**GUIDANCE ON THE RECRUITMENT OF EX-OFFENDERS**

1. **INTRODUCTION**
2. The Policy Statement on the Recruitment of Ex-Offenders and the Recruitment and Selection Guidelines make reference to the procedure to be followed when making an appointment to posts that are excepted and non-excepted under the Rehabilitation of Offenders Act, 1974 (Exclusions & Exceptions) (Scotland) Amendment Order 2013.

**Appendix 7**

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

1. **LEGISLATION**

**2.1 Rehabilitation of Offenders Act 1974**

2.1.2 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.

2.1.3 The Recruitment and Selection Guidelines give 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.

2.1.4 There are exceptions in relation to the Act and in such cases an ex-offender will have to disclose information about spent convictions, (subject to rules), as well as unspent convictions

**2.2 Police Act 1997**

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

2.2.2 Disclosure Scotland functions within the Scottish Criminal Records Office (SCRO) for the purpose of issuing criminal record Disclosures under the Act.

2.2.3 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.

2.2.4 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 recruitment practice.

2.2.5 Three types of disclosure certificate can be issued depending on the nature of the position; these are basic, standard and enhanced disclosures.

* Individuals, or the Council with the individual’s approval, can apply for a Basic disclosure, for any purpose.
* Standard disclosures relate to specified occupations, professions and positions, for example for Solicitor, City Warden and Accountant (as per the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2013.
* Enhanced disclosures continue to be available, but do not relate to Council posts
  1. **Protection of Vulnerable Groups (Scotland) Act 2007**

2.3.1 Protecting Vulnerable Groups Scheme (PVG)

The Protecting Vulnerable Groups membership scheme delivers on the provisions outlined in the Protection of Vulnerable Groups (PVG) (Scotland) Act 2007:

* helps to ensure that those who undertake ‘regulated work’ with children and protected adults through paid and unpaid work do not have a known history of harmful behaviour
* strikes a balance between proportionate protection and robust regulation

2.3.2 The PVG Scheme provides a registration system for all those who work with children and vulnerable adults in the UK that would confirm that there is no known reason why an individual should not work with these client groups.

2.3.3 The PVG Scheme is managed and delivered by Disclosure Scotland. This includes taking decisions, on behalf of Scottish Ministers, about who should be barred from working with vulnerable groups.

**2.4 Code of Practice**

2.4.1 As a registered body i.e. a person or organisation likely to ask the ‘prescribed question’ under the Rehabilitation of Offenders Act 1974, or will act on behalf of groups or individuals asking the ‘prescribed question’, the Council is expected to comply with a Code of Practice, drawn up by the Scottish Government. The Code of Practice governs the use of the information provided by the Disclosure process. The ‘prescribed question’ concerns asking about details of all convictions, irrespective of whether they are spent convictions (subject to rules), or unspent convictions under the Rehabilitation of Offenders Act.

**3 EXCEPTED POSTS**

3.1 Certain kinds of employment, occupations and professions are excepted or excluded from the provisions of the Rehabilitation of Offenders Act, by virtue of The Rehabilitation of Offenders Act 1974 (Exclusions & Exceptions) (Scotland) Amendment Order 2013 which overrules the employment rights an ex-offender would otherwise have in respect of spent convictions. In such cases, organisations are legally entitled to ask applicants the ‘prescribed’ question (see paragraph above for details of the ‘prescribed question’).

3.2 For example, the Council can ask about spent convictions, (subject to rules), if recruiting to posts such as accountant, or solicitor.

3.3 Posts which are excepted from the 1974 Act will require a PVG Record or a Standard Disclosure. Prospective appointees to posts that involve ‘regulated work’ will require to hold membership of the PVG Scheme. Preferred candidates for those occupations, positions and professions listed in the 2013 Order (excluding PVG posts) will require to complete a Criminal Convictions Declaration Form and a Standard Disclosure will be obtained.

**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);
* The age of the offender at the time of the offence
* 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 include posts within other excepted categories e.g. Solicitors or Accountants, should ensure that the candidate holds a valid practising certificate.

**5 RISK ASSESSMENT**

5.1 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 of posts e.g. when a post becomes vacant.

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

5.3 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.

**6 OVERSEAS APPLICANTS**

6.1 Applicants falling into this category include UK residents, whether British

Nationals or not, with recent periods of overseas residence or no previous UK residence.

6.2 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.

6.3 The Recruiting Officer concerned should then verify the preferred candidate’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.

**7 PRPOSPECTIVE EMPLOYEES**

7.1 Processing “disclosure” applications through Disclosure Scotland, 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 (i.e. the preferred candidate). 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”.

**7.2 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.**

7.3 The preferred candidate 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 the appropriate “disclosure” application form. The form should be signed by an authorised counter-signatory registered with Disclosure Scotland.

**8 ACTION AFTER RECEIVING A “DISCLOSURE”**

8.1 Once the recruiting manager receives a “disclosure”, they should make a final judgement on the appointment to the post and then advise the Preferred Candidate.

8.2 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 provided by Disclosure Scotland 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.

Legislation now allows for an appeal process if a candidate feels there is a spent conviction included on a PVG Record or Disclosure Certificate that should be removed as it is not relevant to the post for which they have applied. The appeal must be lodged within 10 days to a Sheriff. The counter signatory’s copy of the disclosure is retained by Disclosure Scotland for ten working days from the date of the disclosure. If the applicant does not appeal the information the counter signatory’s copy will be released.

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

8.4 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 HR Service. 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.

8.5 The disclosure outcome details (i.e. proceed or do not proceed) should be logged on to the HR/Payroll system and the recruitment assessment form should be completed by the recruiting manager and returned to the HR Service Centre.

**9 HANDLING OF DISCLOSURE INFORMATION**

9.1 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.

**10 EDUCATION AND AWARENESS**

10.1 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).

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

**11 LEVELS OF DISCLOSURES**

11.1 Protecting Vulnerable Groups Record

Applicants for posts that require PVG membership must present a PVG Scheme Record when applying, and a PVG Scheme Update will be obtained for the preferred candidate. If the PVG Scheme Update identifies that information has come to light since the last record was issued a decision has to be made by the recruiting manager as to whether a full PVG Scheme Record should be sought.

11.2 Basic disclosures

Thesecontain details of unspent convictions according to the Rehabilitation of Offenders Act 1974 or will state if there are no such convictions. It will ordinarily only be issued to individuals on request when they are seeking paid or unpaid employment but with their approval can be issued to employers or prospective employers.

On the basis of a risk assessment, 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 are not covered by PVG or fall into the category of a standard disclosure.

11.3 Standard Disclosures

These are available in respect of occupations, professions and positions exempted under the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2013 As appropriate, the Disclosure provided by Disclosure Scotland will contain details of both spent convictions, (subject to rules), and unspent convictions or if there are no convictions. .

11.4 Enhanced Disclosures

These are also available in respect of those seeking certain positions exempted under the Rehabilitation of Offenders Act. However, they do not apply to employment with the Council.