



ABERDEEN  
CITY COUNCIL

**PROTECTING VULNERABLE  
GROUPS SCHEME and  
POLICE ACT DISCLOSURE  
GUIDANCE**

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## 1 INTRODUCTION

### Protecting Vulnerable Groups Scheme

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

- helps to ensure that those who have regular contact 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

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.

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.

### Police Act Disclosures

The PVG scheme replaced the previous disclosure arrangements for people who work with vulnerable groups; however the 3 types of disclosures, under the Police Act 1997, are still available for positions not within the scope of the PVG Scheme.

- Basic disclosures continue to be available for any purpose.
- Standard disclosures continue to be available as before, for example for solicitors and accountants (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.

## 2 BACKGROUND

The 2007 Act provides a membership scheme for people undertaking regulated work with children and/or protected adults to join. The PVG Scheme holds individual records which are updated automatically when a person's circumstances change. When a disclosure is required because the scheme member is changing posts or taking on an additional role, prospective employers can check whether he/she is a member of the scheme and whether there is any information held about them.

## 3 REGULATED WORK – POLICY DIRECTION

The Scottish Government cannot provide an absolute and definitive list of positions that constitute regulated work, as the roles and duties that people undertake vary widely between employers and change over time. Determining whether or not an individual is doing regulated work, and what type, is an essential prerequisite before any PVG Scheme application can be made. This is covered in the '**Protecting Vulnerable Groups Scheme Guidance for individuals, organisations and personal employers**', and is available at <https://www.mygov.scot/pvg-scheme/> . If you require specific legal advice, this can be obtained from the Litigation Team in Legal and Democratic Services.

Listed below are basic definitions of what is meant by 'Regulated Work':

### **Regulated work with Children**

This is generally any work, which involves responsibility for the welfare of a child. This can be through providing a service directly to children, through the type of establishment where regulated work takes place, such as a school.

### **Regulated work with Protected Adults**

A 'protected adult' is a service based definition and avoids labeling adults solely on the basis of having a specific condition or disability. A 'protected adult' is an individual aged 16 or over who is in receipt of a type of care, support or welfare service. Defining adults in this way is intended to help employers identify the services that make an adult 'protected' and therefore assess which posts constitute regulated work.

## **4 SCHEME RECORD DISCLOSURE**

Under the PVG scheme, conviction and police information appears on a Scheme Record, and Disclosure Scotland will make an assessment, and give employers the reassurance that the individual is not unsuitable for that type of work, even if the disclosure contains convictions and/or other police information.

### **What scheme membership means**

Just because an individual is a PVG Scheme member, does not necessarily mean that the individual is suitable to work in a specific position. That decision must be taken by us as an employer, informed by the content of their Scheme Record as well as other good recruitment and employment practice.

### **Information on a Scheme Record**

A Scheme Record is issued to the individual and the registered body, and contains conviction and police information. If an individual who is barred applies to join the PVG Scheme, they will not get a Scheme Record but the individual and organisation will be advised by letter that the individual is barred from doing that type of regulated work.

### **Types of scheme record available**

When a person applies to join the PVG Scheme for the first time, there are two types of disclosure record available:

- a **Scheme Record** at the request of an organisation; or
- a **Scheme Membership Statement** at the request of a personal employer or by the individual alone in anticipation of doing regulated work in the future.

The **Scheme Record** is designed for use when:

- asking an individual who does regulated work, or
- is being recruited to do regulated work, to join the PVG Scheme for the first time, or

- where a Scheme Record Update reveals a change to vetting information, and as an employer we choose to follow that up.

The **Scheme Membership Statement** is designed for personal employers asking an individual to do regulated work for them or for pre-emptive use by individuals who intend to do regulated work at some point in the future. It does not contain vetting information.

A **Scheme Record Update** is sought when an individual is being recruited to do regulated work and is a member of the PVG Scheme and to check that nothing has come to light since the Scheme Record was issued that would call in to question their suitability to undertake regulated work. Where a Scheme Record Update reveals a change to vetting information for a Scheme Member a decision will need to be taken as to whether a full Scheme Record should be sought for a further fee.

