SCOTTISH STATUTORY INSTRUMENTS

2003 No. 231

REHABILITATION OF OFFENDERS

The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003

Made - - - -	*28th March 2003*
Coming into force - -	*29th March 2003*

The Scottish Ministers, in exercise of the powers conferred by sections 4(4), 7(4) and 10(1) of the Rehabilitation of Offenders Act 1974(**1**) and of all other powers enabling them in that behalf, hereby make the following Order, a draft of which has, in accordance with section 10(2) of that Act, been laid before and approved by resolution of the Scottish Parliament:

Citation, commencement and extent

1.—(1) This Order may be cited as the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003, and shall come into force the day after the day on which it is made.

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

Interpretation

2.—(1) In this Order–

"the Act" means the Rehabilitation of Offenders Act 1974;

"the 2001 Act" means the Regulation of Care (Scotland) Act 2001(**2**), and the following expressions have the meaning given–

(a) by section 1 of that Act, "Scottish Commission for the Regulation of Care";

(b) by section 2 of that Act, "care service" and "child minding";

(c) by section 43 of that Act, "Scottish Social Services Council"; and

(d) by section 77 of that Act, "social worker" and "social service worker";

"administration of justice offence" means–

(**1**) 1974 c. 53; the functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46) and the Scotland Act 1998 (Transfer of functions to the Scottish Ministers etc.) Order 2003 (S.I. 2003/415).

(**2**) 2001 asp 8.

(a) an offence against the course of justice including attempting to pervert the course of justice and attempting to defeat the ends of justice;

(b) perjury and subornation of perjury; or

(c) any offence committed under the law of any part of the United Kingdom (other than Scotland) or of any other country where the conduct which constitutes the offence would, if it all took place in Scotland, constitute one or more of the offences specified by paragraphs (a) and (b);

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

"private hire driver" means a driver of a private hire car, as defined by section 23(1) of the Civic Government (Scotland) Act 1982(**3**), who is required to be licensed by a licensing authority under the provisions of that Act;

"relevant offence" means–

(a) an offence involving fraud or other dishonesty;

(b) an offence under legislation (whether or not of the United Kingdom) relating to building societies, companies (including insider dealing), industrial and provident societies, credit union, friendly societies, insurance, banking or other financial services, money laundering, insolvency, consumer credit or consumer protection;

(c) an administration of justice offence; or

(d) an offence committed (whether or not under the law of, or of any part of, the United Kingdom) in connection with, or in relation to, taxation for which a person of 21 years of age or over may be sentenced to imprisonment for a term of 2 years or more; and

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

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

Exclusion of section 4(1) of the Act

3. The application of section 4(1) (effect of rehabilitation generally and in proceedings before a judicial authority) of the Act is excluded in relation to–

(a) any proceedings specified in Schedule 1; and

(b) any proceedings with respect to a decision or a proposed decision specified in Part 1 of Schedule 2–

(i) to the extent that there falls to be determined in those proceedings any issue relating to a spent conviction for any relevant offence or to circumstances ancillary thereto; and

(ii) to the extent that section 4(1) renders inadmissible any evidence relating to such conviction or circumstances or removes the requirement to answer any question relating to the conviction or circumstances.

(**3**) 1982 c. 45.

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

4. The provisions of section 4(2)(a) and (b) (questions seeking information with respect to previous convictions) of the Act are excluded in relation to questions put in the circumstances to which Schedule 3 applies.

Exceptions from section 4(3) of the Act

5. There is excepted from the provisions of section 4(3)(b) (effect of rehabilitation on grounds of dismissal or exclusion from an office, profession, occupation or employment) of the Act–

(a) any profession, office, employment or occupation specified in Schedule 4;

(b) any action taken for the purpose of safeguarding national security; and

(c) any decision or proposed decision taken by a person specified in Part 1 of Schedule 2 to do or to refuse to do anything specified in that Part.

Revocation

6. The following Orders are hereby revoked–

(a) The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(**4**);

(b) The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 1986(**5**); and

(c) The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment No. 2) Order 1986(**6**).

St Andrew's House, Edinburgh
28th March 2003

JAMES WALLACE
A member of the Scottish Executive

(**4**) S.I. 1975/1023.
(**5**) S.I. 1986/1249.
(**6**) S.I. 1986/2268.

SCHEDULE 1

Article 3

PROCEEDINGS

1. Proceedings in respect of a person's admission to, or disciplinary proceedings against a member of, any profession specified in Part 1 of Schedule 4 to this Order.

2. Disciplinary proceedings against a constable.

3. Proceedings before the Gaming Board for Great Britain.

4. Proceedings under the Mental Health (Scotland) Act 1984(**7**) before the Sheriff or the Mental Welfare Commission for Scotland.

