

Guidance for the self-disclosure of previous convictions & alternatives to prosecution in Scotland under the Rehabilitation of Offenders Act 1974

August 2020



Scottish Government
Riaghaltas na h-Alba
gov.scot

Guidance for the self-disclosure of previous convictions & alternatives to prosecution in Scotland under the Rehabilitation of Offenders Act 1974 (“the 1974 Act”)¹

Introduction

Who is the guidance for?

Anyone with a conviction or who is given an alternative to prosecution (“AtP”) (e.g. fiscal warning, fiscal fine) and who is looking for a job (e.g. working in an office or in retail) or wanting to get insurance, a bank account, a mortgage or rent a property. It is also aimed at employers and those organisations/individuals who provide advice to people who have been convicted of an offence or given an alternative to prosecution.

Why will it be helpful?

It will allow individuals, employers and those who provide advice to know how the rules of self-disclosure operate. It will help reduce the risk that individuals either under or over self-disclose information relating to their previous convictions – instead they will better know what information should and will be disclosed and what information will not. This will aid those individuals by, for example, allowing them to more easily gain suitable employment and be able to move on with their lives. It should also aid employers to understand the rules regarding self-disclosure and help prevent them from unlawfully using spent conviction/AtP information against someone when making recruitment decisions.

Why is there a need for rules regarding the self-disclosure of previous convictions/AtPs?

In Scotland, our system of self-disclosure is designed as an effective way of minimising the risk to an employer, it protects the public and it is necessary to support the assessment of an individual applying for a job through considering previous relevant behaviour.

Insurance companies also use the self-disclosure of previous convictions in order to assess risk and to set a premium for their product. Banks and building societies may also ask about previous convictions when someone applies for a mortgage. Private landlords and letting agents may also ask about previous convictions when renting out their properties.

If statutory rules did not exist, then the common law position in Scotland regarding self-disclosure would require people to answer, truthfully, any questions about their previous offending history, if asked. Without the 1974 Act, the common law position

¹ This Guidance will apply when Part 2 of the Management of Offenders (Scotland) Act 2019 is commenced.

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would require people to answer, truthfully, any questions about their offending history for the rest of their lives. So the 1974 Act is an important piece of legislation that offers legal protection to individuals with certain previous convictions or AtPs not to self-disclose them in accordance with the rules under the legislation.

Therefore, it is necessary for individuals to understand the rules in relation to self-disclosure to ensure they comply with Scots law.

What will happen if I do not follow these rules?

An employer may require a criminal conviction certificate (commonly known as a basic disclosure) issued by Disclosure Scotland when someone applies for paid or unpaid work. Disclosure Scotland is a Scottish Government executive agency which carries out criminal record checks in Scotland. A basic disclosure is a certificate which highlights any unspent convictions on an individual's criminal record.

If a person does not disclose an unspent conviction and it is included in a basic disclosure issued by Disclosure Scotland then that person may lose their job or not be considered for the post due to providing wrong information on an application form.

The fact that unspent conviction information is being provided to an employer is not in itself a bar to employment. It is up to the employer to consider whether it is relevant for the specific post being applied for. However, lying about information that should have been disclosed is unlikely to be considered acceptable by a prospective employer.

An insurance company may not pay out if a claim has been made as the insurance may be rendered invalid if a person does not provide all relevant details asked for or if they make a misrepresentation. A person may not be able to obtain a mortgage or a loan as a result of providing false information on an application form.

It is important that a person self-discloses details of convictions or AtPs in line with the rules laid down in the 1974 Act, if asked. If they disclose too little, they will not be complying with Scots law.

Which parts of the UK does the Rehabilitation of Offenders Act 1974 apply to?

The 1974 Act applies in Scotland and in England and Wales. However there are differences in the way in which it, and related legislation, operates in England and Wales.

This document is a guide to Scotland only.

For information on the 1974 Act in England and Wales, please visit:

<https://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974>

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Information about 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:

<https://www.nidirect.gov.uk/campaigns/accessni-criminal-record-checks>

Glossary

“The 2019 Act”	The Management of Offenders (Scotland) Act 2019
“1974 Act”	The Rehabilitation of Offenders Act 1974
“2013 Order”	The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013
“1995 Act”	The Criminal Procedure (Scotland) Act 1995
“1997 Act”	The Police Act 1997
“MH 2003 Act”	The Mental Health (Care and Treatment) (Scotland) Act 2003
“The 2015 amendment Order”	The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2015
“The 2016 amendment Order”	The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2016
“The 2016 amendment (No. 2) Order”	The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment (No. 2) Order 2016
“The 2018 amendment Order”	The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2018
“The 2020 amendment Order”	The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2020
“2003 Act”	Sexual Offences Act 2003
“AtP”	Alternative to prosecution
“CPO”	Community Payback Order
“DTTO”	Drug Testing and Treatment Order
“RLO”	Restriction of Liberty Order
“MHTS”	The Mental Health Tribunal for Scotland
“CO”	Compulsion Order
“CORO”	Compulsion Order with Restriction Order
“CICS”	Criminal Injuries Compensation Scheme
“CICA”	Criminal Injuries Compensation Authority
“CHS”	Criminal History System
“PVG”	Protection of Vulnerable Groups

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- Adjournment/Deferral after conviction
- An order under section 61 of the Children and Young Persons (Scotland) Act 1937
- Mental Health Orders
 - Hospital Direction
 - Guardianship Order
 - Assessment/Treatment Order
 - Interim Compulsion Order
 - Compulsion Order
 - Compulsion Order with Restriction Order
- Ancillary Orders
- An endorsement made by a court in relation to an offence mentioned in schedule 2 of the Road Traffic Offenders Act 1988
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(1) General

1. What is the Rehabilitation of Offenders Act 1974?

The Rehabilitation of Offenders Act 1974 (“the 1974 Act”) provides for a system of protection to individuals with convictions or non-court disposals (commonly known as alternatives to prosecution (“AtPs”)). This protection is such that a person is not required to self-disclose these matters in certain circumstances as laid out in the 1974 Act. The 1974 Act restricts the self-disclosure of previous convictions/AtPs. Without it the common law position would still apply whereby a person asked about any convictions or AtPs would have a responsibility to tell the truth.

The protections in the 1974 Act apply when the conviction or AtP is “spent”. When a conviction is treated as spent depends on the “disclosure period” applicable to the conviction. The disclosure period applicable to a conviction under the 1974 Act depends on the sentence imposed as a result of being convicted of an offence. There are rules in the 1974 Act which set out when a conviction becomes spent if more than one sentence is imposed and/or if the person is convicted of further offences before any existing convictions are spent.

When an AtP becomes spent depends on the type of AtP given.