This is covered in the '**Protecting Vulnerable Groups Scheme Guidance for individuals, organisations and personal employers**', and is available at <https://www.mygov.scot/pvg-scheme/>

## 5 FEES

### Applications to join the PVG Scheme or PVG Scheme Record Request

Applications to join the PVG Scheme for the first time or for a PVG Scheme Record (the full record) will cost £59 (currently).

### PVG Scheme Record Updates

The fee is £18 (currently), for an employer requesting a '**Scheme Record Update**'

### PVG Scheme Record Disclosure

If a PVG **Scheme Record Update** shows that new vetting information has been recorded, an employer may wish to request a full PVG Scheme Record Disclosure in order to see the detail. This will cost a further £41 (currently).

The Council currently meets the cost of all Disclosure checks.

## 6 ADMINISTRATIVE FUNCTIONALITY

The PVG Scheme retains a record on individual members; therefore after a person becomes a member, a request for a Scheme Update only requires one page of personal information to enable Disclosure Scotland to process the Scheme Update.

For posts that require a Disclosure Certificate we require to process every application from scratch in relation to Standard and Basic Disclosures, as a full identify verification and a fresh check for criminal history information is required by Disclosure Scotland, every time.

## 7 VETTING AND BARRING PROCESS

People who undertake 'regulated work' and are members of the PVG Scheme have their membership records automatically assessed on a continual basis and updated by Disclosure Scotland, if any new vetting information arises. If an individual becomes unsuitable they will be removed from the scheme and listed on one or both lists, and will be prevented from entering, or removed from the workforce.

Disclosure Scotland operates an appeals procedure, for anyone who wishes to challenge a barring decision.

## **8 SAFE RECRUITMENT PRACTICE**

The PVG Scheme provides the Council with a means of satisfying itself that those doing regulated work are not barred from doing so. If vetting information exists, this will appear only on the Scheme Record, and might prove helpful when deciding whether an individual is suitable for the specific work being offered. Scheme membership forms part of the recruitment and selection criteria for posts involving regulated work with children and/or vulnerable adults, and therefore candidates must evidence that they are scheme members.

The fact that they are not barred and that vetting information has been checked does not necessarily make them the best candidate, or even suitable for the post. It is important to also carry out proper recruitment checking of skills and qualifications and obtain references to ensure that information contained in an application form is verified by previous employers. The decision to offer regulated work should be determined by all of these factors. Information about safe recruitment practice is available at: <http://www.gov.scot/Publications/2007/03/13154149/0>

## **9 REFERRING INDIVIDUALS TO DISCLOSURE SCOTLAND**

The Act places a duty on employers to refer individuals to Disclosure Scotland when certain prescribed conditions are met, namely where they have:-

- Harmed a child or protected adult
- Placed a child or protected adult at risk of harm
- Engaged in inappropriate conduct of a sexual nature involving a child or protected adult
- Given inappropriate medical treatment to a child or protected adult

The referral has to be made within three months of taking a final decision to dismiss the individual or move them permanently from regulated work.

## **10 REVIEW OF POSTS**

The Council will review as necessary those posts that require the post-holder to undertake 'regulated work' and thus be a member of the PVG Scheme.

Services will maintain a list of posts that require to be checked and will review as appropriate the list to take account of change of duties and the working locations of posts. The HR/Payroll database will be updated as appropriate. The post should be identified if it

is covered by the Rehabilitation of Offenders Act, the PVG Scheme, or the Police Act and the level of disclosure required, i.e. Basic or Standard, and the information entered and maintained on the HR/Payroll database by the Service. If in doubt, the Service should contact the Litigation Team in Legal and Democratic Services.

## 11 REHABILITATION OF OFFENDERS ACT 1974

The Council's Policy Statement on the Recruitment of Ex-Offenders, is attached as Appendix 1 and an outline of the provisions of the legislation is contained in Appendix 2.

This is a specific piece of legislation affecting ex-offenders, which affords them equality of opportunity when seeking employment. Under certain circumstances, once a period of time has elapsed from the date of conviction, their conviction is said to be **spent** and for the purposes of employment can be treated as though it never existed. This means that if the ex-offender is asked, on an application form or at interview, if they have a criminal record, they can answer no to this question if the convictions are **spent**. However, there are **exceptions** to this, by virtue of the **Exclusions and Exceptions (Scotland) Amendment Order 2013**.

