

CRIMINAL CONVICTIONS – STATEMENT OF PRINCIPLES

1. The Board takes a serious view of criminal convictions and will take convictions which require to be disclosed under the Rehabilitation of Offenders Act 1974 ("the 1974 Act") and Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 ("the 2013 Order") and which are disclosed by Disclosure Scotland under an enhanced disclosure certificate into consideration when assessing the suitability of applicants for judicial appointment.
2. Applicants for judicial appointment are required to disclose any unspent convictions and any spent convictions unless those spent convictions are protected from disclosure by virtue of the 1974 Act and the 2013 Order. Guidance on self-disclosure of spent convictions is set out at the end of this statement.
3. The Board recognises the rehabilitative intent of the 1974 Act and 2013 Order and may at its discretion determine that a conviction should not automatically prevent an application from proceeding. As a general principle the Board will consider the individual circumstances of each conviction declared by an applicant and, if an applicant has been interviewed, will comment on those circumstances in its report to the First Minister.
4. In deciding whether or not an application can proceed, the factors the Board will consider include:
 - a. the nature, number and date(s) of the offence(s);
 - b. the age of the applicant on the date the offence(s) were committed;
 - c. the circumstances and seriousness of the offence(s);
 - d. the sentence imposed; and e. the time that has elapsed since the conviction.
6. Applicants are also required to disclose any unspent alternatives to prosecution by virtue of the 1974 Act. Alternatives to prosecution include:
 - a. a warning by the procurator fiscal;
 - b. a fiscal fine of up to £500;
 - c. a compensation order of up to £5,000;
 - d. a fiscal work order (i.e. an offer to carry out between 10 and 50 hours of unpaid work as an alternative to court proceedings); e. a road traffic fixed penalty; and f. a diversion from prosecution.
7. An alternative to prosecution becomes spent either at the time of a warning or fixed penalty notice listed in Section 8B(1)(a) or (d) of the 1974 Act or, if the warning or fixed penalty notice is not listed there, 3 months after the alternative to prosecution is given.
8. In relation to current investigations applicants must declare information about any criminal charges they are subject to or any on-going criminal investigation into their conduct. Depending on the particular circumstances of the investigation, their application may be allowed to proceed.

In the event that the applicant was assessed as suitable to be recommended for judicial appointment their name would not normally be put forward to the Scottish Government until the outcome of the investigation was known.

In a competition where a group of selectable applicants was being established to recommend for vacancies arising over a period of time, and the outcome of a criminal investigation, or trial was not known by the end of that period, the applicant would have to reapply at the time of the next selection exercise if they still wished to be recommended for that judicial office.

Guidance on self-disclosure of criminal convictions

1. Applicants for judicial office are required to disclose any unspent convictions and any spent convictions unless those spent convictions are protected from disclosure by virtue of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013.

2. An unspent conviction means a conviction for which the disclosure period for the offence under sections 5-5I of the 1974 Act has not yet expired.

3. Under the 1974 Act and 2013 Order, a spent conviction does not require to be disclosed in three circumstances:

i. Circumstance One: the conviction falls within the definition of a "protected conviction" (defined at paragraph 4 below).

ii. Circumstance Two: the conviction is for an offence listed in schedule A1 of the 2013 Order AND at least 15 years have passed since the date of the conviction (or 7.5 years if the applicant was aged under 18 at the time of conviction) AND is not included in a higher level disclosure sent in connection with the application.

iii. Circumstance Three: the conviction is for an offence listed in in Schedule B1 of the 2013 Order which is not a protected conviction AND is not included in a higher level disclosure sent in connection with the application.

4. A "protected conviction" is a spent conviction AND either:

i. it is not a conviction for an offence listed in Schedule A1 or B1 of the 2013 Order;
OR

ii. it is a conviction for an offence listed in Schedule B1 of the 2013 Order and either:
(a) the sentence was an admonition or an absolute discharge; or (b) at least 15 years have passed since the date of the conviction (or 7.5 years if the applicant was aged under 18 at the time of conviction).