There is nothing in the 1974 Act that prevents an individual from gaining employment before their conviction or AtP is spent and it is not intended as a means of punishing people for their previous offending behaviour. Rather, it is about how information about an individual’s previous offending behaviour is considered as part of the individual’s future life once they have served their sentence. Therefore, the 1974 Act is an important piece of legislation that offers legal protection to an individual not to self-disclose a previous conviction/AtP for general employment purposes or for home insurance or mortgage purposes and as a result, restricts self-disclosure where appropriate.

The general rule is that once a conviction or AtP is spent, that individual does not have to reveal it and cannot be prejudiced by it. This means that if an individual whose convictions or AtPs are all spent is asked on a job application form, or at a job interview, or on an insurance form whether they have a criminal record, they do not have to reveal or admit its existence. Moreover, an employer cannot refuse to employ someone or dismiss someone because of a spent conviction or spent AtP.

However, there are some categories of employment and proceedings to which the 1974 Act does not apply. This is because it is considered appropriate that relevant spent convictions should be taken account of when employers are making recruitment decisions for jobs that involve a particular level of trust (e.g. working for Police Scotland, in certain regulated professions such as being a solicitor or accountant, in childcare, health professions and education being some examples). This is to ensure there is adequate protection for children and vulnerable people in particular and to ensure public confidence is maintained in our police and judiciary by allowing specific employers to be informed about the background of potential/actual

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employees even when the relevant conviction has become spent. Relevant spent convictions can also be taken account of in proceedings set out under article 3 of the 2013 Order and by licensing authorities and the Police in making determinations as to whether an individual should hold or be able to renew certain licences or permits (e.g. taxi licence, firearm, explosive licence).

These exceptions to the protections of the 1974 Act are set out in secondary legislation made under the 1974 Act. The current SSI in force is the 2013 Order: <http://www.legislation.gov.uk/ssi/2013/50/contents/made>²

The 2013 Order was amended in 2015, 2016, 2018 and most recently in 2020.

The 2015 amendment Order

<http://www.legislation.gov.uk/ssi/2015/329/contents/made>

The 2016 amendment Order

<http://www.legislation.gov.uk/ssi/2016/91/contents/made>

The 2016 amendment (No. 2) Order

<http://www.legislation.gov.uk/ssi/2016/147/contents/made>

The 2018 amendment Order

<http://www.legislation.gov.uk/ssi/2018/51/contents/made>

The 2020 amendment Order

<http://www.legislation.gov.uk/ssi/2020/45/contents/made>

Further information on self-disclosure when the protection of the 1974 is dis-applied is provided under part 4 of this guidance.

2. What happens when a conviction/AtP becomes spent?

The general rule is that, once a conviction or AtP is spent the individual becomes a “protected person” under the 1974 Act. As a result, they do not have to reveal the spent conviction/AtP and cannot be prejudiced by it for general disclosure purposes.

This means that if an individual whose convictions or AtPs are all spent is asked on a job application form, or at a job interview, or on an insurance form whether they have a criminal record, they do not have to reveal or admit its existence. Moreover, an employer cannot refuse to employ someone or dismiss someone and an insurance company should not refuse or increase premiums as a result of a spent conviction or spent AtP.

² Please note that the version of the 2013 Order on the legislation.gov.uk website may not show amendments made to the Order.

3. 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.

Sentences listed in section 5(1) of the 1974 Act are as follows;

(a) a sentence of imprisonment for life.

(b) a sentence of imprisonment or corrective training for a term exceeding 48 months.

(c) a sentence of preventive detention.

(d) a sentence of detention during Her Majesty's pleasure or for life under section 209 or 218 of the Armed Forces Act 2006 (“the 2006 Act”) or under section 205(2) or (3) of the Criminal Procedure (Scotland) Act 1995 or a sentence of detention for a term exceeding thirty months passed under section 209 of the 2006 Act.

(da) 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.

(e) a sentence of custody for life.

(f) a sentence of imprisonment for public protection under section 225 of the Criminal Justice Act 2003, a sentence of detention for public protection under section 226 of that Act or an extended sentence under 226A, 226B, section 227 or 228 of that Act (including any sentence within this paragraph passed as a result of any of sections 219 to 222 of the Armed Forces Act 2006).

4. Does the 1974 Act apply to Service personnel?

Yes. 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, table B and 5I of the 1974 Act.

Please see the table at question 17 below - "What are the disclosure periods for service disciplinary offences?"

5. Does the 1974 Act apply to decisions made in Children's Hearings?

Yes. Section 3 of the 1974 Act provides special provision with respect to certain disposals by children's hearings. This section 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 of that ground is a conviction for the purposes of the 1974 Act and the disposal by the hearing is a sentence.

The purpose of section 3 is to ensure disposals from a children's hearing are given protection under the 1974 Act. The disclosure period for all children's hearing disposals is zero which means they are spent immediately (see section 5J of the 1974 Act).

6. Does the 1974 Act cover being arrested or being charged but not convicted of an offence?

No. The 1974 Act only applies to individuals convicted of an offence or individuals given an AtP. Therefore, there are no protections under the 1974 Act for individuals arrested or charged with an offence. This means, a person arrested or charged with an offence is required under common law to self-disclose this fact, if asked.

However, we would expect an employer or an insurance company not to ask such questions for general employment or for home insurance purposes. The fact the individual has not been convicted of an offence or given an AtP would limit any risk and as such, should not be considered. Therefore, it would not be appropriate or necessary for the 1974 Act to provide protections to individuals just because they have had an interaction with the justice system.

7. Does the 1974 Act apply to decisions made in Immigration hearings and Nationality hearings?

Immigration and nationality decisions are exempt from the 1974 Act³. This means that both spent and unspent convictions can be considered by the UK Border Agency when making these assessments.

8. Do individuals have to disclose all their convictions/AtPs for a visa application to visit another country even if they are spent?

³ See section [56A of the UK Borders Act 2007](#).

The eligibility requirements for a visa to travel to another country are a matter for the country concerned and individuals should contact the embassy of the relevant country if they require advice.

9. Will a conviction or AtP be removed from a person's criminal record once it is spent?

The Criminal History System ("CHS") has non-statutory rules about recording and weeding on the CHS. This is called the "Recording, Weeding and Retention of Information on CHS" and means that after certain criteria are met, the convictions are deleted from the system. Each case is weeded (i.e. completely removed) from the CHS on its individual merits based on the appropriate retention rule. Any previous or subsequent information does not affect the retention rule applicable to another record. In general, information will be weeded from the CHS when:

- For minor offences such as theft, the subject to whom the data refers must be 40 years or over and the information held must be at least 20 years old, (i.e. the 40/20 Rule).
- For more serious offences, for example assault or where the court imposed a custodial sentence, the subject to whom the conviction applies must be 70 years or over and the information held must be on his record for at least 30 years, (i.e. the 70/30 Rule).
- Serious convictions such as murder are retained in the CHS until the subject's 100th birthday or as per standard weeding rules where an individual is confirmed dead. Anyone who commits a sexual offence has their conviction retained for 100 years from their birth.

