

HR Policy & Procedure: Recruitment of Ex-Offenders

Version: 4.8



Contents

Section 1: [Introduction](#)

Section 2: [Policy Statement](#)

Section 3: [Procedure](#)

Related HR Links

[Recruitment: choosing a candidate](#)

[Disclosure Scotland](#)

Version Control

| Version Number | Effective Date | Details of Last Revision |
|----------------|----------------|---|
| 4.8 | 10/10/22 | Updated as a result of new legislation: Management of Offenders (Scotland) Act 2019 |
| 4.7 | 20/10/21 | Update with links to new Connects |
| 4.6 | 10/12/20 | Update onto new accessibility policy template |
| 4.5 | 05/09/18 | Update to the process for Criminal Convictions Form |
| 4.4 | 09/03/18 | Clauses 3.3 and 3.8 updated, new clause 2.6 re PVG Remedial Order 2018 added |
| 4.3 | 08/03/17 | Update to include legislative changes |
| 4.2 | 21/08/15 | Updated to replace reference to Navigate with 'Connects' |
| 4.1 | 11.07.14 | Updated onto new policy template |

Equality Impact Assessment: June 2013

Prepared by: HR Team

1. Introduction

- 1.1 North Ayrshire council has undertaken work to ensure that people with convictions are treated within best practice guidelines when applying for work. All applicants are asked to declare any convictions within the current laws.
- 1.2 We will take into account relevant information about what was involved in offending and convictions are not an automatic bar to employment with North Ayrshire Council. This does not mean that all those with convictions will be employed but we will treat applicants equitably.
- 1.3 The Rehabilitation of Offenders Act 1974 provides protections for those with convictions in the recruitment process. Following a defined “rehabilitation period”, convictions can become “spent” and are not disclosed during the recruitment process.
- 1.4 It is lawful to take into account “unspent” convictions during recruitment but it is unlawful for employers, or prospective employers, to take into account “spent” offences in relation to which the person concerned is deemed to have been legally rehabilitated.
- 1.5 The Management of Offenders (Scotland) Act 2019 was introduced to amend provisions previously covered in the Rehabilitation of Offenders Act 1974 with regards to the times for disclosing previous convictions. The provisions of the Act work to support people with convictions on the path to employment.
- 1.6 The time periods are now much shorter and means that many convictions are likely to now be spent. The changes are applied to all convictions in Scotland and older convictions are treated within the Management of Offenders time periods.
- 1.7 Part V of the Police Act 1997, and the protection of Vulnerable Groups (Scotland) Act 2007, are aimed at helping employers and other organisations assess the suitability of applicants for particular posts and to make safer recruitment decisions in relation to positions of trust by widening access to criminal record information.
- 1.8 To this end, the Act provides for the issue of various criminal conviction certificates. In Scotland, these certificates are issued by Disclosure Scotland and are known as Basic, Standard or Enhanced Disclosures. In addition, people undertaking regulated works receive a PVG Scheme Record or PVG Scheme Record Update.
- 1.9 It also ensures that in checking the background of people who want to work with vulnerable groups or in other sensitive roles, the information provided continues to protect the public but balances that public interest with the rights of individuals to have their private life respected.

