



## GUIDANCE ON THE RECRUITMENT OF EX-OFFENDERS

### 1 INTRODUCTION

1.1 The policy on the Recruitment of Ex-Offenders (approved by the Council on 2 October 2002) and the Recruitment and Selection Guidelines (approved by the Council on 11 February 1997) makes reference to the procedure to be followed when making an appointment to posts that are non-excepted and excepted under the Rehabilitation of Offenders Act, 1974.

1.2 This guidance document aims to provide further detailed information on the recruitment of ex-offenders.

### 1 LEGISLATION

#### 2.1 Police Act 1997

2.1.1 Part V of the Police Act 1997 includes measures that enable all organisations to obtain criminal record information about prospective employees and volunteers from a centralised source, namely Disclosure Scotland.

2.1.2 Disclosure Scotland has been established within the Scottish Criminal Records Office (SCRO) for the purpose of issuing certificates (Disclosures) under the Act.

2.1.3 Widening access to criminal record information is intended to provide those making recruitment and appointment decisions with additional information to enable them to determine whether the past behaviour of a person suggests that they are unsuitable for a particular position.

2.1.4 The availability of the disclosure information should not, however, be regarded as a substitute for any of the full range of existing pre-appointment checks which recruiters should undertake, including taking up references and enquiring into the person's previous employment history. The availability of disclosure information should therefore be seen as complimentary to the Council's existing recruitment practice.

2.1.5 Three types of disclosure certificate can be issued depending on the nature of the post, these are basic, standard and enhanced disclosures. A synopsis of each can be found in Appendix A.

#### 2.2 REHABILITATION OF OFFENDERS ACT 1974

2.2.1 Under the Rehabilitation of Offenders Act 1974, it is unlawful for an employer to take into account offences in relation to which the person concerned is deemed to be rehabilitated i.e. the conviction is regarded as spent.



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- 2.2.2 Paragraph 6.89 of the Recruitment and Selection Guidelines gives details on the declaration of criminal convictions, stating that each ex-offender should be assessed on his/her ability to perform the job in question and that their convictions should only be taken into account if they are relevant to the job.
- 2.2.3 There are, exceptions to the Act and in such cases an ex-offender will have to disclose information about spent as well as unspent convictions.

### 2.3 Code of Practice

- 2.3.1 As a registered body i.e. a person or organisation likely to ask excepted questions under the Rehabilitation of Offenders Act 1974, or will act on behalf of groups or individuals asking excepted questions, the Council is expected to comply with a Code of Practice, drawn up by the Scottish Executive. The Code of Practice governs the use of the information provided by the Disclosure process.

### 3 EXCEPTED POSTS

- 3.1 Various kinds of employment, occupations and professionals are excepted. The Exceptions Order overrules the employment rights of an ex-offender would otherwise have in respect of spent convictions. In such cases, organisations are legally entitled to ask applicants excepted questions i.e. details of all convictions, irrespective of whether they are spent or unspent under the Rehabilitation of Offenders Act.
- 3.2 For example, the Council can ask about spent convictions if an application is submitted for admission to professions e.g. teacher or solicitor or if it relates to certain employment e.g. regular contact with children and/or vulnerable adults.
- 3.3 The majority of excepted posts are those, which are deemed to have regular contact, train, supervise or are in sole charge of children and/or vulnerable adults. Definitions of a child and a vulnerable adult can be accessed in Appendix B. Details as to the type of posts which are excepted under the Act can be found in the Recruitment and Selection Guidelines.
- 3.4 Posts which are excepted from the act will require a disclosure either at standard or enhanced level. Prospective appointees to posts deemed have regular contact require to be checked by Disclosure Scotland to ascertain whether the individual concerned has any previous convictions. A list indicating posts which are categorised as excepted within the Council along with the type of disclosure can be found on the Intranet under 'Documents'.

**GUIDANCE ON THE RECRUITMENT OF EX-OFFENDERS****4 CONSIDERING THE RELEVANCE OF A CRIMINAL HISTORY RECORD**

4.1 The nature of an excepted post is such as to necessitate extreme caution in appointing to them anyone with a previous conviction. In this regard, each case requires to be dealt with on its own individual merits, including detailed consideration of such factors as:

- ◆ The type of post;
- ◆ The extent of job supervision;
- ◆ The precise nature of the convictions (s);
- ◆ When the conviction(s) occurred, and;
- ◆ Whether a pattern of related or similar offence is evident;
- ◆ Whether the conviction or other information revealed is relevant to the post in question.

4.2 Services whose establishments includes posts within other excepted categories e.g. Solicitors or Accountants, should ensure that the candidate holds a valid practicing certificate.

