

Policy on the Recruitment of Staff with Criminal Convictions and the use of Disclosure Scotland (Criminal Record Checks) for New and Existing Staff

Introduction

This document outlines the policy of the University of St Andrews on the employment of ex-offenders and the use of criminal records checks. It is made available to all job applicants at interview stage and to any existing member of staff (including unpaid/honorary staff or volunteers) for whom a criminal records check is appropriate. It can also be viewed at any time on the University website at www.st-andrews.ac.uk/employment.

The University's Policy on the Protection of Children and Vulnerable Adults should also be referred to for further information.

Background

Disclosure Scotland is a service designed to enhance public safety by providing potential employers and the voluntary sector with criminal history information on individuals applying for posts. Disclosure Scotland issues certificates known as 'Disclosures' which detail an individual's criminal convictions if applicable.

Appendix 1 provides a list of the legislation that governs this area of employment regulation, however the piece of legislation that made it essential for universities to produce a framework for criminal history checks (Disclosures) was the Protection of Children (Scotland) Act 2003 (POCSA) which came into force in 2005. Further legislation will come into force in 2009 and this policy will be reviewed at this time.

POCSA defines children as being under 18 whereas previously the definition was under 16. The passing into law of this act meant, for the first time, universities were brought into the scope of child protection. Potentially any student can be 17 years old and, therefore, legally a child. This can also apply to employees, and therefore, Schools and Units need to be aware of this when they are recruiting.

Students may also fall into the vulnerable adults category depending on their circumstances; this is less likely but is an area that is also heavily regulated.

There are three types of Disclosure checks, Basic, Standard and Enhanced. The Serious Organised Crime and Police Act 2005 has determined that an Enhanced Disclosure check should be obtained whenever an individual is working with children or vulnerable adults. As the University will only be disclosing/checking positions that it interprets within the meaning of the law as jobs that involve working with children or vulnerable adults then all Disclosures done within the University will be Enhanced.

An Enhanced Disclosure contains details of both spent and unspent convictions and any cautions. In addition, it may show information from police records considered by the Chief Constable to be relevant to the position being sought and which can be disclosed without harming the interests of the prevention or detection of crime. Additional information may be sent separately to the University and must be withheld from the job applicant in the interests of the prevention and detection of crime.

The University makes use of the Disclosure Scotland checks as part of the recruitment process to assess a candidate's suitability for posts involving regular contact with under 18s (children) and vulnerable adults. It may also be used for existing staff if the University deems it necessary and appropriate. See section on Existing Staff and Disclosure Checks.

The Rehabilitation of Offenders Act 1974 allows an employer to ask any job applicant whether or not they have any unspent convictions. The employer can only ask about spent as well as unspent convictions if the job applied for is excluded from the 1974 Act by way of the Exclusions and Exemptions (Scotland) Order 2003. Posts identified as childcare and vulnerable adults jobs are excluded under this Order, and, therefore, subject to a Disclosure Scotland check. (See Appendix 2).

Policy Statement

The University of St Andrews actively promotes equality of opportunity for all with the right levels of talent, skills and potential, and welcomes applications from a wide range of candidates including those with criminal convictions. Having a criminal record will not necessarily debar an individual from working with the University. The nature of the position and the relevance to the job, together with the circumstances and

background of the offences will be considered very carefully by the Head of School/Unit and Human Resources.

Disclosure Policy and Procedure for the Recruitment and Selection of University Staff

