

VARIABLE

Probation	Until the Order expires (if sentenced before 3rd February 1995 with a minimum of 1 year)
Binding Over Supervision Order Care Order	1 year or until the order expires (whichever is the longer).
Attendance Orders	Length of order plus 1 year
Hospital Order under the Mental Health Act	2 years after the Order expires (with a minimum of 5 years from date of conviction).

HER MAJESTY'S SERVICE

Over 18 Years Old (at time of conviction)

Under 18 Years Old (at time of conviction)

A sentence of discharge with public disgrace or dismissal with disgrace	10 years	5 years
A sentence of dismissal	7 years	3½ years
Any sentence of detention in respect of a conviction in Service disciplinary proceedings	5 years	2½ years

SENTENCES ON YOUNG OFFENDERS

Borstal Training	7 years
Detention of over 6 months but under 2 ½ years, (passed under the Children and Young Persons Act 1933 or Children & Young Persons Scotland Act 1937 Sections 53 and 57 respectively)	5 years
Detention of under 6 months passed under either of the aforementioned Acts	3 years

YOUNG PEOPLE

- 1) If found guilty by the Court but referred to the Children's Panel for disposal, or at a Children's Panel the grounds for referral are accepted and include a criminal offence the rehabilitation period is 6 months from the Panel appearance.
- 2) If found guilty by a Court but referred to the Children's Panel for disposal, or at a Children's Panel the grounds for referral are accepted and include a criminal offence. If the Panel's decision is a Supervision Order then the rehabilitation period is 1 year or until Supervision Order ends, whichever is the longest.
- 3) If found guilty by a Court and dealt with by Court then the normal rehabilitation period applies. This can happen if,
 - a) The crime is in the very serious category eg. Murder, Armed Assault etc.
 - b) The crime is committed when child is 15 years but not dealt with until they are 16 years.
 - c) The child is 16 years and on a Supervision Order but the Procurator Fiscal and Children's Panel Reporter agree the court should deal with charges.

THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994

The above act came into effect on 5th February 1995 and extends the rehabilitation period for those individuals placed on probation.

Notes

The length of time that is required for an ex-offender to become rehabilitated depends on the sentence received for the conviction. Each sentence carries its own rehabilitation period. The rehabilitation period may vary depending on the offender's age when sentenced. **Sentences over two and a half years can never be spent.** Suspended sentences are treated as though they were put into effect. For example, a 1 year custodial sentence suspended for 2 years will carry a rehabilitation period of 10 years.

THE POLICE ACT 1997 (Part v)

1. Basic Disclosure

When a person applies for a job, an employer, if he feels that it is appropriate, can ask **the applicant** to obtain a Basic Disclosure (which will detail all convictions that are currently unspent under The Rehabilitation of Offenders Act 1974), from Disclosure Scotland.

The cost for the Basic Disclosure will be £20.00. It is the applicant's responsibility to apply for the check and pay the appropriate fee. Applicants should apply to Disclosure Scotland – 0870 609 6006 – for an application form or they can apply online at www.disclosurescotland.co.uk if they have been resident at the same UK address for 12 months and have a valid debit or credit card.

2. Standard Disclosure

- 1) A Standard Disclosure will be available for those applying for positions listed in The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions (Scotland) Order 2003 (as amended) (see attached handout). A Standard Disclosure will contain details of all convictions on record, whether spent or unspent.

The cost for the Standard Disclosure will be £20.00 and it is the applicant's responsibility to pay the appropriate fee.

Employers will provide the successful applicant with the necessary forms for this level of check to be completed.

3. Enhanced Disclosure

Enhanced Disclosure will be available for those applying for positions which involve a greater degree of contact with children or vulnerable adults. This will involve those regularly caring for, supervising, or being in sole charge of children and young people or vulnerable adults.

Enhanced Disclosures will include all of the details contained in the Standard Disclosure (spent and unspent convictions) and cautions. Warnings and reprimands and any non-conviction information held locally by police, where this is considered relevant to the post or voluntary work being sought will also be included.

Employers will provide the successful applicant with the necessary forms for this level of check to be completed.

The cost for the Enhanced Disclosure will be £20.00 and it is the applicant's responsibility to pay the appropriate fee.

