

# **Orders under the Rehabilitation of Offenders Act 1974 - Homes for Ukraine Sponsorship Scheme - Equality Impact Assessment**

**May 2022**



**Scottish Government**  
Riaghaltas na h-Alba  
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## EQUALITY IMPACT ASSESSMENT - RESULTS

<b>Title of Policy</b>	Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2022  Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Homes for Ukraine Sponsorship Scheme) (Scotland) Amendment Order 2022
<b>Summary of aims and desired outcomes of Policy</b>	These Orders amend the Rehabilitation of Offenders Act (Exclusions and Exceptions) (Scotland) Order 2013 to bring individuals providing accommodation (and those individuals over the age of 16 years where they, and the individual offering the accommodation, reside within the accommodation to be provided) to a person who has been granted permission to enter into or stay in the United Kingdom under the Homes for Ukraine Sponsorship Scheme within the scope of the exceptions set out in the 2013 Order, requiring them to self-disclose certain spent convictions
<b>Directorate: Division: team</b>	Disclosure Scotland

### Executive summary

This EQIA relates to two Orders that were urgently brought forward to amend the Rehabilitation of Offenders Act (Exclusions and Exceptions) (Scotland) Order 2013 (“the 2013 Order”) so that individuals whose suitability to provide accommodation to displaced Ukrainian nationals (and those individuals over the age of 16 years where they, and the individual offering the accommodation, reside within the accommodation to be

provided) under the UK Government's Homes for Ukraine Scheme ("the scheme"), is being assessed and they will have to self-disclose certain spent convictions if asked an exempted question.

The Scottish Ministers have identified that these Orders may have a negative impact in relation to persons with protected characteristics. Those protected characteristics are age and sex. The Scottish Ministers consider the potential negative impact of the policy to be indirect because the circumstances in which those individuals may have convictions included on an enhanced disclosure with suitability information relating to children and adults is not because of their age or sex, but instead is as a result of their voluntary decision to provide accommodation (or because they are over the age of 16 years and live in the same household as the individual who has voluntarily registered to offer to provide the accommodation) under the scheme and be subject to criminal record checks. The Scottish Ministers therefore, consider this potential impact to be justified and proportionate in all of the circumstances.

## **Background**

The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2022 was made by the Scottish Government on 23 March 2022 in response to the scheme announced by the UK Government and the Scottish Government's intention to act as a "super sponsor" for those fleeing the conflict in Ukraine.

This Order amended the 2013 Order so that the appropriate level of vetting checks could be made in relation to individuals seeking to provide accommodation within the premises they also reside in (and those aged over 16 years also residing in the same premises) to Ukrainian nationals and their immediate family members under the scheme.

Connected amendments were made at the same time to the statutory framework in relation to state disclosure were made by the Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2022. A separate EQIA results template has been completed in respect of those amendments.

Since then the policy in relation to the scheme has continued to develop and now, in addition to individuals offering accommodation within their own homes, the scheme is attracting offers of accommodation from

individuals with second homes and self-contained whole properties. The Scottish Government considered that there continued to be a risk that the scheme could attract individuals who are seeking to exploit this opportunity to gain access to vulnerable people. Whole property occupancy arrangements will not be the same as standard tenancy agreements, and individuals offering whole properties under the scheme will not have entry to their property restricted by the terms of any lease; in addition, further examination of the risks and emerging evidence of those risks materialising in other parts of the UK, as well as information of concern being disclosed on those checks already happening on those offering rooms, has led the Scottish Ministers to conclude an enhanced disclosure with suitability information relating to children and adults on everyone offering to provide accommodation through the scheme (whether that be within personal homes or via second properties) offers the appropriate level of safeguarding in these circumstances.

In light of this developing policy position, two further SSIs have been laid in the Scottish Parliament: the Police Act 1997 (Criminal Records) (Homes for Ukraine Sponsorship Scheme) (Scotland) Amendment Regulations 2022 and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Homes for Ukraine Sponsorship Scheme) (Scotland) Amendment Order 2022.

