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Health and Sport Committee Comataidh Slàinte is Spòrs

The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2019 [draft]



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Health and Sport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Health and Sport.



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healthandsport@parliament.scot



0131 348 5524

Committee Membership



Convener
Lewis Macdonald
Scottish Labour



Deputy Convener
Emma Harper
Scottish National Party



George Adam
Scottish National Party



Miles Briggs
Scottish Conservative
and Unionist Party



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Scottish National Party



Sandra White
Scottish National Party



Brian Whittle
Scottish Conservative
and Unionist Party

The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2019 [draft]

1. The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2019 [draft] was laid before the Scottish Parliament on 17 September 2019 and referred to the Health and Sport Committee.
2. The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2019 [draft] is subject to affirmative procedure (Rule 10.6). It is for the Health and Sport Committee to recommend to Parliament whether the Regulations should be approved.
3. These regulations are made in exercise of the powers conferred by sections 4(4) and 10(1) of the Rehabilitation of Offenders Act 1974 (“the 1974 Act”). They amend the Rehabilitation of Offenders Act (Exclusions and Exceptions) (Scotland) Order 2013 (SSI 2013/50) (“the 2013 Order”) to reduce the level of protection an individual has against being asked about, requiring to self-disclose or being prejudiced by a spent conviction for the offence of wilful neglect under section 26 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (“the 2016 Act”).
4. These regulations amend the 2013 Order to restrict the circumstances in which a person with a spent conviction for the offence of wilful neglect will benefit from legal protection against self-disclosing and answering questions about it (e.g. when applying for employment or in judicial proceedings).
5. This offence applies to care workers who ill-treat or wilfully neglect an individual in their care. The purpose of Schedule A1 is to specify offences which do not meet the definition of “protected conviction” in Article 2A of the 2013 Order, reducing the legal protection for those convicted of an offence listed in Schedule A1 against self-disclosing and answering questions about the conviction.
6. The effect of these regulations is that a person with a conviction for the offence of wilful neglect will not be protected from being asked about, being required to disclose or being prejudiced by the conviction in the above proceedings.
7. A consultation on the creation of an offence of wilful neglect was undertaken during the Bill stage of the 2016 Act. No further consultation has been prepared, as the Bill consultation responses were clear that the commission of the offence of wilful neglect as a care worker should be treated very seriously.
8. No further Impact Assessment or Business and Regulatory Impact Assessment (BRIA) has been prepared in respect of these Regulations on the basis that these were undertaken during the Bill Stage of the 2016 Act.

Delegated Powers and Law Reform Committee, 42nd report, 2019 (Session 5)

9. At the Health and Sport Committee’s twenty-fourth meeting on 29 October 2019, the Committee took evidence on The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2019 [draft] from –

- Joe Fitzpatrick, Minister for Public Health, Sport and Wellbeing
- David Leslie, Policy Manager, Openness and Learning Unit, The Scottish Government
- Claire Montgomery, Solicitor, Scottish Government Legal Directorate
- Lynne Nicol, Head of Openness and Learning, The Scottish Government

10. Motion S5M-19060 was lodged by Joe Fitzpatrick, Minister for Public Health, Sport and Wellbeing and supported by Clare Haughey, Minister for Mental Health and Jeane Freeman, Cabinet Secretary for Health and Sport.

Following the evidence session, Joe Fitzpatrick moved motion S5M-19060 that the Health and Sport Committee recommends The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2019 [draft] be approved.

The motion was agreed to without division.

11. The evidence taken and the debate held can be found in the Official Report for 29 October 2019.

12. The Health and Sport Committee recommends The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2019 [draft] be approved.

