

Recruitment of Ex Offender Policy

The purpose of this policy is to ensure consistent and fair practices are implemented for the recruitment of staff or volunteers who have a criminal record to paid/unpaid child care and vulnerable posts within [Your organization/club/group/name].

[Your organization name] undertakes to treat all applicants for positions within the organization fairly and not to discriminate unfairly against the subject of a disclosure on the basis of conviction or other information revealed.

Having a criminal record will not necessarily de-bar an individual from working/volunteering in a child care/Adults at Risk position within this organization. Only convictions or conviction information that is deemed relevant to the position applied for will result in an applicant not being granted the position.

This organization implements a fair recruitment policy that ensures individuals have the opportunity to disclose any convictions or conviction information in a way that allows for a clear risk assessment to be carried out that will determine whether or not the conviction or conviction information is relevant to the position applied for.

To ensure the correct applicant is appointed and to enable [name of your organization] to determine the relevance of any convictions or conviction information to positions applied for [Your organization name] will use the following recruitment tools:

- Application Form
- Self-Declaration Form (see appendix 1, and 2a)
- References
- Interviews
- Disclosure Certificate

As part of [Your organization name] recruitment policy we request the appropriate level of Disclosure certificate at the final part of the recruitment stage, when a position has been offered.

Enhanced Disclosure certificates will only be sought for positions that are deemed to be exempted posts. An exempted post is one, which is detailed in the Exclusions and Exceptions (Scotland) Order 2003 (see appendix 3).

Under the Rehabilitation of Offenders Act 1974, ex-offenders have the right not to reveal spent convictions. However, additional legislation (the Exclusions and Exceptions (Scotland) Act 2003) allows for employers to ask for an applicant to detail their full criminal record history.

One of the positions listed in the Exclusions and Exceptions (Scotland) Order 2003 is a child care position. The definition of a child care position is defined in Schedule 2 of the Protection of Children (Scotland) Act 2003 (PoCSA).

Applications for Child Care and Adults at Risk Positions

Where a position requires an Enhanced disclosure we make this clear on the application form, job advert, self-declaration form and any other information provided about the post. All applicants are required to complete an application form, self-declaration form, interview and give details of 2 referees.

Self-Declaration Forms:

Self-Declaration Forms will be viewed by the Interview Panel/Lead Signatory/Additional Signatory/Committee* before interview to determine the relevance of any disclosed information to the position applied for.

When assessing the relevance of any convictions or conviction information the Interview Panel/Lead Signatory/Additional Signatory/Committee* will look at the following information:

- Whether the conviction is relevant to the position being offered
- The seriousness of the offence revealed.
- The length of time since the offence took place
- Whether the applicant has a pattern of offending behaviour
- Whether the applicant's circumstances have changed since offending took place
- How the individual completed their sentence to move forward and stop the offending behaviour

Should the Interview Panel/Lead Signatory/Additional Signatory/Committee* decide that the information is relevant to the post the applicant will be deemed to have been unsuccessful and this information will be fed back to the applicant by letter.

For applicants who have disclosed convictions or conviction information that is not deemed to be relevant to the post an interview will take place.

At interview we will ensure that open, measured and relevant discussions can take place on the subject of any disclosed offences.

Failure to reveal information on the Self-Declaration Form or at interview that is directly relevant to the position sought will lead to the withdrawal of the offer of paid/unpaid work.

The appropriate level of Disclosure certificate will be accessed once the applicant has successfully completed the interview and the paid/unpaid position has been offered.

Should the returned Disclosure certificate disclose more offences, more serious offences or relevant non-conviction information than previously disclosed by the applicant this could lead to the withdrawal of offer of employment/volunteer post. This will be a decision for the Interview Panel/Lead Signatory/Additional Signatory/Committee to make.

However should the Disclosure certificate for a Child Care position reveal that the applicant is Fully Listed on the Disqualified from Working with Children's List under no circumstances will the applicant be offered or entitled to work/volunteer in a child care position for [name of your organization]

All Disclosure Certificates accessed for successful applicants will be stored for a maximum of 6 months by [Name of Lead Signatory/Additional Signatory] as per our [Name of your organization] policy on storage, handling and retention policy.

