**APPENDIX 5**

|  |
| --- |
| **IN CONFIDENCE** |

# CRIMINAL CONVICTIONS DECLARATION FORM (EXCEPTED POST)

|  |  |  |  |
| --- | --- | --- | --- |
| **Candidate ID:** |  | **Advert Reference:** |  |

**PLEASE COMPLETE THIS FORM AND BRING IT WITH**

**YOU WHEN YOU ATTEND FOR INTERVIEW. THIS**

**SHOULD BE GIVEN TO THE CHAIR OF THE INTERVIEW PANEL.**

**THIS FORM MUST BE COMPLETED/SIGNED EVEN IF**

**YOU HAVE NO CONVICTIONS TO DECLARE.**

**IF YOU HAVE ANY QUESTIONS ON THE COMPLETION OF THE FORM OR REQUIRE IT IN LARGE PRINT PLEASE CONTACT THE HR SERVICE CENTRE ON (01224) 523939 or e-mail AskHR@aberdeencity.gov.uk**

|  |
| --- |
| **REHABILITATION OF OFFENDERS ACT 1974** |

The post for which you have applied is defined as exempted employment under the terms of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2013, and by virtue of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2015 you are required to disclose unspent convictions, unspent cautions or ‘spent convictions which must always be disclosed’). You are not required to disclose spent convictions which ‘are subject to rules’. Please read the attached Advisory Note, produced by Disclosure Scotland (or go to their website for more details).

As a shortlisted candidate you **must** complete the appropriate sections of this form including signing and dating it, then place it in a sealed envelope, and bring it along with you to your interview to hand to the interview panel. It is emphasised that ex-offenders will only be assessed on their ability to do the job applied for and convictions will only be taken into account if relevant to the job.

1. If you have unspent convictions, unspent cautions or ‘spent convictions which must always be disclosed’ or if you have a court appearance pending please supply details below. An additional sheet can be submitted if required. This must be folded and sealed within this form.
2. If you have no previous convictions, or if you do not have a court appearance pending go straight to the DECLARATION section and sign and date accordingly.

If you are in any doubt as to the correct answers to be given, it is recommended that that you take advice from a suitable person e.g. Solicitor, Trade Union Representative, Citizen’s Advice Bureau or go to the Disclosure Scotland website; <https://www.mygov.scot/organisations/disclosure-scotland/>

|  |  |  |  |
| --- | --- | --- | --- |
| **Date** | **Court** | **Details of Offence** | **Sentence** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

|  |
| --- |
| **FORMER NAMES & ADDRESSES** |

|  |  |  |
| --- | --- | --- |
| **Name** | **Address** | **Date from - to** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

|  |
| --- |
| **DECLARATION** |

* I have read the advisory note attached.
* I have not withheld any information, which may affect my application for appointment.
* I understand that false information or omissions may lead to my dismissal.

(The Council may verify the information supplied above).

|  |  |  |  |
| --- | --- | --- | --- |
| Signature : |  | Date: |  |

**ADVISORY NOTE – DISCLOSURE SCOTLAND**

The length of a Rehabilitation Period depends on the sentence given. For a custodial sentence, the length of time actually served is irrelevant, the rehabilitation period is decided by the original sentence and commences on the date of conviction. SENTENCES OF MORE THAN FORTY-EIGHT MONTHS ARE EXCLUDED SENTENCES AND THE CONVICTION WILL NOT BECOME SPENT AFTER A SPECIFIC AMOUNT OF TIME. Other sentences become spent after fixed periods from the date of conviction (see tables below).

All UNSPENT convictions will be disclosed on a higher-level certificate.

For any Unspent Convictions

• An employer can legally ask you to disclose unspent convictions,

• If asked by an employer, or asked when applying for certain college or university courses, or if asked when taking up certain voluntary roles you have to disclose them,

• They will be disclosed on all higher-level disclosures,

• There could be consequences if you fail to disclose unspent convictions when asked. For example, an employer could withdraw an employment offer if they discover you have an unspent conviction you did not disclose when asked.

The Rehabilitation of Offenders Act 1974 allows most convictions to be considered as SPENT after a specific period of time (see tables below). Most jobs are covered by the Rehabilitation of Offenders Act 1974 but some are exempt.

Some SPENT convictions will be always disclosed. These are convictions for offences which appear in Schedule 8A of the remedial order, which are offences which must always be disclosed even when spent (“always list”).

Some SPENT convictions will be disclosed if they are for offences which appear in Schedule 8B of the remedial order, which are offences that will be disclosed even when spent (“rules list”) for 15 years from the date of conviction for convictions received when the person was 18 years old or over or 7.5 years for convictions received when the person was less than 18 years old.

For any spent conviction on the “always list”

• An employer can legally ask you to disclose any spent conviction for an offence on the “always” list.

