

Inplace Personnel Services Limited

Criminal Records Checking Policy

This Policy clearly sets out IPSL (Inplace Personnel Service Limited) policy and procedures for collating Criminal Record background checks on all applicants when required for a particular job role. We are thoroughly committed to equal opportunities for all job applicants.

1. All job applicants Policy overview

1.1 This Policy clearly sets out IPSL (Inplace Personnel Service Limited) policy and procedures for collating Criminal Record background checks on all applicants when required for a particular job role. We are thoroughly committed to equal opportunities for all job applicants and all background checks (if required) will remain strictly confidential.

1.2 We select people for employment based on their:

- worker's skills
- abilities
- experience
- knowledge
- qualifications
- training

1.3 We treat all applicants for positions fairly and working in accordance with:

- **Rehabilitation of Offenders Act 1974**

2. Rehabilitation of offender

2.1 We will not automatically refuse to employ someone with an earlier criminal conviction. During the recruitment processes, candidates disclose details are not usually needed. Please see exceptions below See Lin candidates k .

2.2 Disclosure means sharing information that may otherwise not be required. After a risk assessment, we may request a disclosure if it is:

- proportionate
- relevant to the position concerned

2.3 Job adverts and recruitment information will state if a disclosure is needed. If disclosure is to form part of the recruitment process, applicants will:

- self-disclose all unprotected spent and unspent convictions
- not be entitled to withhold information about convictions which, for other purposes, would be 'spent'.

2.4 Spent convictions

In law, a conviction becomes 'spent' after the elapse of a defined period.

- 2.5 The Worker is then 'rehabilitated'. The amount of time depends on the type of offence they commit.
- 2.6 A Worker in England and Wales whose sentence exceeded 48 months can never become rehabilitated.
- 2.7 People whose convictions are 'spent' must be treated as if their conviction had never occurred. Job applicants are therefore entitled to conceal details relating to spent convictions.
- 2.8 If we find out about a job applicant's spent conviction, we must disregard it when making the employment decision. A refusal to employ a rehabilitated person on the grounds of a spent conviction is unlawful.

3. Exempt positions

- 3.1 We have a duty of care to protect the well-being of:

- the public
- service users
- children and adults in our care who are especially vulnerable or at risk

- 3.2 If the job advertised is on the exempt list in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, the applicant must disclose all convictions.

- 3.3 Disclosure is needed whether or not the convictions are 'spent'. Protected cautions and protected convictions do not need to be disclosed, depending on the job concerned.

- 3.4 We may ask applicants to disclose:

- all unspent and unprotected spent convictions
- cautions
- warnings
- reprimands
- binding over or other orders
- pending prosecutions
- criminal investigations

- 3.5 Failure to disclose this information could result in:

- withdrawal of a job offers
- dismissal
- disciplinary action

- 3.6 Failure to reveal information that is directly relevant to the position sought could lead to:

- withdrawal of an offer of employment
 - a review of employment with us
- 3.7 We will keep any information given to us confidential. We will only consider it with an application for positions to which an order applies.
- 3.8 If the job is exempt, we will ask for written evidence about the successful applicant's criminal convictions. We will seek the applicant's agreement to make a joint application to the Disclosure Barring Service (DBS) for a standard, enhanced or enhanced with DBS barred lists check.
- 3.9 Where a job is exempt, we may lawfully decide to reject the Workers due to a conviction. It does not need to be 'spent'.
- 3.9 We make every subject of a DBS check aware of the DBS code of practice. We will discuss any matter revealed with the Workers before withdrawing a conditional offer of employment.

4. Recruitment

- 4.1 All recruitment will be in line with [our recruitment policy](#). The minimum age that someone can have a criminal record check is 16 years old.
- 4.2 All council job applicants must declare any unspent convictions. For exempt roles working with children and vulnerable adults, applicants must declare all unspent and unprotected spent convictions and cautions.
- 4.3 Candidates who are required to have a criminal record check must complete a DBS application. The resulting DBS certificate is sent to the manager. Failure to do any of the above may result in:
- elimination from the recruitment process
 - dismissal

It is unlawful for us to employ or allow volunteers to work with children and vulnerable adults if they are listed as barred for this type of work.