* Delete as appropriate

Appendix 1

Self-Declaration Form for a Child Care position requiring an Enhanced Disclosure

Private and confidential

The post that you have applied for is for a child care position. The position is therefore exempt from the Rehabilitation of Offenders Act 1974 by the Exclusions and Exceptions (Scotland) Order 2003. You are therefore required to disclose all convictions (spent and unspent), cautions and any relevant non-conviction information.

Part A: Previous convictions – this section should be completed by all applicants.



Date(s) of conviction(s):

Court(s) where your conviction(s) were heard:

Type of offence(s):

Sentence(s) received

Please give details of the reasons and circumstances that led to your offence(s)

Please give details of how you completed the sentence(s) imposed, (for example did you pay your fine(s) as required; what conditions were attached to your probation/community service/supervised attendance order(s), did you comply with the requirements of your custodial sentence(s).

Have any other organisations supported you to work through any of the above issues/difficulties?

What have you learned from your experience?

Part B – Details of any disciplinary action relating to behaviour to children and young people – this section should be completed by all applicants

Have you been disciplined because of inappropriate behaviour towards a child or young person, which may have harmed them or put them at risk of harm? **YES/NO**

If YES, please give details.

Part C: Police Investigations – this should include relevant police non-conviction information.

Date of investigation(s):

Police Division(s) involved:

Details of investigation(s)

Please give details of the reasons and circumstances that led to your investigation(s):

Disposal(s) if known:

Are you, or have you ever been, known to any Social Work Department/Social Services Department (in England and Wales) as an actual or potential risk to children?

YES/NO

If yes, please provide details

Part D: The *Protection of Children (Scotland) Act 2003* Self Declaration – this section should be completed by all applicants.

Before answering the question below, please read the following notes

Section 11 of the *Protection of Children (Scotland) Act 2003* **creates a new offence which an individual who is disqualified from working with children will commit** if they apply for, offer to do, accept or do any work in a child care position. An organisation will also be guilty of an offence if they knowingly employ (paid or unpaid) a disqualified person in a child care position.

Section 17 of the *Protection of Children (Scotland) Act 2003* defines “disqualified from working with children”. **It extends to Scotland disqualifications, which previously applied in England and Wales only.** A person is disqualified from working with children if they are:

- Included (otherwise than provisionally) in the Disqualified from Working with Children List established under section 1(1) of the *Protection of Children (Scotland) Act 2003*;
- Included (otherwise than provisionally) in the List kept under section 1 of the *Protection of Children Act 1999*;
- On List 99 and subject to direction under subsection (1)(a) of section 142 (prohibition from teaching etc.) of the *Education Act 2002* given on the grounds mentioned in subsection (4)(b) of that section, not to carry on work to which that section applies;
- Subject to a Disqualification Order within the meaning of the *Criminal Justice and Court Services Act 2000*.

To help us ensure we are complying with the new child protection laws, please complete the following declaration.

I _____ [full name in block capitals]

Of [address] _____

confirm that I am not subject to any of the disqualifications set out in section 17 of the *Protection of Children (Scotland) Act 2003*

OR

I am the subject of a disqualification from working with children under _____

I understand that deliberately giving false information can result in prosecution.

Signed _____ **Date** _____

Part E: Declaration –this section should be completed by all applicants

I hereby declare and represent that, except for as disclosed above, I have not at any time, whether in the United Kingdom or abroad, been found guilty and sentenced by a court for a criminal offence.

I give my consent to [name of organisation] carrying out a Disclosure check (if appropriate) and to requesting references for the purposes of verifying the replies given in this declaration, including enquiries of any relevant authority.

I agree to inform [name of organisation] if I am convicted of an offence after I take up any post within the organisation. I understand that failure to do so may lead to the immediate suspension of my work with children with the organisation and/or the termination of my services.

If I am appointed to a child care post, I agree to abide by the organisation's Code of Conduct and Child Protection Policy and Guidelines.