Further information can be found by clicking on the attached link;
<https://www.scotland.police.uk/assets/pdf/340047/341626/recording-weeding-and-retention-of-information-on-criminal-history-system-chs?view=Standard>

10. A person has an unspent conviction. Does this affect their eligibility for claiming compensation from the Criminal Injuries Compensation Scheme, ("CICS")?

Yes. The Criminal Injuries Compensation Authority (CICA) may refuse or reduce a payment if the individual has an unspent criminal conviction. The CICS uses the same definition of "conviction" and the same determination of whether a conviction is spent, or a sentence is excluded from rehabilitation, as the 1974 Act.

Please note: In determining whether to apply the Scottish disclosure periods or the rehabilitation periods for England and Wales, CICA will apply the appropriate legislation based on where the incident took place. Therefore, someone resident in Scotland who is injured in London when they are there on business or on holiday may have their award withheld or reduced if they have a conviction which is spent in

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Scotland but unspent in England and Wales. This is because the periods before which a conviction becomes spent are different in Scotland as compared to England and Wales.

A payment will not be made if an individual has an unspent conviction at the date of application, or is convicted before a final decision is made (where that conviction is not immediately spent), for an offence which resulted in:

- a) an excluded sentence being imposed;
- b) a custodial sentence;
- c) a sentence of service detention;
- d) removal from Her Majesty's Service;
- e) a community order;
- f) a youth rehabilitation order; or
- g) a sentence equivalent to a sentence under sub-paragraphs (a) to (f) imposed under the law of Northern Ireland or a member state of the European Union, or such a sentence properly imposed in a country outside the European Union.

If on the date of a person's application they have an unspent conviction which resulted in a sentence not included in the list above, an award under the CICS will be withheld or reduced unless there are exceptional reasons not to do so.

This does not apply to a conviction for which the only penalty imposed was one or more of an endorsement, penalty points or a fine under schedule 2 of the Road Traffic Offenders Act 1988.

The CICS can be accessed here:

<https://www.gov.uk/government/publications/criminal-injuries-compensation-scheme-2012>, and guidance on the Scheme can be accessed here:

<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide>.

11. What is the difference between "general disclosure" and the circumstances when the protections of the 1974 Act are dis-applied?

General/basic disclosure

Only unspent convictions and unspent AtPs are required to be self-disclosed for general disclosure purposes (e.g. working in a shop or a factory or applying for home insurance). A criminal conviction certificate (commonly known as a basic disclosure certificate) issued by Disclosure Scotland will only include details of a person's unspent convictions. For each conviction it includes the date of conviction, the court/court type, the offence committed and the sentence/disposal.

Circumstances when the protections of the 1974 Act are dis-applied

The 1974 Act provides an order making power to exclude or modify the application of the protections conferred by the 1974 Act. If the protections conferred by the 1974 Act are excluded (i.e. dis-applied) a conviction is to be disclosed even if it is spent.

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The current order in force is the 2013 Order which outlines the exclusions and exceptions under the 1974 Act. The exclusions and exceptions in the 2013 Order apply to circumstances where state disclosure by Disclosure Scotland is not, or cannot be used, and also to circumstances where state disclosure by Disclosure Scotland is used.

Further details about these circumstances can be found at part 4 of this guidance.

(2) Disclosure periods applicable to sentences

Please note: The disclosure period for a conviction begins from the date of conviction.

Please note: 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, just because the disclosure period for a specific sentence has ended does not mean that all of a person's convictions would be spent. This is because the 1974 Act contains rules on what happens if a person receives more than one sentence for a conviction or is convicted of subsequent offences while their existing convictions are not yet spent. These rules are discussed in more detail in part 3 below.

12. What are the disclosure periods for custodial sentences?

Summary

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	This is an excluded sentence and the conviction will not become spent after a specific amount of time	This is an excluded sentence and the conviction will not become spent after a specific amount of time

	However, see “13. What happens if a person gets a custodial sentence over 48 months?” for details on how a conviction in respect of which this sentence was given can become spent	However, see “13. What happens if a person gets a custodial sentence over 48 months?” for details on how a conviction in respect of which this sentence was given can become spent
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Examples in Table form

Examples of Disclosure periods for custodial sentences		
Disposal	18 or over on date of conviction	Under 18 on date of conviction
6 months	2½ years	1½ years
12 months	3 years	2 years
24 months	6 years	4 years
36 months	9 years	6 years
48 months	10 years	7 years

Examples

(In these examples it is said that a conviction “may” become spent because the 1974 Act contains rules on what happens if a person receives more than one sentence for a conviction or is convicted on indictment in solemn proceedings of subsequent offences while their existing convictions are not yet spent. These rules are discussed in more detail in part 3 below.)

- A 6 month custodial sentence given to an adult may become spent after 2½ years from the date of conviction (i.e. the disclosure period is the period of the sentence plus a further “buffer period” of 2 years, giving a total of 2½ years).
- A 6 month custodial sentence given to a person under 18 at date of conviction may become spent after 1½ years from the date of conviction (i.e. the disclosure period is the period of the sentence plus a further “buffer period” of 1 year, giving a total of 1½ years).
- A 12 month custodial sentence given to an adult may become spent after 3 years from the date of conviction (i.e. the disclosure period is the period of the sentence plus a further “buffer period” of 2 years, giving a total of 3 years).
- A 12 month custodial sentence given to a person under 18 at date of conviction may become spent after 2 years from the date of conviction (i.e. the disclosure period is the period of the sentence plus a further “buffer period” of 1 year, giving a total of 2 years).

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- A 4 year custodial sentence given to an adult may become spent after 10 years (i.e. the disclosure period is the period of the sentence plus a further “buffer period” of 6 years, giving a total of 10 years).
- A 4 year custodial sentence given to a person under 18 at date of conviction may become spent after 7 years from the date of conviction (i.e. the disclosure period is the period of the sentence plus a further “buffer period” of 3 years, giving a total of 7 years).

13. 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;

- 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.

14. A person has been sentenced for more than one offence at the same time. Will the disclosure periods run concurrently or consecutively?

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 concurrently (at the same time) or consecutively (one after the other).

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 from the end of the sentence, giving a total disclosure period of two years and 6 months before both convictions may become spent).

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 from the end of the sentence, giving a total disclosure period of two years and ten months before the convictions may become spent).

15. What are the disclosure periods for different types of non-custodial sentences?

Summary

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 ⁴ given	Until relevant sentence given
An order under section 61 of the Children and Young Persons (Scotland) Act 1937	N/A	12 months

⁴ 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.

