

To: Regulatory Functions Board

On: 12 November 2020

Report by: Director of Finance and Resources

Heading: Management of Offenders (Scotland) Act 2019

1. Summary

1.1 The purpose of this report is to advise the Board of changes to the law in relation to when convictions require to be disclosed by applicants for a licence. These changes will be introduced with effect from 30th November 2020.

2. Recommendations

2.1 The Board is asked to note the terms of the report.

3. Background

3.1 On 30 November 2020, the provisions contained in Part 2 of the Management of Offenders (Scotland) Act 2019 (“the 2019 Act”) will come into force. These provisions alter the current rules in relation to when convictions no longer require to be disclosed, as set out in the Rehabilitation of Offenders Act 1974 (“the 1974 Act”). The Policy Memorandum which was published when the new legislation was introduced set out that the consequences of a person having to disclose convictions for long periods of time can have an ongoing impact on matters such as their employment. The 2019 Act seeks to achieve a balance between the interests of people not having to disclose their previous offending and the rights of the public to be protected. The 1974 Act has already been amended as regards England.

3.2 The main change that will impact applications before the Board is that many convictions will become spent at an earlier date and will no longer require to be disclosed to the Board, as detailed at section 4 of the report. The main changes to disclosure periods (for over 18s), which are calculated from the date of a conviction, are:

- fines and compensation orders will become spent after a year rather than after 5 years
- prison sentences will never become spent if they are for periods over 48 months (currently 30 months)
- prison sentences for less than a year will now become spent after 2 years plus the term of the sentence (prison sentences of between 6 and 30 months currently become spent after 10 years)
- prison sentences of between 12 and 30 months will now become spent after 4 years plus the term of the sentence (prison sentences of between 6 and 30 months currently become spent after 10 years)
- Endorsements made in relation to an offence under the terms of the Road Traffic Offenders Act 1988 will still remain unspent for 5 years.

3.3 A more detailed table of the changes is attached at Appendix 1.

4. Impact on Applications before the Board

Applications made under the Civic Government (Scotland) Act 1982

4.1 For licensing applications made under the terms of the Civic Government (Scotland) Act 1982 (“the 1982 Act”), other than those made by taxi drivers and private hire car drivers, the amount of convictions that may automatically be taken into account by the Board will be reduced, as many convictions will become spent after a shorter period following the conviction.

Applications by Drivers

4.2 In relation to taxi and private hire car drivers, the special rules contained in the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (“the 2013 Order”) will continue to apply. Under this Order, certain convictions can still be considered in relation to applications for these licences, even if they would normally be considered spent. A number of serious offences listed under the 2013 Order will still require to be disclosed, irrespective of the time of the conviction. The list of offences in this regard includes assault to severe injury, certain firearm offences, causing death by dangerous driving, rape and other specified sexual offences, stalking and harassment offences.

4.3 A further list of offences set out in the 2013 Order may still require to be disclosed by applicants for a taxi or private hire car driver’s licence, depending on the age of the offence and the age of the applicant at the time of the conviction. When a conviction is not protected from being disclosed in terms of these rules, the Board can have regard to it when considering the application. This list of offences includes assault, fraud, certain drug offences and certain road traffic offences, including

dangerous driving, drink driving and driving without insurance. Where spent convictions not detailed in this list (or the list referred to at Paragraph 4.2 above) exist, they will not be able to be taken into account, except in the circumstances detailed at Paragraph 4.5 below.

Applications for Landlord Registration

- 4.4 The special rules which, as with drivers, allow certain spent convictions of landlords to be considered will remain in place.

Exceptions

- 4.5 Notwithstanding the above changes to the 1974 Act, the Board will continue to have the power to consider spent/ protected convictions in appropriate cases. Accordingly, it will remain open to Police Scotland to make a request to the Board to allow spent convictions to be considered where they are of the view that justice will not be able to be achieved otherwise. This applies to all types of licence applications before the Board.

Implications of the Report

1. **Financial** – Nil.
2. **HR & Organisational Development** - Nil
3. **Community/Council Planning** – Nil
4. **Legal** – The Council must have regard in fulfilling its licensing function to the requirements of the Rehabilitation of Offenders Act 1974, as amended by the new legislation, and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013.
5. **Property/Assets** – Nil
6. **Information Technology** – Nil
7. **Equality & Human Rights** -The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report because the recommendation in the report is simply for noting. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.
8. **Health & Safety** – Nil
9. **Procurement** – Nil
10. **Risk** – Nil
11. **Privacy Impact** – Nil
12. **Cosla Policy Position** – Nil
13. **Climate Risk** – Nil

List of Background Papers

None

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APPENDIX 1

Sentence	Current disclosure periods	New disclosure period (for persons aged 18+)
A fine	5 years	12 months
Absolute discharge	6 months	spent immediately
Admonition	6 months	spent immediately
Police or PF warning or Police fixed penalty (under the ASB (S) Act 2004	spent immediately	spent immediately
Alternatives to prosecution (ATPs) i.e. PF conditional offer (monetary)/ PF offer (non-monetary)	3 months from date of ATP	3 months from date of ATP
Disqualification from driving	Period of disqualification	Period of disqualification
A custodial sentence not exceeding 6 months	7 years	Jail term plus 2 years
A custodial sentence not exceeding 12 months	10 years	Jail term plus 2 years
A custodial sentence exceeding 12 months but not exceeding 30 months	10 years	Jail term plus 4 years
A custodial sentence exceeding 30 months but not exceeding 48 months	always requires to be disclosed	Jail term plus 6 years
A custodial sentence over 48 months	always require to be disclosed	always require to be disclosed
Deferred sentence for good behaviour	1 year from date of conviction	Date that conviction is imposed
A compensation order under section 249 of the Criminal Procedure (Scotland) Act 1995	5 years	12 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	5 years
Any sentence – (a) not mentioned above in the tables in Section 5 of the 1974 Act, or (b) other than one to which section 5(2D), or any of sections 5C to 5J, applies e.g. Community Payback Order (CPO), Restriction of Liberty Order (ROLO), Drug treatment and testing order (DTTO)	5 years from end of the order	end of the order or longer if you breach it and are re-sentenced