Offer of employment

- 4.4 An offer of employment for a post working with children or vulnerable adults is conditional. The applicant must:
- satisfy our usual requirements for employment
 - have a satisfactory DBS check, if required, depending on the post in question
- 4.5 Generally, we do not permit any person to commence employment until:
- all specified conditions are satisfied
 - all relevant recruitment is complete

- vetting checks are complete here may be a particular reason why a new starter begins work before the return of the DBS check. In this event, and order for the check to happen, the manager must complete a DBS risk assessment and confirm:
- submission of a correctly completed criminal records check application
- an adult or children barred list check, if applicable, has been undertaken. To progress the check the manager must provide:
 - the name of the individual
 - any previous surnames they have been known as
 - their date of birth
- completion of all of the pre-employment right to work in the UK checks. For example, confirm the identity of the job applicant, references have been taken and are verified
- the manager has made sufficient safeguards for the Workers not to have unsupervised access to children or adults

4.6 Eligibility for checks

4.7 We are legally responsible for asking a person to reveal their conviction history. They must complete a DBS check when the post duties meet the criteria for exempt positions.

4.8 All Consultants will assess new posts, with advice from Business Operations Manager for DBS eligibility if required.

4.9 Individuals recruited from overseas

4.10 Anyone appointed to a post requiring an enhanced DBS check must have one. A check is needed regardless of their length of stay in the UK, even if they have never been resident.

4.11 When recruiting from abroad, the applicant must have:

- a statement of good conduct
- or, an overseas criminal records check

4.12 This includes citizens of the UK who have worked or lived overseas for three months or more in the previous five years.

4.13 This does not apply to members of the UK armed forces and their families who were stationed overseas.

4.14 Generally, the DBS cannot access criminal records held overseas. The national police computer has some overseas records that the DBS check would reveal.

5. Employees

- 5.1 Employees have a responsibility to report any relevant changes of circumstance to us. Our code of conduct requires this. These include
- any criminal investigations, convictions or warnings
 - any other relevant information which a reasonable employer might consider to impact on their employment
- 5.2 Employees must discuss with their line manager any problems which may impact on their suitability to work with children and adults. We will provide appropriate support or action. Failure to disclose convictions with the line manager may result in disciplinary action.
- 5.3 Any existing employee may have to undertake a DBS re-check. Refusing to comply may result in them being subject to disciplinary action for deliberate and, or, unreasonable:
- refusal to carry out lawful and safe instructions
 - to comply with a contractual agreement
- 5.4 We will maintain confidentiality in line with our policies. We may need to share information where concerns arise about the welfare or safety of children or adults. We have a responsibility to protect the safety and welfare of children and vulnerable adults. Any information sharing about an employee's conduct or criminal records will be in accordance with relevant legislation and policy. Information will only be shared as is necessary in the circumstances.
- 5.5 Re-checks for employees
- 5.6 We can legally re-check our employees at a frequency determined by ourselves for posts with:
- an enhanced DBS check
 - or, an enhanced check for regulated activity
- 5.7 There are annual checks for employees who work in children's regulated services. Checks are made via the online update service. We will reimburse the subscription fee for this group of employees.
- 5.8 In addition, where there are reasonable grounds, we may ask existing employees to re-apply for an enhanced DBS check or enhanced check for regulated activity. For example, if their actions or activities give cause for concern.
- 5.9 The grounds for a cause for concern could include:
- allegations of suspicious, or
 - inappropriate behaviour
- 5.10 In such instances, there will be a full investigation as per our disciplinary policy. The employee may need to undergo an enhanced DBS check or

enhanced check for regulated activity. We may take legal advice in respect of this request.

5.11 Refusing to comply with a request for a DBS check may result in disciplinary action.

5.11 Unauthorised disclosure

5.12 The unauthorised disclosure of information about a 'spent' conviction is unlawful. This is revealing someone's criminal record other than in the course of official duties. Serious misuse of a person's criminal record could result in:

- a prison sentence of up to six months
- or a fine of up to £1,000
- or both

6. Types of checks

There are different levels of criminal records check that we use:

6.1 Basic disclosure

6.2 A basic disclosure shows details of unspent convictions at a national level. We may ask all prospective employees to obtain one. It is issued to the individual.

6.3 Enhanced disclosure

6.4 and addition to the basic disclosure, this includes local police records.

