) (“the 2000 Act”), section 62. Section 3 was substituted by the 1975 Act, section 7, extended by the 2000 Act, section 62 and amended by the Criminal Law Act 1977 (c.45), Schedule 12 and the Terrorism Act 2006 (c.11), section 17. Section 4 was amended by the Criminal Procedure (Scotland) Act 1975 (c.21), section 221 and by the Criminal Justice and Courts Act 2015 (c.2), section 1. Section 5 was extended by the 2000 Act (c.11), section 62.

(22) 1968 c.27. The Act was extended by the Firearms Act 1982 (c.31), section 1 and S.I. 1972/971, and modified by the Firearms (Amendment) Act 1988 (c.45), sections 8 and 25.

(23) Section 16A was inserted by the Firearms (Amendment) Act 1994 (c.31), section 1.

(24) Section 17 was amended by the Theft Act 1968 (c.60), Schedule 3.

(25) 1996 c.6. The Act was relevantly amended as follows. Section 2 was extended by the 2000 Act, section 62 and section 32 was extended by the Anti-terrorism, Crime and Security Act 2001 (c.24), section 17.

(26) 2014 c.12.

Human trafficking and exploitation

29. An offence under section 22 of the Criminal Justice (Scotland) Act 2003~~(27)~~ (traffic in prostitution etc.).

30. An offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004~~(28)~~ (trafficking people for exploitation).

31. An offence under section 47 of the Criminal Justice and Licensing (Scotland) Act 2010~~(29)~~ (slavery, servitude and forced or compulsory labour).

32. An offence under the Prohibition of Female Genital Mutilation (Scotland) Act 2005~~(30)~~.

Medical professions etc.

33. An offence under section 10Z9 of the National Health Service (Scotland) Act 1978~~(31)~~ (offences in relation to registration).

34. An offence under section 49 of the Medical Act 1983~~(32)~~ (penalty for pretending to be registered).

Serious organised crime

35. An offence under any of the following provisions of the Criminal Justice and Licensing (Scotland) Act 2010~~(33)~~—

- (a) section 28 (involvement in serious organised crime);
- (b) section 30 (directing serious organised crime); and
- (c) section 31 (failure to report serious organised crime).

Sexual offences

36. An offence under section 50(3) of the Customs and Excise Management Act 1979~~(34)~~ (penalty for improper importation of goods) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876~~(35)~~, but only where the prohibited goods include indecent photographs of persons.

37. A sexual offence within the meaning given by section 210A(10) of the Criminal Procedure (Scotland) Act 1995~~(36)~~ other than an offence mentioned in paragraph (xxvii)(ZF) or (ZG) of that section (engaging while an older child in sexual conduct with or towards another older child).

38. An offence under section 113 of the Sexual Offences Act 2003~~(37)~~ (breach of sexual offences prevention order or interim sexual offences prevention order, etc.).

~~(27)~~ 2003 asp 7. Section 22 was amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”), section 46.

~~(28)~~ 2004 c.19. Section 4 was amended by the 2010 Act, section 46.

~~(29)~~ 2010 asp 13.

~~(30)~~ 2005 asp 8.

~~(31)~~ 1978 c.29. Section 10Z9 was inserted by the Public Services Reform (Scotland) Act 2010 (asp 8), section 108.

~~(32)~~ 1983 c.54. Section 49 was amended by the Statute Law (Repeals) Act 1993 (c.50), Schedule 1 and by S.I. 2007/3101.

~~(33)~~ 2010 asp 13.

~~(34)~~ 1979 c.2. Section 50 was amended by the Criminal Procedure (Scotland) Act 1975 (c.21), section 289F and 289G; the Police and Criminal Evidence Act 1984 (c.60), section 114(1); the Finance Act 1988 (c.33), section 12; the Criminal Justice Act 2003 (c.44), section 293; the Criminal Justice and Immigration Act 2008 (c.4), Schedule 17; the Anti-social Behaviour, Crime and Policing Act 2014 (c.12), section 111; and S.I. 1996/2686.

~~(35)~~ 1876 c.36. Section 42 was amended by the Customs and Excise Act 1952 (c.44), Schedule 12; the Statute Law (Repeals) Act 1993 (c.50), Schedule 1; and the Statute Law (Repeals) Act 2008 (c.12), Schedule 2.

~~(36)~~ 1995 c.46. Section 210A was inserted by the Crime and Disorder Act 1998 (c.37), section 86 and was amended by the Sexual Offences (Amendment) Act 2000 (c.44), section 6(2); the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), section 312; the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), section 21; the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), schedule 1; the Sexual Offences (Scotland) Act 2009 (asp 9), schedules 5 and 6; the 2010 Act, section 23; and by S.S.I. 2003/48 and S.S.I. 2010/421.

39. An offence under section 7 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (offence: breach of RSHO or interim RSHO etc.)(**38**).

Stalking and harassment

40. An offence under section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995(**39**) (racially aggravated harassment).

41. An offence under any of the following provisions of the Criminal Justice and Licensing (Scotland) Act 2010(**40**)—

- (a) section 38 (threatening or abusive behaviour); and
- (b) section 39 (offence of stalking).

Terrorism

42. An offence under any of the following provisions of the Terrorism Act 2000(**41**)—

- (a) section 11 (membership);
- (b) section 15 (fund-raising);
- (c) section 16 (use and possession);
- (d) section 17 (funding arrangements);
- (e) section 17A(2) or (4) (insurance payments made in response to terrorist demands)(**42**);
- (f) section 18 (money laundering);
- (g) section 54 (weapons training)(**43**);
- (h) section 56 (directing terrorist organisation);
- (i) section 57 (possession for terrorist purposes)(**44**);
- (j) section 58 (collection of information)(**45**);
- (k) section 58A (eliciting, publishing or communicating)(**46**); and
- (l) section 61 (inciting terrorism overseas).

43. An offence under any of the following provisions of the Anti-terrorism, Crime and Security Act 2001(**47**)—

- (a) section 47 (use etc. of nuclear weapons);
- (b) section 50 (assisting or inducing certain weapons-related acts overseas);
- (c) section 52 (powers of entry);
- (d) section 54 (offences);
- (e) section 67 (offences);
- (f) section 79 (prohibition of disclosures relating to nuclear security)(**48**);
- (g) section 80 (prohibition of disclosures of uranium enrichment technology)(**49**);

(37) 2003 c.42. Section 113 was amended by the Anti-social Behaviour, Crime and Policing Act 2014 (c.12), Schedule 11 and by S.S.I. 2011/25.

(38) 2005 asp 9. Section 7 was amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 103 and the Anti-social Behaviour, Crime and Policing Act 2014 (c.12), Schedule 11, paragraph 78.

(39) 1995 c.39. Section 50A was inserted by the Crime and Disorder Act 1998 (c.37), section 33.

(40) 2010 asp 13.

(41) 2000 c.11.

(42) Section 17A was inserted by the Counter-Terrorism and Security Act 2015 (c.6), section 42.

(43) Section 54 was amended by the Anti-terrorism, Crime and Security Act 2001 (c.24), section 120; the Counter-Terrorism Act 2008 (c.28), Schedule 9; and the Criminal Justice and Courts Act 2015 (c.2), section 1.

(44) Section 57 was amended by the Terrorism Act 2006 (c.11), section 13.

(45) Section 58 was amended by the Counter-Terrorism Act 2008 (c.28) (“the 2008 Act”), Schedule 9.

(46) Section 58A was inserted by the 2008 Act, section 76.

(47) 2001 c.24.

(48) Section 79 was amended by the Energy Act 2004 (c.20), Schedule 14.

(49) Section 80 was amended by the Energy Act 2013 (c.32), Schedule 12.

- (h) section 113 (use of noxious substances or things to cause harm and intimidate)(**50**);
- (i) section 114 (hoaxes involving noxious substances or things); and
- (j) paragraph 7 of Schedule 3 (offences).

44. An offence under the Terrorism Act 2006(**51**).

45. An offence under any of the following provisions of the Counter-Terrorism Act 2008(**52**)—

- (a) section 54 (offences relating to notification);
- (b) paragraph 15 of Schedule 5 (breach of foreign travel restriction order and offence); and
- (c) paragraph 30 of Schedule 7 (offences: failure to comply with requirement imposed by direction).

Violent offender orders

46. An offence under section 113(1) of the Criminal Justice and Immigration Act 2008(**53**) (breach of violent offender order or interim violent offender order).

Vulnerable persons

47. An offence under section 315 of the Mental Health (Care and Treatment) (Scotland) Act 2003(**54**) (ill-treatment and wilful neglect of mentally disordered person).

48. An offence under any of the following provisions of the Protection of Vulnerable Groups (Scotland) Act 2007(**55**)—

- (a) section 34 (barred individuals not to do regulated work);
- (b) section 35 (organisations not to use barred individuals for regulated work); and
- (c) section 36 (personnel suppliers not to supply barred individuals for regulated work).

49. Any offence where the conduct in respect of which the person was convicted also constituted a breach of a banning order granted under section 19 of the Adult Support and Protection (Scotland) Act 2007(**56**) (banning orders).

Witness protection

50. An offence under any of the following provisions of the Serious Organised Crime and Police Act 2005(**57**)—

- (a) section 86 (offence of disclosing information about protection arrangements); and
- (b) section 88 (offences of disclosing information relating to persons assuming new identity).

Statutory aggravations

51. An offence to which section 29(1) of the Criminal Justice and Licensing (Scotland) Act 2010(**58**) applies (offences aggravated by connection with serious organised crime).

Other

(**50**) Section 113 was amended by the Terrorism Act 2006 (c.11), section 34.

(**51**) 2006 c.11. The Act was relevantly amended as follows. Section 6 was amended by the Criminal Justice and Courts Act 2015 (c.2), section 1 and section 17 was amended by the Serious Crime Act 2015 (c.9), section 81 and paragraph 74 of Schedule 4.

(**52**) 2008 c.28.

(**53**) 2008 c.4.

(**54**) 2003 asp 13.

(**55**) 2007 asp 14.

(**56**) 2007 asp 10.

(**57**) 2005 c.15.

(**58**) 2010 asp 13.

Inchoate offences

52. An offence committed by aiding, abetting, counselling, procuring or inciting the commission of any offence listed in paragraphs 1 to 51 of this Schedule.

53. An offence committed by attempting or conspiring to commit any offence listed in paragraphs 1 to 51 of this Schedule.

Superseded offences

54. An offence superseded (whether directly or indirectly) by any offence listed in paragraphs 1 to 53 of this Schedule (and any qualification in relation to a listed offence applies to the superseded offence as it applies to the listed offence).

Combined offences

55. An offence which was charged, and the conviction for which was received, in conjunction with any offence listed in paragraphs 1 to 54 of this Schedule.

Corresponding offences elsewhere in the UK or abroad

56. An offence under the law of England and Wales or Northern Ireland, or any country or territory outside the United Kingdom, which corresponds to any offence listed in paragraphs 1 to 55 of this Schedule.

SCHEDULE 8B
OFFENCES WHICH ARE TO BE DISCLOSED SUBJECT TO RULES

Common law offences

1. Assault excluding any assault of a kind listed in Schedule 8A.
2. Attempting to defeat the ends of justice.
3. Attempting to pervert the course of justice.
4. Breach of the peace.
5. Clandestinely taking possession.
6. Culpable and reckless conduct.
7. Culpable and reckless endangering of the public.
8. Culpable and reckless fireraising.
9. Embezzlement.
10. False accusation of a crime.
11. Fraud.
12. Housebreaking with intent to steal.
13. Mobbing and rioting.
14. Opening a lockfast place with intent to steal.
15. Perjury.
16. Prevarication on oath.
17. Prison breaking.
18. Public indecency.
19. Reset (excluding reset of plagium).
20. Subornation of perjury.
21. Theft (excluding plagium).
22. Uttering.
23. Wilful fireraising.

Statutory offences

Adult support and protection

24. An offence under section 49 of the Adult Support and Protection (Scotland) Act 2007(**59**) (obstruction).

Adults with incapacity

25. An offence under section 83 of the Adults with Incapacity (Scotland) Act 2000(**60**) (offence of ill-treatment and wilful neglect).

Animals

26. An offence under the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974(**61**).

27. An offence under any of the following provisions of the Wildlife and Countryside Act 1981(**62**)—

- (a) section 1(**63**) (protection of wild birds, their nests and eggs and prevention of poaching);
- (b) section 5(**64**) (prohibition of certain methods of killing or taking wild birds);
- (c) section 9(**65**) (protection of other wild animals and prevention of poaching);
- (d) section 11(**66**) (prohibition of certain methods of killing or taking wild animals);
- (e) section 11A, 11B and 11C(**67**) (offences in relation to snares);
- (f) section 14ZC(**68**) (prohibition on keeping etc. of invasive animals or plants);
- (g) section 15A(**69**) (possession of pesticides); and
- (h) section 18 (attempts to commit offences etc.), but only in relation to an offence listed in sub-paragraphs (a) to (g) of this paragraph.