2. Policy Statement

- 2.1 North Ayrshire Council complies fully with the Disclosure Scotland Code of Practice, issued by Scottish Ministers, in connection with the use of information provided to registered persons and other recipients of information by Disclosure Scotland under Part V of the Police Act 1997, or the Protection of Vulnerable Groups (Scotland) Act 2007 for the purposes of assessing applicants' suitability for positions of trust.
- 2.2 North Ayrshire Council is committed to equality of opportunity, to following practices, and to providing a service that is free from unfair and unlawful discrimination. We will ensure that no employee or potential employee is subject to less favourable treatment and will not discriminate unfairly against any subject of a Disclosure/PVG Scheme Record check based on conviction or other information revealed.
- 2.3 The Council promotes safe and sustainable recruitment and employment of individuals who have previous convictions. Having a criminal record will not necessarily debar applicants from working for North Ayrshire Council. This will depend on the nature of the post and the circumstances and background of offences.
- 2.4 The Rehabilitation of Offenders Act 1974 and Management of Offenders (Scotland) Act 2019 detail a process by which convictions become "spent" following a set time or "Disclosure Period" (Appendix 1) related to the severity of the offence. While a conviction is still within its disclosure period it is considered to be "unspent" and is made available to employers. The full list of Scottish Disclosure periods is available at the [Gov website](#).
- 2.5 It is during that time that it is legal to discriminate on the grounds of that conviction. This does not always mean that unspent convictions will be relevant to job roles and not all those who disclose a conviction will be excluded from employment.
- 2.6 Once a conviction has passed its disclosure period then it will not be made available and become a "spent" conviction, it then becomes unlawful to discriminate on the grounds of this information.
- 2.7 Having a conviction does not mean that people will reoffend. There is evidence that after 5 years someone with a conviction is no more likely to offend than someone who has never been convicted.
- 2.8 Where there is access to vulnerable people or privileged information then posts may be listed as "Exempt" from the 1974 Act and the protections of spent convictions do not apply.
- 2.9 When a post is exempt from the 1974 Rehabilitation of Offenders Act, the majority of roles will fall within the Protecting Vulnerable Groups (PVG) Scheme, this means that both spent & unspent information is available as well as Other

Recruitment of Ex-Offenders Policy & Procedure

- 2.10 Relevant Information (ORI) which has a bearing on the persons suitability for such roles. Some posts are still subject to Standard or Enhanced disclosure within specific circumstances & departments.
- 2.11 Where posts are within the PVG scheme, members must be deemed as fit person to work with Children or Vulnerable adults and can be members of either or both schemes. If an applicant or staff member is Barred from the PVG system, they cannot undertake work with the vulnerable and it is an offence for them to seek work. North Ayrshire Council will never employ anyone within the PVG system who has been barred from the relevant scheme.
- 2.12 When a post is within the PVG scheme it does mean that privileged information is made available in order that relevant assessment can take place in order to ensure the protection of Children & Vulnerable people. Again, it should be made clear that although information on job applicants' previous convictions is made available it does not mean they will be unsuitable for employment.
- 2.13 There are now rules within the 2015 Amendments to PVG which allow historic offences to be removed from PVG records, these convictions are treated as "protected" and need to pass certain tests before they are protected. These convictions must first appear on the PVG rules lists, these can be viewed at the [Gov website](#).
- 2.14 There are two lists firstly, those "Disclosed according to rules" or less serious convictions, and "Offences that must be disclosed, "Unless a Sheriff orders otherwise" or more serious convictions.
- 2.15 For offences to be protected they must be spent under the Management of Offenders (Scotland) Act 2019, disclosure periods and individuals convicted 15 years previously for adults (over 18) or 7.5 years for under 18's.
- 2.16 Those convictions listed as less serious "Disclosed according to rules" will in most cases be automatically removed after 15 years from applicants PVG scheme membership record.
- 2.17 For convictions that are "Unless a Sherrif orders otherwise" or more serious the individual must apply for their conviction(s) to be removed. A submission must be made to the court where the individual was convicted and the relevant sheriff may then agree to protect that conviction.
- 2.18 Although convictions may be protected there remain provisions to allow for relevant concerns to be reported through the use of Other Relevant Information where there are concerns for the vulnerable.
- 2.19 A copy of this policy will be made available to all Disclosure/PVG Scheme applicants at the outset of the recruitment process. The Disclosure/PVG systems are not always well understood and in particular the removal or protection of historic offences is not widely known.
- 2.20 Each Disclosure/PVG Scheme Record contains the date the record was produced. The Disclosure/PVG Scheme Record is accurate as of this date.

2.21 There is no provision in the Police Act 1997 or the Protection of Vulnerable Groups (Scotland) Act 2007 in relation to timescales for reapplying for a Standard or Enhanced Disclosure or conducting a PVG Scheme Record Update. The responsibility to apply a timescale for re-application to Disclosure Scotland, depending on nature of work, recommendations from Care commission and other appropriate bodies, is allocated to each Director/Head of Service.