6.5 It is needed for positions that are exempt from the provisions of the Rehabilitation of Offenders Act 1974. It is issued to the individual.

6.6 Enhanced disclosure with barred list check

6.7 In addition to the enhanced disclosure as detailed above, this includes whether the Workers is on the Children's or Adult barred lists.

6.8 The Disclosure and Barring Service (DBS) hold these lists.

6.9 This check is needed mainly for positions that involve working with children or vulnerable adults in a regulated activity. It is defined by the Safeguarding Vulnerable Groups Act 2006.

6.10 Enhanced check for 'regulated activity'

6.11 Regulated activity is work that a barred person must not do.

6.12 The Safeguarding Vulnerable Groups Act 2006, as amended principally by the Protection of Freedoms Act 2012, identifies a number of offences which prevent barred people from working in regulated activities.

6.13 It is an offence if we permit a person to work whilst knowing or having reason to believe that they are barred.

6.14 Regulated activity includes roles where employees are required to work:

- unsupervised with children
- in a limited range of places with opportunity for contact with children
- conveying children or adults
- with adults providing:
 - healthcare
 - personal care
 - social work
 - assistance with cash, bills, shopping
 - assistance in the conduct of a person's own affairs

7. Eligibility criteria for an enhanced check for regulated activity

Adults - ONLY

7.1 The focus is on the activities required by the adult and not:

- on the setting
- or, the personal characteristics of that adult

7.2 Those who provide:

- healthcare by regulated health care professionals
- personal care such as assistance with washing, dressing, eating, drinking, toileting or teaching to do these tasks
- social work
- help with cash, bills and shopping
- help with the conduct of persons own affairs such as enduring power of attorney
- conveying adults to and from health care, including taxis

7.3 Where an employee undertakes regulated activity, they must have an enhanced DBS check. The check will ensure that the successful candidate is not barred from working with children or adults who are in vulnerable circumstances.

8 Barred list

8.1 A barred person is someone who has harmed or poses a risk of harm to children or vulnerable groups. The DBS make decisions about whether a person is:

- barred
- placed on the children's or adult barred lists
- prevented by law from working with children or vulnerable groups

8.2 It is an offence for a person to work, apply or offer to work in regulated activity with a group from which they are barred.

9. The legal duty to refer

9.1 We must inform the police if a barred person applies for a position of trust which is a regulated activity.

9.2 We must refer information to the DBS in the following circumstances:

9.3 Condition 1

If we have withdrawn permission for a person to work in regulated activity with children and or adults through:

- dismissal
- by moving the person to another area of work that is not regulated activity

If we have withdrawn permission but before this happened the person has:

- resigned
- retired

- been made redundant
- been redeployed

9.4 Condition 2

If we have evidence that the person has:

- been cautioned or convicted of a relevant (automatic barring) offence
- engaged in 'relevant conduct' concerning children or adults. For example, something that has harmed a child or vulnerable adult or put them at risk of harm
- satisfied the 'harm test' concerning children or vulnerable adults. Harm is defined in its widest context and includes physical, sexual, financial harm, neglect, emotional, verbal, psychological harm

In these instances, employees may also be subject to disciplinary procedures. We will make the employee aware of their referral to the DBS in writing.

9.5 We will inform the DBS if an employee:

- resigns
- retires
- is made redundant before a disciplinary hearing, or
- is terminated by mutual consent for matters that meet the reporting criteria

10. Enhanced DBS Check

10.1 There are several positions, professions and activities, which are eligible for an enhanced check without the barred list. We will determine when an enhanced DBS check is required. We must be able to explain the reasons why we have decided to ask for a check of a particular role.

10.2 The level of DBS check is determined when a role goes through job evaluation. We will record it on the job description.

11.1 Applicants with adverse disclosures

11.2 The criminal records check may reveal convictions which make the applicant unsuitable for the applied post. The recruiting manager will discuss them with the applicant in line with the relevant code of practice.

11.3 The applicant must sign the completed risk assessment to:

- verify the information provided
- permit the risk assessment to be stored securely and later destroyed as per our retention policy

11.4 When assessing any disclosure or declared conviction information we receive the risk assessment will support a manager's decision. The manager may discuss matters with HR before discussing it with the applicant.