It will be for the prospective employer or other person or body offering the position to decide which level of disclosure is applied for.

The Extension of the Rehabilitation Periods

The Act is straightforward where a person has one conviction and therefore one rehabilitation period. Once this is spent nothing can re-instate it. It becomes more complex where there are later convictions.

If there is a second offence which is an indictable offence from the Sheriff or High Court then neither conviction will become spent until the longest rehabilitation period has expired.

Exceptions to the Act

Various kinds of employment, occupations and professions are exempted from the Rehabilitation of Offenders Act 1974 by the Exclusions and Exceptions (Scotland) Order 2003 (as amended). These include occupations that fall into the following at risk categories:

- * Work involving matters of national security e.g. some civil service posts.
- * Work that brings the person into contact with vulnerable groups such as infirm, the elderly, mentally ill, and young people aged under eighteen years.
- * Certain professions with legal protection such as nurses or accountants.

The Exclusions and Exceptions (Scotland) Order 2003 (as amended in 2007) overrules all the employment rights an ex-offender would otherwise have in respect of their spent convictions. Inclusion on the Order exempts the position from the Rehabilitation of Offenders Act 1974, thus allowing the employer to ask for details of both spent and unspent convictions.

The ex-offender will have to disclose information about spent, as well as current convictions, provided the employer states clearly on the application form or at the interview that the job applied for is exempt from the Rehabilitation of Offenders Act 1974.

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 vulnerable adults 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, it will be unlawful for the person to be employed in a child care position once the Act comes into force.**

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, occupation or employments specified in the Order, and of those who are currently training for such positions.

The new order makes specific provision for the following occupations, applications and proceedings for the first time:

- Chartered Psychologist
- Actuary
- Registered European Lawyer and Registered Foreign Lawyer
- Social Workers
- Social Service Workers
- Persons applying for Passenger Carrying Vehicle (PVC) Licences
- Taxi drivers and private hire car drivers

- Precognition officers
- Persons concerned with the operation of the Children's Hearing System
- Curators ad litem, reporting officers and safeguarders
- Her Majesty's Inspectors of Education and other appointed to carry out inspections of educational provision
- Police Custody and Security Officers
- Employment concerned with the provision of a care service
- Employment or work in child care position
- Any employment in the Scottish Society for the Prevention of Cruelty to Animals where the person employed or working, as part of their duties, may carry out the killing of animals
- Any office or employment in the Serious Fraud Office
- 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
- Proceedings in connection with a decision of the Scottish Social Services Council under part 3 of the Regulation of Care (Scotland) Act 2001
- Proceedings before the Scottish Commission for the Regulation of Care
- Posts and proceedings regulated by the Financial Services Authority
- Applications to adopt or foster children

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 service 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 purpose 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 or 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

Additional Information

The Scottish Executive has just completed an amendment to the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) Order 2003.

The new Order is entitled, '**The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2007**'. The amendments affect the following;

Proceedings before a judicial authority in which questions may be asked about spent convictions

- Control of Explosives Regulations 1991 – updating the reference to proceedings in respect of applications for explosive certificates
- Gambling Commission – updating the provision to reflect a change of name
- Parole Board – including the proceedings of the Parole Board for Scotland
- Risk Management Authority – including provision as to accreditation proceedings relating to the assessment, monitoring and minimisation of risk
- Proceeds of Crime – including provision in relation to proceedings in connection with the Proceeds of Crime Act 2002, relating to civil recovery and taxation
- Private Security Industry – including appeals concerning licensing decisions by the Security Industry Authority on fitness to work in the private security industry
- Scottish Commission for the Regulation of Care – amending the current provision so as to allow spent convictions to be disclosed under an extended range of proceedings before the Care Commission
- Proceedings under the Adults with Incapacity (Scotland) Act 2000 before a Sheriff – including provision on intervention and guardianship orders so as to offer additional safeguards in assessing the suitability of persons applying for intervention or guardianship orders in relation to the welfare and protection of property and financial affairs of adults who lack capacity
- Criminal Injuries Compensation Authority – including provision in order to allow disclosure of spent convictions in proceedings for or in connection with the recovery of compensation under sections 7A to 7D of the Criminal Injuries Compensation Act 1995
- The Scottish Criminal Cases Review Commission – including provision to allow spent conviction information to be disclosed in proceedings before Scottish Criminal Cases Review Commission
- Claims in respect of miscarriages of justice – including a provision which enables the independent assessor to have regard to spent conviction information when assessing the amount of compensation to be paid to an eligible applicant