### Exclusions and Exceptions (Scotland) Amendment Order 2013

Various kinds of employment, occupations and professions are exempted from The Rehabilitation of Offenders Act 1974, by virtue of the **Exclusions and Exceptions (Scotland) Amendment Order 2013 (The Order)**. These include occupations that fall into "at risk" categories, and certain professions and offices. The Order can be found at: <http://www.legislation.gov.uk/ssi/2013/204/contents/made> , or contact the Litigation Team in Legal and Democratic Services, if you require advice.

The Order overrules certain rights an ex-offender would otherwise have in respect of their **spent** convictions. If a post is exempt from The Order, it allows a prospective employer, the right to ask for details of both **spent convictions, subject to rules**, and **unspent** convictions, but does not necessarily debar ex-offenders from these jobs.

### Use of Criminal Convictions Declaration Forms

A manager must ensure that all posts requiring a Basic or Standard Disclosure (not PVG posts) within their remit are properly assessed, against the 1974 Act:

- The service identifies posts covered by the Rehabilitation of Offenders Act, and flags them on the HR/Payroll database.
- When recruiting to these **excepted** posts, the recruitment pack should contain the relevant Criminal Convictions Declaration form
- There is a separate Criminal Convictions Declaration form for **non-excepted posts**

### Candidates for Interview

Applicants who are ex-offenders should be assessed on their ability to perform in the job in question and their convictions should only be taken into account **if they are relevant to the job**.

- All shortlisted candidates (except those for PVG posts) are required to complete a criminal convictions declaration form and bring it with them to their interview in a sealed envelope. Only the form for the preferred candidate will be viewed by the recruiters
- For jobs regarded as being 'excepted', shortlisted candidates are required to declare 'spent' convictions (subject to rules) as well as 'unspent' convictions. Excepted jobs include Solicitors, Accountants and City Wardens. For jobs regarded as being 'non-excepted', shortlisted applicants are only required to disclose any unspent convictions they may have
- Recruiters will assess the relevance of any declared convictions for the preferred candidate against the nature of the work the job-holder would be required to do and the circumstances in which the work is carried out e.g. a theft conviction may relate to positions where the job-holder is required to handle money
- Where the conviction is relevant, the following points need to be carefully considered
  - the length of time since the offence occurred
  - the preferred candidate's age at the time of the offence
  - whether they have a pattern of convictions
  - the nature and background to the offence
  - whether their circumstances have changed since the offence was committed

If it is unclear from the information provided on the declaration form whether the conviction is relevant or not (e.g. this will often be the case in a "breach of the peace" offence) then recruiters will need to contact the preferred candidate for more detailed information about the offence. This should be done on the day(s) following the interview.

## **12 PREFERRED CANDIDATE FOLLOWING INTERVIEW**

When the 'Preferred Candidate' has been identified for a post involving regulated work with children and/or vulnerable adults, a PVG Scheme Record will be required. In the case of other excepted posts, i.e. those posts not covered by the PVG Scheme, a Standard Disclosure check will be required.

## **13 ACTION ON RECEIPT OF A SCHEME RECORD OR DISCLOSURE CERTIFICATE**

- Once the recruiting manager receives a Scheme Record or a Disclosure Certificate, he/she should make a final judgement on the appointment to the post.
- 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.
- For posts requiring a Basic or Standard Disclosure, where the information provided by Disclosure Scotland is not consistent with that provided by a candidate, he/she should



be contacted and asked for an explanation. If the individual concerned admits failing to disclose a previous conviction or where the disclosure confirms a previously disputed conviction record, the seriousness of the failure to disclose and the continued suitability of the prospective employee will need to be investigated and assessed thoroughly.

- Where the person believes the information on a Basic or Standard Disclosure or on a PVG record to be incorrect, they can submit an appeal to Disclosure Scotland within 10 days of having received their copy of the disclosure. If they do not appeal, or appeal and the appeal is not upheld, Disclosure Scotland will release the information to the employer.
- The disclosure outcome details (i.e. proceed or do not proceed), should be logged on the HR/Payroll database by the recruiting manager.