Ancillary Orders	Length of order ⁵	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
Any other sentence not mentioned in sections 5 to 5J of the 1974 Act	1 year	6 months
Mental Health Orders		
Hospital Direction	Not a sentence under the 1974 Act (not included in a disclosure certificate)	All have same disclosure periods as someone 18 or over at date of conviction
Guardianship Order	Zero ⁶	
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 ⁷ under section 164A of the MH 2003 Act ⁸ for disclosure 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	

Absolute discharge

An absolute discharge is available as a disposal to the court and is used when the court considers that while a person has been convicted of an offence, the facts and

⁵ In some cases an ancillary order will have a disclosure period of 2 years. See section 5(2E) of the 1974 Act. See below for more guidance on this.

⁶ See section 5J(1)(c) of the 1974 Act.

⁷ The Mental Health Tribunal for Scotland.

⁸ The Mental Health (Care and Treatment) (Scotland) Act 2003.

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circumstances of the case do not merit any form of punishment. In summary cases, an absolute discharge is not recorded as a conviction. However, for some purposes, for example if the person is convicted of another crime in the future, it may appear as a previous conviction when the court is considering sentencing. Reasons for an absolute discharge vary and can include because the crime was very minor, the offender was previously of good character or the offender is very young or old.

Notwithstanding the above, in the definition of a conviction under section 1(4) of the 1974 Act an absolute discharge is treated as a conviction for the purposes of the 1974 Act. There is good reason for this, namely to enable the conviction to become spent and the person in question to become a “protected person” in respect of that conviction.

The disclosure period for an absolute discharge is zero. This means it is spent immediately.

Example

A person, no matter what age, is convicted of an offence and given an absolute discharge. They will not be required to self-disclose this for general disclosure purposes.

Admonition

An admonishment is available to the court as a disposal and is a warning to a person convicted of an offence not to commit another crime, but no punishment is given alongside this warning. However, the offence is recorded as a conviction on centrally held state records (i.e. the Criminal History System).

The disclosure period for an admonishment is zero. This means it is spent immediately.

Example

A person, no matter what age, is convicted of an offence and given an admonishment. They will not be required to self-disclose this for general disclosure purposes.

Bond of caution⁹

A “bond of caution” is available to the court as a disposal. It is a sum of money lodged with the court by the person who has been convicted, as security of their being of “good behaviour” for a certain stated period. If the individual is of good behaviour for the specified period, the money is returned and the sentence has been served.

⁹ Pronounced ‘kayshun’.

The disclosure period for a bond of caution is 6 months or the length of the caution period, whichever is the longer (or 3 months or the length of the caution period, whichever is the longer, if the individual was under 18 at the date of conviction).

Example

A person, over 18, is convicted in the sheriff court and given a £2,000 bond a caution to be of good behaviour for 12 months. As the length of the caution period is greater than 6 months the individual will be required to self-disclose this conviction for 12 months from date of conviction.

A fine or compensation order

Criminal fines are one of the most common disposals used in Scottish courts and, when used as the only disposal, are often reserved for less serious crimes.

A compensation order is an order for the convicted person to pay money to the victims of their crime. A compensation order can be imposed as the sole sentence or in conjunction with most other disposals and can be used for most offences. Compensation orders are a financial penalty and enforcement under the Criminal Procedure (Scotland) Act 1995 is similar to that of a fine.

The disclosure period for a fine and for a compensation order is 12 months (or 6 months if the individual was under 18 at the date of conviction).

Example

A person, over 18, is convicted of an offence and is given a £200 compensation order. They will be required to self-disclose this conviction for 12 months from date of conviction.

Example

A person, under 18, is convicted of an offence and is fined £150. They will be required to self-disclose this conviction for 6 months from date of conviction.

Community Payback Order (“CPO”)

CPOs are available to the court under section 227A of the Criminal Procedure (Scotland) Act 1995. They can be given for any offence punishable by imprisonment, and in a limited form, to offences punishable by a fine.

A CPO is an order that imposes one or more of a range of requirements on the convicted person. These requirements can include unpaid work, undertaking programmes to address their offending behaviour, compensation, mental health treatment, participating in a drug or alcohol treatment programme and residing at a particular address.

Where a CPO only consists of an unpaid work activity, there is no requirement for supervision to be included. However, if the CPO contains any other requirements, the court must impose a supervision requirement. An “unpaid work or other activity

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requirement” can only be imposed on a person who is aged 16 or over. The requirement can be imposed for between 20 and 300 hours.

The disclosure period for a CPO is 12 months or the length of the order, whichever is the longer (or 6 months or the length of the order, whichever is the longer, if the individual was under 18 at the date of conviction).

Example

Where a CPO consists only of unpaid work, then the disclosure period is the length of the order if the work is to be carried out for longer than 12 months (or longer than 6 months if under 18 at date of conviction).

However, if the unpaid work lasts for less than 12 months (or less than 6 months if under 18 at date of conviction) then the disclosure period will be 12 months from the date of conviction or 6 months from date of conviction if under 18 at date of conviction.

All other CPOs include a supervision requirement which lasts for a specified period and this will be the length of the disclosure period (e.g. a CPO with a 24 month supervision requirement will have a disclosure period of 24 months). Unless the supervision period lasts for less than 12 months (or less than 6 months if under 18 at date of conviction) then the disclosure period will be 12 months (or 6 months if under 18 at date of conviction).

Drug Testing and Treatment Order (“DTTO”)

A DTTO is available to the Court when a person is convicted of an offence other than one for which the punishment is fixed by law. The policy that lies behind the availability of the DTTO as a disposal is to help people to reduce their drug misuse and the crimes they may have committed because of it.

The disclosure period for a DTTO is 12 months or the length of the order, whichever is the longer (or 6 months or the length of the order, whichever is the longer, if the individual was under 18 at the date of conviction).

Example

A person, over 18, is given a 6 month DTTO. The disclosure period is 12 months from the date of conviction.

Example

A person, over 18, is given an 18 month DTTO. The disclosure period is 18 months from the date of conviction.

Example

A person, under 18 at date of conviction, is given a 6 month DTTO. The disclosure period is 6 months from the date of conviction.

Example

A person, under 18 at date of conviction, is given a 3 month DTTO. The disclosure period is 6 months from the date of conviction.

Restriction of Liberty Order (“RLO”)

An RLO is available to the court where a person is convicted of an offence punishable by imprisonment and requires an offender to be:

- restricted to a specific place for a maximum period of 12 hours per day for up to a maximum of 12 months, and/or
- restricted from a specified place or places for 24 hours a day for up to 12 months.

They are a form of community sentence imposed by the court as an option in cases where they might otherwise be thinking of a prison sentence or another community penalty that would impose substantial demands on the individual.

The disclosure period for an RLO is 12 months or the length of the order, whichever is the longer (or 6 months or the length of the order, whichever is the longer, if the individual was under 18 at the date of conviction).