28. An offence under the Dangerous Dogs Act 1991(**70**).

29. An offence under the Protection of Badgers Act 1992(**71**).

(59) 2007 asp 10.

(60) 2000 asp 4.

(61) S.I. 1974/2211, as amended by S.I. 1977/361, S.I. 1984/1182, S.I. 1990/2371, S.I. 2011/2883 and S.I. 2014/3158.

(62) 1981 c.69.

(63) Section 1 was amended by schedule 5 to the Criminal Justice (Scotland) Act 2003 (asp 7), paragraph 2 of schedule 6 to the Nature Conservation (Scotland) Act 2004 (asp 6) (“the 2004 Act”), section 3(2) and (3) of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6) (“the 2011 Act”) and S.I. 2011/1043.

(64) Section 5 was amended by paragraph 6 of schedule 6 to the 2004 Act.

(65) Section 9 was amended by paragraph 8 of schedule 6 to the 2004 Act and section 7(2) of the 2011 Act.

(66) Section 11 was amended by paragraph 10 of schedule 6 to the 2004 Act and section 13(2) of the 2011 Act.

(67) Sections 11A, 11B and 11C were inserted by section 13(3) of the 2011 Act. Section 11A was amended by S.S.I. 2013/119.

(68) Section 14ZC was inserted by section 14(3) of the 2011 Act.

(69) Section 15A was inserted by paragraph 14 of schedule 6 to the 2004 Act and was amended by section 21(4) of the 2011 Act and by S.I. 2013/1506.

(70) 1991 c.65. The Act was amended by paragraph 81 of Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), sections 1 to 3 of the Dangerous Dogs (Amendment) Act 1997 (c.53), section 10 of and paragraph 2 of schedule 1 to the Control of Dogs (Scotland) Act 2010 (asp 9) and sections 106(2)(a)(ii) and 107 of the Anti-social Behaviour, Crime and Policing Act 2014 (c.12).

(71) 1992 c.51. The Act was amended by paragraph 53 of Schedule 2 to the Planning (Consequential Provisions) (Scotland) Act 1997 (c.11), paragraph 5 of schedule 1 to the Wild Mammals (Scotland) Act 2002 (asp 6), paragraph 26 of schedule 6 to 2004 Act and sections 33 and 41(4) of the 2011 Act.

30. An offence under any of the following provisions of the Conservation (Natural Habitats, &c.) Regulations 1994**(72)**—

- (a) regulation 39**(73)** (protection of certain wild animals); and
- (b) regulation 41**(74)** (prohibition of certain methods of taking or killing wild animals).

31. An offence under the Welfare of Animals (Slaughter or Killing) Regulations 1995**(75)**.

32. An offence under the Wild Mammals Protection Act 1996**(76)**.

33. An offence under the Protection of Wild Mammals (Scotland) Act 2002**(77)**.

34. An offence under the Animal Health and Welfare (Scotland) Act 2006**(78)**.

Armed forces

35. An offence under section 42 of the Armed Forces Act 2006**(79)** (criminal conduct) where the corresponding offence under the law of England and Wales is, or corresponds to, an offence listed in this Schedule.

Assaulting or hindering public officials

36. An offence under section 89 of the Police Act 1996**(80)** (assaults on constables).

37. An offence under section 32 of the Commissioners for Revenue and Customs Act 2005**(81)** (assault).

38. An offence under the Emergency Workers (Scotland) Act 2005**(82)**.

39. An offence under section 85 of the Fire (Scotland) Act 2005**(83)** (false alarms).

40. An offence under section 90 of the Police and Fire Reform (Scotland) Act 2012**(84)** (assaulting or impeding police).

Aviation

41. An offence under any of the following provisions of the Aviation Security Act 1982**(85)**—

- (a) section 20B**(86)** (detention direction); and
- (b) section 21FA**(87)** (air cargo agents: documents).

(72) S.I. 1994/2716.

(73) Regulation 39 was amended by S.S.I. 2008/17 and S.S.I. 2008/425.

(74) Regulation 41 was amended by S.S.I. 2004/475 and S.S.I. 2007/80.

(75) S.I. 1995/731 was amended by S.I. 1999/400 and S.I. 1999/1820 and S.S.I. 2000/62, S.S.I. 2001/145, S.S.I. 2002/238, S.S.I. 2004/13, S.S.I. 2006/536, S.S.I. 2007/150, S.S.I. 2012/321 and S.S.I. 2015/13.

(76) 1996 c.3. The Act was amended by paragraph 1 of schedule 6 to the Protection of Wild Mammals (Scotland) Act 2002 (asp 6) and S.S.I. 2016/536.

(77) 2002 asp 6. The Act was amended by Part 2 of schedule 1 to the 2011 Act and by S.S.I. 2006/536.

(78) 2006 asp 11. The Act was amended by paragraph 34 of Part 1 of schedule 7 to the Police and Fire Reform (Scotland) Act 2012 (asp 8) (“the 2012 Act”).

(79) 2006 c.52.

(80) 1996 c.16. Section 89 was amended by section 104(1) of the Police Reform Act 2002 (c.30); Part 2 of Schedule 17 to the Serious Organised Crime and Police Act 2005 (c.15); S.I. 2012/1809; and S.S.I. 2013/602.

(81) 2005 c.11.

(82) 2005 asp 2. The Act was amended by section 38 of, and paragraph 23 of schedule 3 to the Fire (Scotland) Act 2005 (asp 5), section 44(4) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), paragraph 25 of Part 1 and paragraph 67 of Part 2 of schedule 7 to the 2012 Act, and by S.S.I. 2008/37 and S.S.I. 2013/211.

(83) 2005 asp 5.

(84) 2012 asp 8.

(85) 1982 c.36.

(86) Section 20B was inserted by section 86(1) of the Anti-terrorism, Crime and Security Act 2001 (c.24) (“the 2001 Act”) and amended by paragraph 15 of Schedule 11 to the Civil Aviation Act 2012 (c.19).

(87) Section 21FA was inserted by section 87 of the 2001 Act.

Bomb hoaxes

42. An offence under section 51 of the Criminal Law Act 1977⁽⁸⁸⁾ (bomb hoaxes).

Bribery

43. An offence under the Bribery Act 2010⁽⁸⁹⁾.

Care services

44. An offence under any of the following provisions of the Regulation of Care (Scotland) Act 2001⁽⁹⁰⁾—

- (a) section 45⁽⁹¹⁾ (application for registration under Part 3); and
- (b) section 52 (use of title “social worker” etc.).

45. An offence under any of the following provisions of the Public Services Reform (Scotland) Act 2010⁽⁹²⁾—

- (a) section 80(1) (offences in relation to registration under Chapter 3);
- (b) section 81 (false statements in application under Chapter 3); and
- (c) section 90 (offences under Chapter 4).

46. An offence under article 27 of the Public Services Reform (General Teaching Council for Scotland) Order 2011⁽⁹³⁾ (offences).

47. An offence under regulation 19 of the Social Care and Social Work Improvement (Scotland) (Requirements for Care Services) Regulations 2011⁽⁹⁴⁾ (offences).

Charities

48. An offence under the Charities and Trustee Investment (Scotland) Act 2005⁽⁹⁵⁾.

Child Support

49. An offence under section 50 of the Child Support Act 1991⁽⁹⁶⁾ (unauthorised disclosure of information).

Crossbows

50. An offence under section 1 of the Crossbows Act 1987⁽⁹⁷⁾ (sale and letting on hire).

Domestic abuse

51. An offence under section 2 of the Domestic Abuse (Scotland) Act 2011⁽⁹⁸⁾ (breach of domestic abuse interdict with power of arrest).

⁽⁸⁸⁾ 1977 c.45. Section 51 was amended by section 26(4) of the Criminal Justice Act 1991(c.53).

⁽⁸⁹⁾ 2010 c.23.

⁽⁹⁰⁾ 2001 asp 8.

⁽⁹¹⁾ Section 45 was amended by S.I. 2007/3101.

⁽⁹²⁾ 2010 asp 8.

⁽⁹³⁾ S.S.I. 2011/215.

⁽⁹⁴⁾ S.S.I. 2011/210.

⁽⁹⁵⁾ 2005 asp 10, to which there are no relevant amendments.

⁽⁹⁶⁾ 1991 c.48. The Act was amended by paragraph 1 of schedule 7 and schedule 8 to the Child Maintenance and Other Payments Act 2008 (c.6) and by S.I. 2005/1790, S.I. 2008/2833 and S.I. 2012/2007.

⁽⁹⁷⁾ 1987 c.32. Section 1 was amended by section 35(2) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).

⁽⁹⁸⁾ 2011 asp 13.

Drugs

- 52.** An offence under any of the following provisions of the Misuse of Drugs Act 1971(**99**)—
- (a) section 3(**100**) (restriction of importation and exportation of controlled drugs);
 - (b) section 4(**101**) (restriction of production and supply of controlled drugs);
 - (c) section 4A(**102**) (aggravation of offence of supply of controlled drug);
 - (d) section 5(3) (restriction of possession of controlled drugs);
 - (e) section 6 (restriction of cultivation of cannabis plant);
 - (f) section 8(a) and (b) (occupiers etc. of premises to be to be punishable for certain activities taking place there);
 - (g) section 12(**103**) (directions prohibiting prescribing, supply etc. of controlled drugs by practitioners etc. convicted of certain offences);
 - (h) section 13(**104**) (directions prohibiting prescribing, supply etc. of controlled drugs by practitioners in other cases);
 - (i) section 17 (power to obtain information from doctors, pharmacists etc. in certain circumstances);
 - (j) section 19(**105**) (attempts etc. to commit offences), but only in relation to an offence listed in sub-paragraphs (a) to (i) of this paragraph; and
 - (k) section 20 (assisting in or inducing commission outside United Kingdom of offence punishable under corresponding law).

53. An offence under section 50(3) (penalty for improper importation of goods) or section 170 (fraudulent evasion of duty) of the Customs and Excise Management Act 1979(**106**) in relation to goods prohibited to be imported under section 3(1) of the Misuse of Drugs Act 1971(**107**) (restriction of importation and exportation of controlled drugs).

54. An offence under the Criminal Justice (International Co-operation) Act 1990(**108**).

Escape from custody etc.

55. An offence under section 316 of the Mental Health (Care and Treatment) (Scotland) Act 2003(**109**) (inducing and assisting absconding etc.).

56. An offence under section 91 of the Police and Fire Reform (Scotland) Act 2012(**110**) (escape from custody).

(99) 1971 c.38.

(100) Section 3 was amended by paragraph 4 of schedule 17 to the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”).

(101) Section 4 was amended by paragraph 5 of schedule 17 to the 2010 Act.

(102) Section 4A was inserted by section 1(1) of the Drugs Act 2005 (c.17).

(103) Section 12 was amended by paragraph 8 of Schedule 4 to the Customs and Excise Management Act 1979 (c.2).

(104) Section 13 was amended by the Police Reform and Social Responsibility Act 2011 (c.13), Schedule 17, paragraph 12 and by the Scotland Act 2012 (c.11), section 19.

(105) Section 19 was amended by the Serious Crime Act 2007 (c.27), Schedule 6, paragraph 53.

(106) 1979 c.2. Sections 50 and 170 were amended by the Forgery and Counterfeiting Act 1981 (c.45), section 23; the Police and Criminal Evidence Act 1984 (c.60), section 114(1); the Finance Act 1988 (c.33), section 12; the Criminal Justice Act 2003 (c.44), section 293; the Criminal Justice and Immigration Act 2008 (c.4), Schedule 17; the Anti-social Behaviour, Crime and Policing Act 2014 (c.12), section 111 and by S.I. 1996/2686 and S.I. 2015/664. Section 50 was also amended by the Criminal Procedure (Scotland) Act 1975 (c.21), section 289F and 289G and section 170 was also amended by the Finance (No. 2) Act 1992 (c.48), Schedule 2.

(107) 1971 c.38. Section 3 was amended by the Police Reform and Social Responsibility Act 2011 (c.13), Schedule 17, paragraph 4.

(108) 1990 c.5. The Act was relevantly amended by section 23 of the Criminal Justice Act 1993 (c.36), section 1 of the Criminal Justice (International Co-operation) (Amendment) Act 1998 (c.27), Part 2 of Schedule 7 to the Criminal Justice (Scotland) Act 1995 (c.20), Schedule 5 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), paragraph 21 of Schedule 11 to the Proceeds of Crime Act 2002 (c.29), paragraph 3 of Schedule 28 to the Criminal Justice Act 2003 (c.44) and paragraph 22 of Schedule 17 to the Police Reform and Social Responsibility Act 2011 (c.13).

(109) 2003 asp 13. Section 316 was amended by section 71(3) of the Adult Support and Protection (Scotland) Act 2007 (asp 10) and by S.S.I. 2005/465.

(110) 2012 asp 8.

