Recruitment of Ex-offenders

GCC Management Guidance Notes



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1.0 Introduction

1.1 The aim of this document is to provide guidance on the school's approach to employing people who have a criminal record.

1.2 The Rehabilitation of Offenders Act 1974 (ROA 1974) is aimed at helping people who have been convicted of a criminal offence and have not-re-offended since.

1.3 The Act applies to anyone who has been convicted of a criminal offence and received a sentence of less than four years and has not been convicted of an offence during the rehabilitation period.

1.4 The rehabilitation period (the length of time before a caution or conviction becomes spent) is the specified period after the original conviction. The length of time depends on the sentence the individual was originally given for the offence and runs from the date of the conviction.

1.5 If the individual does not re-offend during the rehabilitation period, their conviction is considered to be 'spent'. Custodial sentences over four years for serious offences (Schedule 18) are never considered to be spent and must always be revealed.

2.0 Spent Convictions

2.1 The table below details when convictions become 'spent':

New rehabilitation periods introduced by the Police, Crime, Sentencing and Courts (PCSC)		
Sentence/disposal	**Buffer period for adults (18 and over at the time of conviction or the time the disposal is administered). This applies from the end date of the sentence (including the licence period).**	**Buffer period for young people (under 18 at the time of conviction or the time the disposal is administered). This applies from the end date of the sentence (including the licence period).**
Custodial sentence* of under 1 year	12 months	6 months
Custodial sentence of between 1 and 4 years	4 years	2 years
Custodial sentence of more than 4 years**	7 years	3.5 years

2.2 Example: A 2-year custodial sentence given to an adult may become spent after 6 years: the rehabilitation period is the period of the sentence plus a further 'buffer period' of 4 years, giving a total of 6 years.

**Custodial sentence includes a sentence of imprisonment (both an immediate custodial sentence and a suspended sentence), a sentence of detention in a young offender institution, a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000, a sentence of detention under section 250 of the Sentencing Act 2020, a Detention and Training order, a sentence of corrective training and a sentence of Borstal training.*

***Excluding serious violent, sexual, or terrorist offences.*

3.0 Further offences during rehabilitation period

3.1 If a rehabilitation period is still running and a further minor offence is committed, then the individual only needs to reveal convictions that are unspent. A minor offence will be tried in a magistrate's court. If, however, the further offence is one that is tried in the Crown Court then neither conviction, even if the first one is minor, will become spent until the rehabilitation periods for both offences are over. If the further conviction leads to a custodial sentence of over four years, neither conviction will become spent.

3.2 If the individual receives more than one sentence at the same time, the total rehabilitation period will depend on whether the sentences run concurrently (at the same time) or consecutively (one after the other). If concurrent sentences are imposed, where a person was convicted in the same proceedings, then the longest applicable rehabilitation period will apply to all the sentences.

3.3 Once a conviction is spent, it remains spent and an applicant is not required to reveal it to an employer, even if convicted of a further offence later. However, there is an exemption to this which relates to posts involving working with vulnerable groups including children (see below).

4.0 Working with vulnerable groups including adults

4.1 The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 overrules the employment rights that ex-offenders would have when employed in certain exempted occupations. The Exceptions Order 2013 amends the Exceptions Order 1975 by removing most "protected convictions" and "protected cautions" from the exceptions to rehabilitation under the ROA 1974.

4.2 With limited exceptions, protected convictions and protected cautions will not be required to be disclosed in a DBS certificate and employers will not be legally entitled to ask questions about such convictions or cautions or to rely on them to refuse employment or to dismiss an employee.

4.3 Where the Exceptions Order 2013 applies there are certain activities for which fuller disclosure of a person's criminal record history is relevant. This will usually be indicated in the job advert for the role by stating that a 'standard' or 'enhanced' criminal record check may be required.