The Police Act 1997 (Criminal Records) (Homes for Ukraine Sponsorship Scheme) (Scotland) Amendment Regulations 2022 amend the Police Act 1997 (Criminal Records) (Scotland) Regulations 2010 to enable requests for enhanced disclosures with suitability information in relation to all individuals who are offering to provide accommodation (and those individuals over the age of 16 years where they, and the individual offering the accommodation, reside within the accommodation to be provided) to a person who has been granted permission to enter into or to stay in the United Kingdom under the scheme. The provisions in these Regulations substitute the provisions in the Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2022.

The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Homes for Ukraine Sponsorship Scheme) (Scotland) Amendment Order 2022 amends the 2013 Order to bring all individuals who are offering to provide accommodation (and those individuals over the age of 16 years where they, and the individual offering the accommodation, reside within the accommodation to be provided) to a person who has permission to

enter into or to stay in the United Kingdom granted under the scheme within the excluded circumstances set out in schedule 3 of the 2013 Order. The provisions in this Order substitute the provisions in Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2022.

The disclosure regime in Scotland is comprised of two broadly aligned parts: self and state disclosure. The Rehabilitation of Offenders Act 1974 ("the 1974 Act") and the 2013 Order regulate self-disclosure, the obligation placed on an individual to admit to previous convictions if asked by a prospective employer. Self-disclosure by the individual is verified by disclosures provided by the state.

Disclosure Scotland, an executive agency of the Scottish Ministers, carries out functions on behalf of the Scottish Ministers under the Police Act and the Protection of Vulnerable Groups (Scotland) Act 2007 ("the 2007 Act") in relation to the disclosure of conviction information and other criminal history. The Police Act 1997 ("the Police Act") and the Protection of Vulnerable Groups (Scotland) Act 2007 ("the 2007 Act") set out the system for state disclosure of an individual's previous criminal history. A conviction may become spent if a certain length of time has elapsed since the date of conviction, with different periods of time applying to different disposals, as set out in section 5 of the 1974 Act.

Once a conviction is spent, an individual becomes a "protected person". The 1974 Act provides that such a person is not normally required to disclose their spent conviction and that they generally cannot be prejudiced by its existence. The purpose of this approach is to appropriately allow an individual to move away from their past criminal activity so that they can contribute effectively to society while also ensuring that people with a legitimate interest, such as employers, are able to understand an individual's background.

Section 4 of the 1974 Act sets out the effect of becoming a protected person. Broadly speaking, section 4 permits such persons not to disclose spent convictions when asked to do so (e.g. by a prospective employer), prevents others from asking about those spent convictions and prohibits reliance on spent convictions in certain legal proceedings or to prejudice an individual in an employment context. However, there are certain exceptions and exclusions to this general approach when the interests of

public safety are paramount. That is, certain circumstances in which an "exempted" question can be asked.

There are some categories of employment and proceedings to which the rules in the 1974 Act do not apply as it is considered appropriate that disclosure of spent conviction information continues to be available. This is because the employment positions and proceedings involve a high degree of sensitivity or there is an expectation of integrity or for the purposes of public protection. These positions and proceedings are subject to what are known as enhanced disclosures, which contain details of unspent convictions and other relevant information

The scheme invites individuals to offer to provide accommodation to displaced Ukrainian persons eligible to apply under the scheme. All individuals offering to provide accommodation (and those individuals over the age of 16 who are living, along with the volunteer, in the accommodation to be provided) are asked to consent to, and submit, an application for an enhanced disclosure as part of the process. Those applications will be countersigned by the person or body making decisions about the placement of displaced Ukrainian persons via the scheme.

The Scottish Ministers consider that, as the scheme is likely to predominately involve women, children and the elderly fleeing conflict, the need to ensure an adequate level of safeguarding is paramount. Whilst recognising that the vast majority of people volunteering to accommodate displaced Ukrainians will present no risk of harm to them, the Scottish Ministers are aware from previous similar schemes that people may seek to exploit vulnerabilities in the system and seek opportunities to cause harm. The Scottish Ministers consider that the safeguarding risks posed in these specific circumstances could be very high (such as in relation to human trafficking); therefore these Orders, together with the amendments to the state disclosure regime, will ensure that the level of disclosure that will provide adequate safeguards - an enhanced disclosure with suitability information relating to children and adults issued under sections 113B, 113CA and 113CB of the Police Act - is available in these circumstances.

The policy for these Regulations contributes to the following National Outcomes:

- We respect, protect and fulfil human rights and live free from discrimination;

- We live in communities that are inclusive, empowered, resilient and safe and;
- We are open, connected and make a positive contribution internationally.