Enabling questions to be asked about spent conviction information in proceedings otherwise than before a judicial authority

- Control of Explosives Regulations 1991 – updating the existing provision in relation to applicants for explosives certificates in proceedings which are not before a judicial authority, to reflect recent legislation
- Private Security Industry Act 2001 – inserting a new provision which ensures proceedings not covered above and which concern licences granted by the Security Industry Authority may involve questions as to a person's spent convictions
- EU Public Procurement Directive – including new provision to ensure that spent conviction information may be sought in considering the eligibility of economic operators for the award of public contracts; this reflects recent procurement regulations which require public bodies to exclude from consideration those convicted of specific criminal offences
- Risk Management Authority – inserting a new provision so that questions may be asked about spent convictions in preparing risk management plans in respect of offenders

Excepted Professions, Offices, Employments and Occupations in relation to which spent conviction information may be relevant for dismissal or exclusion from office

- Dentist Act 1984 – amendment to existing provision to reflect new title of dental professions
- Addition of “or other work” after “employment” – to ensure spent conviction information is available in respect of those working as contractors (in addition to others already covered) for precincts of a prison, the SSPCA, Serious Fraud Office, Serious Organised Crime Agency and Her Majesty's Revenue and Customs
- Her Majesty's Inspectorate of Education - to protect the integrity of both the Management Board and those recruited to assist with inspections
- Risk Management Authority – any office or employment in the Risk Management Authority is covered by a new provision
- The Scottish Criminal Cases Review Commission – any office or employment in the SCCRC is covered by a new provision
- Mental Health (Care and Treatment) (Scotland) Act 2003 – members of the Mental Welfare Commission are now covered by the Order
- Fire and Rescue Service Staff - any office or employment in a fire and rescue authority or joint fire and rescue board is now covered by virtue of a new provision
- Social Work Inspectors – a new provision has been inserted in order to apply higher standards of probity for those employed as inspectors, any Management Board that assists them and those recruited to assist the inspectors.
- Victim Support Organisations – in order to ensure staff and volunteers who offer support to victims of crime and have access to personal information about them have gone through proper selection procedures, including the disclosure of previous offences, before being appointed, a further provision has been added
- Gambling Commission – the existing reference concerning occupations requiring gambling and other licences has been updated to reflect the change of name of the Gambling Commission
- Control of Explosives Regulations 1991 – the existing provision on occupations requiring explosives certificates has been updated to reflect new legislation

- Private Security Industry – a new provision has been inserted to deal with any occupation in respect of which an application to the Security Industry Authority for a licence is required
- Independent Custody Visitors – an amendment has been made to insert provision for any occupation which is concerned with visiting persons detained in police stations, for the purposes of examining and reporting on the conditions under which they are held.

Below is the link to the new Order and Executive note. The Order came into force on 14 February 2007

PRINT VERSION

http://www.opsi.gov.uk/legislation/scotland/ssi2007/ssi_20070075_en.pdf

EXECUTIVE NOTE

http://www.opsi.gov.uk/legislation/scotland/sen2007/ssien_20070075_en.pdf

Further Notes

i. **Children and Young Persons Act 1933 and Children and Young Persons Act Scotland 1937, Sections 53 and 57 respectively.** These cover the sentencing of young people when dealing with crimes heard in Sheriff Court Hearings or High Court Proceedings.

ii. **Sentences of more than 2½ years are never spent.**

iii. **Summary Offences - Scotland**

A summary offence is any crime heard in a) District Court b) Sheriff Court, and the crimes are not deemed to be 'Grave'. Individuals can be sentenced to up to 6 months imprisonment on a summary charge.

iv. **Indictable Offences - Scotland**

An indictable offence is any crime deemed to be 'Grave' or 'Solemn' and is heard in a) Sheriff Court with Sheriff and Jury or b) High Court with Sheriff and Jury.

If on an indictment under (a) the Sheriff can only sentence up to a maximum of 3 years for the main offence however he/she can further sentence to run consecutively or remit to the High Court for sentence.