

# HOT CHOCOLATE TRUST RECRUITING WITH CONVICTIONS POLICY

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# **HOT CHOCOLATE TRUST RECRUITING WITH CONVICTIONS POLICY**

## **Recruiting People with Convictions Policy**

This policy applies to all paid employees, youth work volunteers and to applicants for these roles.

The purpose of this policy is to provide assurance to applicants, staff and volunteers and guidance to those making recruitment decisions of our organisation's process in assessing whether any conviction information provided to us, either through self-disclosure or in a disclosure certificate, impacts on a person's ability to carry out the role that they have applied for or which they hold within our organisation. It is important to recognise that having a criminal record does not necessarily mean that someone cannot work or volunteer for our organisation.

Hot Chocolate Trust treats all applicants fairly and consistently in accordance with the requirements of Rehabilitation of Offenders Act 1974 (as amended). We do not differentiate between paid and unpaid roles when applying the criteria detailed in this policy; the assessment is based entirely on the requirements of the role and any information shared with us either through self-disclosure or contained in a disclosure certificate. The level of disclosure which we will access will be the appropriate level for the role (basic, standard, enhanced or PVG).

## **Self-Disclosure**

We operate a fair recruitment process and will ensure anyone applying for or holding a role in our organisation is given the opportunity to discuss any unspent convictions which they are required to tell us about.

As part of our recruitment process, the self-disclosure form should be completed and returned with application form. The form should be returned in a separate sealed envelope, or as a separate electronic document, and will only be opened if the candidate is provisionally offered the role subject to the outcome of the disclosure. Any self-disclosure forms for unsuccessful candidates will be securely destroyed without being opened.

The rules around what you need to disclose are complex and it may be difficult to know what should and should not be disclosed. We should, therefore, only be told about unspent convictions and relevant spent convictions, using the form in Appendix 1. You should not tell us about any convictions which were gained before the age of 12 and any which are not considered appropriate to disclose subject to exceptions. There is a guidance document in Appendix 2 which will give you detailed information on how long a conviction is considered unspent and a table of disclosure periods in Appendix 5.

If you are in doubt, you can seek legal advice (at your own expense) or you can withhold the conviction information until the appropriate level of disclosure is received.

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Appendices 3 and 4 link to offences that are made available for a longer period of time for roles which require a standard, enhanced or PVG disclosure.

The offences in Appendix 3 are made available on the disclosure certificate for an extended timeframe (a minimum of 15 years for those aged 18 or over at the date of conviction and 7½ years for those under 18 at the date of conviction) with the opportunity to appeal for removal after the extended timeframe has passed.

The offences in Appendix 4 are made available on the disclosure certificate for at least the time that they are unspent and then an extended timeframe (up to a maximum of 15 years for those aged 18 or over at the date of conviction and 7½ years for those under 18 at the date of conviction) with the opportunity to appeal for removal once in the extended timeframe from becoming spent under normal circumstances until the extended timeframe has passed. After this time the offence will no longer be disclosed.

Once in post, any member of staff or volunteer who gains any new convictions must complete the self-disclosure form in Appendix 1 and return it to the Executive Director/Lead PVG Signatory. It is important to note that failing to follow this ongoing self-disclosure process may result in disciplinary action and could ultimately result in dismissal.

## **Disclosure Certificate**

In order to ensure there is no bias in our recruitment decisions, accessing the disclosure certificate will be the final part of our recruitment process and will only be requested when we have provisionally offered the role, subject to a satisfactory disclosure.

When we receive our copy of your disclosure certificate, we will compare it to the self-disclosure form which you have completed. If there are any differences between the details on the two documents, we will arrange to discuss this with you. We will not make any judgement on the reasons that information differs prior to our discussion as we understand that the rules around what information you should share with us is complex.

## **How We Will Use Disclosed Information**

Any information disclosed will be treated in the strictest confidence and only people required to see the information to help assess it will have access to it. There may be instances where we need to seek support or guidance externally (for example, from a solicitor). When this is necessary, we will not share any information which will identify you, only the information which we require support or guidance on.

Where information has been detailed on the self-disclosure form but is not shared on the disclosure certificate, we must always disregard this information as this means that you have provided information that you were not required to share.

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We do, however, need to risk assess any conviction or vetting information carefully to ensure there is no risk to our organisation or those who use our services. In order to ensure we carry out a fair and consistent practice when we assess any conviction or vetting information, we will take into account the following criteria:-

- Is the conviction relevant to the position being offered?
- How serious was the offence?
- How long is it since the offence took place?
- Is there a pattern of offending behaviour?
- Have the personal circumstances changed since the time of the offending behaviour?
- How has the person become rehabilitated?
- Is the person barred from the type of regulated work we need them to do?

If we determine that the disclosed information is relevant to the role, we will withdraw the job or volunteering role offer. For those already in post, this may result in disciplinary action and could ultimately result in dismissal. The reason(s) for our decision will be fully explained.

## **Appeals**

If you feel that the risk assessment has not been carried out appropriately or that our decision is unfair, you have the right to appeal. Appeals should be made in writing to the Executive Director of Hot Chocolate Trust, who will respond within 10 working days.