I agree to abide by the conditions above and certify that the information contained in this form is true and correct to the best of my knowledge and I realise that false information or wilful omissions may lead to the immediate suspension of my work with children or the termination of my services.

Signed: _____ **Date:** _____

Please note that any information you give in this form will be managed according to the organisation's Confidentiality Policy.

Section 2

Non-conviction relevant information:

Section 3

Declaration (I certify that all information contained in this form is true and correct to the best of my knowledge and realise that false information or omissions may lead to dismissal).

Signature: _____ **Date:** _____

NOTE: The information given in this form will be treated in the strictest confidence. Please seal this form in the addressed envelope provided and return prior to your interview.

Appendix 3

The Rehabilitation of Offenders Act 1974 – (Exclusions and Exceptions) (Scotland) Order 2003

Various kinds of employment, occupations and professions are exempted from the Act under the **Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003**.

To ensure adequate protection for the public exemptions have to be made so that information about “spent” convictions may not be withheld in certain circumstances. These exemptions are set out in statute – ‘The Exceptions Order’.

The Exceptions Order sets out the types of work and range of proceedings involving a particular level of trust to which the protection offered by the Rehabilitation of Offenders Act to ex-offenders is not available. Types of work include work with children, work with Adults at Risk, and employment involving the administration of justice, national security and financial services. ***It does not necessarily debar ex-offenders from these jobs.*** Generally it will be for an ***employer*** or other authorised person to make an ***assessment of the relevance of the conviction.***

However, if the ***person is seeking work in a child care position and their previous convictions are such that they have been included in the list that is provided for in the Protection of Children (Scotland) Act 2003 – the Disqualified from Working with Children’s List, it will be unlawful for the person to be employed in a child care position.***

In all circumstances, the person whose suitability for a position is being assessed must be informed when the question is asked that ‘spent’ convictions (or, in the case of financial services, ‘spent’ convictions for a relevant offence), are to be disclosed. Questions can for the most part only be asked to determine the suitability of the person seeking the post. It should be noted however that for child minding, adoption and fostering questions can be asked of the individual being assessed, and also those living or working in the same household.

In respect of those posts covered by the Exceptions Order, an employer or authorised body is generally entitled to know about all previous convictions, both ‘spent’ and ‘unspent’ and to take them into account in assessing an individual’s suitability for work. The only one area where the range of previous convictions which the employer or authorised body is entitled to know about is restricted, is in the financial service sector.

The Exceptions Order now makes it clear that questions about previous convictions can be asked of those who are seeking to train for any of the professions, offices, occupations or employments specified in the Order, and of those who are currently training for such positions.

EXCEPTED PROFESSIONS, OFFICES, EMPLOYMENTS, AND OCCUPATIONS

Professions

- Medical Practitioner
- Advocate, Solicitor
- Chartered Accountant
- Dentist, Dental Hygienist, Dental Auxiliary
- Veterinary Surgeon
- Nurse, Midwife, Health Visitor
- Ophthalmic Optician, Dispensing Optician
- Pharmaceutical Chemist
- Registered Teacher
- Any profession to which the Professions Supplementary to Medicine Act 1960 applies and which is undertaken following registration under the Act
- Registered Osteopath
- Registered Chiropractor
- Chartered Psychologist
- Actuary
- Registered European Lawyer, Registered Foreign Lawyer
- Social Worker
- Social Service Worker