Financial Services

57. An offence under the Financial Services and Markets Act 2000(**111**).

58. An offence under the Financial Services Act 2012(**112**).

Fire safety

59. An offence under section 72(1) or (3) of the Fire (Scotland) Act 2005 (offences)(**113**).

Firearms

60. An offence under the Firearms Act 1968(**114**), except an offence under any of the following provisions—

- (a) section 16 (possession of firearm with intent to injure);
- (b) section 16A (possession of firearm with intent to cause fear or violence);
- (c) section 17 (use of firearm to resist arrest); and
- (d) section 18 (carrying firearm with criminal intent).

61. An offence under section 50(5) of the Civic Government (Scotland) Act 1982(**115**) (drunk in possession of firearm).

62. An offence under the Firearms (Amendment) Act 1997(**116**).

63. An offence under any of the following provisions of the Violent Crime Reduction Act 2006(**117**)—

- (a) section 28 (using someone to mind a weapon);
- (b) section 32 (sales of air weapons by way of trade or business to be face to face);
- (c) section 35 (restriction on sale and purchase of primers); and
- (d) section 36 (manufacture, import and sale of realistic imitation firearms).

(111) 2000 c.8. The Act was relevantly amended by the Pension Schemes Act 2015 (c.8), Schedule 3, paragraph 2 and the Financial Services Act 2012 (c.21), sections 11(2), 13, 25(1), 26 and 95 and Schedules 8, 9 and 12 and Part 1 of Schedule 18 and S.I. 2000/534, S.I. 2001/1090, S.I. 2005/1433, S.I. 2010/22, S.I. 2012/2554 and S.I. 2013/1773.

(112) 2012 c.21. The Act was amended by the Financial Services (Banking Reform) Act 2013 (c.33), sections 105 and 106, Schedule 9, paragraph 4(3)(e) and Schedule 10, paragraph 9 and S.I. 2014/3329.

(113) 2005 asp 5. Section 72 was amended by S.S.I. 2005/2060.

(114) 1968 c.27 (“the 1968 Act”). Section 16A was inserted by the Firearms (Amendment) Act 1994 (c.31) section 1(1). The 1968 Act was relevantly amended by the Criminal Justice Act 1982 (c.48), Schedule 14, paragraph 24(a); the Criminal Justice Act 1988 (c.33), Schedule 8, paragraphs 6 and 16 and Schedule 16; the Firearms (Amendment) Act 1988 (c.45), sections 1 to 3, 9, 10, 13, 15, 20 and 23; the Firearms (Amendment) Act 1994, section 2; the Criminal Justice and Public Order Act 1994 (c.33), Schedule 10, paragraph 24(2)(a); the Firearms (Amendment) Act 1997 (c.5), sections 1, 9, 10, 40, 42 and Schedule 2, paragraphs 1 to 14 and Schedule 3; the Firearms (Amendment) (No. 2) Act 1997 (c.64), Schedule 1; the Crime and Disorder Act 1998 (c.37), Schedule 8, paragraph 14; the Anti-social Behaviour Act 2003 (c.38), sections 37 to 39 and Schedule 3; the Criminal Justice Act 2003 (c.44), Schedule 32, Part 1, paragraph 12; the Violent Crime Reduction Act 2006 (c.38), sections 31, 33, 34, 40 and 41 and Schedule 5; the Criminal Justice and Immigration Act 2008 (c.4), Schedule 4, Part 1, paragraph 6; the Crime and Security Act 2010 (c.17), section 46(2); the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), schedule 2, Part 2, paragraph 30(2); and the Anti-social Behaviour, Crime and Policing Act 2014 (c.12), sections 108 to 110 and S.I. 1968/1200, S.I. 1992/2823, S.I. 2010/1759 and S.I. 2011/713.

(115) 1982 c.45.

(116) 1997 c.5. The Act was relevantly amended by S.I. 2011/713.

(117) 2006 c.38.

Food safety and standards

- 64.** An offence under any of the following provisions of the Food Safety Act 1990(**118**)—
- (a) section 7(**119**) (rendering food injurious to health); and
 - (b) section 9(**120**) (inspection and seizure of suspected food).
- 65.** An offence under regulation 4(b) of the General Food Regulations 2004(**121**).

Forced marriage

- 66.** An offence under section 9 of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (offence of breaching order)(**122**).

Fraud and forgery

- 67.** An offence under the Forgery and Counterfeiting Act 1981(**123**).
- 68.** An offence under section 46A of the Criminal Law (Consolidation) (Scotland) Act 1995 (false monetary instruments)(**124**).
- 69.** An offence under section 49 of the Criminal Justice and Licensing (Scotland) Act 2010 (articles for use in fraud)(**125**).
- 70.** An offence under section 92 of the Police and Fire Reform (Scotland) Act 2012 (impersonation etc.)(**126**).

Harassment

- 71.** An offence under section 234A of the Criminal Procedure (Scotland) Act 1995 (non-harassment orders)(**127**).
- 72.** An offence under section 9 of the Protection from Harassment Act 1997 (breach of non-harassment order)(**128**).

Immigration, etc.

- 73.** An offence under any of the following provisions of the Immigration Act 1971(**129**)—
- (a) section 24(**130**) (illegal entry and similar offences);

(**118**) 1990 c.16.
(**119**) Section 7 was amended by S.I. 2004/3279.
(**120**) Section 9 was amended by S.I. 2004/3279 and S.S.I. 2013/336.
(**121**) S.I. 2004/3279. Regulation 4 was substituted by S.S.I. 2005/616
(**122**) 2011 asp 15.
(**123**) 1981 c.45. The Act was relevantly amended by S.S.I.2014/3168.
(**124**) 1995 c.39. Section 46A was inserted by the Crime (International Co-operation) Act 2003 (c.32), section 89.
(**125**) 2010 asp 13.
(**126**) 2012 asp 8.
(**127**) 1995 c.46. Section 234A was inserted by the Protection from Harassment Act 1997 (c.40), section 11, and amended by the Crime and Punishment (Scotland) Act 1997 (c.48), Schedule 3; the Criminal Justice (Scotland) Act 2003 (asp 7), section 49(1); and the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”), section 15.
(**128**) 1997 c.40. The Act was relevantly amended by the 2010 Act, section 49(2) and the Domestic Abuse (Scotland) Act 2011 (asp 13), section 1(3).
(**129**) 1971 c.77.
(**130**) Section 24 was amended by the National Health Service (Scotland) Act 1972 (c.58), section 64(1) and Schedule 6, paragraph 155; the Criminal Procedure (Scotland) Act 1975 (c.21), sections 289F and 289G; the British Nationality Act 1981 (c.61), section 39 and Schedule 4, paragraph 2; the Immigration Act 1988 (c.14), sections 6 and 10 and Schedule 1, paragraph 10; the Asylum and Immigration Act 1996 (c.49), section 6; the Immigration and Asylum Act 1999 (c.33), Schedule 16, paragraph 1; and the Nationality, Asylum and Immigration Act 2002 (c.41), section 62.

- (b) section 24A(**131**) (deception);
- (c) section 25(**132**) (assisting unlawful immigration to member State);
- (d) section 25A(**133**) (helping asylum-seeker to enter United Kingdom);
- (e) section 25B(**134**) (assisting entry to United Kingdom in breach of deportation or exclusion order);
- (f) section 26(**135**) (general offences in connection with administration of Act);
- (g) section 26A(**136**) (registration card);
- (h) section 26B(**137**) (possession of immigration stamp); and
- (i) section 27(**138**) (offences by captains, owners or agents of ships or aircraft).

74. An offence under any of the following provisions of the Immigration and Asylum Act 1999(**139**)—

- (a) section 105 (false representations);
- (b) section 106 (dishonest representations);
- (c) any of the following paragraphs of Schedule 11—
 - (i) paragraph 1 (obtaining certificates of authorisation by false pretences);
 - (ii) paragraph 4(**140**) (assaulting a detainee custody officer); and
 - (iii) paragraph 5 (obstructing detainee custody officer); and
- (d) any of the following paragraphs of Schedule 12—
 - (i) paragraph 3(**141**) (failure to submit to a medical examination);
 - (ii) paragraph 4(**142**) (assisting detained persons to escape);
 - (iii) paragraph 5 (bringing alcohol into a detention centre); and
 - (iv) paragraph 6 (conveying articles into or out of a detention centre).

75. An offence under section 35 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(**143**) (deportation or removal: cooperation).

76. An offence under section 21 of the Immigration, Asylum and Nationality Act 2006(**144**) (offence).

(131) Section 24A was inserted by the Immigration and Asylum Act 1999 (c.33), section 28 and amended by the Nationality, Immigration and Asylum Act 2002 (c.41) (“the 2002 Act”), Schedule 9, paragraph 1.

(132) Sections 25 to 25C were substituted for section 25 by the 2002 Act, section 143. Section 25 was amended by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.9), section 1 and the UK Borders Act 2007 (c.30) (“the 2007 Act”), section 30.

(133) Section 25A was amended by the 2007 Act, sections 29 and 30.

(134) Section 25B was amended by the 2007 Act, section 30.

(135) Section 26 was amended by the Criminal Procedure (Scotland) Act 1975, sections 289F and 289G; the British Nationality Act 1981, section 39 and Schedule 4, paragraph 3; the Asylum and Immigration Act 1996 (c.49), section 6; the Immigration and Asylum Act 1999 (c.33), section 30; the 2002 Act, section 151 and Schedule 9, paragraph 1.

(136) Section 26A was inserted by the 2002 Act, section 148 and amended by S.I. 2008/1693.

(137) Section 26B was inserted by the 2002 Act, section 149.

(138) Section 27 was amended by the Counter-Terrorism and Security Act 2015 (c.6), Schedule 5, paragraph 2 and by S.I. 1993/1813

(139) 1999 c.33.

(140) Paragraphs 4 and 5 of Schedule 11 were amended by the Immigration Act 2014 (c.22) (“the 2014 Act”), Schedule 9, paragraph 12.

(141) Paragraphs 3, 4, 5 and 6 of Schedule 12 were amended by the 2002 Act (c.41), section 66.

(142) Paragraph 4 of Schedule 12 was also amended by the 2014 Act, Schedule 9, paragraph 12.

(143) 2004 c.19. Section 35 was amended by the 2014 Act, Schedule 2, paragraph 5.

(144) 2006 c.13.

Insolvency

77. An offence under any of the following provisions of the Insolvency Act 1986**(145)**—

- (a) section 131**(146)** (company's statement of affairs);
- (b) section 206**(147)** (fraud, etc. in anticipation of winding up);
- (c) section 208**(148)** (misconduct in course of winding up);
- (d) section 216**(149)** (restriction on re-use of company names); and
- (e) section 235**(150)** (duty to co-operate with office-holder).

Landmines

78. An offence under section 2 of the Landmines Act 1998**(151)** (prohibited conduct).

Medicines

79. An offence under any of the following provisions of the Medicines Act 1968**(152)**—

- (a) section 45 (offences under Part II), but only in relation to a contravention of section 7(2) (general provisions as to dealing with medicinal products); and
- (b) section 67 (offences under Part III).

80. An offence under any of the following provisions of the Human Medicines Regulations 2012**(153)**—

- (a) regulation 34(1) (offences: breach of regulations and false information and defence concerning starting materials); and
- (b) regulation 255(1)(a), (b), (c) or (d) (offences relating to dealings with medicinal products).

Mental health

81. An offence under section 318 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (false statements)**(154)**.

Neglect of duty

82. An offence under Part 4 (shipping: alcohol and drugs) or Part 5 (aviation: alcohol and drugs) of the Railways and Transport Safety Act 2003**(155)**.

83. An offence under section 22 of the Police and Fire Reform (Scotland) Act 2012 (failure to perform duty)**(156)**.

(145) 1986 c.45.

(146) Section 131 was amended by S.I. 2010/18.

(147) Section 206 was amended by the Company Directors Disqualification Act 1986 (c.46) ("the 1986 Act"), sections 21 and 25; the Criminal Justice (Scotland) Act 1987 (c.41) ("the 1987 Act"), sections 30, 35 and 47; and the Criminal Justice Act 1988 (c.33) ("the 1988 Act"), sections 86 and 123 and Schedule 8, paragraph 13 and by S.I. 1986/1996.

(148) Section 208 was amended by the Small Business, Enterprise and Employment Act 2015 (c.26), Schedule 9, paragraph 52.

(149) Section 216 was amended by the 1986 Act, sections 21 and 25; the 1987 Act, sections 30, 35 and 47; and the 1988 Act, sections 86 and 123 and Schedule 8, paragraph 13.

(150) Section 235 was amended by the Enterprise Act 2002 (c.40), Schedule 17, paragraph 24.

(151) 1998 c.33.

(152) 1968 c.67. The Act was relevantly amended by the Criminal Procedure (Scotland) Act 1975 (c.21), section 289B; the Health and Social Care Act 2001 (c.15), section 63; and by S.I. 2004/1031, S.I. 2006/2407 and S.I. 2012/1916

(153) S.I. 2012/1916. The Regulations were relevantly amended by S.I. 2013/1855.

(154) 2003 asp 3.