- 1 Applicants for **all** posts who are invited for interview will have to declare any unspent convictions on the Criminal Offences Declaration Form. (See Appendix 3).
 - 2 Any position which the University deems to be a childcare or vulnerable adults position and, therefore, subject to a Disclosure Scotland check will have this information clearly stated in the further particulars for the job at the advertising stage. For these posts all applicants invited for interview will have to declare all spent as well as unspent convictions on the Criminal Offences Declaration Form. Positions already identified as requiring disclosure checks are listed in Appendix 2, however Human Resources, in consultation with the Head of School/Unit will decide if any new positions require a disclosure check.
 - 3 A Criminal Offences Declaration Form will be included with the interview letter along with guidance notes and a copy of this policy. The Declaration Form will only be opened if the University would like to offer the individual the position.
 - 4 The information contained on the Declaration Form will only be shared by those who need to know it as a part of the selection process.
 - 5 The University will seek a Disclosure Scotland check even when a job applicant has made details of their criminal record known to the University at an earlier stage.
 - 6 No appointment will be confirmed until the University receives a Disclosure Certificate that it deems to be satisfactory.
 - 7 Failure to reveal information relating to unspent convictions (and spent convictions in the case of excluded occupations) could lead to withdrawal of an offer of employment or termination of employment.
 - 8 No individual should commence work with the University until a satisfactory disclosure has been received. If exceptional circumstances require that the individual commence work before the disclosure is received, advice should be sought from Human Resources.
 - 9 The University will take into account the following when considering an applicant with a criminal conviction:
 - Whether the conviction or other matter revealed is relevant to the position in question
 - The seriousness of any offence revealed
 - The length of time since the offence or other matter occurred
 - Whether the applicant has a pattern of offending behaviour or other relevant matter
 - Whether the applicant's circumstances have changed since the offending behaviour or the other relevant matters
- Normally, no decision will be taken until a meeting has been held with the applicant, a Human Resources Officer and the manager responsible for the position.
- 10 Successful candidates who have not spent the previous 12 months in the United Kingdom will have to provide appropriate documentation from the countries they have resided in. Information on what is required is available from Human Resources.

The Rehabilitation of Offenders Act 1974

Spent and Unspent Convictions

The Rehabilitation of Offenders Act was introduced to prevent people being discriminated against in their employment because of an offence committed in their past. For employers, this means that people whose convictions are 'spent' should be treated as rehabilitated and as if their conviction had never taken place.

Rehabilitation periods are indicated in the table below:

Sentence	Rehabilitation period	Rehabilitation period
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	for people aged under 18 when convicted	for people aged 18 or over when convicted
Prison sentences of 6 months or less including suspended/ deferred sentences, youth custody or detention in a young offender institution	3.5 years	7 years
Prison sentences of more than 6 months to 2.5 years	5 years	10 years
Borstal (abolished in 1988)	7 years	7 years
Detention centres (abolished in 1988)	3 years	3 years
Fines, compensation, probation, community service/ community punishment orders, combination/ community punishment and rehabilitation orders, action plan, curfew, drug treatment and testing, and reparation orders	2.5 years	5 years
Absolute Discharge/ Admonished	6 months	6 months

There are certain sentences excluded from rehabilitation under the Act which are never considered spent. These are:

- A sentence of life imprisonment
- A sentence of preventive detention
- A sentence of imprisonment, youth custody or corrective training for a term exceeding 30 months

Existing Staff and Disclosure Checks

At present, there is no requirement to check existing staff, however the legislation coming into force in 2009 may change this. Nevertheless, the University has taken the decision to check existing staff in certain circumstances.

There are areas within the University where certain employees have been subject to disclosure checks for some time e.g. Schools Liaison, Student Support Services and summer schools. This will continue, and all staff, both existing and new will have to be disclosed if taking part in any summer school unless it is quite clear that there is no risk e.g. summer schools for PhD students.

Due to the nature of Sports Centre activities, all existing as well as new staff will be subject to a disclosure check. The Sports Centre has developed its own guidance and procedure in this area which can be obtained from them.

The University reserves the right to undertake a disclosure check on existing staff if the nature of the activity dictates that it is appropriate and relevant e.g. activities involving school children; activities which come under the banner of social exclusion; research that potentially involves children or vulnerable adults etc. External organisations involved with these groups may, as a matter of course, expect any of our participating staff to be disclosed and so it would be worth clarifying this with the organisations in question. Advice can be sought from Human Resources.

Any current member of staff moving from one position within the University to another position which is identified in Appendix 1 will be required to undertake a Disclosure Scotland check.

If an existing member of staff's disclosure check raises any cause for concern, the matter will be dealt with by the appropriate member of the Principal's Office in conjunction with Human Resources.