11.5 Having a conviction will not necessarily bar someone from employment with us. We will only take a criminal record into account when the conviction is relevant. We must weigh the protection of the applicant's rights and interests against the rights and interests of clients and employees, including our responsibilities to these groups, and the public.

11.6 It is an offence for a person to work, apply or offer to work in regulated activity with a group from which they are barred. We will not employ candidates on the barred list in a regulated activity.

11.7 If someone on the barred list for regulated activity applies for barred work, we will make a referral to the DBS.

13. Further Checks

13.1 Prohibition order checks

13.2 Contractors

13.3 Whoever provides a contractor is legally their employer. It is their responsibility to obtain any DBS or barred list check, if required.

13.4 Procurement Lincolnshire ensures that all safeguarding requirements are in the procurement documentation. There are regular audits of the contractor's organisation.

- receive any payment except for travel and other approved expenses
- be on a placement or work experience
- be on a course that requires them to do this job role
- be in a trainee position that will lead to a full-time role post-qualification

14 Gender recognition certificates

14.1 Anyone with a gender recognition certificate is legally the acquired gender.

14.2 When applying for a DBS check, the applicant must include any previous names and gender. For confidentiality, the DBS has a special procedure and dedicated officer. Email sensitive@dbsgsi.gov.uk.

14.3 Gender will be kept confidential with a clear disclosure certificate. If there are any relevant convictions under a previous gender, the DBS disclosure certificate will show both gender names.

GS Paterson



**Operations Director
Inplace Personnel Services Ltd**

28.11.2022

Annex A - Attached below

Please note this is guidance only and you should seek legal advice if you are unsure.

This guidance applies from 28 November 2020

Guidance on the Rehabilitation of Offenders Act 1974 and The Exceptions Order 1975.

Contents: (1) INTRODUCTION:

What is the Rehabilitation of Offenders Act 1974?

- Who benefits from the 1974 Act and how?
- Which parts of the UK does the 1974 Act apply to?
- Does the Act apply to Service personnel?
- Does the 1974 Act cover cautions, penalty notices for disorder or fixed penalty notices? (2)

REHABILITATION PERIODS:

- How long will it take before my caution or conviction becomes spent?
- Are there any sentences which are not covered by the 1974 Act?
- What are the rehabilitation periods for motoring offences?
- What happens if I get another caution or conviction before my first conviction becomes spent?
- What happens if I get another conditional caution or conviction before my first conditional caution becomes spent?
- I have been sentenced for more than one offence at the same time. Will the rehabilitation periods run concurrently or consecutively? (3)

EXCEPTIONS ORDER:

- Are there any jobs or other activities for which I will have to disclose both spent and unspent cautions and convictions?
- What jobs and activities are listed in the Exceptions Order?
- Which cautions and convictions do I need to disclose under the Exceptions Order if full disclosure is closure isn't required?
- What is a 'specified offence'?
- Can an employer ask an individual to declare details of all convictions and cautions?
- Are there any jobs or activities where full disclosure is required? (4)

INFORMATION FOR EMPLOYERS

- How do I know if I am eligible to request a standard or enhanced criminal records certificate from prospective and/or current employees?
Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.
- What should I consider when employing ex-offenders? (5) Jurisdiction
 - Application of different rehabilitation periods and exceptions in England & Wales and Scotland
- What legislation to apply when the Disclosure and Barring Service and Disclosure Scotland issue criminal record certificates (6)

ANNEX A: Examples of the types of occupations, posts, and activities in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. - Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act.

Anyone in doubt should seek their own legal advice. (1)

INTRODUCTION: This document should be considered a guide to the position in England and Wales only. You will find links to more detailed guidance on specific issues throughout, including references to guidance produced by the Disclosure and

- What is the Rehabilitation of Offenders Act 1974? The Rehabilitation of Offenders Act 1974 ("1974 Act") primarily exists to support the rehabilitation into employment of reformed offenders who have stayed on the right side of the law. Under the 1974 Act, following a specified period which varies according to the disposal administered or sentence passed, cautions and convictions (except those resulting in prison sentences of over four years and all public protection sentences*) may become spent. As a result the offender is regarded as rehabilitated. For most purposes the 1974 Act treats a rehabilitated person as if he or she had never committed or been charged with charged or prosecuted for or convicted of or sentenced for the offence and, as such, they are not required to declare their spent caution(s) or conviction(s), **for example, when**

applying for most jobs or insurance, some educational courses and housing applications. *A public protection sentence, the provisions for which are set out in Part 12 of the Criminal Justice Act 2003 and Part 8 of the Armed Forces Act 2006, means a sentence of imprisonment or detention imposed for specified sexual and violent offences. These sentences include imprisonment or detention for public protection, extended sentences of imprisonment or detention for public protection, and extended determinate sentences.