## **The Scope of the EQIA**

The Scottish Ministers considered that a full EQIA was required to assess the extent to which these Orders may engage each of the protected characteristics because the policy could lead to sensitive information about an individual's background, including certain spent convictions being disclosed, albeit for reasons considered to be justified and proportionate in all of the circumstances.

As part of a framing exercise to assess the anticipated impact for this policy, the Scottish Ministers considered previous evidence gathered for various impact assessments carried out when developing the Disclosure (Scotland) Bill which demonstrated that men are more likely than women to have criminal convictions. This evidence is still considered to hold true, as the data gathered and analysed demonstrated. Information gathered from a previous disclosure policy consultation, that some age cohorts are more likely than others to have past convictions, was also utilised.

The most recent published version of the Scottish Government's Criminal Proceedings in Scotland (<https://www.gov.scot/publications/criminal-proceedings-scotland-2019-20> ) was also consulted. It is recognised that the data in this source relates to a period between 2019-2020. However, this version was published on 18 May 2021 and it is not expected that the data would be significantly different now.

It should be noted that Disclosure Scotland does not collect data on disability, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief or marriage and civil partnership as these protected characteristics have no bearing on the conduct of disclosure checks.

## **Key Findings**

The scheme is voluntary and eligibility criteria are applicable, including that individuals will need to agree to apply for an enhanced disclosure check when they register for the scheme.

The Scottish Ministers consider that the policy will have no impacts on the protected characteristics of disability, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief or marriage and civil partnership. There is no information to indicate that this policy change has any bearing on these protected characteristics. The addition of these circumstances to the prescribed list of circumstances in which questions may be asked about an individual's past criminal history means that anyone who has registered to provide accommodation under the scheme (and those individuals over the age of 16 who are living, along with the volunteer, in the accommodation to be provided) will need to answer honestly any questions put to them about certain spent convictions.

The Scottish Ministers consider that the policy will not have a direct impact on age but may have a minimal indirect impact. There are some age cohorts more likely than others to have accrued convictions which may be disclosed on the enhanced disclosures with suitability information sought in these circumstances. The 'Criminal Proceedings in Scotland' publication suggests on page 47 the highest conviction rate in 2019-20 was for those individuals (overall, and not distinguished by sex) aged 31-40 (32 per 1,000), with the 21-30 age group also showing a similar 31 convictions per 1,000 population, (overall and not distinguished by sex) (page 47).

Likewise, the Scottish Ministers consider that the policy will not have a direct impact on sex but may have a minimal indirect impact. The Scottish Ministers know from the previous impact assessments undertaken in relation to the Disclosure (Scotland) Act 2020 and other work in this policy area that men are more likely than women to have accrued convictions which may be disclosed in these circumstances. The 'Criminal Proceedings in Scotland' publication suggests that although the number of convictions per 1000 of the population has declined over the past 10 years, it is still the case that there is a disparity in convictions between men and women. The figures in page 36 detail that in 2019-20 there were for all people, 15 convictions per 1,000 population. There were, however, more convictions for males at 26 convictions per 1,000 population compared to five for females per 1,000 population.

Conviction information relating to an individual may be disclosed as part of the enhanced disclosure checks and used by the recipient countersignatory to make informed decisions about the suitability of an individual to provide accommodation to a displaced Ukrainian person via the scheme. This



information may result in the individual or accommodation not being considered suitable.

Individuals within certain age cohorts with convictions and men with convictions may therefore be impacted by this policy. However, the Scottish Ministers consider this impact to be indirect and of a minimal negative consequence – in that the circumstances in which those individuals may find themselves subject to an enhanced disclosure check with suitability information or asked exempted questions is not because of their age or sex, but instead is as a result of their voluntary decision to register to provide accommodation (or because they are over the age of 16 years and live in the same household as the volunteer who is offering to provide the accommodation) under the scheme and be subject to criminal record checks.

## **Recommendations and Conclusion**

The results of this impact assessment show that the policy will be achieved with no unjustified negative or unintended impacts on any protected characteristics. The scope of the policy will be kept under review as the scheme, including Scotland's super sponsor role, continues to develop.



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EH1 3DG

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