If the matter is still not resolved to your satisfaction, you should put your grievance in writing to the Trustees of Hot Chocolate Trust, addressed to the Chair of Hot Chocolate Trust via the HCT office address. If a meeting is held by the Chair, or representatives of the Trustees, to discuss the appeal then you may be accompanied by someone of your choice. The Trustees will give their decision within 14 working days of the grievance being received. The decision of the Trustees is final.

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## **Appendix 1**

### **Self-Disclosure Form for Declaring Convictions – Scotland**

The Rehabilitation of Offenders Act (Exclusions and Exceptions) (Scotland) (as amended).

The post that you have applied for requires a basic, standard or enhanced disclosure or is one where your normal duties include regulated work and requires a PVG disclosure in accordance with at least one of the following pieces of legislation:

- Rehabilitation of Offenders Act 1974 (as amended)
- Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (as amended)
- Protection of Vulnerable Groups (Scotland) Act 2007 (as amended)
- Police Act 1997 (as amended)

You are therefore required to disclose certain convictions below, but you should not tell us about any convictions which were gained before the age of 12. Having a criminal record will not necessarily be a bar to working or volunteering with us. We will consider any information disclosed fairly and in accordance with the requirements of Rehabilitation of Offenders Act 1974.

This guidance relates to recruitment in Scotland.

### **Data Protection Act 2018 and GDPR**

The information given in this form will be treated in strict confidence. When completed, the document contains sensitive personal data as defined by the Data Protection Act and GDPR which will be used only for the purpose it was requested and handled in accordance with the Act.

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## Unspent Convictions

You must complete this section.

Do you have any unspent convictions?

Yes	
No	

If you have crossed yes, please provide details below.

All unspent convictions must be disclosed. Please provide details of any unspent convictions here:-

Date	Court	Offence	Disposal

## Spent Convictions

This section should only be completed following the guidance below if you will be applying for a standard, enhanced or PVG disclosure but you should not tell us about any convictions which were gained before the age of 12. Do not complete this section if you are applying for a basic disclosure.

The 2020 amendment, as amended in 2022, order gives 2 lists of offences that may be disclosed for an extended period.

Convictions detailed in Appendix 3 should only be detailed if 15 years (if 18 or over at the time of conviction) or 7½ years (if under 18 at the time of conviction) from the date of conviction have not passed, unless you received a custodial sentence exceeding 48 months in which case you must always disclose this information. Those in appendix 4 should only be disclosed above if they are unspent.

If you have any convictions for offences detailed in these lists which are now considered to be spent in normal circumstances, you should not disclose these on this form. However, please be aware that if you are applying for a Standard, Enhanced or PVG disclosure, this information can be released on your certificate for longer than the normal rehabilitation period (see Conviction Disclosure Guidelines in Appendix 2). Disclosure Scotland will notify you if you have any convictions which fall under this extended disclosure period as you can (if you wish) apply to have this information removed from your disclosure. Where such information is released, we will discuss this with you when we receive our copy of your disclosure. Please note that applying to have this information removed does not guarantee its removal; the

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final decision on this will be made by a Sheriff or using the review mechanism when it becomes available.

If you have any convictions detailed in Appendix 3 and the extended disclosure period has not passed, please provide the information here,

Date	Court	Offence	Disposal

## Conviction Disclosure Guidelines

Minor conviction	Conviction detailed in Appendix 3	Conviction detailed in Appendix 4	A custodial sentence of more than 48 months
Will be detailed for the rehabilitation period as detailed in Appendix 2 and Appendix 5. The conviction will not be detailed after it becomes spent.	Will be detailed for a minimum of 15 years (7½ years if under 18 at the time of conviction) and then, if spent, the individual can apply to have the information removed.	Will be detailed for a minimum of the rehabilitation period and then potentially for up to 15 (or 7½ years if under 18 at the time of conviction) from the date of conviction. After the initial rehabilitation period and if spent, the individual can apply to have the information removed. The conviction will not be detailed after this period.	Never spent

## Barred Lists

This section should only be completed if you will be applying for PVG disclosure or enhanced disclosure with list checks. Do not complete this section if you are applying for a basic, standard or enhanced disclosure without list checks.

I understand that my role involves regulated work and confirm that I am not barred from the relevant regulated work group(s).	
<b>Signed</b>	<b>Date:</b>

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## Declaration

I certify that the information contained in this form is true and complete to the best of my knowledge and belief. I understand that any false information or omission in the information I have given may lead to the immediate suspension or termination of my volunteering or employment with the organisation.

I confirm that I have read and understood this declaration.

<b>Full name</b>	
<b>Address</b>	
<b>Signed</b>	
<b>Date</b>	



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## Appendix 2

### Summary guidance for the self-disclosure of previous convictions & alternatives to prosecution in Scotland under the Rehabilitation of Offenders Act 1974 (“the 1974 Act”)

(CLICK ON ARROW TO THE LEFT OF THE HEADINGS TO EXPAND THAT SECTION)

#### 1. Disclosure Periods: Custodial sentences

Disclosure periods for custodial sentences		
Sentence length	18 or over on date of conviction	Under 18 on date of conviction
Up to (and including) 12 months	Length of sentence plus 2 years	Length of sentence plus 1 year
Over 12 months & up to (and including) 30 months	Length of sentence plus 4 years	Length of sentence plus 2 years
Over 30 months & up to (and including) 48 months	Length of sentence plus 6 years	Length of sentence plus 3 years
Over 48 months	<p>This is an excluded sentence and the conviction will not become spent after a specific amount of time</p> <p>A review mechanism will be available in due course for relevant sentences over 48 months</p>	<p>This is an excluded sentence and the conviction will not become spent after a specific amount of time</p> <p>A review mechanism will be available in due course for relevant sentences over 48 months</p>

What are the types of convictions which always have to be disclosed?