(155) 2003 c.20. Parts 4 and 5 were amended by the Armed Forces Act 2006 (c.52), Schedule 16, paragraphs 198 and 199 and the Deregulation Act 2015 (c.20), Schedule 11.

(156) 2012 asp 8.

Obscene material etc.

84. An offence under section 1(1) of the Indecent Displays Act 1981(**157**) (indecent displays).

85. An offence under any of the following provisions of the Civic Government (Scotland) Act 1982(**158**) —

- (a) section 51(**159**) (obscene material);
- (b) section 51A(**160**) (extreme pornography); and
- (c) paragraph 19(3)(**161**) of Schedule 2 (enforcement).

86. An offence under section 85(3) of the Postal Services Act 2000(**162**) (prohibition on sending certain articles by post).

87. An offence under section 127(1) of the Communications Act 2003(**163**) (improper use of public electronic communications network).

Offences in relation to children

88. An offence under any of the following provisions of the Children and Young Persons (Scotland) Act 1937(**164**)—

- (a) section 15 (causing or allowing persons under 16 to be used for begging);
- (b) section 22 (exposing children under seven to risk of burning);
- (c) section 31(1) (penalties and legal proceedings in respect of general provisions as to employment);
- (d) section 33 (prohibition of persons under sixteen taking part in performances endangering life or limb); and
- (e) section 34 (restrictions on training for performances of a dangerous nature).

89. An offence under section 40(1) of the Children and Young Persons Act 1963(**165**) (offences).

90. An offence under section 50(2) of the Civic Government (Scotland) Act 1982(**166**) (drunk in charge of a child).

91. An offence under section 81 of the Children (Scotland) Act 1995(**167**) (offences in connection with orders etc. for the protection of children).

92. An offence under any of the following provisions of the Children's Hearings (Scotland) Act 2011(**168**)—

- (a) section 59 (offences); and
- (b) section 171 (offences related to absconding).

(157) 1981 c.42. Section 1 was amended by the Cinemas Act 1985 (c.13), section 24; the Broadcasting Act 1990 (c.42), Schedule 20, paragraph 20; and the Licensing Act 2003 (c.17), Schedule 6, paragraph 80.

(158) 1982 c.45.

(159) Section 51 was amended by the Indecent Displays (Control) Act 1981 (c.42); the Broadcasting Act 1990 (c.42), sections 4, 87, 163 and 203 and Schedule 21; the Criminal Justice and Public Order Act 1994 (c.33), Schedule 9, paragraph 30; and the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) ("the 2010 Act"), section 42.

(160) Section 51A was inserted by the 2010 Act, section 42.

(161) Paragraph 19 was amended by the Criminal Procedure (Scotland) Act 1975 (c.21) ("the 1975 Act"), section 289G; the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 129 and by S.I. 1984/526.

(162) 2000 c.26.

(163) 2003 c.21. Section 127 was amended by the Criminal Justice and Courts Act 2015 (c.2), section 51.

(164) 1937 c.37. The Act was relevantly amended by the Education (Scotland) Act 1962 (c.47), section 139; the Children and Young Persons Act 1963 (c.37), section 64 and Schedules 3 and 5; the 1975 Act, section 289G; the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 7; the Employment Act 1989 (c.38), section 10 and Schedule 3; and S.I. 1998/276 and S.S.I. 2000/149.

(165) 1963 c.37. Section 40 was amended by the 1975 Act, sections 289F and 289G and by S.I. 1998/276.

(166) 1982 c.45. Section 50 was amended by the 1975 Act, section 289G.

(167) 1995 c.36. Section 81 was repealed by the Children's Hearings (Scotland) Act 2011 (asp 1), Schedule 6, paragraph 1.

(168) 2011 asp 1.

Offensive behaviour etc.

93. An offence under the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012(**169**).

Offensive weapons

94. An offence under the Restriction of Offensive Weapons Act 1959(**170**).

95. An offence under section 50(3) (penalty for improper importation of goods) or section 170 (fraudulent evasion of duty) of the Customs and Excise Management Act 1979(**171**) in relation to goods prohibited to be imported under—

- (a) section 1(2) of the Restriction of Offensive Weapons Act 1959 (penalties for offences in connection with dangerous weapons); or
- (b) section 141(4) of the Criminal Justice Act 1988 (offensive weapons).

96. An offence under any of the following provisions of the Criminal Justice Act 1988(**172**)—

- (a) section 141 (offensive weapons); and
- (b) section 141A (sale of knives and certain articles with blade or point to persons under eighteen).

97. An offence under any of the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995(**173**)—

- (a) section 47 (prohibition of the carrying of offensive weapons);
- (b) section 48 (search for offensive weapons);
- (c) section 49 (offence of having in a public place an article with a blade or point);
- (d) section 49A (offence of having article with blade or point (or offensive weapon) on school premises);
- (e) section 49C (offence of having offensive weapon etc. in prison); and
- (f) section 50 (extension of constable’s power to stop, search and arrest without warrant).

Official Secrets Acts

98. An offence under the Official Secrets Act 1911(**174**).

(169) 2012 asp 1.

(170) 1959 c.37. The Act was relevantly amended by the Restrictions of Offensive Weapons Act 1961 (c.2), section 1; the Criminal Procedure (Scotland) Act 1975 (c.21), sections 289E and 289G; the Criminal Justice Act 1982 (c.48), sections 35 and 46; and the Criminal Justice Act 1988 (c.33), section 46 and Schedule 8, paragraph 16.

(171) 1979 c.2. Section 50 was amended by the Criminal Procedure (Scotland) Act 1975 (c.21), section 289F and 289G; the Police and Criminal Evidence Act 1984 (c.60), section 114(1); the Finance Act 1988 (c.33), section 12; the Criminal Justice Act 2003 (c.44), section 293; the Criminal Justice and Immigration Act 2008 (c.4), Schedule 17; the Anti-social Behaviour, Crime and Policing Act 2014 (c.12), section 111; and S.I. 1996/2686.

(172) 1988 c.33. The Act was relevantly amended by the Offensive Weapons Act 1996 (c.26) (“the 1996 Act”), section 6; the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) (“the 2006 Act”), section 75; the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17) (“the 2007 Act”), section 60 and schedule 5; and the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”), section 36.

(173) 1995 c.39. The Act was relevantly amended by the 1996 Act (c.26), section 2; the 2006 Act, section 7; the 2007 Act, section 63; and the 2010 Act, section 37.

(174) 1911 c.28. The Act was relevantly amended by the Official Secrets Act 1920 (c.75), Schedules 1 and 2; the Atomic Energy Authority 1954 (c.32), section 6; the Nuclear Installations Act 1965 (c.7), Schedule 1, paragraph 3; the Criminal Law Act 1967 (c.58), Schedule 3; the Criminal Law Act (Northern Ireland) 1967 (c.18), Schedule 2; the European Communities Act 1972 (c.68), section 11(2); the Civil Aviation Act 1982 (c.16), section 18; the Telecommunications Act 1984 (c.12), section 109 and Schedules 4 and 5; the Official Secrets Act 1989 (c.6), section 16(4), Schedule 2; the Serious Organised Crime and Police Act 2005 (c.15), Schedule 17, paragraph 1; and S.I. 1972/971).

99. An offence under the Official Secrets Act 1920(**175**).

100. An offence under the Official Secrets Act 1989(**176**).

Prisons

101. An offence under section 41 of the Prisons (Scotland) Act 1989 (unlawful introduction of tobacco, etc., into prison)(**177**).

Proceeds of crime and money laundering

102. An offence under any of the following provisions of the Proceeds of Crime Act 2002(**178**)—

- (a) Part 7(**179**) (money laundering);
- (b) Part 8(**180**) (investigations); and
- (c) section 453A(**181**) (certain offences in relation to financial investigators).

103. An offence under the Proceeds of Crime Act 2002 (External Investigations) Order 2013(**182**).

104. An offence under the Proceeds of Crime Act 2002 (External Investigations) (Scotland) Order 2015(**183**).

Prostitution

105. An offence under any of the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995(**184**)—

- (a) section 7(**185**) (procuring);
- (b) section 9(**186**) (permitting girl to use premises for intercourse);
- (c) section 11(**187**) (trading in prostitution and brothel-keeping);
- (d) section 12 (allowing child to be in brothel); and
- (e) section 13(9)(**188**) (living on earnings of another from male prostitution).

106. An offence under the Prostitution (Public Places) (Scotland) Act 2007(**189**).

(175) 1920 c.75. The Act was amended by the Official Secrets Act 1939 (c.121), section 1; the Criminal Procedure (Scotland) Act 1975 (c.21), sections 221 and 289B; the Schedule to the Forgery and Counterfeiting Act 1981 (c.45); the Interception of Communications Act 1985 (c.56), section 114; the Official Secrets Act 1989 (c.6), section 11; and the Postal Services Act 2000 (c.26), Schedule 9, paragraph 1.

(176) 1989 c.6. The Act was relevantly amended as follows. Section 4 was amended by the Intelligence Services Act 1994 (c.13), Schedule 4, paragraph 4 and the Regulation of Investigatory Powers Act 2000 (c.23), Schedule 4, paragraph 5. Section 12 was amended by the Reserve Forces Act 1996 (c.14), Schedule 10, paragraph 22; the Government of Wales Act 1998 (c.38). Schedule 12, paragraph 30 the Scotland Act 1998 (c.46), Schedule 8, paragraph 26; the Northern Ireland Act 1998 (c.47), Schedule 13; the Police (Northern Ireland) Act 2000 (c.32), Schedule 6, paragraph 9; the Energy Act 2004 (c.20), Schedule 14, paragraph 6; the Serious Organised Crime and Police Act 2005 (c.15) (“the 2005 Act”), Schedule 4, paragraph 58; the Government of Wales Act 2006 (c.32), Schedules 10 and 12; and the Crime and Courts Act 2013 (c.22), Schedule 8, paragraph 36.

(177) 1989 c.45. Section 41 was amended by the Criminal Justice and Public Order Act 1994 (c.33), section 153 and the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”), section 34.

(178) 2002 c.29.

(179) Part 7 was amended by the 2005 Act, sections 102 to 106 and Schedule 17; the Crime and Courts Act 2013 (c.22), Schedule 8; the Serious Crime Act 2015 (c.9), section 37; S.I. 2006/308; and S.I. 2007/3398.

(180) Part 8 was relevantly amended as follows. Section 342 was amended by the Serious Crime Act 2007 (c.27) (“the 2007 Act”), Schedule 10; the Coroners and Justice Act 2009 (c.25), Schedule 19, paragraph 9; and S.I. 2007/3398.

(181) Section 453A was inserted by the 2007 Act, section 81 and amended by the Policing and Crime Act 2009 (c.26), Schedule 7, paragraph 94.

(182) S.I. 2013/2605.

(183) S.I. 2015/206.

(184) 1995 c.39.

(185) Section 7 was amended by the Sexual Offences (Scotland) Act 2009 (asp 9) (“the 2009 Act”), schedule 6, paragraph 1.

(186) Section 9 was amended by the 2009 Act, schedule 5, paragraph 1 and by the 2010 Act, schedule 4, paragraph 11.

(187) Section 11 was amended by the 2010 Act, section 45.

(188) Section 13 was amended by the 2009 Act, schedules 5 and 6 and by the 2010 Act, section 45.

(189) 2007 asp 11.

Public order

107. An offence under any of the following provisions of the Public Order Act 1986(**190**)—

- (a) section 1 (riot);
- (b) section 2 (violent disorder);
- (c) section 3(**191**) (affray);
- (d) section 4 (fear or provocation of violence);
- (e) section 4A(**192**) (intentional harassment, alarm or distress);
- (f) section 5(**193**) (harassment alarm or distress);
- (g) section 18(**194**) (use of words or behaviour or display of written material);
- (h) section 19 (publishing or distributing written material);
- (i) section 20 (public performance of play);
- (j) section 21 (distributing, showing or playing a recording);
- (k) section 22 (broadcasting or including programme in cable programme service);
- (l) section 23 (possession of racially inflammatory material);
- (m) section 29B(**195**) (use of words or behaviour or display of written material);
- (n) section 29C (publishing or distributing written material);
- (o) section 29D (public performance of play);
- (p) section 29E (distributing, showing or playing recording);
- (q) section 29F (broadcasting or including programme in programme service); and
- (r) section 29G (possession of inflammatory material).

Road traffic

108. An offence under any of the following provisions of the Road Traffic Act 1988(**196**)—

- (a) section 1(**197**) (causing death by dangerous driving);
- (b) section 1A(**198**) (causing serious injury by dangerous driving);
- (c) section 2 (dangerous driving);
- (d) section 2B(**199**) (causing death by careless, or inconsiderate, driving);
- (e) section 3ZB(**200**) (causing death by driving: unlicensed or uninsured drivers);
- (f) section 3ZC(**201**) (causing death by driving: disqualified drivers);
- (g) section 3ZD (causing serious injury by driving: disqualified drivers);
- (h) section 3A(**202**) (causing death by careless driving when under influence of drink or drugs);
- (i) section 4(1)(**203**) (driving, or being in charge, when under the influence of drink or drugs);

(190) 1986 c.64.