**5 ASSESSMENT AS TO WHETHER THE POSTHOLDER WILL HAVE REGULAR CONTACT TO CHILDREN AND/OR VULNERABLE ADULTS.****5.1 Does the position involve one-to-one contact?**

If it does, and especially if such contact is likely to be away from the individual's home or separate from other children or adults, then contact should be regarded as regular.

**5.2 Is the position supervised?**

It is possible for a person to spend considerable amounts of time with children and/or vulnerable adults, but under close supervision. This might not necessarily be regarded as regular contact, although the scope for developing relationships which could be exploited outside working hours should be kept in mind.

**5.3 Is the situation an isolated one?**

There is a greater risk to a child/vulnerable adult who is living away from home e.g. in residential care, possibly for lengthy periods, and the risks may increase the further the child/vulnerable adult is from the family home, or if family visits are infrequent. A similar situation could arise where there is opportunity to take children/vulnerable adults singly, or in a group, away from family surroundings, for example, on holiday.

**5.4 Is there regularity of contact?**

The more regular contact a person has with the same child/vulnerable adult or group of children/vulnerable adults, the greater the opportunity to put the child/vulnerable adult at risk. This is especially so if the contact is unsupervised, or occurs way from other children/vulnerable adults. Equally,



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opportunities for regular social contact, such as between a child/vulnerable adult and domestic staff in a residential home, might be seen as providing substantial access/regular contact.

### 5.5 Is overnight care involved?

Where children/vulnerable adults stay overnight in care they are more vulnerable to risk of abuse than during waking hours, because of the increased opportunities for offence to take place.

## 6 PERSONS WHO SHOULD BE CHECKED BY DISCLOSURE SCOTLAND

6.1 The arrangements for checking cover all prospective employees, students on placement and volunteers, whether paid or unpaid, full-time, part-time, temporary, casual/relief or any other type of worker undertaking work on behalf of the Council.

6.2 The following are the main groups for whom checks should be carried out. All prospective employees and work placements in:

- ◆ residential establishments for children/vulnerable adults
- ◆ day nurseries, family centres, playgroups and similar establishments offering day care
- ◆ Educational establishments (including non-teaching employees). For appointments to teaching posts, candidates require to be enhanced disclosure checked **in addition to** presenting their General Teaching Council practicing certificate.
- ◆ sports and recreational facilities e.g. leisure attendants, lifeguards, day camp leaders
- ◆ any prospective employee, who in the opinion of the Corporate Director, has regular contact or who train, supervise or are in sole charge of children/vulnerable adults, as detailed earlier in the guidance notes.

6.3 The list is neither prescriptive nor exhaustive. As stated earlier, a list indicating the posts requiring a disclosure can be accessed on the Intranet under 'Documents'. Corporate Directors will require to exercise their own judgement as to the posts within their services for which checks should be carried out. The basic test of regular contact should be used as the guideline for those posts with access to children/vulnerable adults. Further assistance may be sought from the HR Service.

6.4 It is appreciated that certain postholders will, from time to time, have access to children/vulnerable adults. For example,



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- ◆ Fieldwork staff, who may access schools, residential and day care establishments
- ◆ Employees who are required to make house enquiries and who may come into contact with children/vulnerable adults depending on the composition of the client households.
- ◆ Employees overseeing the operation of public toilets i.e. toilet attendants.

6.5 It is not necessary to carry out checks on such staff unless they have substantial access/regular contact by virtue of their day to day duties as described earlier in the guidance.

### 7 POST RISK ASSESSMENTS

7.1 Although a comprehensive post risk assessment exercise was initially undertaken to establish which Council posts required a disclosure, it is recognised that this type of assessment should be continual through regular reviewing and monitoring posts e.g. when a post becomes vacant.

7.2 When amendments or additions to the list of approved posts occur then the PSe HR/Payroll System should be updated by Services accordingly.

7.3 A bi-annual audit assessment will also be undertaken by the HR Service where Services will be requested to contribute to the assessment by providing data on posts which require a disclosure and the appropriate level of check. This type of practice will aim to ensure that the list of posts requiring a disclosure is reviewed regularly and updated.

### 8 VOLUNTEERS

8.1 Volunteers who work within a Voluntary Organisation will require a standard or enhanced disclosure, as appropriate, if their volunteer duties indicate that this should be the case. The processing of the criminal record check should be undertaken by the Voluntary Organisation, who should be registered with Volunteer Development Scotland. Such disclosures are processed free of charge.

8.2 Where volunteers are working within Aberdeen City Council, and a disclosure is required on the same basis as outlined above, then the Council should process disclosure applications via Disclosure Scotland. These checks will incur the same fee as a prospective employee.

### 9 OVERSEAS APPLICANTS

9.1 Applicants falling into this category include UK residents, whether British Nationals or not, with recent periods of overseas residence or no previous UK residence.