Certain convictions are not capable of becoming spent. This is where an “excluded sentence” is imposed in respect of that conviction. Excluded sentences are listed in section 5(1) of the 1974 Act.

What happens if I get another conviction for which an “excluded sentence” is imposed before my first conviction becomes spent?

Excluded sentences have no effect on the disclosure periods for previous or subsequent convictions. This means the disclosure period for the first conviction will not change.

#### Example

An individual over 18 is convicted of an offence and fined £500 (conviction 1). The disclosure period for this sentence is 12 months from the date of conviction. Six

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months later the person is convicted of supplying class A drugs and given a 5 year custodial sentence (conviction 2) in solemn proceedings. This is an excluded sentence under section 5(1) of the 1974 Act.

The disclosure period applicable to conviction 1 remains 12 months and will not be affected by conviction 2.

### **3. What happens if I was given an excluded sentence and was convicted again?**

As stated above, excluded sentences have no effect on the disclosure periods for previous or subsequent sentences. This means the disclosure period for the subsequent conviction will be determined by the actual sentence given for that conviction.

#### **Example**

A person over 18 is convicted of an offence and sentenced to five years imprisonment. This is an excluded sentence. Six months after being released from prison they are convicted of a second offence and fined £500. The disclosure period applicable to the second offence is 12 months from the date of conviction and is unaffected by the first conviction.

## **2. Section 5 Rules Consecutive and concurrent sentences**

Section 5(2F): For the purposes of this section:

- a) consecutive terms of;
  - i. imprisonment or other custodial sentences, or
  - ii. detention under section 209 of the Armed Forces Act 2006 are to be treated as a single term,
  
- b) terms of imprisonment, or of detention, which are:
  - i. wholly or partly concurrent, and
  - ii. imposed in respect of offences of which a person was convicted in the same proceedings are to be treated as a single term.

Therefore, if an individual receives more than one sentence for different offences at the same time, the total disclosure period will depend on whether the sentences run consecutively (one after the other) or concurrently (at the same time).

If consecutive sentences are imposed, then the sentences will be added together to calculate the disclosure period.

#### **Example**

A four month and six month prison sentence running consecutively will count as a ten month sentence (carrying a “buffer period” of 2 years, if over 18 at date of conviction, from the end of the sentence) giving a total disclosure period of two years and ten months before the convictions may become spent.

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If concurrent sentences are imposed, then the longest applicable disclosure period will apply to all the sentences.

## **Example**

A four month and six month prison sentence ordered to run concurrently will count as a single term of six months (carrying a “buffer period” of two years, if over 18 from date of conviction, from the end of the sentence) giving a total disclosure period of two years and 6 months before both convictions may become spent).

### **3. Suspended sentences**

Section 5(2F)(c): No account is to be taken of any subsequent variation, made by a court in dealing with a person in respect of a suspended sentence of imprisonment, of the term originally imposed.

## **Example**

A 2 year custodial sentence suspended for 2 years will have the same disclosure period as a 2 year custodial sentence that has not been suspended, (i.e. 6 years from date of conviction or 4 years from date of conviction if under 18 at date of conviction).

### **4. Sentences imposed out with Scotland**

Section 5(2F)(d): A sentence imposed by a court outwith Scotland is to be treated as the sentence mentioned:

- i. in section 5,
- ii. in Table A or Table B, or
- iii. in any of sections 5C to 5J,

to which it most closely corresponds.

This is the closest equivalent rule. This means sentences outwith Scotland must be treated as the closest equivalent Scottish sentence in order to determine the appropriate disclosure period.

### **5. What happens if a person gets a custodial sentence over 48 months?**

At the moment a conviction cannot become spent if a custodial sentence of more than 48 months is imposed. This is because the sentence is an excluded sentence.

However, the Management of Offenders (Scotland) Act 2019 (“the 2019 Act”) enables the Scottish Ministers to make regulations which will allow a person to apply for a review of their conviction if a “relevant sentence” was imposed in respect of that conviction (see below for the meaning of “relevant sentence”). The reviewer will determine whether or not the conviction should become spent (and therefore whether the person is a “protected person” in respect of that conviction).

A “relevant sentence” is;

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- a) a sentence of imprisonment or corrective training for a term exceeding 48 months, or
- b) a sentence of detention for a term exceeding 48 months under section 207 (detention of young offenders) or 208 (detention of children convicted on indictment) of the Criminal Procedure (Scotland) Act 1995.

These regulations have not yet been made meaning it is not yet possible to apply for such a review.

Separate guidance will be published in due course when the review mechanism has been developed and the necessary regulations have been approved by the Scottish Parliament.

