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Justice Committee Comataidh a' Cheartais

The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2020 [draft]

Application process to become a police officer



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Justice Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



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justicecommittee@parliament.scot



0131 348 5047

Committee Membership



Convener
Margaret Mitchell
Scottish Conservative
and Unionist Party



Deputy Convener
Rona Mackay
Scottish National Party



John Finnie
Scottish Green Party



Jenny Gilruth
Scottish National Party



James Kelly
Scottish Labour



Liam Kerr
Scottish Conservative
and Unionist Party



Fulton MacGregor
Scottish National Party



Liam McArthur
Scottish Liberal
Democrats



Shona Robison
Scottish National Party

Introduction

1. At its meeting on 21 January 2020, the Justice Committee ("the Committee") considered the following draft Statutory Instrument:
 - [The Rehabilitation of Offenders Act 1974 \(Exclusions and Exceptions\) \(Scotland\) Amendment Order 2020 SSI 2020/Draft](#)
2. The draft instrument was laid before the Parliament on 18 December 2019 and referred to the Committee. The Committee is required to report to Parliament on the instrument by 11 February 2020. The instrument is subject to the affirmative procedure.
3. The overall policy objective of the instrument is to improve how the backgrounds of constables, potential constables, police custody and security officers and armed forces police can be appropriately vetted in Scotland. The purpose of which is to improve the decisions made in relation to the appointments for such roles as well as decisions made in relation to disciplinary proceedings against serving constables.

Purpose of the Instrument

4. The overall objective of this instrument is to adjust the rules relating to what spent conviction information can be used when vetting candidates seeking what the policy note which accompanies the draft instrument refers to as a 'relevant position'. The policy note describes a 'relevant position' under this instrument as: constables, police custody and security officers and persons appointed as police cadets to undergo training with a view to becoming constables, naval, military and air force police ('armed forces police').
5. The effect of the draft instrument this is to improve how the backgrounds of constables, potential constables, police custody and security officers and armed forces police can be appropriately vetted in Scotland. The purpose of this change is to improve the decisions made in relation to the appointments for such roles as well as decisions made in relation to disciplinary proceedings against serving constables.
6. As such, the ultimate objective is to improve the quality of such decisions so as to ensure those who serve as constables and police custody and security officers are fit to serve and ensure constables continue to be fit to serve. The draft instrument also seek to ensure armed forces police are treated in the same way in Scotland as in England & Wales.
7. Although the draft instrument relates to police constables generally, it will have most effect in relation to Police Scotland.
8. The draft instrument amends the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013, as amended ("the 2013 Order")¹. The purpose of which is to allow Police Scotland and all other forces recruiting and employing people in Scotland (e.g. British Transport Police, Civil Nuclear Constabulary) to be able to consider all spent convictions received at any age. This includes all spent alternatives to prosecution (AtPs) given when the person was 18 or over-
 - in disciplinary proceedings against a police constable appointed after the date of commencement of the draft instrument, and
 - in disciplinary proceedings against an existing police constable for conduct committed on or after the date of commencement, (this is to ensure no retrospective assessments are made of a constable appointed under the previous vetting regime).
9. This draft instrument will also allow Police Scotland, other forces recruiting and employing people in Scotland, and the armed forces police, to be able to consider all spent convictions received at any age and all spent AtPs given when the person was 18 or over when-
 - vetting constables, police custody and security officers, persons appointed as police cadets to undergo training with a view to becoming constables, naval, military and air force police, (where a person has at date of commencement not applied for the roles mentioned).

Consideration by the Delegated Powers and Law Reform Committee

10. At its meeting on 7 January 2020 the Delegated Powers and Law Reform (DPLR) Committee considered the draft instrument. The DPLR Committee agreed that it did not need to draw the draft instrument to the attention of the Parliament on any grounds within its remit.

