



## **RECRUITING PEOPLE WITH CONVICTIONS POLICY**

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### Appendix 1

### Disclosure Periods

## 1 Policy Statement

The Code of Practice (“the Code”) is published by Scottish Ministers under section 122 of Part V of The Police Act 1997 (“the 1997 Act”). The Code identifies obligations which registered bodies, counter signatories and other recipients of disclosure information issued under the 1997 Act and the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”).

YMCA Scotland complies with the Code, the 1997 and 2007 Acts regarding the treatment of individuals who are subject to Disclosure Scotland checks. Along with the Disclosure (Scotland) Act 2020, which focuses on safeguarding children and at-risk adults, while balancing the need for people with convictions to move on from past convictions and contribute to society.

We undertake not to discriminate unfairly against the subject of a disclosure on the basis of conviction or other information revealed.

We will provide a copy of this policy and the Code to anyone who asks to see it.

## 2 Management of Offenders (Scotland) Act 2019

The Management of Offenders (Scotland) Act 2019 has been amended to ensure it remains fit for purpose by encouraging rehabilitation, reducing barriers to reintegration and to bring in consistent disclosure levels across the United Kingdom.

The implementation of the Act will mean:

- People with convictions will no longer have minor offences hanging over them for a long period of time
- Convictions which were gained before the age of 12 will only be disclosed if the Independent Reviewer determines it appropriate

## 3 Recruiting people with Convictions

We are committed to equality of opportunity, to following practices, and to providing a service which is free from unfair and unlawful discrimination. We ensure that no applicant or member of staff is subject to less favourable treatment on the grounds of offending background. We actively promote the right mix of talent, skills and potential and welcome applications from a wide range of candidates, including those with criminal records. The selection of candidates for interview will be based on skills, qualifications and experience. This policy is made available to all applicants at the outset of the recruitment process.

We will use a PVG check only where this is considered proportionate and relevant to the particular position or type of regulated work. This will be based on a thorough risk assessment of the position or work and having considered the relevant legislation which determines whether or not a Standard or Enhanced Disclosure under the 1997 Act or a Scheme Record under the 2007 Act is applicable.

It is mandatory for those carrying out regulated roles with children and protected adults to be a member of the PVG Scheme. Where a disclosure application or request is deemed necessary, individuals will be made aware that the position or work will be subject to a Disclosure Scotland check and that the nature of the position or work entitles us to ask about spent and unspent convictions.

Having a criminal record will not necessarily debar people from working with YMCA Scotland.

## 4 Self Disclosure

The rules around what you would need to disclose are complex making it difficult to know what should and should not be disclosed. For this reason, we do not ask applicants going through our recruitment process to self-disclose. Instead, we will make our final recruitment decision based on the information contained in a disclosure. A disclosure will not tell us about any convictions which were gained before the age of 12 (unless you have applied for an enhanced disclosure or a PVG scheme record and the independent reviewer established by the Age of Criminal Responsibility (Scotland) Act 2019 has decided that the information should be included) or those which are spent and which are not considered appropriate to disclose unless they are subject to exceptions or subject to rules. There is a guidance document in Appendix 1 which will give you detailed information on how long a conviction is considered unspent.

Once in post, all staff and volunteers are required to tell us about any new convictions which they gain. Details of any new convictions should be provided to the Lead Signatory, YMCA Scotland, 1 Chesser Avenue, Edinburgh, EH14 1TB. We will then assess this information as detailed in 'How We Will Use Disclosed Information' below.

## 5 **PVG Membership**

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.

It will be an offence to work in a role where a disclosure is required without first joining the PVG scheme or for YMCA Scotland to employ someone in a role who has not confirmed is an appropriate PVG scheme member.

YMCA Scotland will undertake PVG checks on relevant staff and volunteers every five years.

In line with legislation the minimum age to obtain a PVG is sixteen.

## 6 **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.

We 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.

## 7 **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 Lead Signatory, YMCA Scotland, 1 Chesser Avenue, Edinburgh, EH14 1TB. The appeal will be heard by the appropriate signatories. Appeals should be submitted within 14 days and we will respond to you within 14 days.