## 6. Disclosure Periods: Non-custodial sentences

Disclosure periods for non-custodial sentences		
Disposal	18 or over on date of conviction	Under 18 on date of conviction
Absolute discharge	Zero	Zero
Admonishment	Zero	Zero
Bond of caution	6 months, or length of caution period, whichever is the longer	3 months, or length of caution period, whichever is the longer
A fine or compensation order	1 year	6 months
Community Payback Order, Drug Treatment & Testing Order and Restriction of Liberty Order	12 months or length of order, whichever is the longer	6 months or length of order, whichever is the longer
Adjournment/Deferral after conviction	Until relevant sentence <sup>1</sup> given	Until relevant sentence given
An order under section 61 of the Children and Young Persons (Scotland) Act 1937	N/A	12 months
Ancillary Orders <sup>2</sup>	Length of order	Length of order
An endorsement made by a court in relation to an offence mentioned in schedule 2 of the Road Traffic Offenders Act 1988	5 years	2½ years

<sup>1</sup> A “relevant sentence” is any sentence other than an adjournment or deferral, (or, where applicable, a further adjournment or deferral) imposed on the person in respect of the conviction.

<sup>2</sup> Examples of ‘ancillary orders’ are, non-harassment order, supervision and treatment orders, football banning order, antisocial behaviour order, exclusion from

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Any other sentence not mentioned in Table A or B or sections 5(2D), 5C to 5J	1 year	6 months
Mental Health Orders		
Hospital Direction	Not a sentence under the 1974 Act (not included in disclosure certificate)	All have same disclosure periods as someone 18 or over at date of conviction
Guardianship Order	Zero <sup>4</sup>	
Assessment/Treatment Order	Until final disposal given	
Interim Compulsion Order	Until final disposal given	
Compulsion Order (CO)	Length of order. After 12 months an application can be made to the MHTS <sup>5</sup> under section 164A of the MH 2003 Act <sup>6</sup> for disclosure of the CO to end	
Compulsion Order with Restriction Order (CORO)	Length of order. If the restriction order ends and the CO remains, an application can be made to the MHTS for disclosure of the CO to end 12 months after the restriction order ends	

licensed premises order, confiscation order, serious crime prevention order and an order disqualifying someone from driving.

4. Section 5J(1)(c) of the 1974 Act.

5. The Mental Health Tribunal for Scotland.

6. The Mental Health (Care and Treatment) (Scotland) Act 2003.

Any other sentence not mentioned in Table A or B or sections 5(2D), 5C to 5J of 1974 Act

This is essentially a “default” sentence. The purpose of this is to provide for a disclosure period for any new disposals that may be created but not yet included in the 1974 Act for whatever reason. If this was not included then any new disposal not included would not be required to be self-disclosed.

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The disclosure period for this default sentence is 12 months (or 6 months if the individual was under 18 at the date of conviction).

An endorsement made by a court in relation to an offence mentioned in schedule 2 of the Road Traffic Offenders Act 1988

An endorsement for a road traffic offence listed in schedule 2 of the Road Traffic Offenders Act 1988, imposed either by the court by order or by means of a fixed penalty notice (FPN) is a sentence for the purposes of the 1974 Act and may become spent after 5 years (or two and half years where the offender is under 18).

Road traffic legislation specifically provides that endorsement as a result of a FPN in these circumstances is to be treated, for the purposes of the 1974 Act, as a conviction and as if the endorsement had been made in pursuance of an order made by the court.

Where an order for disqualification from driving is imposed by the court on conviction, that conviction may become spent when the order cease to have effect.

Where the court imposes more than one sentence or penalty for the offence then the longest disclosure period determines when the conviction may become spent.

## **Example**

An adult is convicted of a road traffic offence and the court imposes a fine (disclosure period 1 year), an order for endorsement (disclosure period 5 years) and an order disqualification from driving for 1 year (disclosure period 1 year).

The disclosure period for this conviction will be 5 years because the endorsement carries the longest disclosure period.

Once the conviction becomes spent, the person is not required to declare it when applying for most jobs or (motor) insurance.

For more information on the disclosure periods for particular driving offences, please consult:

[www.direct.gov.uk/en/motoring/driverlicensing/endorsementsanddisqualifications/dg\\_10022425](http://www.direct.gov.uk/en/motoring/driverlicensing/endorsementsanddisqualifications/dg_10022425)

## **7. What happens if I have been convicted on an offence and also put on the Sex Offenders Register?**

The 1974 Act is concerned with the disclosure of convictions and alternatives to prosecution (AtPs). It is not the way in which the risks posed by sex-offenders are managed in the community.

If a person commits a sexual offence they may be subject to notification requirements under Part 2 of the Sexual Offences Act 2003.

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However, notification requirements do not affect when a conviction becomes spent. A person may be subject to notification requirements in connection with a conviction despite that conviction being spent.

Further details on the management of sex offenders can be found on the attached links to Police Scotland's website.

## [Multi Agency Public Protection Arrangements \(MAPPA\) - Police Scotland](#) [Policing of Registered Sex Offenders - Police Scotland](#)

### 8. Children's hearings

Section 3 of the 1974 Act provides that, where a child is referred to a children's hearing on grounds that the child committed an offence, the acceptance or establishment (or deemed establishment) of that ground is a conviction for the purposes of the 1974 Act and the disposal by the hearing is a sentence.