4.4 All unspent convictions and cautions must be disclosed just like any job or activity not covered by the Exceptions Order. In addition, spent cautions and convictions must be disclosed if they meet the circumstances described in the table below:

Spent cautions and convictions must be disclosed if they meet these circumstances:		
Disposal	Age when given/sentenced	How long since given/sentenced?
Caution for specified offence	18 or over	Any time
Caution for non-specified offence	18 or over	Less than 6 years
Conviction for specified offence	Any age	Any time
Convictions resulting in custodial sentence	Any age	Any time
Conviction for non-specified offence	18 or over	Less than 11 years
	Under 18	Less then 5 and a half years

4.5 Any other caution or conviction which does not meet the details set out in the table, such as spent youth reprimands, warnings and cautions, is considered protected.

4.6 With limited exceptions, protected convictions and protected cautions will not be required to be disclosed in a DBS certificate and employers will not be legally entitled to ask questions about such convictions or cautions or to rely on them to refuse employment or to dismiss an employee.

5.0 Protected convictions

5.1 A conviction is a "protected conviction" if:

- It does not relate to a "listed offence", such as violent and sexual offence.
- No custodial sentence was imposed. The individual has no other convictions. Where the individual has more than one conviction, all convictions will be included on the certificate. It was received by a person aged under 18 at the time of the conviction and five and a half years or more have elapsed. It was received by a person aged 18 or over at the time of the conviction and 11 years or more have elapsed.

6.0 Protected cautions

6.1 A caution is a "protected caution" if:

- It does not relate to a listed offence
- It was given to a person aged under 18 at the time of the caution and two years or more have elapsed
- It was given to a person aged 18 or over at the time of the caution and six years or more have elapsed.

7.0 During the Interview

7.1 As part of the interview paperwork the recruiting manager will have the application form which indicates if the candidate has unspent convictions.

7.2 The interview panel should interview with an open mind and focus on the ability and merit of the candidate to do the job but should be prepared to discuss convictions revealed with the candidate to be able to make an objective recruitment decision.

7.3 Be sure to make the best use of the interview to discuss the nature of convictions with the candidate if they have disclosed a criminal record. This information is essential to any risk assessment.

7.0 If the candidate is successful:

- Ensure you understand the content of this document and not discuss spent protected convictions or cautions as detailed in section 2.0 of this document.
- Ensure that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position..
- Advise the candidate that all information is dealt with in the strictest confidence
- Not to share any information revealed with anyone who is not entitled to see it.
- Advise the candidate that failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment.

- Respect the right of candidate to conceal any convictions that are spent unless they are applying for a job that is subject to a DBS check.
- Explain to the candidate that, where the job applied for is subject to a DBS check, that they are required to disclose all unspent criminal convictions and cautions unless they are 'protected' as detailed in section 5.0 and 6.0 of this document.
- Explain the DBS Panel process for unclear disclosures – please refer to the Disclosure and Barring Service Policy.

7.0 Risk assessments

7.1 Assessing the risk of employing a person with a criminal record means comparing an applicant's skills, experience and conviction circumstances against risk criteria that have been identified for the job. For example, some violent offences would be relevant to positions involving unsupervised contact with the public. But it is also important to remember that no two offences are exactly alike.

7.2 In assessing risks, a number of factors need to be taken into account as follows:

Issues	Reasons
Exemption status under the Rehabilitation of Offenders Act 1974 Duties under the Police and Children's Acts regarding one-to-one contact with children, vulnerable adults or the elderly Requirements of the Safeguarding Vulnerable Groups Act 2006	It is illegal to employ certain offenders in some occupations.
To what extent is the school bound by other legal constraints?	For example, those with motoring convictions employed as drivers.
Does the post involve direct responsibility for finance or items of value? Does the post involve any direct responsibility for finance or items of value? Will the nature of the job present any realistic opportunities for the post holder to re-offend in the place of work?	What could happen and how serious would that be? What factors would increase or decrease the perceived risk? For example, the nature of the offence and impact of rehabilitation since then. Consider whether the offence would create unacceptable risks for other employees, customers, suppliers, clients, service users, etc.

7.3 The school should also consider:

- The level and closeness of supervision that might be needed early on in the employment
- The extent to which procedures, such as audits or the involvement of others in the work process, would be a form of indirect supervision
- Whether any training or briefing would be useful to enable the school to manage the post-holder in the work context
- What precautions already exist in the organisation or could be put in place? Consider direct or indirect supervision, progress reviews involving the ex-offender etc.