## **14 ERRORS ON A DISCLOSURE CERTIFICATE**

Where an individual feels that there is an error on their disclosure certificate they can dispute the information contained on a certificate or record with Disclosure Scotland.

The types of dispute Disclosure Scotland deal with are:

- the criminal record information is wrong
- it relates to someone else
- the 'other relevant information' box on the certificate is not right

Full details of the disputes process is provided under: <https://www.mygov.scot/disclosure-dispute/>

## **15 APPLYING TO HAVE A 'SPENT' CONVICTION REMOVED FROM A DISCLOSURE CERTIFICATE**

If an individual has a spent conviction for an offence on the rules list, they can apply to have it removed from their disclosure certificate if they think it is not relevant to their work. To obtain a new certificate with the convictions removed, an individual must apply to a sheriff. To apply, they must:

- make sure the conviction is spent and is on the rules list
- contact Disclosure Scotland within 10 working days of the date of issue on the certificate
- make an application to the sheriff within 3 months of telling Disclosure Scotland they are going to apply. (The application to the Sheriff can take up to six months to process, depending on their case load)

Once the individual has informed Disclosure Scotland that they want to apply to a sheriff, the counter signatory's (employer) copy of the disclosure cannot be sent out until the sheriff has reached a decision on the application. This may delay an employer from making a job offer.

When applying to a sheriff an individual should:

- apply to their local sheriff court
- inform the clerk of the sheriff court that they want to make a summary application in relation to the Police Act 1997 and the Protection of Vulnerable Groups Act 2007 remedial (No 2) order 2015
- make sure to include relevant information such as the date of their certificate and date of appeal notification to Disclosure Scotland

Full details of the process are provided under the links below:-

Police Act <http://www.legislation.gov.uk/ukpga/1997/50/contents>  
 PVG <http://www.legislation.gov.uk/ssi/2015/423/contents/made>

## 16 POLICE ACT DISCLOSURES

The **Police Act 1997, Part V**, covers those posts that are not caught by the PVG Scheme. A Disclosure contains criminal history information which can be used by employers to make safer recruitment decisions. There are three types of Disclosure:

### **Basic Disclosure** (Criminal Conviction Certificate)

A Basic Disclosure contains details of convictions **unspent**, under the Rehabilitation of Offenders Act 1974. It is not job specific or job related, and is available to anyone for any purpose. It is normally only issued to the applicant, but can be issued to the prospective employer i.e. the Council, with the approval of the applicant.

This may be used as a minimum check for posts which are not covered by the PVG scheme, or where the legislation does not allow a Standard disclosure.

Further details on Basic Disclosures can be found under:

<https://www.mygov.scot/basic-disclosure/apply-for-basic-disclosure/>

### **Standard Disclosure** (Criminal Record Certificate)

A Standard Disclosure is available for those applying for positions listed in the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2013, and contain all conviction information, **spent** and **unspent**, including cautions.

Further details on Standard Disclosures can be found under:

<https://www.mygov.scot/standard-disclosure/>

### **Enhanced Disclosure** (Enhanced Criminal Record Certificate)

An Enhanced Disclosure is for people (**not employees**) involved in child care including child minding, day care and foster parents.

Further details on Enhanced Disclosures can be found under:

<https://www.mygov.scot/enhanced-disclosure/>

## **17 PROFESSIONAL REGISTRATION**

A worker who is required to be a PVG member as part of registering with their respective governing body, e.g. GTC Scotland, SSSC, will be checked by the governing body solely in relation to the registration process. It is a separate process from the check carried out by Aberdeen City Council as an employer or prospective employer.

However, as part of the interview process, shortlisted candidates must provide evidence of their registration with the relevant professional body, where it is a requirement of the job.

## **18 POLICY ON THE SECURE HANDLING, USE, STORAGE AND RETENTION OF DISCLOSURE SCOTLAND INFORMATION**

Aberdeen City Council complies fully with the Code of Practice, issued by Scottish Ministers, regarding the correct handling, holding and destroying of Disclosure information provided by Disclosure Scotland under Part V of the Police Act 1997 ("the 1997 Act"), for the purposes of assessing applicants' suitability for employment purposes, voluntary positions, licensing and other relevant purposes. It also complies fully with the Data Protection Act 1998 and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure Scotland information.