Two different disposals are available to a children's hearing. They are a discharge and a compulsory supervision order.

The disclosure period for both a discharge and a compulsory supervision order is zero. This means they are spent immediately.

Children's Hearings		
Disposal	18 or over on date of conviction	Under 18 on date of conviction
Discharge	N/A	Zero
Compulsory supervision order	N/A	Zero

### 9. Alternatives to Prosecution (AtP)

Alternatives to Prosecution		
Category 1 AtPs	Zero	Zero
Category 2 AtPs	3 months	3 months

AtPs are disposals which are primarily available to Scottish police and Scottish prosecutors to deal with criminal conduct other than by way of prosecution before a criminal court.

AtPs broadly fall into two categories and can be divided into "Category 1" and "Category 2" AtPs. "Category 1" AtPs which become spent immediately and so have no disclosure period are:

- warning given by a constable
- warning given by a procurator fiscal and
- fixed penalty notices given under section 129 of the Antisocial Behaviour (Scotland) Act 2004.

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“Category 2” AtPs which become spent three months after the day on which given (and so have a disclosure period of three months) are other types of non-court based disposals available to the police and prosecutors. They are:

- a conditional offer issued in respect of the offence under section 302 of the Criminal Procedure (Scotland) Act 1995,
- a compensation offer issued in respect of the offence under section 302A of the 1995 Act,
- a work order made against the person in respect of the offence under section 303ZA of the 1995 Act,
- has, under subsection (5) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6), given notice of intention to comply with a restoration notice given under subsection (4) of that section, and
- has accepted an offer made by a procurator fiscal in respect of the offence to undertake an activity or treatment or to receive services or do any other thing as an alternative to prosecution.

Therefore, depending on the type of the AtP, the 1974 Act provides that an AtP either becomes spent immediately or 3 months after the AtP is given.

Please note: Anything corresponding to a warning, offer, order or notice given as a result of an offence committed under the law of a country or territory outside Scotland will be treated in the same manner as an equivalent AtP given in Scotland.

## Example

A person commits a minor offence and given a warning by a police constable. This is spent immediately and the person is not required to disclose it.

## Example

A person commits an offence and given a fiscal fine of £50. The person will be required to disclose this, if asked, for 3 months from the date it was given.

## 10. Disclosure periods: Service Disciplinary Offences

The 1974 Act applies to everyone convicted of a criminal offence or a service disciplinary offence (for example absence without leave) by either a civilian court (in the cases of criminal offences) or a Service Court or the Commanding Officer (in the cases of criminal or service disciplinary offences). The same disclosure periods apply to sentences which are imposed in the service justice system as are imposed by the civilian justice system.

## Example

A fine imposed by a Sheriff Court and a fine imposed by a Court Martial would each have the same disclosure period of a year beginning with the date of conviction.

There are certain service sentences that can only be imposed by the service justice system (e.g. sentence of dismissal from Her Majesty's service or service detention).



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There are specific disclosure periods for such sentences which are set out in sections 5B and 5I of the 1974 Act. Please see the table below.

Disclosure periods for Service Disciplinary Offences		
Disposal	18 or over on date of conviction	Under 18 on date of conviction
A sentence of cashiering, discharge with ignominy or dismissal with disgrace from Her Majesty's service	10 years	5 years
A sentence of dismissal from Her Majesty's service	7 years	3½ years
Any sentence of service detention within the meaning of the Armed Forces Act 2006, or any sentence of detention corresponding to such a sentence, in respect of a conviction in service disciplinary proceedings	5 years	2½ years
A custodial order under section 71AA of the Army Act 1955 or the Air Force Act 1955, or under section 43AA of the Naval Discipline Act 1957, where the maximum period of detention specified in the order is more than 6 months	7 years	7 years
A custodial order under schedule 5A of the Army Act 1955 or the Air Force Act 1955, or under schedule 4A of the Naval Discipline Act 1957, where the maximum period of detention specified in the order is more than 6 months	7 years	7 years
A sentence of detention for a term exceeding 6 months but not exceeding 30 months passed under section 71A(4) of the Army Act 1955 or Air Force Act 1955, section 43A(4) of the Naval Discipline Act 1957 or section 209 of the Armed Forces Act 2006	5 years	5 years

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A sentence of detention for a term not exceeding 6 months passed under section 71A(4) of the Army Act 1955 or Air Force Act 1955, section 43A(4) of the Naval Discipline Act 1957 or section 209 of the Armed Forces Act 2006	3 years	3 years
A custodial order under any of the schedules of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 mentioned above, where the maximum period of detention specified in the order is 6 months or less	3 years	3 years
A custodial order under section 71AA of the Army Act 1955 or Air Force Act 1955, or section 43AA of the Naval Discipline Act 1957, where the maximum period of detention specified in the order is 6 months or less	3 years	3 years
A service community order, or an overseas community order, under the Armed Forces Act 2006	5 years	2½ years or the length of the order whichever is the longer
A community supervision order under schedule 5A of the Army Act 1955 or the Air Force Act 1955 or under schedule 4A of the Naval Discipline Act 1957	1 year or the length of the order, whichever is the longer	1 year or the length of the order, whichever is the longer