Example

A person, over 18, is given an RLO for 3 months. The disclosure period is 12 months from the date of conviction.

Example

A person, under 18 at date of conviction, is given an RLO for 3 months. The disclosure period is 6 months from the date of conviction.

Example

A person, over 18, is given an RLO for 12 months. The disclosure period is 12 months from the date of conviction.

Adjournment/Deferral after conviction

When a person is convicted of an offence the case can be adjourned or deferred before the person receives a final disposal for that offence for a variety of reasons. Under the changes made by Part 2 of the 2019 Act, adjournments and deferrals are now treated as a sentence under the 1974 Act. This is to ensure the conviction can be disclosed from the point they are convicted, as opposed to the point of sentence.

The disclosure period for an adjournment or deferral will run until the person is given a “relevant sentence” (e.g. admonished, fined).

Once the person is given a relevant sentence, the disclosure period for the conviction will then be based on the “relevant sentence” given.

This approach ensures there is no period in time after conviction but before sentence where self-disclosure is not required.

Example

A person, over 18, is convicted in court for an offence and sentencing is deferred for 6 months. The conviction has to be self-disclosed during this 6 months.

After 6 months they are given a relevant sentence of a £100 fine. As the disclosure period for a fine is 12 months from date of conviction, the conviction must continue to be self-disclosed for a further 6 months from the date the fine is given. That is because a fine has a disclosure period of 12 months from the date of conviction.

If, however, after 6 months they are given a sentence of admonishment following deferral (instead of a fine), the conviction will be spent as soon as the admonishment is given. This is because the disclosure period for a sentence of admonishment is zero.

The same disclosure periods in the above examples would apply if the sentencing was adjourned for whatever reason.

An order under section 61 of the Children and Young Persons (Scotland) Act 1937

Such orders are no longer available to the Scottish courts. However, it is necessary to provide a disclosure period for such orders to maintain the protections for such orders under the 1974 Act.

The disclosure period for such an order is 12 months from the date of conviction.

In all likelihood such orders will now be spent and as such, will not be required to be self-disclosed.

Ancillary Orders

The 1974 Act applies to what this guidance refers to as “ancillary orders”. These are sentences which:

- are not otherwise dealt with in sections 5 to 5J of the 1974 Act (i.e. any of the other specific sentences mentioned in this guidance),
- are imposed on a person in respect of a conviction, and
- are given by way of an order which imposes on the person a disqualification, disability, prohibition, requirement or restriction, or which is otherwise intended to regulate the person’s behaviour.

There are a wide range of ancillary orders available to the courts today. Examples of these type of orders are;

- non-harassment orders,

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- supervision and treatment orders,
- football banning orders,
- antisocial behaviour orders,
- exclusion from licensed premises orders,
- confiscation orders,
- serious crime prevention orders, and
- an order disqualifying someone from driving etc.

The disclosure period for an ancillary order is the length of the order and depends on the provisions of the order.

If an order contains provision which enables determination of the date on which the conditions in the order cease to have effect, the disclosure period ends when the conditions cease to have effect.

If an order contains provision which provide that the conditions of the order have effect for an indefinite period (including the lifetime of a person) or without limit of time, the disclosure period ends when the conditions cease to have effect.

In the case of any other order, where there is no determination as to when it ceases to be in effect, the disclosure period will be 2 years from the date of conviction. This is necessary in the case of orders where it is not possible to determine the date on which the conditions cease to have effect.

Example

A person is given a 5 year non-harassment order in respect of a conviction and no other sentence. This is required to be disclosed until the order expires (i.e. 5 years).

Example

A person is convicted of drink driving. They are fined £500 (12 months disclosure period) has their licence endorsed (5 year disclosure period) and disqualified from driving for 10 years (10 year disclosure period). The disclosure period for the conviction will be 10 years from the date of conviction. This is because the order disqualifying the person for driving has the longest disclosure period.

Part 3 of this guidance provides further details of the rules associated with receiving more than one sentence in the same proceedings.

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

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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 ceases 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.

Part 3 of this guidance provides further details of the rules associated with receiving more than one sentence in the same proceedings.

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

www.direct.gov.uk/en/motoring/driverlicensing/endorsementsanddisqualifications/dg_10022425

Any other sentence not mentioned in sections 5 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.

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

Mental health orders

There are a number of mental health disposals available to a Scottish court which can be imposed on conviction¹⁰ and fall within the meaning of the 1974 Act. The mental health disposals available to a Scottish court are as follows:

¹⁰ The definition of “conviction” for the purposes of the 1974 Act includes findings in criminal proceedings that a person has committed an offence or done the act or made the omission charged (other than a finding linked with a finding of insanity, or as the case may be, a finding that a person is not criminally responsible under

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- hospital direction
- guardianship order
- assessment and treatment orders
- interim compulsion order
- compulsion order
- compulsion order with a restriction order

Hospital Directions

Section 59A of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) allows the court when sentencing a person who is convicted on indictment of an offence punishable by imprisonment to make a hospital direction authorising removal of a person to hospital, detention of a person in hospital and the giving of medical treatment. This must be done in addition to a sentence of imprisonment imposed in the case.

If the medical conditions for making the order no longer exist, the person can be returned to the institution (prison) in which they may have been detained, but for the existence of the order.

As the hospital direction is given in addition to a custodial sentence and relates to the place of a person’s detention (hospital rather than prison) it is considered appropriate for such an order not to be considered a sentence under the 1974 Act. Therefore, the hospital direction will not be disclosed and will not affect the disclosure period of any other sentence.

This is provided for in the 1974 Act through removing a hospital direction from the definition of sentence in section 1(3). It should be noted that the custodial sentence given for the offence will of course carry its own disclosure period.

Guardianship Order

The 1974 Act applies to guardianship orders which are given on conviction (such orders can also be sought in the civil courts but this guidance only relates to those given on conviction). A guardianship order can be given when the court considers them to be the only means by which to safeguard the welfare of the person subject to the order.

In relation to the treatment of guardianship orders under the 1974 Act, the disclosure period is zero (i.e. they will be spent immediately).

This reflects that they are imposed as a safeguarding measure for the individual’s welfare.

section 51A of the Criminal Procedure (Scotland) Act 1995). See section 1(4) of the 1974 Act.

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The disclosure period for a guardianship order is zero. If it is the only sentence given this means it is spent immediately and there is no requirement to disclose the conviction.

Assessment Orders and Treatment Orders

Assessment orders can be applied for by a prosecutor, by the Scottish Ministers or by the court of its own volition. Such orders can be imposed both pre-conviction, but also post-conviction. The 1974 Act only applies where such orders are imposed post-conviction.

Treatment orders can be made on application by a prosecutor, by the Scottish Ministers or by the court. Again, such orders can be imposed both pre-conviction, but also post-conviction and again the 1974 Act only applies where such orders are imposed post-conviction.