## **19 REVIEW OF GUIDANCE**

This guidance will be reviewed every 3 years and will be subject to continual review and amendment in light of experience of its operation, employment best practice and statutory requirements.

## ABERDEEN CITY COUNCIL

## RECRUITMENT OF EX-OFFENDERS

**Policy Statement**

1.	The Council complies fully with the Code of Practice, issued by Scottish Ministers, in connection with the use of information provided to registered persons, their nominees and other recipients of information by Disclosure Scotland under Part V of the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007, for the purposes of assessing applicants' suitability for employment purposes. The Council undertakes to treat all applicants for positions fairly and not to discriminate unfairly against the subject of a Disclosure on the basis of convictions or other information revealed.	Section 122 of the Police Act 1997  Protection of Vulnerable Groups (Scotland) Act 2007  The Rehabilitation of Offenders Act 1974
2.	This policy statement is made available to all Disclosure applicants at the outset of the recruitment process.	Best Practice, based on model Policy from Disclosure Scotland
3.	The Council is committed to equality of opportunity, to following practices, and to providing a service which is free from unfair and unlawful discrimination. It ensures that no applicant or member of staff is subject to less favourable treatment on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation or offending background, or is disadvantaged by any condition which cannot be shown to be relevant.	The Council's Diversity and Equality Policy.  Expectation of Scottish Ministers
4.	The Council actively promotes equality of opportunity for all with the right mix of talent, skills and potential, and welcomes applications from a wide range of candidates, including those with criminal records. The selection of candidates for interview will be based on skills, qualifications, experience and behaviours.	The Council's Diversity and Equality Policy
5.	The Council will request a Disclosure only where this is considered proportionate and relevant to the particular position. This will be based on a thorough risk assessment of that position and having considered the relevant legislation which determines whether or not a Basic or Standard Disclosure under the 1997 Act or a PVG Scheme Record under the 2007 Act is applicable for the position in question. Where a Disclosure is deemed necessary for a post or position, all applicants will be made aware at the initial recruitment stage that it will be subject to a Disclosure and that the Council will request the individual, selected as the preferred candidate, to undergo an appropriate Disclosure check.	The Police Act 1997  Protection of Vulnerable Groups (Scotland) Act 2007  Disclosure Scotland Code of Practice (Section 122 of Part V of the Police Act 1997)
6.	Where a Standard Disclosure forms part of the recruitment process, the Council will request all shortlisted candidates to provide details of their criminal record, subject to rules, by completing a Criminal Convictions Declaration Form. Where a Basic Disclosure forms part of the recruitment process shortlisted candidates will be required to complete a Criminal Convictions Declaration Form, providing details of unspent convictions. In both cases, only the form for the preferred candidate will be looked at by the appointment panel. Where membership of the PVG Scheme is a requirement of a post, applicants will not be required to complete a Criminal Convictions Declaration Form, with all relevant criminal record information contained on the PVG certificate.	Rehabilitation of Offenders Act 1974  Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions (Scotland) Amendment Order 2015