• If asked by an employer or asked when applying for certain college or university courses, or if asked when taking up certain voluntary roles you have to disclose them.

• They will be disclosed on all higher-level disclosures

• There could be consequences if you fail to disclose these spent convictions when asked, for example an offer of employment may be revoked if spent convictions on the “always list” are not disclosed.

For any spent conviction on the “rules list”

• You do not have to disclose any such conviction and cannot be prejudiced or subjected to any liability by not disclosing that conviction until if and only if the higher level disclosure is sent and contains the spent conviction.

• It is at the point when a higher level disclosure, which contains information regarding a spent conviction for an offence on the Rules List, is sent to a registered person (i.e. the person who countersigned the disclosure application), that the individual will be liable to self-disclose.

• They will be disclosed on all higher-level disclosures if less than 15 years or 7.5 years old.

• When the employer receives the higher-level disclosure containing spent conviction information, they will be able to take this into account when deciding on whether to interview the individual and/or deciding whether to employ them. However, they will not be able to prejudice the person for not disclosing their spent conviction when applying for the position.

For any spent conviction for an offence not on the “always list” or “rules list”

• An employer should not be asking you to disclose any spent convictions for offences not on the “always list” or “rules list”.

• If asked by an employer or asked when applying for certain college or university courses, or if asked when taking up certain voluntary roles you do not have to disclose them.

• They will not be disclosed on a higher-level disclosure.

**Tables of disclosure periods of previous convictions & alternatives to prosecution in Scotland under the Rehabilitation of Offenders Act 1974 ("the 1974 Act")**

Footnote1

**Important Note:** This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act in Scotland. Anyone in doubt should seek their own legal advice.

**Custodial Sentences**

| **Disclosure periods for custodial sentences** | | |
| --- | --- | --- |
| **Sentence length** | **18 or over on date of conviction** | **Under 18 on date of conviction** |
| **Up to (and including) 12 months** | Length of sentence plus 2 years | Length of sentence plus 1 year |
| **Over 12 months & up to (and including) 30 months** | Length of sentence plus 4 years | Length of sentence plus 2 years |
| **Over 30 months & up to (and including) 48 months** | Length of sentence plus 6 years | Length of sentence plus 3 years |
| **Over 48 months** | This is an excluded sentence and the conviction will not become spent after a specific amount of time  A review mechanism will be available in due course for relevant sentences over 48 months | This is an excluded sentence and the conviction will not become spent after a specific amount of time  A review mechanism will be available in due course for relevant sentences over 48 months |

**Non-custodial sentences**

| **Disclosure periods for non-custodial sentences** | | |
| --- | --- | --- |
| **Disposal** | **18 or over on date of conviction** | **Under 18 on date of conviction** |
| **Absolute discharge** | Zero | Zero |
| **Admonishment** | Zero | Zero |
| **Bond of caution** | 6 months, or length of caution period, whichever is the longer | 3 months, or length of caution period, whichever is the longer |
| **A fine or compensation order** | 1 year | 6 months |
| **Community Payback Order, Drug Treatment & Testing Order and Restriction of Liberty Order** | 12 months or length of order, whichever is the longer | 6 months or length of order, whichever is the longer |
| **Adjournment/Deferral after conviction** | Until relevant sentence2 given | Until relevant sentence given |
| **An order under section 61 of the Children and Young Persons (Scotland) Act 1937** | N/A | 12 months |
| **Ancillary Orders3** | Length of order | Length of order |
| **An endorsement made by a court in relation to an offence mentioned in schedule 2 of the Road Traffic Offenders Act 1988** | 5 years | 2½ years |
| **Any other sentence not mentioned in Table A or B or sections 5(2D), 5C to 5J** | 1 year | 6 months |
| **Mental Health Orders** | | |
| **Hospital Direction** | Not a sentence under the 1974 Act (not included in disclosure certificate) | All have same disclosure periods as someone 18 or over at date of conviction |
| **Guardianship Order** | Zero4 |
| **Assessment/Treatment Order** | Until final disposal given |
| **Interim Compulsion Order** | Until final disposal given |
| **Compulsion Order (CO)** | Length of order. After 12 months an application can be made to the MHTS5 under section 164A of the MH 2003 Act6 for disclosure of CO to end |
| **Compulsion Order with Restriction Order (CORO)** | Length of order. If the restriction order ends and the CO remains, an application can be made to the MHTS for disclosure of the CO to end 12 months after the restriction order ends |

**Children's hearings**

| **Children's Hearings** | | |
| --- | --- | --- |
| **Disposal** | **18 or over on date of conviction** | **Under 18 on date of conviction** |
| **Discharge** | N/A | Zero |
| **Compulsory supervision order** | N/A | Zero |

**Alternatives to Prosecution (AtP)**

|  |  |  |
| --- | --- | --- |
| **Alternatives to Prosecution ( AtP)** | | |
| **Category 17 AtPs** | **Zero** | **Zero** |
| **Category 2 AtPs** | 3 months | 3 months |

**Service Disciplinary Offences**

The 1974 Act applies to everyone convicted of a criminal offence or a service disciplinary offence (for example absence without leave) by either a civilian court (in the cases of criminal offences) or a Service Court or the Commanding Officer (in the cases of criminal or Service disciplinary offences). The same disclosure periods apply to sentences which are imposed in the service justice system as are imposed by the civilian justice system.