Students and Disclosure Checks

An Enhanced Disclosure check will also have to be done for any students which the University asks to take part or employs in any of the activities as described under 'Existing Staff'. However, if the student will be supervised by a member of University of staff at all times, there will be no need for a Disclosure check to be done.

Research Issues and Disclosure Checks

There will be occasions where staff and students have to undertake research targetting children and/or vulnerable adults. If it is quite clear that the research involves either of these groups, then a disclosure check should be done even though it involves existing staff and students.

There will also be occasions where researchers are going abroad to research, in particular, to countries that have no regulations in this area. In these circumstances, if the researcher knows that they will definitely be conducting research on children or vulnerable adults, they should get a disclosure check done before they go.

In either situation, it is the School/Unit who has the responsibility to ensure that the disclosure check is done. However, Human Resources will process the paperwork.

In a few cases, researchers will have gone abroad to research a specific area but find that the initial research directs them into an area involving children and/or vulnerable adults. Under these circumstances, it will be impossible for a criminal records check to be done, therefore, the researchers should follow the good practice guide as outlined in Protection of Children and Vulnerable Adults Policy.

If a Researcher is unclear about this area of their research, they must refer it to the University Teaching and Research Ethics Committee in the first instance.

Validity/Expiry of Disclosure Information

The Disclosure Certificate is valid for the date of issue only, as it represents information to Disclosure Scotland on that date only.

For this reason, the University will always ask a job applicant (or current employee, where checks are being done on members of staff already in post) to make a new Disclosure application.

Handling, Holding and Destroying Disclosure Information

All information disclosed by Disclosure Scotland is sensitive and highly confidential and therefore, the University will handle this information in a responsible way in line with the Disclosure Scotland Code of Practice and the Data Protection Act.

Storage and Access

Disclosure information will not be kept on an individual's personal file and will always be kept separately in a lockable, non portable storage device with access strictly controlled and limited to those who are entitled to see it as part of their duties.

Handling

In accordance with section 124 of the Police Act 1997, Disclosure information is only passed to those who are entitled to see it in the course of their duties. The University will maintain a record of all those to whom Disclosure information has been revealed. It is important to note that it is a criminal offence to pass this information to anyone who is not entitled to receive it.

Usage

Disclosure information is only used for the specific purpose for which it was requested and for which the applicant's consent has been given.

Retention

Disclosure information will not be kept longer than 90 days to allow for the consideration and resolution of any disputes or complaints. If, in very exceptional circumstances, it is considered necessary to keep the information longer than 90 days, Disclosure Scotland will be consulted about the validity of this.

Disposal

At the end of the retention period, Disclosure information will be destroyed by shredding. Disclosure information will be taken from secure storage and shredded immediately; it will not be placed in transitory storage e.g. confidential waste bag. No photocopies, digital images or computer-based copies of the Disclosure Certificate will be kept. However, details of the date the Disclosure Certificate was received, the unique reference number and the level of Disclosure requested will be kept on the individual's personal record.

If you have any queries regarding this policy, please contact Louise Milne, Human Resources Officer on extension 2557 or email lm80@st-andrews.ac.uk.

Human Resources
August 2008

Appendix 1

Extract from the Disclosure Scotland Website

Legislation (listed in date order - earliest first)