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An order under section 211 of the Armed Forces Act 2006	<p>Where the person was 15 years of age or older at the date of the conviction</p> <ul style="list-style-type: none"> <li>• 5 years if the order was for a term exceeding 6 months</li> <li>• 3½ years if the order was for a term of 6 months or less</li> </ul>	<p>Where the person was 15 years of age or older at the date of the conviction</p> <ul style="list-style-type: none"> <li>• 5 years if the order was for a term exceeding 6 months</li> <li>• 3½ years if the order was for a term of 6 months or less</li> </ul> <p>Where the person was under 15 years of age at the date of the conviction</p> <ul style="list-style-type: none"> <li>• Length of the order plus 12 months</li> </ul>
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## 11. Section 6 (the disclosure period applicable to a conviction)

A conviction becomes spent, and a person treated as a protected person in respect of that conviction, on the expiry of the disclosure period applicable to the conviction.

Section 6 of the 1974 Act sets out the rules which determine the length of the disclosure period of a conviction. The disclosure period applicable to a conviction depends principally on the disclosure period applicable to the sentence imposed for that conviction.

However, the rules as to when a conviction becomes spent get more complicated when more than one sentence is imposed for a conviction or if a person is convicted in solemn proceedings of further offences before their existing convictions are spent.

How does disclosure work if more than one sentence is imposed in respect of a conviction?

If more than one sentence is imposed in respect of a conviction (for example, a fine and a non-harassment order are both imposed), and the sentences have different disclosure periods attributable to them, the conviction requires to be disclosed in accordance with the longer or longest of these periods.

### Example

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If a 25 year old person gets convicted of an offence and is fined (12 month disclosure period) and is also given a 5 year non-harassment order (5 year disclosure period) then the disclosure period for that conviction will be 5 years.

This is because the disclosure period applicable to the conviction is the same as the disclosure period applicable to the non-harassment order, which has the longer of the two disclosure periods for the two sentences.

## **12. Section 6(4) of the 1974 Act rule: Solemn proceedings**

If someone gets convicted of a further offence, in solemn proceedings, before the end of the disclosure period applicable to the first conviction, then whichever of the two disclosure periods would end earlier is extended so as to end at the same time as the other disclosure period.

### **Example**

A person aged 25 gets convicted of an offence and given a court fine. The disclosure period for that sentence is 12 months. As no other sentences are imposed the disclosure period applicable to that conviction is 12 months and the conviction would otherwise become spent after 12 months.

However, 6 months later the person is convicted of a further offence, in solemn proceedings, and given a 2 year custodial sentence. The disclosure period for that sentence will be 6 years. As no other sentences are imposed the disclosure period applicable to the conviction is 6 years.

The disclosure period for the first conviction is 12 months. The disclosure period for the second conviction is 6 years.

As the disclosure period for the second conviction is greater, the disclosure period for the first conviction is extended so that it will end at the same time as the disclosure period for the second conviction.

That is, both disclosure periods will end 6 years from the date of the second conviction for the offence which resulted in the custodial sentence. This means that both convictions may become spent 6 years following the date of conviction of the second offence (provided no further offences are committed in which the person is convicted in solemn proceedings).

However, there are 3 exceptions to this rule set out in the 1974 Act:

- 1) section 6(4A) to 6(4C)
- 2) section 6(5) to 6(5B)
- 3) section 6(6)

## **Section 6(4A) – 6(4C) of the 1974 Act rule: Adjournment and deferral**

This rule is necessary to ensure the rule to extend disclosure periods under section 6(4) will not apply to situations where a case was adjourned or deferred, the person

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gets a further conviction during that period, and are then given a sentence with no disclosure period for the first offence. For instance, an absolute discharge or an admonishment. In such circumstances the second conviction will not impact on when the first conviction become spent.

## **Example**

A person is convicted of an offence and sentencing is deferred for 6 months. During this period the person is convicted in solemn proceedings of a further offence and given a fine of £1,000. The disclosure period applicable to the fine is 12 months from the date of conviction.

After the 6 months deferral for sentencing in the first conviction the person is admonished for that first conviction.

The rule in section 6(4) would mean that the disclosure period applicable to the first conviction is extended to be the same as that of the second conviction (because that is longer). However, because an admonishment was given for that first conviction the rule in section 6(4B) applies and the disclosure period applicable to the first conviction is not extended. That means that the first conviction becomes spent.

## **13. Section 6(5) to 6(5B) rule: Ancillary orders**

The rule in section 6(4) of the 1974 Act does not apply to extend the disclosure period applicable to a conviction when the only sentence imposed for the other conviction is an ancillary order.

An ancillary order is one mentioned in section 5(2D) of the 1974 Act. This exception to the rule is set out in section 6(5).

Where, in addition to the ancillary order another sentence is imposed for a conviction, in determining whether the disclosure period applicable to another conviction is extended by the rule in section 6(4), the disclosure period applicable to the ancillary order is to be disregarded. This exception to the rule is set out in section 6(5A) and (5B).

