
SCOTTISH STATUTORY INSTRUMENTS

2020 No. 245 (C. 20)

REHABILITATION OF OFFENDERS

The Management of Offenders (Scotland) Act 2019
(Commencement No. 4 and Saving Provision) Regulations 2020

<i>Made</i>	- - - -	<i>19th August 2020</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>21st August 2020</i>
<i>Coming into force</i>	- -	<i>30th November 2020</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 63(2) and (3) of the Management of Offenders (Scotland) Act 2019⁽¹⁾ and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Management of Offenders (Scotland) Act 2019 (Commencement No. 4 and Saving Provision) Regulations 2020 and come into force on 30 November 2020.

(2) In these Regulations—

“the 2005 Act” means the Licensing (Scotland) Act 2005⁽²⁾,

“the 2019 Act” means the Management of Offenders (Scotland) Act 2019,

“Licensing Board” means a Board continued in existence by or established under section 5 of the 2005 Act.

Appointed day

2. 30 November 2020 is the day appointed for the coming into force of the provisions of the 2019 Act specified in column 1 of the table in the schedule (the subject matter of which is described in the corresponding entry in column 2 of the table).

(1) 2019 asp 14.
(2) 2005 asp 16.

Saving provision

3.—(1) Until the coming into force of section 52 of the Air Weapons and Licensing (Scotland) Act 2015 (relevant offences and foreign offences: spent convictions)⁽³⁾, for the purposes of any relevant matter the provisions of the 2019 Act which are commenced by these Regulations have no effect in relation to a conviction.

(2) In paragraph (1), “relevant matter” means—

- (a) any application (and determination of any such application) under the 2005 Act,
- (b) any notice given under any provision of the 2005 Act,
- (c) any proceedings before a Licensing Board under the 2005 Act,
- (d) any appeal in relation to a decision made by a Licensing Board under the 2005 Act.

St Andrew’s House
Edinburgh
19th August 2020

H YOUSAF
A member of the Scottish Government

(3) 2015 asp 10.

SCHEDULE

Regulation 2

<i>Column 1</i>	<i>Column 2</i>
<i>(Provisions of the 2019 Act)</i>	<i>(Subject matter)</i>
Section 17	Effect of expiry of disclosure periods
Section 18	Excluded sentences: convictions prevented from becoming spent
Section 19	Disclosure periods for particular sentences
Section 20	Table A – disclosure periods: ordinary cases
Section 21	Table B – disclosure periods: service sentences
Section 22	Disclosure period: caution for good behaviour
Section 23	Disclosure period: particular court orders
Section 24	Disclosure period: adjournment or deferral
Section 25	Disclosure period: mental health orders
Section 26	Disclosure period: compulsion orders
Section 27	Disclosure period: juvenile offenders
Section 28	Disclosure period: service discipline
Section 29	Sentences to which no disclosure period applies
Section 30	Disclosure periods applicable to convictions
Section 31	Powers as to alternatives to prosecution
Section 33	Excluded sentences: applications for convictions to be treated as spent
Section 34	Regulations under section 33: general details
Section 35	Regulations under section 33: appropriate period
Section 36	Regulations under sections 33 and 35: procedure etc.
Section 37	Transitional provision
Section 38	Remainder of amendments
Schedule 2	Rehabilitation of Offenders Act 1974

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring into force various provisions of the Management of Offenders (Scotland) Act 2019 (“the 2019 Act”). The Bill for the 2019 Act received Royal Assent on 30 July 2019. Sections 62, 63 and 64 came into force on the following day. The provisions being commenced by this instrument relate to the Rehabilitation of Offenders Act 1974 (“the 1974 Act”). The 1974 Act sets out rules for determining when a conviction is “spent” for the purposes of that Act. The effect of a conviction being spent is that the protections set out in section 4 of the 1974 Act apply in respect of that conviction.

Regulation 2 of these Regulations appoints 30 November 2020 for the coming into force of the provisions of the 2019 Act specified in the schedule of these Regulations. Those are: sections 17 to 31, 33 to 38 and schedule 2 of the 2019 Act.

Sections 17 to 30, 38 and schedule 2 of the 2019 Act are commenced by this instrument. Those provisions amend the 1974 Act to change the length of time it takes, and the rules which apply, before certain convictions become spent. The provisions also make changes to the terminology used in the 1974 Act, for instance the 1974 Act will refer to “disclosure period” instead of “rehabilitation period”.