It is considered appropriate and necessary that where an order is given after conviction but prior to a final disposal being made by the court, the conviction should be disclosed until the person is sentenced, at which point it will be the final disposal that governs the disclosure period.

Therefore, the disclosure period for an assessment order and a treatment order is the length of the order. However, once the individual is given the final disposal (e.g. compulsion order, compulsion order with restriction or a custodial sentence) it will be that disposal that will determine the disclosure period for the offence and it will run from the date of conviction.

The disclosure period for assessment and treatment orders until final disposal given.

Example

A person over 18 is convicted of an offence and an assessment or treatment order is imposed. 12 months later the person is given a 12 month custodial sentence.

The assessment or treatment order should be self-disclosed for the length of the order (i.e. 12 months from the date of conviction) and then the disclosure period for the 12 month custodial sentence will be 2 years from the date it is imposed - rather than 3 years.

This is because the disclosure period for a 12 month custodial sentence is 3 years from the date of conviction. However, the conviction has already been required to be self-disclosed for 12 months as a result of the assessment or treatment order being imposed for 12 months. This means 2 years are left of the disclosure period of the 12 month custodial sentence.

Interim Compulsion Order

Interim compulsion orders can be made where a person has been convicted of an offence punishable by imprisonment (other than one for which the sentence is fixed

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by law). This is necessary where the court needs more information about the person's health to inform the future sentencing decision of the court. The court will impose such an order on the advice of two doctors and after the examination it is stated the individual needs to go to hospital for further examination. An interim compulsion order is distinguishable from an assessment order in that it is renewable, consequently allowing the lengthy assessment that may be required of people who have committed serious offences and/or appear to pose considerable risk.

As an interim compulsion order is granted in order to assess an individual's mental health prior to sentencing, it is necessary and appropriate to have a disclosure period that runs from the length of the order.

This is similar to, but not the same as, deferring a sentence. Therefore, an interim compulsion order will run until the person is given the final disposal by the court. The disclosure period will then be determined by that final disposal and will run from the date of the conviction.

The disclosure period for an interim compulsion order is the length of the order.

Compulsion Order ("CO")¹¹

Please note disclosure periods are only relevant for COs given where the person was convicted of an offence or where there was a relevant finding that the person committed the offence on an examination of the facts.

When a criminal court imposes a CO, it will expire after 6 months unless it is extended. The Mental Health (Care and Treatment) (Scotland) Act 2003 ("the MH 2003 Act") governs the review and extensions of a CO. There is no limitation on the number of extensions, providing that the person continues to meet the conditions for being subject to the CO.

The default disclosure period of a CO is the length of the order (i.e. the conviction should be disclosed for as long as the order is in force).

However, the patient or the patient's named person is able to apply to have the disclosure period of the CO come to an end. An application of this type is made under section 164A of the MH 2003 Act as inserted by section 26 of the 2019 Act. Applications can be made from 12 months after the CO is given.

If a person's application is not successful then they may apply again. However, they are not able to apply until 12 months after their previous application was refused.

If the patient or patient's named person does not apply to the Mental Health Tribunal, disclosure will continue to apply for the length of the order.

¹¹ See section 5G of the 1974 Act.

Example

A person is convicted of an offence and given a CO. After 6 months the CO is not extended. In such circumstances the disclosure period for the CO is 6 months from the date of conviction.

Example

A person is convicted of an offence and given a CO. After 6 months the CO is extended for a further 12 months. 6 months after the CO is extended the patient or the patient's named person can make an application to seek the end of the disclosure requirements of the CO.

If the application is successful the disclosure period applicable to the CO will end.

Compulsion Order with Restriction Order ("CORO")

The disclosure period for a CORO is the length of the order.

The reason for this approach is that the restriction element of the order is only imposed if the court takes the view that it is necessary for the protection of the public from serious harm and therefore it is considered that there is sufficient correlation between the conviction and the risk the individual poses to justify disclosure.

However, under section 193(5) of the MH 2003 Act, the restriction element of a CORO can be revoked if the risk of serious harm falls away. If the restriction order is revoked, the CO can, in some cases, still be left in place which raises the question of disclosure of this remaining element.

If the CO order remains in place, the remaining CO element of the CORO is treated in the same way as a CO made as a standalone order under the 1995 Act.

As noted above, this means that if the RO element of a CORO is revoked, disclosure continues to be necessary for the length of the order subject to the operation of the application mechanism by the person subject to the CO.

However, an application can be made under section 164A of the MH 2003 Act from 12 months after the RO element of a CORO is revoked.

16. What are the disclosure periods for Children's Hearings disposals?

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.

17. What are the disclosure periods for 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 (for 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).

However, there are certain service sentences/disposals that can only be imposed by the service justice system (e.g. sentence of dismissal from Her Majesty's service or service detention). There are specific disclosure periods for such sentences which are set out in sections 5B and 5I of the 1974 Act. These are set out in 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	7 years	7 years

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period of detention specified in the order is more than 6 months		
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 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 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 longer	1 year or the length of the order, whichever is longer

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"> • 5 years if the order was for a term exceeding 6 months • 3½ years if the order was for a term of 6 months or less 	<p>Where the person was 15 years of age or older at the date of the conviction</p> <ul style="list-style-type: none"> • 5 years if the order was for a term exceeding 6 months • 3½ years if the order was for a term of 6 months or less <p>Where the person was under 15 years of age at the date of the conviction</p> <p>Length of the order plus 12 months</p>
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18. What are the disclosure periods for AtPs?

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

“Category 2” AtPs 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,

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- has, under subsection (5) of section 20A of the Nature Conservation (Scotland) Act 2004, 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, and

Therefore, depending on the type of the AtP, the 1974 Act provides that an AtP either becomes spent immediately or within 3 months of the AtP being issued.

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.

Examples

- 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.
- 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.

(3) Rules as to when convictions become spent

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 of further offences before their existing convictions are spent.

This part of the guidance sets out those rules in more detail.

Rules under section 6

(1) Where only one sentence is imposed in respect of a conviction the disclosure period applicable to the conviction is, subject to the following provisions of this section, the period applicable to the sentence in accordance with sections 5 to 5I.

(2) Where more than one sentence is imposed in respect of a conviction (whether or not in the same proceedings), then, subject to the following provisions of this section, if the periods applicable to those sentences in accordance with sections 5 to

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51 differ, the disclosure period applicable to the conviction shall be the longer or the longest (as the case may be) of those periods.

(2A) In subsections (1) and (2), the references to sentences do not include excluded sentences.

(3ZA) Subsection (3ZB) applies where:

(a) an order listed in subsection (3ZC) is imposed on a person in respect of a conviction for an offence,

(b) after the expiry of the disclosure period applicable to the conviction in accordance with subsection (1) or (2) (“the original disclosure period”), a further sentence for the offence is imposed on the person in consequence of breaching the order, and

(c) by virtue of the further sentence, the disclosure period applicable to the conviction in accordance with subsection (2) (“the new disclosure period”) ends later than the original disclosure period.