**Example**

A fine imposed by a Sheriff Court and a fine imposed by a Court Martial would each have the same disclosure period of a year beginning with the date of conviction.

There are certain service sentences that can only be imposed by the service justice system (e.g. sentence of dismissal from Her Majesty's service or service detention). There are specific disclosure periods for such sentences which are set out in sections 5B and 5I of the 1974 Act.

Please see the table below.

| **Disclosure periods for Service Disciplinary Offences** | | |
| --- | --- | --- |
| **Disposal** | **18 or over on date of conviction** | **Under 18 on date of conviction** |
| **A sentence of cashiering, discharge with ignominy or dismissal with disgrace from Her Majesty's service** | 10 years | 5 years |
| **A sentence of dismissal from Her Majesty's service** | 7 years | 3½ years |
| **Any sentence of service detention within the meaning of the Armed Forces Act 2006, or any sentence of detention corresponding to such a sentence, in respect of a conviction in service disciplinary proceedings** | 5 years | 2½ years |
| **A custodial order under section 71AA of the Army Act 1955 or the Air Force Act 1955, or under section 43AA of the Naval Discipline Act 1957, where the maximum period of detention specified in the order is more than 6 months** | 7 years | 7 years |
| **A custodial order under schedule 5A of the Army Act 1955 or the Air Force Act 1955, or under schedule 4A of the Naval Discipline Act 1957, where the maximum period of detention specified in the order is more than 6 months** | 7 years | 7 years |
| **A sentence of detention for a term exceeding 6 months but not exceeding 30 months passed under section 71A(4) of the Army Act 1955 or Air Force Act 1955, section 43A(4) of the Naval Discipline Act 1957 or section 209 of the Armed Forces Act 2006** | 5 years | 5 years |
| **A sentence of detention for a term not exceeding 6 months passed under section 71A(4) of the Army Act 1955 or Air Force Act 1955, section 43A(4) of the Naval Discipline Act 1957 or section 209 of the Armed Forces Act 2006** | 3 years | 3 years |
| **A custodial order under any of the schedules of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 mentioned above, where the maximum period of detention specified in the order is 6 months or less** | 3 years | 3 years |
| **A custodial order under section 71AA of the Army Act 1955 or Air Force Act 1955, or section 43AA of the Naval Discipline Act 1957, where the maximum period of detention specified in the order is 6 months or less** | 3 years | 3 years |
| **A service community order, or an overseas community order, under the Armed Forces Act 2006** | 5 years | 2½ years or the length of the order whichever is the longer |
| **A community supervision order under schedule 5A of the Army Act 1955 or the Air Force Act 1955 or under schedule 4A of the Naval Discipline Act 1957** | 1 year or the length of the order, whichever is the longer | 1 year or the length of the order, whichever is the longer |
| **An order under section 211 of the Armed Forces Act 2006** | Where the person was 15 years of age or older at the date of the conviction   * 5 years if the order was for a term exceeding 6 months * 3½ years if the order was for a term of 6 months or less | Where the person was 15 years of age or older at the date of the conviction   * 5 years if the order was for a term exceeding 6 months * 3½ years if the order was for a term of 6 months or less   Where the person was under 15 years of age at the date of the conviction  Length of the order plus 12 months |

**Footnotes**

1. These are the disclosure periods that apply in accordance with Part 2 of the Management of Offenders (Scotland) Act 2019.

2. A "relevant sentence" is any sentence other than an adjournment or deferral, (or, where applicable, a further adjournment or deferral) imposed on the person in respect of the conviction.

3. Examples of 'ancillary orders' are, non-harassment order, supervision and treatment orders, football banning order, antisocial behaviour order, exclusion from licensed premises order, confiscation order, serious crime prevention order and an order disqualifying someone from driving.

4. Section 5J(1)(c) of the 1974 Act.

5. The Mental Health Tribunal for Scotland.

6. The Mental Health (Care and Treatment) (Scotland) Act 2003.

7. Category 1" AtPs are warnings given by a constable or a procurator fiscal and fixed penalty notices given under section 129 of the Antisocial Behaviour (Scotland) Act 2004. All others are "Category 2 AtPs".