(191) Sections 3, 4, 4A and 5 were amended by the Serious Organised Crime and Police Act 2005 (c.15), Schedule 17.

(192) Section 4A was inserted by the Criminal Justice and Public Order Act 1994 (c.33), section 154.

(193) Section 5 was amended by the Crime and Courts Act 2013 (c.22), section 57.

(194) Sections 18, 20, 21, 22 and 23 were amended by the Broadcasting Act 1990 (c.42), sections 164 and 203 and Schedule 21.

(195) Sections 29B, 29C, 29D, 29E, 29F and 29G were inserted by the Racial and Religious Hatred Act 2006 (c.1), Schedule 1, paragraph 1 and amended by the Criminal Justice and Immigration Act 2008 (c.4) Schedules 16 and 28.

(196) 1988 c.52.

(197) Sections 1 and 2 were substituted by the Road Traffic Act 1991 (c.40), section 1.

(198) Section 1A was inserted by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10), section 143(2).

(199) Section 2B was inserted by the Road Safety Act 2006 (c.49), section 20.

(200) Section 3ZB was inserted by the 2006 Act, section 21 and was amended by the Criminal Justice and Courts Act 2015 (c.2), Schedule 6.

(201) Section 3ZC and 3ZD were inserted by the 2015 Act, section 29.

(202) Section 3A was inserted by the Road Traffic Act 1991 (c.40) (“the 1991 Act”), section 3 and amended by the Road Safety Act 2006 (c.49), section 31 and by the Criminal Justice and Courts Act 2015 (c.2), Schedule 22, paragraph 2.

- (j) section 5(1)(a) (driving or being in charge of a motor vehicle with alcohol concentration above prescribed limit); and
- (k) section 178 (taking motor vehicle without authority, etc.).

Sexual offences

109. An offence under section 37(1) or (4) of the Sexual Offences (Scotland) Act 2009(**204**) (older children engaging in sexual conduct with each other).

Solicitors

110. An offence under the Solicitors (Scotland) Act 1980(**205**).

Terrorism

111. An offence under any of the following provisions of the Terrorism Act 2000(**206**)—

- (a) section 12 (support);
- (b) section 13 (uniform);
- (c) section 19(**207**) (disclosure of information: duty);
- (d) section 21A(**208**) (failure to disclose: regulated sector);
- (e) section 21D(**209**) (tipping off: regulated sector);
- (f) section 36 (police powers);
- (g) section 38B(**210**) (information about acts of terrorism);
- (h) section 39(**211**) (disclosure of information, &c.);
- (i) section 51 (offences);
- (j) section 116 (powers to stop and search);
- (k) paragraph 32 of Schedule 5 (urgent cases); and
- (l) paragraph 18 of Schedule 7(**212**) (offences).

112. An offence under any of the following provisions of the Counter-Terrorism Act 2008(**213**)—

- (a) section 2 (offence of obstruction);
- (b) paragraph 30A of Schedule 7(**214**) (offences: relevant person circumventing requirements); and

(203) Section 4(1) was amended by the 1991 Act, section 4 and (in relation to Scotland) by the Serious Organised Crime and Police Act 2005 (c.15) (“the 2005 Act”), Schedule 7, paragraph 27(4).

(204) 2009 asp 9.

(205) 1980 c.46. The Act was relevantly amended as follows. Section 26 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73) (“the 1985 Act”), section 56 and Schedule 1, paragraph 4; the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40) (“the 1990 Act”), Schedule 8, paragraph 29; the Legal Services (Scotland) Act 2010 (asp 16) (“the 2010 Act”), sections 123 and 125; and by S.S.I. 2000/121 and S.S.I. 2004/382. Section 27 was repealed by the 1990 Act, Schedule 9. Section 28 was amended by the 1985 Act, section 56 and Schedule 1, paragraph 6; and by S.S.I. 2000/121 and S.S.I. 2004/382. Section 31 was amended by the 1985 Act, section 56 and Schedule 1, paragraph 8; the 1990 Act, Schedule 9; the 2010 Act, section 123; and by S.S.I. 2000/121 and S.S.I. 2004/382. Section 32 was amended by the 1985 Act, section 56 and Schedule 1, paragraph 9; the Solicitors (Scotland) Act 1988 (c.42), section 6 and Schedule 1, paragraph 7; the 1990 Act, section 74 and Schedule 8, paragraph 29; the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), Schedule 4, paragraph 7; the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), section 61; the Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), section 7; the 2010 Act, section 123; and by S.S.I. 2000/121 and S.S.I. 2004/382. Section 64CB was inserted by S.I. 2003/1398.

(206) 2000 c.11.

(207) Section 19 was amended by the Anti-terrorism, Crime and Security Act 2001 (c.24) (“the 2001 Act”), Schedule 2, paragraph 5; the 2005 Act, Schedule 4, paragraph 126; the Counter-Terrorism Act 2008 (c.28), section 77; and the Crime and Courts Act 2013 (c.22) (“the 2013 Act”), Schedule 8, paragraph 68.

(208) Section 21A was inserted by the 2001 Act, Schedule 2, paragraph 5 and was amended by the 2005 Act, Schedule 4, paragraph 128; the 2013 Act, Schedule 8, paragraph 72 and S.I. 2007/3398.

(209) Section 21D was inserted by S.I. 2007/3398 and has been amended by the 2013 Act, Schedule 8, paragraph 75.

(210) Section 38B was inserted by the 2001 Act, section 117.

(211) Section 39 was amended by S.I. 2007/3398.

(212) Paragraph 18 was amended by S.I. 2011/1938.

(213) 2008 c.28.

- (c) paragraph 31 of that Schedule (offences in connection with licences).

Vets

113. An offence under any of the following provisions of the Veterinary Surgeons Act 1966(**215**)—

- (a) section 19(**216**) (restriction of practice of veterinary surgery by unqualified persons); and
(b) section 20(**217**) (prohibition of use of practitioners' titles by unqualified persons).

Miscellaneous statutory offences

114. An offence under any of the following provisions of the Civic Government (Scotland) Act 1982(**218**)—

- (a) section 57(**219**) (being in or on building etc. with intent to commit theft);
(b) section 58 (convicted thief in possession)(**220**); and
(c) section 60(**221**) (powers of search and seizure).

115. An offence under section 22 of the Rent (Scotland) Act 1984(**222**) (unlawful eviction and harassment of occupier).

116. An offence under section 85(1) of the Postal Services Act 2000(**223**) (prohibition on sending certain articles by post).

117. An offence under any of the following provisions of the Serious Organised Crime and Police Act 2005(**224**)—

- (a) section 67 (offences in connection with disclosure notices or search warrants);
(b) section 129(**225**) (corresponding Scottish offence);
(c) section 145 (interference with contractual relationships so as to harm animal research organisation); and
(d) section 146(**226**) (intimidation of persons connected with animal research organisation).

Statutory aggravations

118. An offence (other than an offence listed in Schedule 8A) to which either of the following provisions of the Offences (Aggravation by Prejudice) (Scotland) Act 2009(**227**) applies—

- (a) section 1(1) (prejudice relating to disability); or
(b) section 2(1) (prejudice relating to sexual orientation or transgender identity).

Other

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- (214) Paragraph 30A was inserted by the Terrorist Asset-Freezing etc. Act 2010 (c.38), section 50(3).
(215) 1966 c.36.
(216) Section 19 was amended by the Criminal Procedure (Scotland) Act 1975 (c.21) ("the 1975 Act"), section 289B; the Criminal Law Act 1977 (c.45) ("the 1977 Act"), Schedule 13; and the Animals (Scientific Procedures) Act 1986 (c.14), section 27 and Schedule 3, paragraph 5.
(217) Section 20 was amended by the 1975 Act, section 289B; and the 1977 Act, Schedule 13.
(218) 1982 c.45.
(219) Section 57 was amended by the 1975 Act, section 289G.
(220) Section 56 was amended by the 1975 Act, section 289G and the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 24 and schedules 2 and 5.
(221) Section 60 was amended by the 1975 Act, section 289G and the Crime and Disorder Act 1998 (c.37), section 24.
(222) 1984 c.58. Section 22 was amended by the Housing (Scotland) Act 1988 (c.43), section 38.
(223) 2000 c.26.
(224) 2005 c.15.
(225) Section 129 was amended by the Terrorism Act 2000 (c.11), section 12.
(226) Section 146 was amended by the Charities Act 2011 (c.25), Schedule 7, paragraph 103.
(227) 2009 asp 8.

Inchoate offences

119. An offence committed by aiding, abetting, counselling, procuring or inciting the commission of any offence listed in paragraphs 1 to 118 of this Schedule.

120. An offence committed by attempting or conspiring to commit any offence listed in paragraphs 1 to 118 of this Schedule.

Superseded offences

121. An offence superseded (whether directly or indirectly) by any offence listed in paragraphs 1 to 120 of this Schedule (and any qualification in relation to a listed offence applies to the superseded offence as it applies to the listed offence).

Combined offences

122. An offence which was charged, and the conviction for which was received, in conjunction with any offence listed in paragraphs 1 to 121 of this Schedule.

Corresponding offences elsewhere in the UK or abroad

123. An offence under the law of England and Wales or Northern Ireland, or any country or territory outside the United Kingdom, which corresponds to any offence listed in paragraphs 1 to 122 of this Schedule.”.

Amendment of the 2007 Act

Amendment of the 2007 Act

4.—(1) The 2007 Act is amended as follows.

(2) In section 46 (statement of scheme membership) subsection (3)(b) and the word “, and” immediately preceding it are repealed.

(3) In section 49 (vetting information) for subsection (1)(c) substitute—

“(c) information which—

- (i) the chief officer of a relevant police force reasonably believes to be relevant in relation to the type of regulated work in relation to which the scheme member participates in the Scheme, and
- (ii) in the chief officer’s opinion, ought to be included in the scheme member’s scheme record, and”.

(4) In section 51 (correction of inaccurate scheme record)—

- (a) in subsection (5) for the words “thinks that the information concerned might be” substitute “reasonably believes the information concerned to be”; and
- (b) after subsection (6) insert—

“(7) This section does not apply to vetting information included in a scheme record which could be the subject of an application under section 52A(2).”.

(5) For section 52 (disclosure of scheme records) substitute—

“52 Disclosure of scheme records

(1) This section applies in relation to a scheme member’s scheme record if—

- (a) disclosure conditions A to D are satisfied, and
- (b) section 53 does not require Ministers to disclose the scheme member’s short scheme record.

(2) Subsection (3) applies where the scheme record does not include vetting information about a conviction for an offence listed in schedule 8B of the 1997 Act which is—

- (a) a spent conviction, but
- (b) not a protected conviction.

(3) Ministers must—

- (a) disclose the scheme record, and
- (b) send a copy of the scheme record to the scheme member.

(4) Subsections (5) to (9) apply where the scheme record includes vetting information about a conviction for an offence listed in schedule 8B of the 1997 Act which is—

- (a) a spent conviction, but
- (b) not a protected conviction.

(5) Ministers must send a copy of the scheme record to the scheme member (who may make an application to the sheriff under section 52A(2)).

(6) Subsection (7) applies where—

- (a) the scheme member notifies Ministers before the end of the period mentioned in section 52A(3)(a) that the scheme member does not intend to make an application under section 52A(2), or
- (b) that period expires without the scheme member having notified Ministers that the scheme member does intend to make such an application.

(7) Ministers must disclose the scheme record as soon as possible after receiving the notification or, as the case may be, the expiry of that period.

(8) Subsection (9) applies where—

- (a) the scheme member notifies Ministers before the end of the period mentioned in section 52A(3)(a) that the scheme member intends to make an application under section 52A(2), but
- (b) either—
 - (i) the scheme member does not make such an application before the end of the period mentioned in section 52A(3)(b), or
 - (ii) the scheme member does make such an application but abandons it before it is determined by the sheriff.

(9) Ministers must not disclose the scheme record (and the request for disclosure of the record is to be treated as having been withdrawn).

52A Review of vetting information in scheme record

(1) This section applies where a scheme member receives a copy of the scheme member's scheme record under section 52(5).

(2) The scheme member may apply to the sheriff for an order requiring Ministers to remove from the scheme record the vetting information referred to in section 52(4).

(3) An application under subsection (2)—

- (a) may only be made if the scheme member notifies Ministers before the end of the period of 10 working days beginning with the date on which the scheme record was sent to the scheme member under section 52(5) of an intention to make the application,
- (b) must be made before the end of the period of 6 months beginning with the date on which that notification is given, and
- (c) must not relate to vetting information about a conviction which has previously been the subject of an application which—
 - (i) was refused under subsection (6)(b), and
 - (ii) related to the same type of regulated work.

(4) No finding of fact on which a conviction is based may be challenged in an application under subsection (2).

(5) Proceedings in an application under subsection (2) may take place in private if the sheriff considers it appropriate in all the circumstances.