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- 9.2 Due to the unavailability of a checking service by Disclosure Scotland for such applicants, it is important for Recruiting Officers to note that the onus should be on the applicant to obtain proof of his/her suitability for a post. Applicants should request the police force from their country to provide details of their criminal history record.
- 9.3 The Recruiting Officer concerned should then verify the preferred applicant's proof of suitability by contacting the Chief Constable (or equivalent) of the appropriate country by phone, fax or e-mail. This practice should minimise potential recruitment difficulties in this area.

### 10 UMBRELLA BODY STATUS

- 10.1 The Council is registered as having Umbrella Body status. This allows the Council to ask excepted questions, counter-sign and process disclosure applications on behalf of other organisations who are not registered bodies with Disclosure Scotland.
- 10.2 Such organisations must comply with the Code of Practice issued by the Scottish Executive on the same basis as the Council.
- 10.3 For further information on the role of an umbrella body, please contact the HR Service.

### 11 PROCESSING DISCLOSURE APPLICATIONS

#### 11.1 Existing employees

- 11.1.1 Checks on existing employees should be made only if they are selected for a position within the Council, which provides the opportunity for regular contact to children/vulnerable adults.
- 11.1.2 Existing employees filling such a post (and having being checked previously) should be re-checked if selected for a promoted post or transfer to a post within the same category, regardless of the level of disclosure sought previously i.e. standard or enhanced disclosure.
- 11.1.3 If however, serious allegations are made against a person already working with children/vulnerable adults, or previously unrevealed information comes to light which gives reasonable cause for concern, then a disclosure must be sought.



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### 11.2 Prospective employees

11.2.1 Processing disclosure applications through Disclosure Scotland the Scottish Criminal Records Office forms part of the Council's agreed Recruitment Procedure. A disclosure should be sought after a person has been selected as the most suitable person to fill a post. The preferred candidate should be informed that an offer of appointment will be subject to a satisfactory criminal record check and advised of the normal timescale attached to processing a disclosure i.e. 2-3 weeks.

**11.2.2 Under no circumstances should an employee commence employment before a satisfactory disclosure is received from Disclosure Scotland unless discretion has been granted to permit an occupational group to commence work (and where conditions will be attached to this type of practice) within a particular Service due to resourcing difficulties.**

11.2.3 Prospective employees will be advised by the recruiting manager as to which type of disclosure is required for the post in question and will be asked to complete a disclosure application form. The form should be signed by an authorised counter-signatory registered with Disclosure Scotland.

11.2.4 Each authorised counter-signatory will have the responsibility for organising and overseeing the operation of the checking procedure, to include ensuring that all disclosures come via him/her or his/her staff for this purpose. The main areas of responsibility will be:

- ◆ To be satisfied that the request for a disclosure is justified in terms of determining whether the post involves regular contact with children and/or vulnerable adults. He/she should also refer to the Council's list of excepted posts requiring disclosures.
- ◆ To make the request to Disclosure Scotland, duly signed
- ◆ To ensure that the disclosure information received from Disclosure Scotland is given only to those who need to know it.
- ◆ To ensure that the confidentiality of the information is properly safeguarded and destroyed after it has served the purpose for which it was obtained.

11.2.5 Services with few posts being excepted under the Act are not likely to administer disclosures on a regular basis, and may wish to use an authorised signatory within another service. Details of the existing counter-signatories can be accessed through the Intranet under 'Documents'.

11.2.6 For further information on additional or new signatories, please contact the HR Service.



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11.2.7 A response from Disclosure Scotland is normally received within two to three weeks. If for any reason the process is delayed, the individual should be informed along with the reason for the delay.

### 12 FINANCIAL IMPLICATIONS

12.1 There are financial implications associated with the processing of disclosure applications. The Council will pay the agreed fee to Disclosure Scotland for each disclosure sought. The same fee is required regardless the type of disclosure required. In normal circumstances, only the prospective employee's disclosure application form should be processed for checking purposes.

12.2 Where the circumstances of an appointment to a post requires that more than one person needs to be checked then, the matter should be discussed with the HR Service.

12.3 Services should ensure that each disclosure application identification number along with the persons name, date of birth, position applied for and the date sent to Disclosure Scotland is logged either manually or electronically. This will assist in tracking outstanding disclosure applications, where necessary, and should enable a smooth re-charging process across the Council.

12.4 Where invoices are sent directly to individual Services, a logging system is still advisable for the purpose of tracking outstanding disclosure applications from Disclosure Scotland.

### 13 ACTION AFTER RECEIVING DISCLOSURE

13.1 Once the recruiting manager receives a disclosure, he/she should make a final judgement on the appointment of the post and advise the prospective candidate/existing employee accordingly.