## **Example**

Section 6(5): A person aged 25 is convicted of an offence (conviction 1) and is given a 5 year non-harassment order (but no other sentence). This will have a disclosure period of 5 years. One year later the person is convicted again (conviction 2) and is given a fine. The disclosure period applicable to conviction 2 is 12 months. This is not extended to match the five-year disclosure period applicable to conviction 1.

## **Example**

Section 6(5A) and (5B): In a variation to the circumstances in the example immediately above, in addition to the non-harassment order given for conviction 1 the person also received a custodial sentence of 12 months.

The disclosure period applicable to the non-harassment order is five years and the disclosure period applicable to the custodial sentence is 3 years.

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This means the disclosure period applicable to conviction 1 is 5 years. However, section 6(4) applies (if the second conviction occurred in solemn proceedings) and the disclosure period for conviction 2 is extended, because of the custodial sentence given.

By virtue of section 6(5A) and (5B), the disclosure period applicable to conviction 2 is only extended until the disclosure period applicable to the custodial sentence imposed for conviction 1 has expired. The disclosure period for the non-harassment order is ignored in determining the length of the extension.

Applying this rule, the disclosure period applicable to conviction 2 will last two years instead of one year. This is because the disclosure period for the custodial sentence for conviction 1 is three years but one year has already elapsed between convictions 1 and 2, leaving 2 years remaining.

The disclosure period applicable to conviction 1 will remain five years owing to the non-harassment order.

## **14. Section 6(6) rule: Summary proceedings, service proceedings and convictions outside a Scottish court**

The rule under section 6(4) of the 1974 Act does not apply if the subsequent conviction was one heard before a criminal court in summary proceedings. In such cases, each conviction becomes spent in accordance with the disclosure period for that conviction only and neither extends the other.

### **Example**

A person aged 25 is fined for a summary offence (conviction 1). The disclosure period is 12 months. Six months later the person is fined again for a further summary offence (conviction 2). In such a case, the disclosure period for the conviction 1 will be 12 months from the date of that conviction and the disclosure period for conviction 2 will be 12 months from the date of that conviction. Therefore, disclosure of the conviction 1 will end 6 months before disclosure for conviction 2.

The rule under section 6(4) also does not apply to service disciplinary proceedings for an offence listed in schedule 1 of the 1974 Act or to any conviction by or before a court outside Scotland of an offence in respect of conduct which, if it had taken place in Scotland, would not have constituted an offence under the law in force in Scotland.

## **15. What happens if I get another conviction for which an “excluded sentence” is imposed before my first conviction becomes spent?**

Excluded sentences have no effect on the disclosure periods for previous or subsequent conviction. This means the disclosure period for the first conviction will not change.

### **Example**

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An individual over 18 is convicted of an offence and fined £500 (conviction 1). The disclosure period for this sentence is 12 months from the date of conviction. Six months later the person is convicted of supplying class A drugs and given a 5 year custodial sentence (conviction 2) in solemn proceedings. This is an excluded sentence under section 5(1) of the 1974 Act.

The disclosure period applicable to conviction 1 remains 12 months and will not be affected by conviction 2.

## **16. What happens if I was given an excluded sentence and was convicted again?**

As stated above, excluded sentences have no effect on the disclosure periods for previous or subsequent sentences. This means the disclosure period for the subsequent conviction will be determined by the actual sentence given for that conviction.

### **Example**

A person is convicted of an offence and sentenced to five years imprisonment. This is an excluded sentence. Six months after being released from prison they are convicted of a second offence and fined £500. The disclosure period applicable to the second offence is 12 months and is unaffected by the first conviction.

## **17. What happens if I get an AtP before my first conviction becomes spent?**

The rule in section 6(4) of the 1974 Act only applies to convictions meaning that an AtP given when a prior conviction is unspent will have no effect on when that prior conviction becomes spent.

What happens if I get a conviction before my first AtP becomes spent?

The rule in section 6(4) of the 1974 Act only applies to convictions meaning that a conviction obtained when a prior AtP is unspent will have no effect on when that prior AtP becomes spent.

What happens if I get another AtP before my first AtP becomes spent?

There will be no impact on the disclosure period for the first AtP. That is both disclosure periods will be in accordance with the actual AtP given.

## **18. What happens if I was given a life sentence or an equivalent to a life sentence?**

The conviction is not capable of being spent and self-disclosure will always be necessary.

What happens if a person is convicted of a further offence during the period of adjournment or deferral for a previous offence?

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In accordance with the rule under section 6(4A) to (4C), if a “relevant sentence<sup>3</sup>” is imposed for the previous conviction and if the “relevant sentence” is one where there is no disclosure period (e.g. admonishment<sup>4</sup>) then the rule under section 6(4) does not operate so as to extend the disclosure period applicable to the previous conviction.

Other rules may apply depending on what the decision of the court is and in what type of court the offences were prosecuted in.

If the court decides to treat the previous and subsequent offences together then the rule in section 6(2) may apply.

If the offences are prosecuted in solemn proceedings and if the “relevant sentence” is one where a disclosure period applies (e.g. fine or community payback order) then the rule in section 6(4) may apply.

However, until the “relevant sentence” is given for the previous offence the adjournment and deferral will continue to be disclosed.

If both offences are prosecuted separately in summary proceedings the disclosure period for both convictions will be based on the sentences given.