(6) In determining an application under subsection (2) the sheriff must—

- (a) if satisfied that the vetting information is not relevant in relation to a type of regulated work in relation to which the scheme member participates in the Scheme, allow the application,
- (b) otherwise, refuse the application.

(7) The sheriff may allow the application in part where it relates to vetting information about two or more convictions.

(8) The decision of the sheriff on an application is final.

(9) Where the sheriff allows the application, the sheriff must order Ministers to remove the information from the scheme record in relation to a type of regulated work in relation to which the scheme member participates in the Scheme.

(10) On the determination of an application under subsection (2), Ministers must treat the disclosure request to which the application relates as if it had been made under section 52 on the day after the date on which the determination is made.”.

(6) In section 53 (disclosure of short scheme records)—

- (a) in subsection (1) before “Ministers” insert “Subject to subsection (1A),”;
- (b) after subsection (1) insert—

“(1A) But Ministers must treat the request as a request for a disclosure of the member’s scheme record under section 52 if the scheme record includes vetting information.”;

- (c) in subsection (3) for paragraphs (b) to (e) substitute—

“(b) says that no vetting information is included in the scheme member’s scheme record.”; and

- (d) subsection (4) is repealed.

(7) After section 57 (disclosure restrictions) insert—

“57A Meaning of “conviction” and “protected conviction”

For the purposes of sections 52 and 52A—

“conviction” means a conviction within the meaning of the Rehabilitation of Offenders Act 1974, and “spent conviction” is to be construed in accordance with that Act,

“protected conviction” is to be construed in accordance with section 126ZA of the 1997 Act.”.

Transitional provision

Current applications for criminal record certificates and enhanced criminal record certificates under sections 113A, 113B, 114 and 116 of the 1997 Act

5.—(1) Paragraph (2) of this article applies where the Scottish Ministers—

- (a) have, before the relevant date, received an application for—

- (i) a criminal record certificate under section 113A (criminal record certificates) or, as the case may be, section 114 (criminal record certificates: Crown employment) of the 1997 Act; or
- (ii) an enhanced criminal record certificate under section 113B (enhanced criminal record certificates) or, as the case may be, section 116 (enhanced criminal record certificates: judicial appointments and Crown employment) of the 1997 Act; and

- (b) have not by that date issued the certificate.

(2) An application referred to in paragraph (1) is to be treated for all purposes as having been received after the relevant date.

(3) Paragraph (4) applies where before the relevant date the Scottish Ministers have issued—

- (a) a criminal record certificate under section 113A or, as the case may be, section 114 of the 1997 Act; or
- (b) an enhanced criminal record certificate under section 113B or, as the case may be, section 116 of the 1997 Act.

(4) Section 116ZB(2) of the 1997 Act as inserted by article 3(4) of this Order does not apply in relation to the certificate.

Current applications for new certificates under section 117 of the 1997 Act

6.—(1) Paragraph (2) of this article applies where the Scottish Ministers—

- (a) have, before the relevant date, received an application for a new criminal record certificate or, as the case may be, a new enhanced criminal record certificate under sections 113 to 116 of the 1997 Act in accordance with section 117 (disputes about accuracy of certificates) of the 1997 Act; and
- (b) have not by that date issued the new certificate.

(2) An application referred to in paragraph (1) is to be treated for all purposes as having been received after the relevant date.

Current applications for registration under section 120 of the 1997 Act

7.—(1) Paragraph (2) of this article applies where the Scottish Ministers—

- (a) have, before the relevant date, received an application for registration under section 120 (registered persons) of the 1997 Act; and
- (b) have not by that date included the person in the register kept under section 120 of the 1997 Act.

(2) An application referred to in paragraph (1) is to be treated for all purposes as having been received after the relevant date.

Current disclosure requests under sections 52 and 53 of the 2007 Act

8.—(1) Paragraph (2) of this article applies where the Scottish Ministers—

- (a) have, before the relevant date, received a request for—
 - (i) disclosure of a scheme member's scheme record under section 52 (disclosure of scheme records) of the 2007 Act; or
 - (ii) disclosure of a scheme member's short scheme record under section 53 (disclosure of short scheme records) of the 2007 Act; and
- (b) have not by that date disclosed the scheme record or, as the case may be, short scheme record.

(2) Any request for a disclosure referred to in paragraph (1)(a) is to be treated for all purposes as having been received after the relevant date.

Correction of scheme records under section 51 of the 2007 Act

9.—(1) Paragraph (2) of this article applies where the Scottish Ministers—

- (a) have, before the relevant date, received—
 - (i) a notification of changes under section 50 (duty to notify certain changes) of the 2007 Act; or
 - (ii) a request from a scheme member for correction of a scheme record under section 51 (correction of inaccurate scheme record) of the 2007 Act; and
- (b) have not by that date corrected the scheme record.

(2) A notification or, as the case may be, a request referred to in paragraph (1) is to be treated for all purposes as having been received after the relevant date.

(3) For the purposes of section 51, information is not to be regarded as inaccurate if it is information about a conviction which no longer falls within the definition of vetting information by virtue of the coming into force of this Order.

Current nominations under regulation 4 of the Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2010

10.—(1) Paragraph (2) of this article applies where the Scottish Ministers—

(a) have, before the relevant date, received—

(i) a nomination of a countersignatory under regulation 4(1) or 4(2) (nomination of countersignatories) of the Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2010~~(228)~~; or

(ii) representations under paragraph (4) of that regulation; and

(b) have not by that date accepted the nomination.

(2) A nomination or, as the case may be, representations as referred to in paragraph (1) are to be treated for all purposes as having been received after the relevant date.

Consequential amendments

Amendment of the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010

11. After regulation 5 of the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010~~(229)~~ insert—

“Waiver of fees for disclosure request under section 52 when deemed to be such under section 53(1A)

5A. The fee prescribed by regulation 3(3) is waived where—

(a) the scheme member has requested disclosure of the scheme member’s short scheme record under section 53 and paid the fee prescribed by regulation 3(4); and

(b) in accordance with section 53(1A), the request for the disclosure of the scheme member’s short scheme record is treated as a request for disclosure of the member’s scheme record as if the request had been made under section 52.”.

A member of the Scottish Government

St Andrew’s House,
Edinburgh

[September 2015]

~~(228)~~ S.S.I. 2010/383.

~~(229)~~ S.S.I.2010/167, to which there are no relevant amendments.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to the Police Act 1997 (“the 1997 Act”) and the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”) to remove any potential incompatibility, arising from the disclosure of criminal convictions and cautions under the 1997 Act and the 2007 Act, with the European Convention on Human Rights (“the Convention”).

In the case of *R (on the application of T and another) v Secretary of State for the Home Department and another* [2014] UKSC 35 (judgment of 18th June 2014), the United Kingdom Supreme Court made a declaration of incompatibility under section 4 of the Human Rights Act 1998 that the provisions in sections 113A and 113B of the 1997 Act (as they applied in England and Wales) were incompatible with article 8 of the Convention because the requirements in relation to blanket disclosure of all spent convictions were not in accordance with the law. Similar provisions in sections 113A and 113B of the 1997 Act (as it applies in Scotland) may be incompatible with article 8. In addition, in section 49(1)(a) of the 2007 Act the definition of “vetting information” relies on section 113A(3)(a) of the 1997 Act and may also be incompatible with article 8.

Article 3 amends the 1997 Act. Section 113A of the 1997 Act is amended by article 3(2). Article 3(2)(c) amends the definition of relevant matter in section 113A(6) of the 1997 Act. “Conviction” means a conviction (including a spent conviction) within the meaning of the Rehabilitation of Offenders Act 1974. Paragraph (a) of the definition of “relevant matter” is amended so that it means a conviction but not a protected conviction and paragraph (b) is amended so that it includes all cautions which are not yet spent by virtue of schedule 3 of the Rehabilitation of Offenders Act 1974. Protected conviction is defined by reference to a new section 126ZA inserted into the 1997 Act by article 3(7) of the Order. Protected conviction is defined by reference to the lists of offences inserted into the 1997 Act as new schedules 8A (list of offences which must always be disclosed) and 8B (offences which are to be disclosed subject to rules). Both schedules are inserted by article 3(8) of the Order. A protected conviction is a conviction which is not listed in either schedule 8A or 8B, or is listed in schedule 8B but the conviction was given less than 15 years ago, or in the case of persons under 18 less than 7 years and 6 months, or the sentence received was either admonition or absolute discharge. Protected convictions and spent cautions will not be included in criminal record certificates or enhanced criminal record certificates. Section 49(1)(a) of the 2007 Act relies on the definition of “relevant matter” in section 113A(6) of the 1997 Act and therefore protected convictions and spent cautions will also not be within the definition of “vetting information” for the purposes of the 2007 Act.

Article 3(3)(b)(ii) of the Order amends section 113A(4) to strengthen the test which the chief officer of a police force must apply when the Scottish Ministers request Other Relevant Information (“ORI”). The chief officer must reasonably believe that information is relevant for the purpose for which an enhanced criminal record certificate is required and that the information ought to be disclosed. Article 3(3)(c) repeals subsection (5) which allowed the police to include ORI in an enhanced disclosure without providing it in the applicant’s copy of the certificate.

Article 3(4) inserts new sections 116ZA and 116ZB into the 1997 Act. The purpose of the new section 116ZA is to specify when a copy of a criminal record certificate or an enhanced criminal record certificate must be sent to the person who signed the statement which accompanied the application for it. Previous requirements to send it to this person at the same time as to the applicant are repealed (articles 3(2)(b) and 3(3)(e)). Where a certificate does not include information about a spent conviction listed in new schedule 8B which is not a protected conviction it continues to be sent at the same time to the applicant and the person who signed the statement accompanying the application. Where a certificate does include information about a spent conviction listed in new schedule 8B which is not a protected conviction, a copy of it is issued to the person who signed the statement if, within a period of 10 working days, the applicant either tells Disclosure Scotland to issue the copy or does not indicate to Disclosure Scotland that they intend to make an application to the sheriff under the new section 116ZB(2) for an order for a new certificate from which that information is removed. If the applicant tells Disclosure Scotland that they intend to make an application to the sheriff under the new section 116ZB(2), but does not make the application, Disclosure Scotland must not send a copy of the certificate to the person who signed the statement accompanying the application and the process ends.

The new section 116ZB sets out the procedure for an application to the sheriff to remove information from the certificate. When the appeal is determined, the sheriff must make an order requiring the issue of a new certificate as at the date of the order (new section 116ZB(9) and (10)). Where the sheriff is satisfied that the information is not relevant for the purpose for which a certificate was required, the sheriff must order that the information is removed from the new certificate (new section 116ZB(9)). Where the application is refused, the applicant cannot make a further application to the sheriff for removal of the same information which is included in the new certificate (new section 116ZB(10)(b)). Where a sheriff has ordered information to be removed from a certificate, then the information must not be included in any subsequent criminal record certificate or enhanced criminal record certificate if they are required for the same purpose for which the original certificate was required – new sections 113A(3A) and 113B(3A) as inserted by article 3(2)(a) and 3(3)(a) respectively.

Article 3(5)(a) amends section 117(4) of the 1997 Act in consequence of the change made to section 113B(4) in relation to ORI. Article 3(5)(b) inserts a new subsection (5) in section 117 to ensure that, where a certificate includes information about a spent conviction listed in new schedule 8B which is not a protected conviction, an individual cannot make an application under section 117 if the individual could make an application to the sheriff under the new section 116ZB(2) for a new certificate with the information removed.

Article 4 amends the 2007 Act. Article 4(2) repeals section 46(3)(b) of the 2007 Act so that the Scottish Ministers are not required to issue a statement of scheme membership if the individual makes a disclosure request under sections 52 or 53 of the 2007 Act at the same time as they apply to join the PVG Scheme.

Article 4(3) amends subsection (1)(c) of the definition of “vetting information” in relation to ORI provided by the police. This is now aligned with the similar provision in section 113B(4) of the 1997 Act. The chief officer must reasonably believe that information is relevant in relation to the type of regulated work in relation to which the scheme member participates in the PVG Scheme and that the information ought to be disclosed.

Article 4(4)(a) amends section 51 of the 2007 Act in consequence of the change made to section 49(1)(c) in relation to ORI. Article 4(4)(b) inserts a new subsection (7) in section 51 to ensure that, where a scheme record includes information about a spent conviction listed in new schedule 8B to the 1997 Act which is not a protected conviction, an individual cannot request correction of a scheme record under section 51 if the individual could make an application to the sheriff under the new section 52A(2) to have the information removed from the scheme record.

Article 4(5) substitutes a new section 52 of the 2007 Act on disclosure of scheme records and inserts a new section 52A to provide for an application to the sheriff for removal of certain vetting information. The purpose of these new provisions is to specify when a scheme record is to be disclosed to the person who countersigned the disclosure request. Where a scheme record does not include information about a spent conviction listed in new schedule 8B to the 1997 Act which is not a protected conviction, it continues to be disclosed at the same time as the copy of it is sent to the scheme member. Where a scheme record includes information about a spent conviction listed in new schedule 8B to the 1997 Act which is not a protected conviction, it is to be disclosed if, within a period of 10 working days, the applicant either tells Disclosure Scotland to disclose it or does not indicate to Disclosure Scotland that they intend to make an application to the sheriff under the new section 52A(2) for removal of the information from the scheme record. If the scheme member tells Disclosure Scotland that they intend to make an application to the sheriff under the new section 52A(2), but does not make the application or the application is abandoned, the disclosure request is treated as having been withdrawn.