5. Proceedings under the Firearms Act 1968(**8**) in respect of–

(a) the registration of a person as a firearms dealer, the removal of a person's name from a register of firearms dealers or the imposition, variation or revocation of conditions of any such registration; or

(b) the grant, renewal, variation or revocation of a firearm certificate; or

(c) the grant, renewal or revocation of a shot gun certificate; or

(d) the grant of a permit under section 7(1), 9(2) or 13(1)(c) of that Act.

6. Proceedings in respect of the grant, renewal or variation of a licence under section 25 (Restrictions on persons under eighteen going abroad for the purpose of performing for profit) of the Children and Young Persons Act 1933(**9**).

7. Proceedings in respect of a determination by the Scottish Ministers as to the suitability of a person to be the proprietor of an independent school within the meaning of section 135 of the Education (Scotland) Act 1980(**10**) including proceedings before an Independent Schools Tribunal in respect of the above matters under section 102 of the Education (Scotland) Act 1980.

8. Proceedings in respect of an application for, or cancellation of the Secretary of State's approval of a place under section 1 of the Abortion Act 1967(**11**).

9. Proceedings before the Scottish Commission for the Regulation of Care under the 2001 Act in respect of applications for registration under sections 7 or 8 of that Act or variation or removal of a condition, or cancellation of registration under section 14 of that Act.

10. Proceedings on an application to the police or a court of summary jurisdiction for a certificate under any Order in Council made under section 43 of the Explosives Act 1875(**12**) as to the fitness of the applicant to keep explosives.

11. Proceedings by way of appeal against, or review of, any decision taken, by virtue of any of the provisions of this Order, on consideration of a spent conviction.

12. Proceedings held for the receipt of evidence affecting the determination of any question arising in any proceedings specified in this Schedule.

13. Proceedings held in respect of an application for the grant, renewal, or cancellation of a licence to be a taxi driver or private hire driver.

14. Proceedings–

(**7**) 1984 c. 36.
(**8**) 1968 c. 27.
(**9**) 1933 c. 12.
(**10**) 1980 c. 44.
(**11**) 1967 c. 87.
(**12**) 1875 c. 17.

(a) before the National Lottery Commission in respect of the grant or revocation of a licence under Part 1 of the National Lottery etc. Act 1993(**13**); or

(b) by way of appeal to the Secretary of State against the revocation of any such licence by the National Lottery Commission.

15. Proceedings in connection with a decision of the Scottish Social Services Council under Part 3 of the 2001 Act.

SCHEDULE 2 Articles 3, 5 and Schedule 3, paragraph 8

FINANCIAL SERVICES

Part 1

Decisions referred to at Articles 3(b) and 5(c)

1. Any decision by the Financial Services Authority–

(a) to refuse an application for Part IV permission under the 2000 Act;

(b) to vary or to cancel such permission (or to refuse to vary or cancel such permission) or to impose a requirement under section 43 of that Act or;

(c) to make, or to refuse to vary or revoke, an order under section 56 (prohibition orders) of that Act;

(d) to refuse an application for the Authority's approval under section 59 of that Act or to withdraw such approval;

(e) to refuse to make, or to revoke, an order declaring a unit trust scheme to be an authorised unit trust scheme under section 243 of the 2000 Act or to refuse to give its approval under section 251 of the 2000 Act to a proposal to replace the manager or trustee of such a scheme;

(f) to give a direction under section 257 (authorised unit trust schemes) of the 2000 Act, or to vary (or to refuse to vary or revoke) such a direction;

(g) to refuse to make, or to revoke, an authorisation order under regulation 14 of the Open-Ended Investment Companies Regulations 2001(**14**) or to refuse to give its approval under regulation 21 of those Regulations to a proposal to replace a director or to appoint an additional director of an open-ended investment company;

(h) to give a direction to an open-ended investment company under regulation 25 of those Regulations or to vary (or refuse to vary or revoke) such a direction;

(i) to refuse to give its approval to a collective investment scheme being recognised under section 270 of the 2000 Act or to direct that such a scheme cease to be recognised by virtue of that section or to refuse to make, or to revoke an order declaring a collective investment scheme to be a recognised scheme under section 272 of that Act;

(j) to refuse to make, or to revoke, a recognition order under section 290 of the 2000 Act, otherwise than by virtue of section 292(2) of that Act, or to give a direction to a UK recognised investment exchange or UK recognised clearing house under section 296 of the 2000 Act;

(**13**) 1993 c. 39.
(**14**) S.I. 2001/1228.