13.2 It will not be appropriate for Disclosure Scotland to determine whether or not a particular conviction or pending case is relevant in the circumstances of the individual concerned. The nature and extent of the information supplied will depend on the type of disclosure requested by the Service. In addition, disclosure information provided will now include records relating to driving offences due to the wider access of information available.

13.3 Where the information provided by Disclosure Scotland is not consistent with that provided by a candidate or existing employee, the counter-signatory should draw the discrepancy to the attention of the recruiting panel. The prospective employee or existing employee should be contacted and asked for an explanation. Where the person believes the information to be incorrect,



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the counter-signatory should request Disclosure Scotland to re-check its earlier assessment.

- 13.4 If the individual concerned admits failure to disclose a previous conviction or where the disclosure confirms a previously disputed conviction record, then the matter should be discussed with the Head of HR. Thereafter, the matter will be dealt with in accordance with the guidance under 'excepted posts' and 'persons who should be checked by Disclosure Scotland'. In addition, the seriousness of the failure to disclose and the continued suitability of the prospective employee or existing employee will need to be investigated and assessed thoroughly.
- 13.5 The disclosure outcome details i.e. proceed or do not proceed should be logged on to the PS enterprise HR system and the recruitment assessment form should be completed by the recruiting manager and returned to the HR Service.

### 14 HANDLING OF DISCLOSURE INFORMATION

- 14.1 The information provided by Disclosure Scotland is confidential. It must be used only to judge the suitability or otherwise of a person for the post in question. Counter-signatories who receive this information must keep it securely while the assessment is being made and should be retained until the recruitment process terminates. Once this has been done, the disclosure information should be shredded. It should not be kept for a period of more than 6 months.
- 14.2 Further guidance and information can be accessed within the Council's Security of Disclosure Information Policy.

### 15 EDUCATION AND AWARENESS

- 15.1 Corporate Directors should ensure that the advice contained within these guidelines is circulated to all officers with recruiting responsibilities (or those officers who are potentially involved in recruitment matters).
- 15.2 Disclosure Scotland has advised that each employing service should have Child Protection Procedures in place, if appropriate, and that staff should be made aware of these and put them into use. Employees who have regular contact/substantial access to children should have clear job descriptions and be clear about what is expected to them. Managers should play an active role in overseeing the work of those members of staff who have such regular contact/substantial access.



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15.3 Further information on the details contained within this guidance document may be obtained from the HR Service.

### LEVELS OF DISCLOSURES

**Basic disclosures** will contain details of convictions held in central police records, which are unspent according to the Rehabilitation of Offenders Act 1974 or will state if there are no such convictions. It will only be issued to individuals on request when they are seeking paid or unpaid employment and will, therefore, not be issued to employers or prospective employers.

Where necessary, it may be appropriate to seek a basic disclosure from an individual in relation to the nature of the post, and where the duties of the post clearly do not fall into standard or enhanced disclosure categories.

**Standard Disclosures** are available in respect of positions exempted under the Rehabilitation of Offenders Act i.e. those whose duties involve regular contact with children/vulnerable adults. It will contain details of both spent and unspent convictions or if no convictions exist, then a certificate will be issued indicating that no information relating to convictions is held on the central records.

**Enhanced Disclosures** are also available in respect of those seeking certain positions exempted under the Rehabilitation of Offenders Act. However, it is reserved for those employed in positions involving regularly caring for, training, supervising or being in sole charge of those aged under 18 years or vulnerable adults.

Such disclosures can include information that the Chief Constable of any relevant police force considers appropriate. For example, information about suspicion of crime, as well as details of previous convictions in addition to all the details contained in a standard disclosure.



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### DEFINITIONS OF A CHILD AND VULNERABLE ADULT

#### Child

A child is defined as a person aged under 18 years.

#### Vulnerable Adult

A person aged 18 years or over may be considered vulnerable if he receives:

- ◆ Accommodation and nursing or personal care in a care home, or
- ◆ Personal care or nursing or support to live independently in his own home; or
- ◆ Any services provided by an independent hospital, independent clinic, independent medical agency or National Health Service body; or
- ◆ Social care services; or
- ◆ Any services provided in an establishment catering for a person with learning difficulties.

And, in consequence of any one, or any combination, of the following factors, namely:

- ◆ A substantial learning or physical disability, or
- ◆ A physical or mental illness, chronic or otherwise, including an addiction to alcohol or drugs; or
- ◆ A reduction in physical or mental capacity.

In addition, a vulnerable person will have a disability where he/she has a:

- ◆ Dependency upon others in the performance of, or a requirement for assistance in the performance of, basic physical functions; or
- ◆ Severe impairment in the ability to communicate with others; or
- ◆ Impairment in a person's ability to protect himself from assault, abuse or neglect.