Offices and Employments

- Judicial Appointments
- Prosecutors, Officers assisting prosecutors, and Officers assisting in the work of the Crown Office
- Signing Justices, and their Clerks and Assistants
- Clerks (including depute and assistant clerks) and officers of the High Court of Justiciary, and the Court of Session and the District Court, Sheriff Clerks (including Sheriff Clerk Depute) and their Clerks and assistants
- Precognition Agents
- Constables, Police Custody, Security Officers, Persons appointed as Police Cadets to undergo training with a view to becoming Constables and persons employed for the purposes of, or to assist the Constables of, a Police Force established under any enactment, Naval, Military and Air Force Police
- Any employment which is concerned with the administration of, or is otherwise normally carried out wholly or partly within the precincts of a prison, remand centre, young offenders institution, detention centre or removal centre, and members of visiting committees for prisons appointed under rules made under section 39 of the Prisons (Scotland) Act 1989(a) and members of visiting committees for remand centres and young offenders institutions appointed under section 19(3) of that Act
- Traffic wardens appointed under section 95 of the Road Traffic Regulation Act 1984(b) or section 9 of the Police (Scotland) Act 1967(c)
- **Any employment or work which is concerned with the provision of a care service**
- **Any employment or work which is concerned with the provision of health services and which is of such a kind as to enable the holder to have access to persons in receipt of such services in the course of that person's normal duties**
- **Any employment or work in a child care position**
- Any person who provides a service, or who seeks to provide a service under Part 4 of the Adults with Incapacity (Scotland) Act 2000(d)
- Any employment in the Scottish Society for the Prevention of Cruelty to Animals where the person employed or working, as part of his or her duties, may carry out the killing of Animals
- Any office or employment in the Serious Fraud Office
- Any office or employment in the National Crime Squad or the National Criminal Intelligence Service
- Any office or employment in Her Majesty's Customs and Excise

- Any employment which is concerned with the monitoring, for the purposes of child protection, of communications by means of the internet
- Any office or employment in the Scottish Social Services Council
- Her Majesty's Inspectors or any person appointed by the Scottish Ministers for the purposes of section 66 of the Education (Scotland) Act 1980(e) or section 9 of the Standards in Scotland's Schools etc. Act 2000(f)
- The principal Reporter or officers appointed under section 128(5) of the Local Government etc. (Scotland) Act 1994(g) to assist that officer
- Members of a panel established by virtue of section 101 (1) of the Children (Scotland) Act 1995 (h) (panels for curators *ad litem*, reporting officers and safeguarders)

Occupations

- Firearms dealer
- Any occupation in respect of which an application to the Gaming Board for Great Britain for a licence, certificate or registration is required by or under any enactment
- Any occupation which is concerned with the management of a place in respect of which the approval of the Secretary of State is required by section 1 of the Abortion Act 1967
- Any occupation in respect of which the holder, as occupier of premises on which explosives are kept, is required by an Order in Council made under section 43 of the Explosives Act 1875 to obtain from the police or a court of summary jurisdiction a certificate as to his fitness to keep explosives
- Taxi driver or private hire driver

Interpretation - In this schedule

'Actuary' means a member of the Institute of Actuaries or a member or student of the Faculty of Actuaries;

'Accountant' means a member of –

- (a) the Association of Certified Accountants;
- (b) the Institute of Chartered Accountants in Scotland;
- (c) the Institute of Chartered Accountants in England and Wales;
- (d) the Chartered Institute of Public Finance Accountants; or
- (e) the Chartered Institute of Management Accountants;

'Chartered Psychologist' means a psychologist included in the British Psychological Society's Register of Chartered Psychologists;

'child care position' has the meaning given by schedule 2 to the Protection of Children (Scotland) Act 2003(a);

'Firearms Dealer' has the meaning given by section 57(4) of the Firearms Act 1968(b);

'Health Services' means services provided under the National Health Service (Scotland) Act 1978(c) and similar services provided otherwise than under the National Health Service;

'Her Majesty's Inspectors' has the meaning given by section 135 of the Education (Scotland) Act 1980;

'Judicial Appointment' means an appointment to any office by virtue of which the holder has power (whether alone or with others) under any enactment or rule of law to determine any questions affecting the rights, privileges, obligations or liabilities of any person;

'Prosecutors' has the meaning given by section 307 of the Criminal Procedure (Scotland) Act 1995(d);

'Registered Chiropractor' has the meaning given by section 43 of the Chiropractors Act 1994(e);

'Registered Foreign Lawyer' and 'Registered European Lawyer' have the meaning given by section 65 of the Solicitors (Scotland) Act 1980(f);

'Registered Osteopath' has the meaning given by section 41 of the Osteopaths Act 1993(g);

'Registered Teacher' means a teacher registered under the Teaching Council (Scotland) Act 1965(h);

'work' has the meaning given by section 16 of the Protection of Children (Scotland) Act 2003.