- Who benefits from the 1974 Act and how?

All cautions and convictions may eventually become spent, except for prison sentences, or sentences of detention for young offenders, of over four years and all public protection sentences regardless of the length of sentence. Once a caution or conviction has become spent under the 1974 Act, a person does not have to reveal it or admit its existence in most circumstances. Unless an exception applies (see below), then spent cautions and convictions need not be disclosed when filling in a form, or at a job interview. An employer cannot refuse to employ someone (or dismiss someone) because he or she has a spent caution or conviction unless an exception applies. The exceptions where you may have to declare spent cautions and convictions are listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Section 3 of this guidance). An employer should be able to say if an exception applies and, if so, where it can be found on the Exceptions Order.

- Which parts of the UK does the 1974 Act apply to? The 1974 Act applies in England, Wales and Scotland. However there are some differences in the way in which it, and related legislation, operates in Scotland. This document should therefore be considered a guide to England and Wales only. Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice. For information on the 1974 Act in Scotland, please visit: www.scotland.gov.uk/Topics/Justice/public-safety/offendermanagement/publications/law/RehabofOffenders The relevant Northern Irish legislation, the Rehabilitation of Offenders (Northern Ireland) Order 1978 and the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 can be found here: www.dojni.gov.uk/index/accessni/legal-issues/legislation.htm

- Does the Act apply to Service personnel?

The 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 rehabilitation periods apply to sentences which are imposed in the service justice system as are imposed by the civilian justice system (for example a fine imposed by a Magistrates' Court and a fine imposed by a Court Martial, would each have the same rehabilitation period of a year beginning with the date of conviction). Additionally there are two sentences which attract a rehabilitation period, and which can only be imposed by the service justice system.

- removal from the service (for example dismissal with disgrace from Her Majesty's service or dismissal from Her Majesty's service) which attracts a rehabilitation period of 1 year beginning with the date of conviction.

- a sentence of service detention, the total rehabilitation period being the period of the sentence and an additional 'buffer' period of 1 year which applies from the end of the sentence (see the section below on rehabilitation periods). These rehabilitation periods are halved if the offender was under 18 at the time of conviction. All of the other sentences particular to the service justice system (for example a severe reprimand or a service supervision and punishment order) that are not listed elsewhere in the guidance are spent immediately.

- Does the 1974 Act cover cautions, penalty notices for disorder or fixed penalty notices?

IPSL Off 118 – Guidance for Criminal Convictions

V1

28/11/2022

The 1974 Act covers simple cautions (which become spent immediately) and conditional cautions (which become spent after three months). Reprimands and warnings were abolished in April 2013 and a reprimand or warning given before that

date is now to be treated as a youth caution which, as with adult cautions, is spent immediately. Fixed Penalty Notices and Penalty Notices for Disorder do not constitute a conviction or caution (though they may be recorded on local police systems should the force consider it necessary to do so) and they therefore are not covered by the 1974 Act (but see below in relation to a FPN issued for certain road traffic offences and where an endorsement is imposed). (2) REHABILITATION PERIODS:

- How long will it take before my caution or conviction becomes spent?

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

The rehabilitation period (the length of time before a caution or conviction becomes spent) is determined by the type of disposal administered or the length of the sentence imposed. Rehabilitation periods that run beyond the end of a sentence are made up of the total sentence length plus an additional period that runs from the end of the sentence, which we have called the 'buffer period'. Other rehabilitation periods start from the date of conviction or the date the penalty was imposed. The 'buffer periods' are halved for those who are under 18 at date of conviction (save for custodial sentences of six months or less where the 'buffer period' is 18 months). The rehabilitation periods for sentences with additional "buffer periods" which run from the end date of the sentence are shown in the table below: *Custodial sentence includes a sentence of imprisonment (both an immediate custodial sentence and a suspended sentence), a sentence of detention in a young offender institution, a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000, a detention and training order, a sentence of youth custody, a sentence of corrective training and a sentence of Borstal training.