The new section 52A of the 2007 sets out the procedure for an application to the sheriff for removal of vetting information from a scheme record. Where the sheriff is satisfied that the information is not relevant for a type of work in relation to which the scheme member participates in the PVG Scheme, the sheriff must order that the Scottish Ministers to remove the information from the scheme record (new section 52A(6)(a)). When the appeal is determined the sheriff must make an order requiring the disclosure request to be treated as if it had been made on the day after the date of the order (new section 52A(10)) and the disclosure request will be treated again in accordance with section 52. Where the application is refused, the scheme member cannot make a further application to the sheriff for removal of the same information

from the scheme record in relation to a disclosure request for the same type of regulated work (new section 52A(3)(c)).

Article 4(6) amends section 53(3) of the 2007 Act to alter the content of a short scheme record. A short scheme record will include a scheme member's statement of scheme membership and state that there is no vetting information on the scheme record. If a scheme member with vetting information included in their scheme record requests disclosure of a short scheme record, it will be treated under the new section 53(1A) as a disclosure request for a scheme record under section 52 of the 2007 Act.

Article 4(7) inserts a new section 57A into the 2007 Act to make provision for the definition of "conviction" and "protected conviction" for the purposes of sections 52 and 52A of the 2007 Act. "Conviction" has the same meaning as in the Rehabilitation of Offenders Act 1974, including a spent conviction. "Protected conviction" has the same meaning as in section 126ZA of the 1997 Act.

Articles 5 to 10 make transitional provision. Any applications for criminal record certificates and enhanced criminal record certificates under sections 113A, 113B, 114 and 116 of the 1997 Act (article 5(1) and (2)), applications for new certificates under section 117 of the 1997 Act (article 6), applications for registration under section 120 of the 1997 Act (article 7), disclosure requests under sections 52 and 53 of the 2007 Act (article 8), requests for correction of scheme records under section 51 of the 2007 Act (article 9(1) and (2)) and nominations of a countersignatory under regulation 4(1) or 4(2) of the Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2010 (article 10) which have been received prior to the coming into force of this Order and are not yet completed are to be treated as having been received after the coming into force of this Order (article 11). This means that the new definition of 'relevant matter' in section 113A(6) of the 1997 Act will apply when all of these applications or requests are completed. Article 5(3) and (4) provides that section 116ZB(2) does not apply to a criminal record certificate or an enhanced criminal record certificate issued prior to the coming into force of this Order so that there can be no application to the sheriff for a new certificate. Article 9(3) provides that, for the purposes of section 51 of the 2007 Act, information is not to be regarded as inaccurate if it is information about a conviction which no longer falls within the definition of "vetting information" by virtue of the coming into force of this Order.

Article 11 makes a consequential amendment to the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010 to provide for a fee waiver when a request for a disclosure of a short scheme record is treated as a request for a scheme record by virtue of the new section 53(1A) of the 2007 Act (as inserted by article 4(6)(b) of this Order).

POLICY NOTE

THE POLICE ACT 1997 AND THE PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007 REMEDIAL ORDER 2015

SSI 2015/???

Introduction

1. The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2015 (“the 2015 Order”) amends Part V of the Police Act 1997 (“the 1997 Act”) and Part 2 of the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”) and makes transitional provisions. It also makes a consequential amendment to the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010 (“the 2010 Regulations”).

Background

2. On 18 June 2014, in the case *R (on the application of T and another) (FC) (Respondents) v Secretary of State for the Home Department and another (Appellants)* [2014] UKSC 35, the United Kingdom Supreme Court (“UKSC”) made a declaration of incompatibility under section 4 of the Human Rights Act 1998 that the provisions of sections 113A and 113B of the Police Act 1997 (as applicable in England and Wales) were incompatible with article 8 (the right to respect for private and family life) of the European Convention on Human Rights (“the Convention”) because the requirements in those sections in relation to blanket disclosure of all spent convictions were not in accordance with the law. In Scotland, similar provisions of the 1997 Act apply to the issue of disclosure certificates. These functions under the 1997 Act and related legislation are devolved to Scottish Ministers and are exercised through Disclosure Scotland.

3. In light of the UKSC ruling, the Scottish Government assessed the operation of the 1997 Act in Scotland and concluded that changes should be made to the 1997 Act to ensure that it strikes a fair balance between an individual’s right to respect for their private life and the interests of public protection. In addition, the Scottish Government concluded that the 2007 Act (an Act of the Scottish Parliament which established the Protecting Vulnerable Groups Scheme – “PVG Scheme”) should also be amended.

4. The 2015 Order should be considered alongside the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2015 which provides for associated changes to the system of self-disclosure of previous criminal convictions by an individual under the Rehabilitation of Offenders Act 1974 (“the 1974 Act”) and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013.

Parliamentary Procedure

5. As the issue to be addressed relates to Convention rights, the Scottish Ministers are using a remedial order made under section 12(1) and (3) of the Convention Rights (Compliance) (Scotland) Act 2001 (“the 2001 Act”). In this case, the 2015 Order is subject to the urgent procedure under section 14 of the 2001 Act. Section 14(1) confers a power on the Scottish Ministers, for reasons of urgency, to make a remedial order without following the

procedure specified in section 13 of the 2001 Act. Annex A to this Policy Note provides the Statement of Reasons which was laid before the Scottish Parliament, in accordance with section 14(2)(b) of the 2001 Act.

6. While the 2015 Order came into force on 10 September 2015, section 14(2) of the 2001 Act requires that Scottish Ministers must, after making the 2015 Order, give public notice of it, and invite observations to be made in writing within 60 days of the 2015 Order being made. Once the 60 day period has expired, the Scottish Ministers will lay before Parliament a statement summarising all the observations and what, if any, modifications they consider appropriate to make to the 2015 Order.

7. Section 14(5) of the 2001 Act provides that if the 2015 Order is to be modified, Scottish Ministers must make and lay before the Scottish Parliament a further remedial order incorporating the relevant changes. In accordance with section 14(6), either the initial version of the remedial order (the 2015 Order) or the revised version of the remedial order must be approved within 120 sitting days (commencing on 10 September 2015), otherwise the remedial order will cease to have effect.

Policy objective

8. In its decision the UKSC accepted that a conviction or caution would usually become part of someone's private life once it became spent (as set out in the 1974 Act). The UKSC accepted that information about unspent convictions could continue to be disclosed as the disclosure of those did not interfere with article 8 rights since they were not yet part of someone's private life. Article 8 of the Convention sets out the right to respect for private and family life –

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

9. The UKSC ruled that the requirements in sections 113A and 113B of the 1997 Act on the Disclosure and Barring Service (“DBS”) to operate by means of blanket disclosure of information about spent convictions and spent cautions held on the Police National Computer (“PNC”) were not in accordance with the law as the 1997 Act had failed to make any distinction on the basis of any or all of the following criteria in its operation in England and Wales:

- the nature of the offence
- the disposal in the case
- the time that has elapsed since the offence took place
- the relevance of the disclosure information to the employment sought.

10. The UKSC also referred to other factors which could be taken into account such as the circumstances in which the person committed an offence, the age when they committed an offence and their perpetration of further offences (Lord Wilson in paragraph 41 of the decision). The 2015 Order takes into account some of these factors in the reforms which it will introduce to the disclosure regime in Scotland. Introduction of these reforms will, on a case-by-case basis, result in changes to the content of a standard or an enhanced disclosure issued under the 1997 Act, and a PVG scheme record issued under the 2007 Act. In other words, there is no longer blanket disclosure of all spent convictions with the result that some spent conviction information which would have been disclosed, had this 2015 Order not been made, will no longer be disclosed.

11. In addition, the 2015 Order changes the content of the short scheme record under section 53 of the 2007 Act, and the tests to be applied by the chief officer of a relevant police force when considering a request from the Scottish Ministers for other relevant information under either section 113B(4) of the 1997 Act or section 49(1)(c) of the 2007 Act.

12. Lastly, the 2015 Order amends the 1997 and 2007 Acts to require Scottish Ministers, in certain circumstances, to provide the applicant with the opportunity to see their disclosure before it is issued to a third party. In cases where that opportunity is offered, the applicant will be able to intimate an intention to Scottish Ministers to make an application to a sheriff for an order for the issue of a new disclosure certificate (the 1997 Act), or an order for the removal of vetting information from their PVG scheme record (the 2007 Act) if the sheriff considers that the details are not relevant to the purpose for which the disclosure was requested. Where such intimation of an application to the sheriff is received by Scottish Ministers, the third party will not see the copy of the disclosure until the court application appeal is finally determined.

Summary of Order

13. The 2015 Order:

- provides that certain spent convictions will continue always to be disclosed due to the serious nature of the offence - article 3(2)(c)(ii) inserts a new paragraph (a) in the definition of “relevant matter” in section 113A(6) of the 1997 Act; this definition relies on the concept of a protected conviction which is defined in new section 126ZA of the 1997 Act (inserted by article 3(7) of the 2015 Order); section 126ZA makes reference to lists of offences contained in new schedules 8A and 8B of the 1997 Act (inserted by article 3(8) of the 2015 Order); new schedule 8A lists serious offences for which spent convictions will always be disclosed;
- sets out rules to be applied to certain spent convictions to determine the content of standard and enhanced disclosures under the 1997 Act and the PVG scheme record disclosure under the 2007 Act (these disclosures are collectively referred to as ‘higher level disclosures’). These rules will mean that certain spent convictions (within the meaning given in the 1974 Act) will no longer be disclosed - new schedule 8B lists offences for which spent convictions will be disclosed subject to the application of rules relating to the age of the person at the time of the conviction and the length of time since the date of conviction as well as the disposal which was given. These rules are set out in new section 126ZA(2);

- provides that certain spent convictions will no longer be disclosed routinely due to the minor nature of the offence - new section 126ZA(1) provides that a spent conviction is a protected conviction if it is listed in neither new schedule 8A nor 8B of the 1997 and such convictions will therefore no longer fall routinely within the definition of “relevant matter”;
- provides that all spent cautions (within the meaning given in schedule 3 of the 1974 Act) will never be disclosed - article 3(2)(c)(ii) inserts a new paragraph (b) in the definition of “relevant matter” in section 113A(6) of the 1997 Act which means that only unspent cautions fall within the meaning of “relevant matter” and can be disclosed;
- provides individuals who have a spent conviction for certain offences which have not yet reached the point at which the rules would prevent disclosure of the conviction (which are therefore not yet protected convictions) with the possibility to indicate to Scottish Ministers that they intend to make an application to a sheriff for an order for a new disclosure certificate (the 1997 Act) or the removal of vetting information from a PVG scheme record (the 2007 Act) – article 3(4) of the 2015 Order inserts new section 116ZB into the 1997 Act which sets out the requirements for making such an application and sets out what the sheriff can order in such an application; article 4(5) inserts a new section 52A into the 2007 Act to make similar provision in relation to PVG scheme records;
- in those cases where the intention to make an application to the sheriff is indicated, this prevents the issue of a higher-level disclosure to the person who countersigned the disclosure application or request until that application to the sheriff is finally determined - article 3(4) of the 2015 Order inserts new section 116ZA which sets out when a copy of a higher level disclosure can be issued to the person who countersigned the application; article 4(5) inserts a new section 52 into the 2007 Act to make similar provision in relation to PVG scheme records;
- amends the test in section 113B(4) of the 1997 Act and section 49(1)(c) of the 2007 Act for the provision of other relevant information by the chief officer of a relevant police force in connection with higher-level disclosure applications (article 3(3)(b)); article 4(3) makes a similar amendment to section 49(1)(c) of the 2007 Act; article 3(3)(c) of the 2015 Order also repeals section 113B(5) of the 1997 Act which allowed the police to provide other relevant information only to the person who countersigned the application and not the applicant;
- revises the information that can be included on the short scheme record disclosure issued under section 53 of the 2007 Act so that a short scheme record can be issued only where the scheme member’s scheme record does not include vetting information (article 4(6)(c) and (d));
- allows Scottish Ministers to treat certain short scheme record disclosure requests as if they were a disclosure request for a scheme record when the scheme member’s scheme record includes vetting information (article 4(6)(a) and (b) , and makes consequential amendments to the 2010 Regulations to deal with instances of this treatment (article 11) to provide for a waiver of the fee for a scheme record disclosure; and

- sets out transitional provision for the 1997 Act, the 2007 Act and the Police Act (Criminal Records) (Registration) (Scotland) Regulations 2010 (articles 5 to 10).