- [Rehabilitation of Offenders Act 1974](#) (Ministry of Justice - The UK Statute Law Database)
- [Police Act 1997](#) (Part V)(OPSI/HMSO)
- [Data Protection Act 1998](#) (OPSI/HMSO)
- [Regulation of Care \(Scotland\) Act 2001](#) (OPSI/HMSO)
- The Housing (Scotland) Act 2001 (Housing Support Services) Regulations 2002 (OPSI/HMSO) - the Schedule to this SSI provides details of prescribed [Housing Support Services](#) per section 2(1) of the Regulation of Care (Scotland) Act 2001
- [The Rehabilitation of Offenders Act 1974 \(Exclusions and Exceptions\) \(Scotland\) Order 2003](#) (OPSI/HMSO)
- [Criminal Justice \(Scotland\) Act 2003](#) (OPSI/HMSO)
- [Protection of Children \(Scotland\) Act 2003](#) (OPSI/HMSO) - full Act
- Protection of Children (Scotland) Act 2003 (OPSI/HMSO) - Schedule 2 - [definition of child care positions](#)
- [Serious Organised Crime and Police Act 2005](#) (OPSI/HMSO)
- The Police Act 1997 ([Criminal Records](#))(Scotland) Regulations 2006 (OPSI/HMSO)
- [Definition of Adult at Risk](#) as contained in The Police Act 1997 (Criminal Records) (Scotland) Regulations 2006 (OPSI/HMSO) *Note - definition is contained within Regulation 10(3)*
- The Police Act 1997 (Criminal Records)([Registration](#))(Scotland) Regulations 2006 (OPSI/HMSO)
- The Serious Organised Crime and Police Act 2005 ([Commencement No 2](#))(Scotland) Order 2006 (OPSI/HMSO) - implements, amongst other sections, section 163 of the 2005 Act
- The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) ([Amendment](#)) (Scotland) Order 2006 (OPSI/HMSO)
- [Protection of Vulnerable Groups \(Scotland\)](#) Bill and associated documents (introduced 25 September 2006)(Scottish Parliament) - see below for details of Act
- The Police Act 1997 (Criminal Records)(Scotland) [Amendment](#) Regulations 2006 (OPSI/HMSO)
- The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions)(Scotland) [Amendment](#) Order 2007 (OPSI/HMSO)
- [Protection of Vulnerable Groups \(Scotland\) Act 2007](#) (OPSI/HMSO)
- The Police Act 1997 (Criminal Records)(Scotland) [Amendment](#) Regulations 2008 (OPSI/HMSO)
- Protection of Children (Scotland) Act 2003 ([Amendment of the Definition of Child Care Position](#)) Order 2008 (OPSI/HMSO)

Appendix 2

Listed below are the posts that the University has determined should be subject to a Disclosure Scotland check.

All posts will be subject to an Enhanced disclosure check.

Academic Staff
Teaching Fellows
Tutors, Casual Tutors, Demonstrators (including Music Centre)
Contract Research Staff who teach or could potentially teach
Wardens / Assistant Wardens
Sports Centre Staff including Clerical Staff
Student Support Staff including Clerical Staff
Chaplaincy Staff including Clerical Staff

Occupational Health Staff including Clerical Staff
Some Summer School staff (including clerical staff) depending on the nature of the Summer School and the duties required
Clerical Staff in Academic Schools (and Music Centre)
Admissions staff in Access and Education Liaison
Teaching Technicians, Scientific Officers and School Computing Officers
Careers Advisors
Residences Staff
Estates Staff

Currently, the above list only applies to new members of staff in the above positions. However, there are some areas where existing staff will have to be disclosed. Please see 'Existing Staff' section of Disclosure Policy.

Any position that is not mentioned above that could be considered potentially disclosable should be discussed with Human Resources. Newly created positions should also be assessed to see if they are disclosable. Human Resources, in consultation with the Head of School/Unit will take the decision whether a post should be disclosed.

Appendix 3

University of St Andrews

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Human Resources

CRIMINAL OFFENCES DECLARATION FORM

Name:	
Position Applied For:	
Job Reference Number:	

Please tick the appropriate box:

- A** I do not have unspent convictions or pending court appearances
 I have the following unspent convictions/ pending court appearances (Please provide details below)

Conviction/Details of offence	Date sentenced/Court date	Sentence imposed

B For those jobs exempted under the Exclusions and Exemptions (Scotland) Order 2003, please declare spent convictions below. (If the job that you are applying for is subject to a Disclosure Scotland Check, you will have to declare spent convictions. The Further Particulars for the position will confirm whether this is the case).

Conviction/Details of offence	Date sentenced	Sentence Imposed

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C Protection of Children (Scotland) Act 2003

This part is only relevant to those positions which are subject to a Disclosure Scotland Check. It is important to note that giving false information in this section under the Protection of Children (Scotland) Act 2003 can result in prosecution.

I 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 _____
(Please fill in the blank if relevant). **OR**

I confirm that I have not been disqualified from working with under18s in another country. (If you have, please give details).

I understand that false information or omissions may lead to my dismissal

Signed _____ Date _____

Please return this form in the envelope provided.