7.	In line with the Rehabilitation of Offenders Act 1974, the Council will only ask about convictions which are defined as "unspent" in terms of that Act, unless the nature of the position is such that it is legally entitled to ask questions about an individual's entire criminal record, subject to rules. All the shortlisted candidates (excluding those applying for PVG posts) will be asked to complete a Criminal Convictions Declaration Form and take this with them to their interview in a sealed envelope. Only the form completed by the preferred candidate will be viewed and vetted by the appointment panel to consider any relevant convictions and the individual's suitability for the post.	Rehabilitation of Offenders Act 1974  Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2015 Police Children & Young Person's Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2015.
8.	The Council undertakes to ensure an open and measured discussion on the subject of any offences or other matters that might be considered relevant for the position concerned. Failure to reveal information that is directly relevant to the position sought could affect an individual's application for employment or lead to their dismissal. Members of any appointment panel will take account of the differing interests and circumstances of each appointment, when making a final decision on the preferred candidate.	Rehabilitation of Offenders Act 1974
9.	The Council undertakes to discuss any matter revealed in a certificate <sup>1</sup> under the 1997 Act or a Scheme Record issued under the 2007 Act with the subject of that Disclosure before considering withdrawing preferred candidate status.	Disclosure Scotland Code of Practice
10.	The Council will ensure that all those who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of Disclosure information. It will also be ensured that they have received appropriate guidance and training in the relevant legislation relating to employment of ex-offenders (e.g. the Rehabilitation of Offenders Act 1974).	The Council's Guidance on Managing Recruitment and Selection  Rehabilitation of Offenders Act 1974
11.	The Council undertakes to make every subject of a Disclosure aware of the existence of the Code of Practice, a copy of which can be obtained from the Disclosure web site by following this link <a href="https://www.mygov.scot/disclosure-code-of-practice/">https://www.mygov.scot/disclosure-code-of-practice/</a>	Disclosure Scotland Code of Practice
	HAVING A CRIMINAL RECORD WILL NOT NECESSARILY EXCLUDE AN INDIVIDUAL FROM WORKING WITH ABERDEEN CITY COUNCIL. THIS WILL DEPEND ON THE NATURE OF THE POSITION, TOGETHER WITH THE CIRCUMSTANCES AND BACKGROUND OF THE OFFENCES COMMITTED OR OTHER INFORMATION CONTAINED ON A DISCLOSURE CERTIFICATE OR PROVIDED DIRECTLY TO THE COUNCIL BY A POLICE FORCE.	The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 (safer recruitment)  Rehabilitation of Offenders Act 1974

<sup>1</sup> The Council is only able to discuss what is contained on a Disclosure Certificate and not what may have been sent under separate cover by a police force.

## ABERDEEN CITY COUNCIL

## RECRUITMENT OF EX-OFFENDERS

## Outline of Provisions

**The *Rehabilitation of Offenders Act 1974* – Outline of Provisions**

This document has to be read in conjunction with Aberdeen City Council's Policy Statement on the Recruitment of Ex-Offenders

1. The *Rehabilitation of Offenders Act 1974* (ROA) sets out to improve the rehabilitation prospects of people who have been convicted of a criminal offence and served their sentence. Under the terms of the Rehabilitation of Offenders Act (1974) (Exclusions and Exceptions) (Scotland) Amendment Order 2016 offenders are not required to self-disclose spent convictions at the point of applying for a job, and cannot be prejudiced for not disclosing at that point. That protection is only removed at the point a PVG Record or Disclosure Certificate i.e. a 'state disclosure' is sent by Disclosure Scotland. Generally speaking, the ROA provides that a spent conviction need not normally be disclosed when a person is asked about his or her previous record.

The 2016 Order means that an individual only has to declare unspent convictions, unspent cautions or **'offences which must always be disclosed'** (spent or unspent). They do not need to disclose other spent convictions for **'offences which are subject to rules'**.

The overarching policy objective of 'The 2016 Order' is to remove the legal requirement for all spent convictions to be self-disclosed i.e. restricts the requirement for self-disclosure. It introduces the concept of a 'protected conviction' which does not require to be self-disclosed once spent.

The '2016 Order' also modifies 'the Order' to apply only to spent convictions when it is appropriate to require a person to self-disclose, and introduces two Schedules:-

1. Offences which must always be self-disclosed.
2. Offences which may become protected if conditions are satisfied, i.e. offences which are 'subject to rules'.

Disclosure Scotland will therefore cease to disclose all convictions on higher level disclosures (PVG Records and Standard and Enhanced Disclosure Certificates). The offences which are 'subject to rules', may be disclosed depending on when the conviction was received, the age of the offender at the date of conviction and the sentence received.

The legislation now allows for an appeal process if a candidate feels there is a spent conviction included on the 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 countersignature's copy will be released from day eleven. If the applicant is happy with the content of the disclosure

and is happy for it to be released and advises Disclosure Scotland of that, it will be issued to the counter signatory at that point. Therefore, the release of information may be delayed.