Overview of amended disclosure regime

14. The decision about whether or not a spent conviction on an applicant's criminal record should be disclosed will be determined by a two-stage process. The first stage of the process will be determined by the nature of the offence. Two lists of offences have been developed – a list of 'offences which must always be disclosed' and a list of 'offences which are to be disclosed subject to rules'. These lists of offences are set out in article 3(8) of the 2015 Order as amendments to the 1997 Act. Two new schedules – schedules 8A and 8B – are added to the 1997 Act. New schedule 8A sets out the list of offences which must be disclosed. New schedule 8B sets out the list of offences which can be disclosed subject to the application of rules.

15. In developing these lists of offences careful consideration was given to the attributes required for roles requiring higher level disclosure. Such roles place the individuals filling them in a position of power and responsibility. A conviction for a criminal offence that:

- resulted in serious harm to a person;
- represented a significant breach of trust and/or responsibility;
- demonstrated exploitative or coercive behaviour;
- demonstrated dishonesty against an individual;
- abused a position of trust; or,
- displayed a degree of recklessness that resulted in harm or a substantial risk of harm

is evidence that a person's conduct has caused harm to an individual and/or is evidence of misconduct in a position of authority. This evidence of past behaviour is important information for employers when determining whether an individual is suitable for a role for which higher level disclosure is applicable. The protection of vulnerable groups and of sensitive assets (where a higher level disclosure would be appropriate) must be balanced against any presumption that spent convictions ought not to be disclosed.

16. Where the serious nature of a person's criminal conduct is such that the passage of time will not diminish the relevance of the information to a prospective employer or organisation, Disclosure Scotland will always disclose those spent convictions. These offences comprise the 'Offences which must always be disclosed' list (schedule 8A list). It should be noted that conviction of such an offence will often result in a disposal which means it would never become spent under the 1974 Act. These convictions would continue always to be disclosed as unspent convictions, as under the current legislation. For example, a conviction for murder requires the imposition of a mandatory life sentence and therefore a conviction for murder will never be spent. However, there may be instances where the specific circumstances of the conviction result in the imposition of a sentence which is capable of becoming spent under the 1974 Act. The inclusion of these offences on the 'Offences which must always be disclosed' list means that no matter how old the conviction is, it will always be disclosed on a higher level disclosure.

17. Where the nature of a person's less serious criminal conduct is such that the passage of time, coupled with the age of the person at the date of conviction, means that certain convictions are no longer relevant to a prospective employer or organisation, Disclosure Scotland will not routinely disclose those convictions. These offences comprise the 'Offences which are to be disclosed subject to rules' list (schedule 8B list) in the 2015 Order.

18. Where the nature of a person's criminal conduct is of a minor nature, these convictions cease to be relevant to a prospective employer or organisation once they are spent convictions under the 1974 Act, and Disclosure Scotland will not routinely disclose those spent convictions. These offences will be on neither the 'Offences which must always be disclosed' list (schedule 8A list) nor the 'Offences which are to be disclosed subject to rules' list (schedule 8B list).

19. The lists of offences in new schedules 8A and 8B will be applied to all types of higher level disclosure. This is because regulated work within the PVG Scheme and those posts which attract enhanced and standard disclosures under the 1997 Act require a degree of trust to be placed in the individual who will hold a role that places them in a position of power and responsibility. This sets these roles apart from other jobs but is the same across the types of higher level disclosure. Attempting to apply different lists to different types of disclosure would make the disclosure regime opaque to applicants and unwieldy to deliver. It could also give rise to suggestions that within types of disclosure the varied posts mean that different convictions would be of greater or lesser interest to the person making the request for disclosure and so different lists should be applied to different posts. This would introduce an undesirable element of discretion and significant scope for error in deciding which list to apply to each application.

20. The offence lists have been developed using multiple sources of information. The starting point was the Scottish Government published Recorded Crime in Scotland Classification of Crimes and Offences. Thereafter the Scottish Government considered all Scottish Criminal History System ("CHS") and PNC recorded offences that have appeared on higher level disclosures since 2007. We considered the DBS list of offences that will never be filtered from a DBS certificate and Access Northern Ireland's filtering list. Finally, we considered the detailed ISCJIS charge codes published on the Scottish Government website.

21. The offence lists will be made publicly available on the Disclosure Scotland website. Ministers will have a power to amend the list of offences by affirmative order (new section 126ZB of the 1997 Act as inserted by article 3(7)).

Rules for the 'Offences which are to be disclosed subject to rules' list

22. Having first determined that the conviction is spent and then that the offence is not included on the 'Offences which must always be disclosed' list, the rules will be applied and those convictions which are protected convictions within the meaning of new section 126ZA of the 1997 Act will not be disclosed. For each spent conviction on the applicant's record the second stage of the process will involve consideration of the age of the conviction and the age of the person at the date of conviction, as well as the means of disposal of the conviction.

23. If the conviction is more than 15 years old at the date of disclosure and the person was aged 18 years or over at the date of the conviction, it will not be disclosed. If the person was

under the age of 18 years at the date of conviction and the conviction is more than 7.5 years old at the date of disclosure, it will not be disclosed.

24. The periods of 15 and 7.5 years have been derived within the context of current rehabilitation periods under the 1974 Act and CHS retention periods operated by Police Scotland so as to strike a balance between the rights of the individual and the rights of those they are seeking to work with. Under the 1974 Act, the longest period that must elapse before a conviction resulting in any sentence of less than 30 months imprisonment can become spent is 10 years where the offender was aged 18 years or over at the date of conviction and 5 years where the offender was aged under 18 years at the date of conviction. Disclosure periods of 15 and 7.5 years for higher level disclosures avoid the possibility that a person applying for a basic level disclosure could have more information included on their certificate than a person applying for a higher level disclosure.

25. In addition, Police Scotland currently applies a 30/70 'weeding rule' to certain conviction information stored on CHS. This means that the subject to whom the conviction applies has to be 70 years old and the information has to have been on record for at least 30 years (both conditions must be met) before CHS will perform an automated weed on the data. This rule is used if the conviction is on indictment or the disposal was a custodial sentence. A 15 year disclosure period represents half of the minimum period that the conviction will be held on CHS for any purpose and reflects that information is being used for the more limited purpose of disclosure to inform employment decisions.

26. It is reasonable to bind up the consideration of age of the person with the time elapsed since the conviction. There is precedent for this combined approach in the 1974 Act where different timeframes for convictions to be spent are specified depending on the age of the offender, and in the PVG scheme where the time limits in relation to applications for removal from the children's or adults' lists depend on the age of the individual when they were listed.

27. Any applicant whose record contains multiple spent convictions will have each conviction considered separately and the rules will be applied to each conviction as though it is the only conviction on the record. Disclosure Scotland will, however, continue to issue information about spent convictions for multiple offences which form part of one conviction due to the way in which the offences were charged and recorded.

28. Where a conviction for an offence on the 'Offences which are to be disclosed subject to rules' list is less than 15 years old (or 7.5 years as appropriate) then the disposal of the conviction will also be taken into account. Convictions that result in no punishment or intervention (other than the record of the matter) being imposed will not be disclosed, that is, any conviction for which the court imposes a sentence of admonition or absolute discharge (the meaning of which includes a discharge from a children's hearing relating to an offence ground referral) will not be disclosed even where the conviction is less than 15 years old (or 7.5 years as appropriate). This means that the process takes into account cases where the individual circumstances are so unusual that at sentencing the judge chose to impose no punishment.

Cautions

29. In relation to any applicant whose record contains spent cautions within the meaning of schedule 3 of the 1974 Act these will never be disclosed. Only unspent cautions will fall within the definition of “relevant matter”. This means that the process takes into account cases where the circumstances of the offence did not lead to prosecution when the individual had received a caution. Cautions are not used in Scotland. They are used in England, Wales and Northern Ireland.

Application to sheriff for order to issue new certificate under the 1997 Act with conviction information excluded or for order to request removal of information from a scheme record under the 2007 Act

30. Where spent conviction information about an offence on the ‘Offences which are to be disclosed subject to rules’ list is not included in a standard or enhanced disclosure under the 1997 Act, the copy of the certificate will be issued to the countersignatory at the same time as it is sent to the applicant. But applicants for a standard or enhanced disclosure under the 1997 Act whose certificate contains spent conviction information about an offence on the ‘Offences which are to be disclosed subject to rules’ list will have a right to apply to the sheriff for a new certificate from which that information is removed from their disclosure. Certificates containing such spent conviction information will be sent initially to the applicant only. The requirement to send the copy of the disclosure to the countersignatory will apply only if the applicant has not indicated an intention to the Scottish Ministers that they would like to make an application to the sheriff. The copy of any such certificate will be withheld for 10 working days before issue to the countersignatory.

31. Where a scheme member requests a disclosure under section 52 of the 2007 Act and their scheme record contains spent conviction information about an offence on the ‘Offences which are to be disclosed subject to rules’ list the scheme member will have a right to apply to the sheriff for removal of that information from their scheme record under new section 52A of the 2007 Act (inserted by article 4(5) of the 2015 Order).

32. When the certificate is issued or the copy of the scheme record is sent to the individual, they will be advised that if they intend to apply to the sheriff for removal of any spent conviction information on the certificate or scheme record they must notify Disclosure Scotland of their intention to do so within 10 working days of the date of issue of the certificate or scheme record. If no intimation of such an intent to make an application to the sheriff is received by Disclosure Scotland after 10 working days from the date on the certificate the countersignatory’s copy of the certificate will be issued or the scheme record will be disclosed.

33. An application to the sheriff must be made within 6 months of the notification to Disclosure Scotland of the intention to make such an application. The sheriff’s decision on an application is final. At conclusion of the appeal, Disclosure Scotland will implement the ruling. Irrespective of the sheriff’s decision, in all cases where an application has been made to the sheriff in relation to inclusion of a spent conviction on their certificate or scheme record, their application for a certificate, or for a scheme record will be re-vetted at the conclusion of the appeal. If the sheriff ordered certain spent convictions to be removed, these will be removed before the new certificate or the copy of the scheme record is issued. Lastly, the applicant will be given a further opportunity (again 10 working days) to consider their

revised certificate or scheme record before a copy is sent to the countersignatory. A further application could be made to the sheriff if there is new conviction information on the certificate or scheme record about which they could make an application, for example if a conviction has become spent since the issue of the original certificate or scheme record.

Short Scheme Record Disclosures

34. The information included on a short scheme record is being amended by article 4(6) of the 2015 Order. When a request for disclosure of a short scheme record is made, and if the PVG scheme member does not have vetting information in their scheme record, a short scheme record which states that no vetting information is included in the scheme member's scheme record will be sent to the scheme member and the countersignatory.

35. PVG scheme members with vetting information on their current scheme record who request disclosure of a short scheme record will be deemed to have made a request for disclosure of a scheme record. Any PVG scheme members whose record contains vetting information that includes a spent conviction from the 'Offences which are to be disclosed subject to rules' list will be sent a copy of the scheme record disclosure. Only the individual's copy of the scheme record will be issued in the first instance and they will be notified of their right to apply to the sheriff for removal of the spent conviction information from the scheme record. If no intimation of an intention to make such an application is received by Disclosure Scotland after 10 working days from the date of issue of the scheme record, the scheme record will be disclosed to the countersignatory.

36. The scheme record will not be issued to the countersignatory until any application to the sheriff is concluded.

37. Where request for a short scheme record disclosure is treated as a new scheme record disclosure to be issued (that is, any scheme record containing vetting information that requires to be disclosed), the fee for the disclosure of the scheme record will be waived and it will be charged at the same rate as the short scheme record disclosure (that is, £18).

Other Relevant Information

38. A small proportion of enhanced disclosures and PVG scheme records (around 0.5% or 1,100 certificates per annum) contain Other Relevant Information ("ORI") provided to the Scottish Ministers by the police. Powers in the 1997 and 2007 Acts allow the chief officer of a relevant police force to include information that he or she thinks 'might be relevant' (in the case of the 2007 Act) and which 'might be relevant' and 'ought to be included' in the case of the 1997 Act. Consideration was given to whether section 113(b)(4) of the 1997 Act and section 49(1)(c) of the 2007 Act should be amended and changes are now made by the 2015 Order to both Acts so that the tests for provision of the ORI are that the chief officer 'reasonably believes [information] to be relevant' and 'ought to be included in the certificate / disclosure of the scheme record.

Consultation

39. No formal consultation has been undertaken on the 2015 Order. Section 14(2) of the 2001 Act provides that Scottish Ministers must, upon making the Order, give notice of the publication of the remedial order to appropriate organisations and invite observations in

writing within 60 days of the Order being made. Once the 60 day period has expired, the Scottish Government will lay a statement before Parliament summarising all the observations received and what, if any, modifications they consider appropriate to make to the order. It will be for the Scottish Parliament to approve the 2015 Order (or any second remedial order made its place) within 120 days of it being made or it will fall.

40. A list of the organisations to whom notification of the publication of the remedial order was given is attached at Annex B.

Regulatory Impact

41. A partial Business and Regulatory Impact Assessment has been prepared.

Equality Impact

42. An partial Equality Impact Assessment has been prepared.

Scottish Government
10 September 2015