(3ZB) Despite the expiry of the original disclosure period, the person is not to be treated for the purposes of this Act as a protected person in respect of the conviction until the expiry of the new disclosure period (and accordingly the conviction is not to be treated as spent until that period has expired).

(3ZC) The list is:

(a) an order for conditional discharge,

(b) a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995,

(c) a drug treatment and testing order under section 234B of that Act,

(d) a restriction of liberty order under section 245A of that Act.

(3ZD) to (3ZE) Relates to powers to make regulations.

(3A) Without prejudice to subsection (2), where:

(a) an order is made under section 1(2A) of the Street Offences Act 1959 in respect of a conviction,

(b) after the end of the disclosure period applicable to the conviction the offender is dealt with again for the offence for which that order was made, and

(c) the disclosure period applicable to the conviction in accordance with subsection (2) (taking into account any sentence imposed when so dealing

with the offender) ends later than the disclosure period previously applicable to the conviction,

the offender shall be treated for the purposes of this Act as not having become a protected person in respect of that conviction, and that conviction shall for those purposes be treated as not having become spent, in relation to any period falling before the end of the new disclosure period.

(4) Where:

(a) during the disclosure period applicable to a conviction, the person convicted is convicted of a further offence, and

(b) the disclosure periods applicable to the two convictions under this section would end on different dates,

the disclosure period which would end earlier is extended so as to end at the same time as the other disclosure period (but this rule is subject to subsections (4A) to (5B)).

(4A) Subsection (4B) applies where:

(a) in relation to the conviction of a person (“the first conviction”) the court adjourns the case, or defers sentence,

(b) during the disclosure period applicable to the adjournment or deferral, the person is convicted of a further offence,

(c) a relevant sentence is imposed on the person in respect of the first conviction, and

(d) there is, by virtue of section 5J, no disclosure period applicable to that sentence.

(4B) Section 4 does not operate so as to extend the disclosure period applicable to the first conviction.

(4C) In subsection (4A):

(a) references to adjournments and deferrals are to those matters as mentioned in section 5E(1),

(b) a “relevant sentence” is any sentence other than an adjournment or deferral (as mentioned in section 5E(1)) or, where applicable, a further such adjournment or deferral.

(5) A disclosure period is not extended in accordance with subsection (4) so as to end at the same time as another disclosure period if:

(a) the other disclosure period is applicable in accordance with section 5(2E) to an order:

- (i) imposing on a person any disqualification, disability, prohibition, requirement or restriction, or
- (ii) which is otherwise intended to regulate behaviour, and

(b) that order is the only sentence imposed in respect of the conviction to which the other disclosure period is applicable.

(5A) Subsection (5B) applies where:

- (a) more than one sentence is imposed in respect of a conviction (whether or not in the same proceedings),
- (b) none of the sentences is an excluded sentence, and
- (c) one of the sentences is an order mentioned in subsection (5) in respect of which the disclosure period is applicable in accordance with section 5(2E).

(5B) In determining whether the disclosure period applicable to another conviction is, in accordance with subsection (4), extended by virtue of the disclosure period applicable to the conviction mentioned in subsection (5A)(a), the disclosure period applicable to the order is to be disregarded.

(6) In subsection (4)(a), the reference to a conviction for a further offence does not include:

- (a) any conviction in England and Wales of a summary offence or of a scheduled offence (within the meaning of section 22 of the Magistrates' Courts Act 1980) tried summarily in pursuance of subsection (2) of that section (summary trial where value involved is small);
- (b) any conviction by or before a criminal court in summary proceedings;
- (bb) any conviction in service disciplinary proceedings for an offence listed in Schedule 1 to this Act; and
- (c) 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.

Q & A in relation to section 6

19. 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

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.

20. What happens if someone gets convicted again before the disclosure period of a previous conviction ends?

The answer to that question depends on the type of proceedings under which the subsequent conviction occurred.

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, on indictment 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

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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 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.

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.

As mentioned above, 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.

This is because (as mentioned above) the disclosure period is not extended because the sentence imposed for conviction 1 was only an ancillary order.

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 three years.

This means the disclosure period applicable to conviction 1 is five 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.

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.

21. 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

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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

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

Where a person is convicted of an offence (the “first conviction”) and the court adjourns the case or defers sentence and they are convicted of a second offence (“the second conviction”) during that period of adjournment or deferral, the rule in section 6(4) may act to extend the disclosure period applicable to the first conviction.

However, if in relation to the first conviction a “relevant sentence” is imposed¹² and that sentence is one where there is no disclosure period (e.g. an admonishment) then the rule in section 6(4) does not apply. This means that the second conviction does not extend the disclosure period for the first conviction. This is by virtue of section 6(4A) to (4C).

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

¹² A “relevant sentence” is any sentence other than an adjournment or deferral or, where applicable a further such adjournment or deferral.

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 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.

28. 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 Discharge¹³, 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 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

¹³ 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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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.

29. 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 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.

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.

1. [Registered sex offender management](#)
2. [Multi Agency Public Protection Arrangements \(MAPPA\)](#)
3. [Community 'Outing' of RSOs](#)

(4) Where the protections given to spent convictions/AtPs do not or may not apply

30. Do I have to self-disclose my spent conviction when the protections of the 1974 Act are dis-applied?

Yes, where the protections of the 1974 Act are dis-applied, both unspent and some or all spent convictions have to be self-disclosed. Whether some or all spent convictions have to be self-disclosed is determined by the circumstances under which a question about your previous convictions is being asked.

The 1974 Act provides an order making power to exclude or modify the application of the protections conferred by the 1974 Act. This essentially means that the protections of the 1974 Act are dis-applied, or switched off. This power has been exercised to specify the types of employment and proceedings that are excluded

from the 1974 Act and therefore where the self-disclosure of spent convictions is required. The current order in force is the 2013 Order.

The 2013 Order applies to circumstances where state disclosure from Disclosure Scotland is not, or cannot be used and also to circumstances where state disclosure from Disclosure Scotland may be used.

The system of self-disclosure under the 2013 Order was updated in 2015, 2016, 2018 and most recently in 2020. These changes mean that for the majority of circumstances set out under the 2013 Order there is less self-disclosure of spent convictions. This is because as a result of these changes not all spent convictions are now required to be automatically self-disclosed (i.e. when they become a protected conviction).

Determining when the rules of self-disclosure apply can be complex. It will depend on the particular offence and on the circumstances of the question being asked of you. In some cases **all** unspent and spent convictions require to be disclosed. In other cases certain spent convictions do not have to be disclosed.