3. Procedure

3.1 We will only request a Basic/Standard/Enhanced Disclosure or PVG Scheme Record where it is necessary and relevant to the position sought. Further guidance is available in the HR Guide: Levels of Disclosure and PVG Checks Available.

3.2 Where a post requires a Disclosure/PVG Scheme Record, the job advert will contain a statement advising the post is subject to a Disclosure/PVG Scheme Record check. The Council will ensure that an individual's consent is given before seeking a Disclosure/PVG Scheme Record.

3.3 As part of the normal recruitment process all preferred candidates (after interview) are required to provide details of their criminal record. This information is requested by the HR Resourcing team. The candidate will complete the [Criminal Convictions Declaration Form](#) online or provide us with a "Disclosure Letter" which can be attached to the Criminal Convictions Declaration Form. It is a condition of working for North Ayrshire Council that you answer all the questions on this form and that you do not withhold any information, except as provided under the Rehabilitation of Offenders Act 1974 and Management of Offenders Act (Scotland) 2019.

3.4 Failure to reveal information at that point which, in the Council's view, is directly relevant to the position sought could lead to withdrawal of an offer of appointment, or if you have already been appointed, to your dismissal.

3.5 Human Resources will seek the relevant Disclosure or PVG Scheme Record (within 48 hours of receipt of accurate paperwork) when a provisional offer of employment is made. This offer will be subject to satisfactory clearance by the Council of the information provided by Disclosure Scotland.

3.6 Under no circumstances should an employee be placed in a position of trust until satisfactory clearance by the Council of the information provided by Disclosure Scotland.

3.7 In considering practical issues, where an employee is required to start work prior to their Disclosure check being returned, this time should be used for induction and training purposes and the employee must always be supervised if pending a PVG check.

3.8 The relevant Head of Service will be advised of the result of the Disclosure/PVG Scheme Record. Where the Disclosure/PVG Scheme Record is returned

Recruitment of Ex-Offenders Policy & Procedure

advising "No Trace" i.e. nothing found, Human Resources will notify the designated officer within the Service to advise when all preemployment checks are complete and satisfactory. Where there is anything listed in the Disclosure/PVG Scheme Record then the Criminal Conviction Declaration form and a copy of the Disclosure will be sent to the Head of Service by e-mail, for consideration. Advice and guidance on individual circumstances is available from Human Resources. The Head of Service will then respond to HR Resourcing with their decision.

- 3.9 We undertake to discuss any matter revealed in a Disclosure/PVG Scheme Record with the subject of that Disclosure/PVG Scheme Record before withdrawing a conditional offer of employment. Where the subject of the disclosure has commenced employment with the Council, where relevant, the normal Disciplinary Procedures will be followed.
- 3.10 In accordance with Disclosure Scotland Guidelines, Disclosure information will be retained for a maximum 90-day period to allow for any dispute about the accuracy of a Disclosure or a recruitment decision to be made and considered. We will however keep a record of the issue date of the Disclosure information, the name of the subject, the date of birth of the subject, the type of Disclosure, the position in question, the unique number issued by the Disclosure Bureau and the recruitment decision taken. Full details of the security of Disclosure information can be found in the Council's Secure Handling, Use, Storage and Retention of Vetting Information Policy and Procedure.

Appendix 1

| Sentence | Disclosure period - aged 18 or over when convicted | Disclosure period - aged under 18 when convicted |
|---|--|--|
| Custodial sentence not exceeding 12 months | Term of sentence plus two years | Term of sentence plus one year |
| Custodial sentence exceeding 12 months but not exceeding 30 months | Term of sentence plus four years | Term of sentence plus two years |
| Custodial sentence exceeding 30 months but not exceeding 48 months | Term of sentence plus six years | Term of sentence plus three years |
| A fine | 12 months | Six months |
| A compensation order | 12 months | Six months |
| An endorsement made by a court | Five years | Two years and six months |
| A sentence of cashiering, discharge with ignominy or dismissal with disgrace from Her Majesty's service. | 10 years | Five years |
| A sentence of dismissal from Her Majesty's service. | Seven years | Three years and six months |