Consideration by the Justice Committee

11. The Committee considered the draft instrument at its meeting on 21 January 2020. The Committee took oral evidence ² on the draft instrument from Humza Yousaf MSP, Cabinet Secretary for Justice ('the Cabinet Secretary'), Nigel Graham, Senior Policy Officer, and Douglas Kerr, Legal Adviser, Scottish Government Legal Directorate, at the Scottish Government.
12. The Cabinet Secretary lodged motion S5M-20332 proposing that the Justice Committee recommends approval of the instrument. The Cabinet Secretary outlined the purpose of the instrument to the Committee, as set out previously.
13. During the evidence session, Members of the Committee expressed concern at the lack of consultation undertaken by the Government on the draft instrument, as well as the lack of a human rights impact assessment on policy content of the draft instrument.
14. Members questioned whether the lack such consultation on the draft instrument may have prevented the views of police representative bodies, such as the Scottish Police Federation or the Association of Scottish Police Superintendent, from being properly take into account when developing the policy set out in the draft instrument.
15. Members also considered whether the lack of a human rights assessment may have implications for any future appeals process by officers who may be the subject of disciplinary proceeding after the commencement of the draft instrument, and any retrospective application of its provisions.
16. The Cabinet Secretary took on board the views expresses by Members that due diligence on the draft instrument could have been handled more effectively. ³ However, he stated that both he, and Police Scotland, were satisfied that the draft instrument is compliant with Scotland's human rights obligations and, in particular, article 8 of the European Convention on Human Rights. He highlighted the fact that Police Scotland had written to the Committee in support of the draft instrument. ⁴
17. The Cabinet Secretary also stressed the importance to recognising that the draft instrument would not introduce a blanket ban on the appointment of persons with spent convictions to 'relevant position' within the police. Rather, it will simply allow any spent convictions an applicant may have to be part of the consideration of any application process.
18. The Cabinet Secretary confirmed the 'saving provisions' in the draft instrument would prevent retrospective application of the new provisions to those officers already appointed. However, he stated that if someone with a spent conviction applies for a 'relevant position' after the date of commencement on the instrument, or if there are subject to disciplinary proceedings, any spent convictions could be taken into account at that time.
19. Members also considered the policy note which accompanied the draft instrument. It states that the provisions of the draft instrument do not apply to all police staff, namely any employment or office which is not a constable, police cadet, or police

custody and security officer. Those other roles fall into the category of 'persons employed for the purposes of a police force established under any enactment' and 'persons appointed to assist in the carrying out of police functions'. This may include civilian administrative and technical staff etc.

20. Both the Scottish Government and Police Scotland agree the current level of disclosure which apply to applications for those roles, remains appropriate. These posts remain subject to general higher-level disclosure, but not the further scrutiny level that will be permitted under by the provisions of the draft instrument.
21. Members questioned why the enhanced level of scrutiny provided for in the draft instrument did apply to applications for civilian posts with the police, as some of those posts may have access to very sensitive areas of police activity, such as criminal intelligence, forensics, forensic accounting and information technology etc.
22. The Cabinet Secretary stated ⁵ his confidence that the right level of scrutiny currently applies to people applying to work in a 'civilian role' with the police. However, he agreed to reflect further on the concerns expressed around the lack of application of the level of scrutiny in the draft instrument to civilian posts within the police.

Conclusions

23. Following the evidence session, the Cabinet Secretary moved the motion in his name: S5M-20332—That the Justice Committee recommends that the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2020 [draft] be approved.
24. The motion was agreed to without debate or division.
25. **The Justice Committee recommends to the Parliament that it approve the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2020 [draft].**

Justice Committee

The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2020 [draft], 1st Report, 2020 (Session 5)

- 1 The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013: <http://www.legislation.gov.uk/sdsi/2013/9780111019085>
- 2 Justice Committee, Official Report, 21 January 2020, Cols 30 - 36:
www.parliament.scot/parliamentarybusiness/report.aspx?r=12472&mode=pdf
- 3 Justice Committee, Official Report, 21 January 2020, Cols 34 - 35:
www.parliament.scot/parliamentarybusiness/report.aspx?r=12472&mode=pdf
- 4 Correspondence from Police Scotland 17 January 2020: https://www.parliament.scot/S5_JusticeSubCommitteeOnPolicing/General%20Documents/20200117PStoMM_RehabSSI.pdf
- 5 Justice Committee, Official Report, 21 January 2020, Cols 31 - 32:
www.parliament.scot/parliamentarybusiness/report.aspx?r=12472&mode=pdf