In relation to any community or youth rehabilitation order which has no specified end date, the rehabilitation period is 2 years from the date of conviction. Sentence/disposal Buffer period for adults (18 and over at the time of conviction or the time the disposal is administered). This applies from the end date of the sentence (including the licence period). Buffer period for young people (under 18 at the time of conviction or the time the disposal is administered). This applies from the end date of the sentence (including the licence period). Custodial sentence* of over 4 years, or a public protection sentence Never spent Never spent Custodial sentence of over 30 months (2 ½ years) and up to and including 48 months (4 years) 7 years 3½ years Custodial sentence of over 6 months and up to and including 30 months (2 ½ years) 4 years 2 years Custodial sentence of 6 months or less 2 years 18 months Community order or youth rehabilitation order** 1 year 6 months Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act.

Anyone in doubt should seek their own legal advice.

The following table sets out the rehabilitation period for sentences which do not have "buffer periods" and for which the rehabilitation period runs from the date of conviction: Sentence/disposal Rehabilitation period for adults (18 and over at the time of conviction or the time the disposal is administered). Rehabilitation period for young people (under 18 at the time of conviction or the time the disposal is administered). Fine 1 year 6 months Conditional discharge, Period of the order Period of the order Absolute discharge

None Conditional caution and youth conditional caution 3 months or when the caution ceases to have effect if earlier 3 months Simple caution, youth caution Spent immediately Spent immediately Compensation order* On the discharge of the order (i.e. when it is paid in full) On the discharge of the order (i.e. when it is paid in full) Binding over order Period of the order Period of the order Attendance centre order Period of the order Period of the order Hospital order (with or without a restriction order) Period of the order Period of the order Referral order Not available for adults Period of the order Reparation order Not available for adults None Examples: A 2 year custodial sentence given to an adult may become spent after 6 years: the rehabilitation period is the period of the sentence plus a further 'buffer period' of 4 years, giving a total of 6 years.

A 2-year custodial sentence suspended for 2 years is spent after 6 years; the rehabilitation period is the period of the custodial sentence plus a further buffer period of 4 years giving a total of 6 years. (A suspended sentence is a sentence of imprisonment, and the rehabilitation period is therefore determined by the custodial sentence, regardless of the period for which it is suspended).

IPSL Off 118 – Guidance for Criminal Convictions

V1

28/11/2022

A 6-month sentence of detention given to a young person may become spent after 2 years: the rehabilitation period is the period of the sentence plus a further 'buffer period' of 18 months, giving a total of 2 years. A 1-year community order given

to an adult may become spent after 2 years: the rehabilitation period is the length of the order plus a further 'buffer period' of 1 year, giving a total of 2 years. A 1-year youth rehabilitation order given to a young person may become spent after 18 months: the rehabilitation period is the length of the order plus a further 'buffer period' of 6 months, giving a total of 18 months. An adult who is given a fine will have to declare this conviction for 1 year from the date of conviction before it is considered spent. Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

*Compensation Orders – it is important that individuals obtain proof of payment from the court and keep this document to prove that the compensation order has been paid in full.

- Are there any sentences which are not covered by the 1974 Act?

The following sentences are exempt from the 1974 Act and can never become spent:

- a. Sentence of imprisonment for life.
- b. Sentence of imprisonment, youth custody, detention in a young offender institution or corrective training of over 4 years.
- c. Sentence of preventive detention.
- d. Sentence of detention during Her Majesty's pleasure or for life.
- e. Sentence of custody for life.
- f. public protection sentences (imprisonment for public protection, detention for public protection, extended sentences of imprisonment or detention for public protection and extended determinate sentences for dangerous offenders).

- What are the rehabilitation periods for motoring offences?