They only need to disclose spent convictions for 'offences which are subject to rules' if they are not appealing for the spent conviction to be removed by a Sheriff or if the Sheriff has concluded that the spent conviction should remain on the PVG Record or Disclosure Certificate.

However, due to an individual's right to request for spent convictions of 'offences which are subject to rules' to be removed from a PVG Record or Disclosure Certificate, they will, without prejudice, not be required to disclose any of these spent convictions prior to the PVG Record or Disclosure Certificate being sent to the employer.

2. However, there are some categories of employment to which the ROA does not apply and for the purposes of which convictions otherwise defined as spent have still to be disclosed. These categories of employment may be regarded as "exclusions" from the provisions in ROA which allow an offender to avoid disclosing spent convictions in response to questions. ROA allows the list of exclusions to be specified in secondary legislation. The types of employment where questions about spent convictions can be asked include teaching, social work, accounting, legal and health professions.
3. Where the Police Act 1997 refers to asking "exempted questions", it means asking questions about spent convictions, 'subject to rules', in circumstances in which the usual effects of ROA (section 4(2)(a) or (b)) have been excluded by order made by the Scottish Ministers.
4. The current provision for Scotland (at the time of printing of this Guide) on matters excluded from section 4(2)(a) and (b) of ROA is the *Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2016*.

**Details of the most recent Exclusions and Exceptions Orders are available on the Publications page of Disclosure Scotland's website at [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk) under "Legislation".**

## **Introduction**

The aim of this policy is to state Aberdeen City Council's approach towards employing people who have criminal convictions. The Council uses information provided by Disclosure Scotland to assess applicants' suitability for positions of trust, and in doing so the Council complies fully with the Disclosure Scotland Code of Practice and undertakes to treat all applicants for positions fairly. It undertakes not to discriminate unfairly against any subject of a Disclosure on the basis of a conviction or other information revealed. The Council's Policy Statement is made available to all persons for whom a request is made for a Disclosure Scotland check, at the outset of the recruitment process.

The Council is committed to equality of opportunity for all job applicants and aims to select people for employment on the basis of their individual skills, abilities, experience, knowledge and, where appropriate, qualifications and training. It is committed to fair treatment of its staff, potential staff or users of its service, regardless of age, disability,

gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation or offending background.

Where a Basic or Standard disclosure is to form part of the recruitment process, the Council requests all applicants called for interview to provide details of their criminal record on a Criminal Convictions Declaration Form. Basic or Standard disclosure information is sent under separate, confidential cover, to a designated person within the Council and it is guaranteed that this information will only be seen by those who need to see it as part of the recruitment process. This part of the process does not apply to those individuals applying for positions that require membership of the PVG scheme.

It is ensured that all those employees involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences. It is also ensured they have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act (1974) (Exclusions and Exceptions) (Scotland) Amendment Orders 2013 and 2016.

It is also ensured that an open and measured discussion takes place with a preferred candidate on the subject of any offences or other matter that might be relevant to the position, before a decision is made on whether or not to make a job offer. Failure by a preferred candidate to reveal information that is directly relevant to the position sought could lead to withdrawal of preferred candidate status. The Council undertakes to discuss any matter revealed in a disclosure with the person seeking the position before withdrawing preferred candidate status.

The Council will therefore consider ex-offenders for employment on their individual merits. However, its approach towards employing ex-offenders does take account as to whether the job is or is not exempt from the provisions of the Rehabilitation of Offenders Act 1974.

### **The Rehabilitation of Offenders Act 1974**

The Council will not automatically refuse to employ a particular individual just because she or he has a previous criminal conviction. As part of the recruitment process for posts that require a Basic or Standard Disclosure shortlisted applicants will be required to complete a self-declaration form detailing all unspent convictions, and spent convictions subject to rules. This requirement does not apply to those individuals applying for positions that require membership of the PVG scheme.

If a preferred candidate has a conviction that is not spent and if the nature of the offence is relevant to the job for which s/he has applied, the individual circumstances of the case will be reviewed. The Council may, at its discretion, decide not to offer the individual employment.