## **8 YMCA Scotland Executive Committee**

YMCA Scotland will apply for a PVG Scheme Record for each member of the Executive Committee as trustees of a youth organisation.

### **Responsibility for Policy –**

**Operational Practice: National General Secretary**

**Executive Responsibility: YMCA Scotland Executive Committee**

**ACCEPTED AS THE RECRUITMENT OF EX-OFFENDERS POLICY THE EXECUTIVE COMMITTEE AT ITS MEETING ON 20 SEPTEMBER 2023**

**SIGNED \_\_\_\_\_ National Council Chairman**

**SIGNED \_\_\_\_\_ National General Secretary**

This policy will be reviewed at 18-month intervals

<sup>1</sup> We are only able to discuss what is contained on a PVG Certificate and not what may have been sent under separate cover by a police force.

## Appendix 1

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

Sentence	Disclosure period – aged 18 or over	Disclosure period – aged under 18
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
Caution for good behaviour where, in respect of a conviction, a person was ordained to find caution for good behaviour in respect of a period (“the caution period”).	whichever is the longer of— (i) 6 months from the date of the conviction, (ii) the length of the caution period	whichever is the longer of— (i) 3 months from the date of the conviction, (ii) the length of the caution period
Ancillary Orders  Examples of 'ancillary orders' are, non-harassment order, supervision and treatment orders, football banning order, antisocial behaviour order, exclusion from licensed premises order, confiscation order, serious crime prevention order and an order disqualifying someone from driving.	Length of Order	
Category 2 Alternatives to Prosecution  <ul style="list-style-type: none"> <li>a conditional offer issued in respect of the offence under section 302 of the</li> </ul>	Three Months	

<p>Criminal Procedure (Scotland) Act 1995,</p> <ul style="list-style-type: none"> <li>• a compensation offer issued in respect of the offence under section 302A of the 1995 Act,</li> <li>• a work order made against the person in respect of the offence under section 303ZA of the 1995 Act,</li> <li>• 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</li> <li>• 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,</li> </ul>		
<p><b>Particular Court Orders –</b></p> <ul style="list-style-type: none"> <li>• <b>Community Payback Order,</b></li> <li>• <b>Drug Treatment &amp; Testing Order, and</b></li> <li>• <b>Restriction of Liberty Order</b></li> <li>• </li> </ul>	<p>whichever is the longer of—</p> <p>(i) 1 year from the date of the conviction</p> <p>(ii) a period beginning with that date and ending when the order ceases to have effect.</p>	<p>whichever is the longer of—</p> <p>(i) Six months from the date of the conviction</p> <p>(ii) a period beginning with that date and ending when the order ceases to have effect.</p>
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.	
a supervision requirement under any provision of the Children (Scotland) Act 1995	Nil - become spent immediately on imposition.	
a guardianship order	Nil - become spent immediately on imposition.	
a compulsory supervision order under any provision of the Children's Hearings (Scotland) Act 2011	Nil - become spent immediately on imposition.	
Adjournment or Deferral	Until relevant sentence given	
Certain Mental Health Orders - Assessment Order Treatment Order Interim Compulsion Order	Length of order.	
Certain Mental Health Orders -  Compulsion Order with Restriction Order	<p>Length of order.</p> <p>If the restriction order ends and the CO remains, an application can be made to the Mental Health Tribunal for Scotland for disclosure of the CO to end 12 months after the restriction order ends.</p>	
Compulsion Orders	Length of order.	

	After 12 months an application can be made to the Mental Health Tribunal for Scotland under section 164A of the MH 2003 Act for disclosure of CO to end.	
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.
Any sentence—  (a) not mentioned above in this Table or in Table B, or (b) other than one to which section 5(2D) applies	12 months	6 months

**TABLE B -Disclosure periods: service disciplinary sentences**

Sentence	Disclosure period – aged 18 or over	Disclosure period – aged under 18
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
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	3 years	3 years

Discipline Act 1957, where the maximum period of detention specified in the order is 6 months or less		
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