Section 31 of the 2019 Act is commenced by this instrument. Section 31 provides new powers for the Scottish Ministers in relation to alternatives to prosecution (“AtP”) under the 1974 Act. The powers will enable the Scottish Ministers to amend the list of circumstances in which a person is given an AtP for the purposes of the 1974 Act and also to amend, remove or add provision specifying when an AtP will become spent.

Sections 33 to 36 of the 2019 Act are commenced by this instrument. A conviction cannot become spent if an “excluded sentence” is imposed in respect of that conviction (see section 5(1) of the 1974 Act for the list of excluded sentences). Section 33 of the 2019 Act will enable the Scottish Ministers to make regulations allowing a person who has a conviction for which a relevant excluded sentence was imposed to apply to be treated as a protected person in respect of that conviction and for that conviction to be treated as spent. A “relevant excluded sentence” is one listed in section 33(4) of the 2019 Act. Sections 34 to 36 of the 2019 Act provide further detail in connection with the exercise of this power.

Section 37 of the 2019 Act is commenced by this instrument. Section 37 sets out transitional provision related to the amendments made to the 1974 Act by Part 2 of the 2019 Act. By virtue of section 37(1) and (2), the changes to disclosure periods made by the provisions being commenced by this instrument will apply in relation to convictions dated, and sentences imposed, before 30 November 2020 (as well as to convictions dated, and sentences imposed, on and after 30 November 2020). Section 37(4) of the 2019 Act says that the 1974 Act applies as if the amendments mentioned in section 37(1) and (2) had always had effect. However, this has to be read subject to section 37(5) to (9) of the 2019 Act. This means that if, by virtue of section 37(4), a person would have been a protected person before 30 November 2020, and if their conviction would have been spent before that date, they are not in fact to be treated as a protected person, and their conviction is not to be treated as spent, until 30 November 2020. These provisions prevent the amendments made by Part 2 of the 2019 Act from having retrospective application.

Regulation 3 of these Regulations makes saving provision. The effect of regulation 3 is that, until section 52 of the Air Weapons and Licensing (Scotland) Act 2015 is commenced, for the purposes of any “relevant matter”, the amendments made by Part 2 of the 2019 Act have no effect in relation

to a conviction. This means that the changes to the disclosure periods applicable to sentences and to convictions do not apply in respect of determining whether or not a conviction is spent for the purposes of any relevant matter. Instead, the 1974 Act will continue to apply to relevant matters as it did immediately prior to 30 November 2020. “Relevant matters” are applications under the Licensing (Scotland) Act 2005 (“the 2005 Act”), determinations of such applications, proceedings before Licensing Boards under the 2005 Act and any appeal of a decision of a Licensing Board.

NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

(This note is not part of the Regulations)

The following provisions of the Management of Offenders (Scotland) Act 2019 have been brought into force by commencement regulations made before the date of these Regulations.

<i>Provision</i>	<i>Date of Commencement</i>	<i>Instrument No.</i>
Section 16(1) (partially)	11 October 2019	S.S.I. 2019/309
Section 32	21 December 2019	S.S.I. 2019/413
Section 39	21 December 2019	S.S.I. 2019/413
Section 44	31 December 2019	S.S.I. 2019/417
Section 48	11 October 2019	S.S.I. 2019/309
Section 49	11 October 2019	S.S.I. 2019/309
Section 50(1), (2) and (4)	11 October 2019	S.S.I. 2019/309
Section 53(1) and (3)(a)	11 October 2019	S.S.I. 2019/309
Section 55	11 October 2019	S.S.I. 2019/309
Section 56	11 October 2019	S.S.I. 2019/309
Section 57	11 October 2019	S.S.I. 2019/309
Section 59	11 October 2019	S.S.I. 2019/309
Section 60	11 October 2019	S.S.I. 2019/309
Section 61	11 October 2019	S.S.I. 2019/309
Schedule 1, paragraph 1	11 October 2019	S.S.I. 2019/309
Schedule 1, paragraph 3	11 October 2019	S.S.I. 2019/309
Schedule 1, paragraph 4	11 October 2019	S.S.I. 2019/309
Schedule 1, paragraph 5	11 October 2019	S.S.I. 2019/309