Please be aware that the following is not a comprehensive account of the rules around self-disclosure, rather it provides a general overview of the operation of the 2013 Order.

The decision about whether or not a spent conviction should be self-disclosed is now determined, in part, by whether the offence for which the person was convicted is a listed offence and if so, what list the offence is attached to. That is, whether it is a schedule A1 offence, a schedule B1 offence, or an offence not on either schedule.

There are certain circumstances where **all** spent convictions are required to be self-disclosed if you are asked about them, or taken into account. Examples of these are:

- proceedings before the Gambling Commission,
- proceedings under the MH 2003 Act before the MHTS or the Mental Health Welfare Commission for Scotland,
- proceedings under the Firearms Act 1968,
- proceedings under Part 1 of the Air Weapons and Licensing (Scotland) Act 2015 in respect of certain matters relating to certificates and permits in connection with air weapons,
- proceedings in relation to the suitability of a person to be the proprietor of an independent school,
- certain proceedings under the Explosives Regulations 2014,
- proceedings relating to licences under section 4A of the Poisons Act 1972,
- disciplinary proceedings against a constable,
- proceedings before the parole board.

A person may also be asked about any or all spent convictions, and that information can be taken into account in the following occupations:

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- Firearms dealer.
- Constables, persons appointed as police cadets to undergo training with a view to becoming constables, police custody and security officers and naval, military and air force police.
- Any occupation in respect of which the holder is required pursuant to regulations 4, 5 and 11 of the Explosives Regulation 2014 to obtain from the chief officer of police an explosives certificate certifying that person to be a fit person to acquire or acquire and keep explosives.

Information on the circumstances where a higher level disclosure from Disclosure Scotland can be requested and the content of higher level disclosures can be found by clicking on the link below.

<https://www.mygov.scot/convictions-higher-disclosures/>

31. Do I have to self-disclose my spent AtPs when the protections of the 1974 Act are dis-applied?

Only certain spent AtPs are required to be disclosed and only in very specific circumstances.

Disclosure of spent AtPs is required when the individual concerned is being vetted for the role of constable, appointment as a police cadet to undergo training with a view to becoming a constable, or for the role of police custody and security officer.

Spent AtPs also require to be disclosed when seeking employment in the naval, military and air force police.

In each of the above circumstances it is only disclosure of spent AtPs given when the person was 18 or over that require to be disclosed. Any spent AtP given to a person when they were under 18 does not have to be disclosed.

These changes were made under the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2020.

The 2020 amendment Order

<http://www.legislation.gov.uk/ssi/2020/45/contents/made>

32. Are there any other situations where a spent conviction can be disclosed or taken into consideration?

Section 7(1) of the 1974 Act provides that the general protections given to spent convictions in section 4(1) of the Act does not affect:

- a) any right of Her Majesty, by virtue of Her Royal prerogative or otherwise, to grant a free pardon, to quash any conviction or sentence, or to commute any sentence,

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- b) the enforcement by any process or proceedings of any fine or other sum adjudged to be paid by or imposed on a spent conviction,
- c) the issue of any process for the purpose of proceedings in respect of any breach of a condition or requirement applicable to a sentence imposed in respect of a spent conviction, or
- d) the operation of any enactment by virtue of which, in consequence of any conviction, a person is subject, otherwise than by way of sentence, to any disqualification, disability, prohibition, requirement, restriction or other way of regulating the person's behaviour the period of which extends beyond the rehabilitation period applicable in accordance with rules under section 6 of the 1974 Act to the conviction.

Section 7(2) of the 1974 Act also provides that nothing in section 4(1) of the Act will affect the determination of any issue, or prevent the admission of evidence or requirement of any evidence, relating to a person's previous convictions or circumstances ancillary thereto in the following types of proceedings:

- a) in any criminal proceedings before a court in Scotland (including any appeal or reference in a criminal matter);
- b) in any service disciplinary proceedings or in any proceedings on appeal from any service disciplinary proceedings;
- c) in any proceedings on an application for an order under section 2, 2A or 20 of the Crime and Disorder Act 1998 or in any appeal against the making of such an order;
- d) in any proceedings on an application under section 2, 4 or 5 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) or in any appeal under section 6 of that Act;
- e) in any proceedings relating to parental responsibilities or parental rights (within the meaning of section 1(3) and section 2(4) respectively of the Children (Scotland) Act 1995), guardianship, adoption or the provision by any person of accommodation, care or schooling for children under the age of 18 years;
- f) in any proceedings under Part II of the Children (Scotland) Act 1995;
- g) in any proceedings relating to the variation or discharge of a youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2008, or on appeal from any such proceedings;
- h) in any proceedings in which he is a party or a witness, provided that, on the occasion when the issue or the admission or requirement of the evidence falls to be determined, he consents to the determination of the issue or, as the case may be, the admission or requirement of the evidence notwithstanding the provisions of section 4(1).
- i) in any proceedings brought under Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc).

Examples

- An individual is convicted of housebreaking. As part of the sentencing process, it will be necessary for the court to know about any previous spent convictions. For example, it may show it is the individual's first offence or it

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may show they have 20 previous convictions. The court will be appropriately informed in making their sentencing decision by having access to this information.

- A soldier is in front of a court martial for a serious offence. It is appropriate for the court martial to know whether they have any previous convictions for sentencing purposes.
- A determination is being made on whether an individual should get a Risk of Sexual Harm Order. It would be appropriate to know about any previous sexual offences that may have become spent in order to make the most appropriate decision.
- A member of a child's family wishes to get a guardianship order. It will be appropriate to have details of whether this individual has any previous convictions that may have relevance for the decision on guardianship.
- A child is referred to a children's hearing on offence grounds. It will be appropriate to know about any previous offending behaviour.
- An individual is a witness in criminal proceedings and it may be appropriate for details of their criminal past to be disclosed.

Section 7 of the 1974 Act also gives a judicial authority the power to admit evidence of a spent conviction in proceedings before it even although such proceedings are not set out in section 7(2) of the Act or in the 2013 Order.

However, this can only happen when the judicial authority is satisfied that justice cannot be done in the case except by allowing or requiring such a disclosure.

In addition, section 7 also provides that only court orders relating to a person's convictions can be included in any list or statement about a person's previous convictions which is given to any court when considering how to deal with that individual in respect of any offence.

33. Are there any other situations where a spent AtP can be disclosed or taken into consideration?

For AtPs paragraph 7 of [schedule 3](#) of the 1974 Act applies instead of section 7(1).

Sections 7(2) and (3) of the 1974 Act also apply with some modifications as set out under paragraph 8 of schedule 3. For example spent AtPs cannot be considered in any service disciplinary proceedings or in any proceedings on appeal from any service disciplinary proceedings (whereas spent convictions may be).



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Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-83960-711-0 (web only)

Published by The Scottish Government, August 2020

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS732066 (08/20)

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