## **19. What happens if I breach a Community Payback Order (CPO), Drug Testing and Treatment Order (DTTO) or a Restriction of Liberty Order (RLO)?**

The applicable rule is set out in section 6(3ZA) and (3ZB) of the 1974 Act.

This applies if a person is given a Conditional Discharge<sup>5</sup>, CPO, RLO or a DTTO for an offence (“offence A”) and the person breaches the order and, as a result of this breach, the person is given a further sentence for offence A after the disclosure period for the initial order has ended.

In such a case, the person is not to be treated as a protected person, and the conviction is not spent, until the disclosure period for that second sentence has expired.

To use the example of a CPO, in some circumstances where there has been a breach of the order, the court may revoke the order and deal with the person in respect of offence A as if the order had not been imposed.

In this case, the disclosure period for the conviction resulting in the CPO would end at the point of revocation. However, the effect of this rule is that the person will not be

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<sup>3</sup> A “relevant sentence” is any sentence other than an adjournment or deferral or, where applicable a further such adjournment or deferral.

<sup>4</sup> See section 5J for the full list of sentence with no disclosure period.

<sup>5</sup> Although a conditional discharge is not a disposal under Scots Law, the absence of a specific Scottish equivalent means that the reference is retained to ensure that the amendments do not create a gap in the regime for people in Scotland who have received this disposal elsewhere in Great Britain.



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treated as a “protected person” in respect of the conviction until the expiry of the disclosure period applicable to how the person is dealt with by the court as a result of breaching the CPO and the conviction will not be treated as spent until that period has expired.

### **Example**

A person is given a CPO with a supervision requirement of 2 years. The disclosure period for this sentence is 2 years (i.e. 12 months or the length of the order, whichever is longer). After 18 months the person breaches their CPO and is dealt with by the court. As a result, the court revokes the CPO and instead gives the individual concerned a 14 month custodial sentence.

This revised sentence has a disclosure period of 5 years and 2 months from the date of the original conviction (i.e. length of sentence plus 4 years). Therefore, as a result of the breach of the CPO and the fact the court imposed a custodial sentence of 14 months, the disclosure period for the conviction is extended by 3 years and 2 months, with the clock starting from the date of conviction.

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## **Appendix 3**

The following link takes you to the Scottish Government website and a list of offences which if convicted of will be disclosed for a minimum period of 15 years, 7 ½ years if under 18 at the time of conviction.

[Offences that must be disclosed - mygov.scot](https://mygov.scot/offences-that-must-be-disclosed)

Once the above noted time periods have passed the applicant will be able to request the removal of the information from their disclosure.

For example – a 23-year-old convicted of robbery and given a custodial sentence of 18 months will have that automatically placed on their standard/enhanced/PVG disclosure for fifteen years. Once we pass 15 years from the date of conviction they'll be able to request that the information be removed from their disclosure.

It is not an automatic removal, the applicant will be required to show why the conviction is no longer relevant.

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## Appendix 4

The following link takes you to the Scottish Government website and a list of offences which if convicted of will be disclosed for a period of 15 years, 7 ½ years if under 18 at the time of conviction.

[Offences that must be disclosed according to rules - mygov.scot](https://mygov.scot/offences-that-must-be-disclosed-according-to-rules)

Applicants will be able to lodge an appeal to have the conviction removed from their disclosure if the rehabilitation period set out in the Rehabilitation of Offenders act has been completed.

Unless the applicant has been jailed for more than 48 months then these offences will automatically be removed from being disclosed when the 15 / 7 ½ year periods have passed.

For example – a 23-year-old convicted of a breach of the peace and fined £100 will have that automatically placed on their disclosure for a year. For the 14 years after that they'll be able to request the removal of that conviction when they go through the disclosure process. The conviction will then be removed 15 years after the date of conviction.

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## Appendix 5

**Table A - Disclosure periods: Ordinary cases**

<b>Sentence</b>	<b>Disclosure period – aged 18 or over</b>	<b>Disclosure period – aged under 18</b>
A custodial sentence not exceeding 12 months	The term of the sentence plus 2 years	The term of the sentence plus 1 year
A custodial sentence exceeding 12 months but not exceeding 30 months	The term of the sentence plus 4 years	The term of the sentence plus 2 years
A custodial sentence exceeding 30 months but not exceeding 48 months	The term of the sentence plus 6 years	The term of the sentence plus 3 years
A custodial sentence exceeding 48 months	NEVER SPENT  A review mechanism will be available in due course for relevant sentences over 48 months.	NEVER SPENT  A review mechanism will be available in due course for relevant sentences over 48 months.
A fine	12 months	6 months
A compensation order under section 249 of the Criminal Procedure (Scotland) Act 1995	12 months	6 months
An order for endorsement made by a court in relation to an offence mentioned in schedule 2 of the Road Traffic Offenders Act 1988	5 years	2½ years
Absolute Discharge	Nil - become spent immediately on imposition.	
Admonishment	Nil - become spent immediately on imposition.	
children's hearing discharge	Nil - become spent immediately on imposition.	
Juvenile Offenders where (a) send the person to an approved school, or (b) commit the person to the care of a fit person	n/a	One year from the date of conviction.

**Note: these are the main disclosure periods and further disclosure periods can be accessed from the relevant legislation**