An endorsement for a road traffic offence listed in Schedule 2 to the Road Traffic Offenders Act 1988, imposed either by the court 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 for a FPN in these circumstances to be treated as a conviction and dealt with as such under the 1974 Act. Penalty points and a driving disqualification imposed by the court on conviction may become spent when they cease to have effect (penalty points have effect for three years as set out in road traffic legislation). Where the court imposes more than one sentence or penalty for the offence then the longest rehabilitation period determines when the conviction may become spent. A fixed penalty notice (FPN) can be used to deal with minor road traffic offences, but it is not a criminal conviction or a caution and the 1974 Act does not apply. Examples: An adult is convicted of a road traffic offence, and the court imposes a fine (rehabilitation period 1 year), an endorsement (rehabilitation period 5 years), penalty points (rehabilitation period 3 years) and driving disqualification for 1 year (rehabilitation period 1 year); the rehabilitation period for this conviction will be 5 years because the endorsement carries the longest rehabilitation period. If the offender was under 18 and received the above sentence, the conviction may become spent after 3 years because the longest rehabilitation period applicable would then be three years for the penalty points (the endorsement would become spent after two and half years). Once the conviction becomes spent, the person is not required to declare it when applying for most jobs, or (motor) insurance. It is the case for all convictions (not only road traffic convictions) that where more than one sentence or penalty is imposed then the conviction may only become spent once the longest rehabilitation period which applies has ended.

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

www.direct.gov.uk/en/motoring/driverlicensing/endorsementsanddisqualifications/dg_1002242_5

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

- What happens if I get another caution or conviction before my first conviction becomes spent?

If you already have an unspent conviction and you get a further caution or conviction before the earlier conviction has become spent, one of the following will apply: a. If your later outcome is a caution (either a simple caution or a conditional caution), neither rehabilitation period will be affected. The conviction for the earlier offence will become spent at the time

IPSL Off 118 – Guidance for Criminal Convictions

V1

28/11/2022

originally fixed, and the caution for the later offence will become spent after the normal period (immediately for a simple caution or three months for a conditional caution). b. If your later outcome is a conviction, then neither conviction will become spent until the rehabilitation periods for both offences are over. This applies to summary offences (offences that

can only be tried in a magistrates' court) as well as either way offences (triable in either the magistrates' court or the Crown Court) and indictable only offences (offences that can only be tried in the Crown Court). Please note that there are very limited exceptions to this under section 6(5) of the 1974 Act. c. If your later outcome is a conviction that results in a custodial sentence of more than four years, or a public protection sentence of any length, then neither the second nor the first conviction will ever become spent. Once a conviction becomes spent, it remains spent, even if a person is convicted of other offences later.

- What happens if I get another conditional caution or conviction before my first conditional caution becomes spent?

If the later conditional caution or conviction is separate to the earlier conditional caution (i.e. not for the offence in respect of which you were cautioned), then neither rehabilitation period will be affected. The conditional caution for the earlier offence will become spent at the end of 3 months from when it is given, and the caution or conviction for the later offence will become spent after the normal period. For example: A person receives a conditional caution for shoplifting. A month later he receives a conviction for a separate offence.

The conditional caution will become spent in the normal way (three months from the date of issue) and, in relation to the conviction for the separate offence the rehabilitation period will apply for the sentence imposed by the court. However, if you fail to comply with a conditional caution, and you are subsequently prosecuted the conditional caution will cease to have effect.

Any subsequent conviction will then attract the relevant rehabilitation period for the sentence imposed by the court. For example: A person receives a conditional caution for shoplifting. He fails to comply with the conditions and as a result is prosecuted for, and convicted of, the shoplifting offence for which he receives a fine, the conditional caution ceased to have effect when he was prosecuted and he now has a conviction with a 12-month rehabilitation period because, in this example, he was sentenced to a fine.

- I have been sentenced for more than one offence at the same time. Will the rehabilitation periods run concurrently or consecutively?

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

If you receive more than one sentence at the same time, the total rehabilitation period will depend on whether the sentences run concurrently (at the same time) or consecutively (one after the other). If concurrent sentences are imposed, then the longest applicable rehabilitation period will apply to all the sentences. For 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 from the end of the sentence, giving a total rehabilitation period of two years and 6 months before both convictions can be considered spent). If consecutive sentences are imposed, then the sentences will be added together to calculate the rehabilitation period.

For example, a four month and six-month prison sentence running consecutively will count as a ten month sentence (carrying a "buffer period" of four years from the end of the sentence, giving a total rehabilitation period of four years and ten months before the convictions can be considered spent). (3)

EXCEPTIONS ORDER

- Are there any jobs or other activities for which I will have to disclose both spent and unspent cautions and convictions?