### **Jobs that are exempt from the Rehabilitation of Offenders Act 1974**

If the job into which the Council is seeking to recruit is one of the excluded jobs listed in the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2013, it will require shortlisted applicants to self-disclose all convictions, whether spent, (subject to rules), or unspent. Even in these circumstances, however, the Council will not refuse to employ a particular individual unless the nature of the conviction



has some relevance to the job for which the individual has applied. Those applying for positions that require membership of the PVG scheme are not required to complete a self-disclosure form.

Once a preferred candidate has been selected the Council will obtain a Scheme Record Update for PVG posts and a Basic or Standard Disclosure Certificate for non PVG posts from Disclosure Scotland, being documentary evidence about that person's criminal record. The Council will pay the relevant fee.

The Council is committed to ensuring that all information provided about an individual's criminal convictions, including any information released in a disclosure, is used fairly and stored and handled appropriately and in accordance with the provisions of the Data Protection Act 1998. Data held on file about an individual's criminal convictions will be held only as long as it is required for employment purposes and will not be disclosed to any unauthorised person.

# POLICY STATEMENT ON THE SECURE HANDLING, USE, STORAGE AND RETENTION OF DISCLOSURE SCOTLAND INFORMATION

## General Principles

1. Aberdeen City Council complies fully with the Code of Practice, issued by Scottish Ministers, regarding the correct handling, holding and destroying of Disclosure information provided by Disclosure Scotland under Part V of the Police Act 1997 (“the 1997 Act”), for the purposes of assessing applicants’ suitability for employment purposes, voluntary positions, licensing and other relevant purposes. It also complies fully with the Data Protection Act 1998 and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure Scotland information.

## Usage

2. We use Disclosure information only for the purpose for which it has been provided. The information provided by an individual for a position within Aberdeen City Council is not used or disclosed in a manner incompatible with the purpose. We process personal data only with the express consent of the individual. We notify the individual of any non-obvious use of the data, including further disclosure to a third party, identifying the Data Controller, the purpose for the processing, and any further relevant information.

## Handling

3. Aberdeen City Council recognises that, under section 124 of the 1997 Act, it is a criminal offence to disclose Disclosure information to any unauthorised person. We, therefore, only pass Disclosure information to those who are authorised to see it in the course of their duties. Aberdeen City Council will not disclose information provided under subsection 113(B) (5) of the 1997 Act namely information which is not included in the Disclosure, to the applicant.

Disclosure information will only be passed to those who are authorised to see it in the course of their duties:

- a) a member, officer or employee of the registered body,
- b) a member, officer or employee of a body whose request the registered body countersigned the relevant application, or
- c) an individual at whose request the registered body countersigned the relevant application.

Information provided under section 115(8) of the Act, namely additional information provided by Chief Constables in Enhanced Disclosures, will not be disclosed to the individual who is the subject of the Disclosure. If specifically requested to disclose such information, for example if a subject access request is made in terms of section 7 of the Data Protection Act 1998, the Council will obtain the written permission of the Chief Constable who provided the information prior to considering whether the Council is obliged to disclose the information.

## **Access and Storage**

4. We do not keep Disclosure information on an individual's personal file. It is kept securely, in lockable, non-portable storage containers. Access to storage units is strictly controlled to authorised and named individuals, who are entitled to see such information in the course of their duties.

## **Retention**

5. We do not keep Disclosures or Disclosure information for any longer than is required after a recruitment (or any other relevant) decision has been taken. In general, this is no longer than 90 days. This is to allow for the resolution of any disputes or complaints. Disclosure information will only be retained for longer than this period in exceptional circumstances which justify retention for a longer period. The same conditions relating to secure storage and access will apply during any such period.

## **Disposal**

6. Once the retention period has elapsed, we will ensure that Disclosure information is immediately destroyed in a secure manner i.e. by shredding, pulping or burning. Aberdeen City Council will ensure that Disclosure information which is awaiting destruction will not be kept in any insecure receptacle (e.g. a waste bin or confidential waste sack). We will not retain any image or photocopy or any other form of the Disclosure information. We will, however, keep a record of the date of issue of the Disclosure, the name of the subject, the Disclosure type, the position for which the Disclosure was requested, the unique reference number of the Disclosure and details of the recruitment decision taken.