Yes. There are certain exceptions where you may be asked to disclose your caution or conviction even if it is considered spent under the 1974 Act. The provision for this is set out in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, as amended (the "Exceptions Order"). This is in recognition that there are certain activities for which fuller disclosure of a person's criminal record history is relevant, for example, where there is a real risk to children, other people in vulnerable circumstances or some other particularly sensitive area of work.

Where the Exceptions Order applies this will usually be indicated in the job advert for the role by stating that a 'standard' or 'enhanced' criminal record check may be required (see further below for explanation of these terms). In these

IPSL Off 118 – Guidance for Criminal Convictions

V1

28/11/2022

circumstances you are required to list all your cautions and convictions, including those that are spent, unless for the purposes of the job or activity they are considered to be ‘protected’ (discussed further below).

You should be aware that as well as being able to ask you to disclose your cautions and convictions, in these circumstances the employer, organisation or licensing body will be able to request the same information from the Disclosure and Barring Service (“DBS”).

- What jobs and activities are listed in the Exceptions Order?

The jobs and activities listed in the Exceptions Order mainly relate to particularly sensitive areas such as work with children or health and social care, work in law enforcement and the legal system, and high-level financial positions. Exceptions also apply to certain certificates and licences (such as a firearms certificate) and to certain proceedings (such as those connected with admission to certain regulated professions). Annex A provides a summary of the main jobs and activities that are included in the Exceptions Order. It is important to be aware that the Exceptions Order is kept under review

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

Any amendments are made periodically to ensure that the criminal disclosure regime meets the changing requirements of public protection.

- Which cautions and convictions do I need to disclose under the Exceptions Order?

All unspent convictions and cautions must be disclosed just like any job or activity not covered by the Exceptions Order.

In addition, spent cautions and convictions must be disclosed if they meet the circumstances described in the table below:

Disposal Age when given/sentenced How long since given/sentenced? Caution for specified offence 18 or over Any time
Caution for non-specified offence 18 or over Less than 6 years Conviction for specified offence Any age Any time Conviction resulting in custodial sentence Any age Any time Conviction for non-specified offence 18 or over Less than 11 years Under 18 Less than 5 and half years Any other caution or conviction which does not meet the details set out in the table, such as spent youth reprimands, warnings and cautions, is considered protected. Protected cautions and convictions do not need to be disclosed unless the job or activity is one which is of the utmost integrity. These jobs and activities require full disclosure and are discussed below.

- What is a ‘specified offence’? A specified offence is one which is serious, and which relates to sexual offending, violent offending and/or are relevant to safeguarding children and vulnerable adults. The full list of these specified offences can be found on the DBS website. <https://www.gov.uk/government/publications/filtering-rules-for-criminal-record-checkcertificates>.

- Are there any jobs or activities where full disclosure is required?

There are a small number of jobs or activities for which the utmost integrity is required. In order to maintain public trust and confidence, full disclosure of all convictions and cautions, including protected cautions and convictions, must be made. These are generally jobs or activities relating to national security, police constables, judicial appointments, and firearms certificates. You will be informed by the employer, organisation, or licensing body if full disclosure is required when applying for these jobs or activities. Please be aware, disclosure of criminal records in these instances is not provided by the Disclosure and Barring Service.

- What can an employer, organisation or licensing body ask an individual to disclose?

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

www.gov.uk/government/organisations/disclosure-and-barring-service.

- What should I consider when employing ex-offenders?

IPSL Off 118 – Guidance for Criminal Convictions

V1

28/11/2022

Each employer is best placed to consider whether a person's convictions (either before they have become spent, or, in the case of activities listed on the Exceptions Order, when they are spent) make him or her unsuitable for a particular job. But it is important that you should reach a balanced judgement, having regard to such factors as:

- a. the person's age at the time of the offence.
- b. how long ago the offence took place.
- c. whether it was an isolated offence or part of a pattern of offending.
- d. the nature of the offence.
- e. its relevance to the post or position in question; and
- f. what else is known about the person's conduct before and since the offence.

The Disclosure and Barring Service Code of Practice requires registered employers to have a fair and clear policy towards ex-offenders and not to discriminate automatically based on an unprotected conviction or caution.

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.