

EX-OFFENDERS AND VOLUNTEERING CHECKLIST

A good practice checklist for organisations involving ex-offenders as volunteers:

- Have a fully operational equal opportunities policy, incorporating a statement on the involvement of ex-offenders.
- Be aware that a volunteer does not have to provide your organisation voluntarily with information about his/her criminal record unless specifically asked. Consider carefully whether the volunteering role in question requires knowledge about criminal convictions.
- State that spent or unrelated convictions need not be disclosed or discussed, unless the role in question is exempt under the Rehabilitation of Offenders Exceptions Order. A summary of the Legislation for Disclosure has been included as Appendix 1. Organisations may wish to provide this information to potential volunteers as part of their information pack.
- If asking potential volunteers to declare criminal convictions on a self-declaration form, accompany the question with a statement saying "information about criminal convictions is requested to assist the selection process and will be taken into account only when the conviction is considered relevant to the role. The information will be treated confidentially and will be destroyed once a recruitment decision has been made." If the post is eligible for an AccessNI check, then a consent form should also be signed, outlining the level of AccessNI check to be sought.
- If your organisation provides services to children and/or adults at risk, role descriptions must be assessed against the definitions of regulated activity outlined in The Safeguarding Vulnerable Groups (NI) Order 2007 (as amended by The Protection of Freedoms Act 2012). If the role is regulated activity, your organisation must process an Enhanced Disclosure with Barred List check.

Whether the role constitutes regulated activity or not, your organisation can no longer legally ask volunteers to declare **all** criminal history information. They can only be asked to declare any convictions that are not subject to **filtering**.

Filtering is the term given to the non-disclosure of information on AccessNI certificates which is considered to be old and minor. From the 14th April 2014, old and minor offences are removed or 'filtered' from Standard and Enhanced Disclosure checks. This means they won't appear on the disclosure certificate and the applicant does not have to tell a prospective employer about these offences. These offences which can be filtered are known as 'protected'.

AccessNI has provided the following example of an appropriate question which organisations may wish to use on their declaration form. **'Do you have any convictions that are not 'protected' (as defined by the Rehabilitation of Offenders (Exceptions) (Northern Ireland) Order 1979, as amended in 2014)?'**

Volunteers should also be asked to declare any cases pending and where the role constitutes regulated activity, if they are included on the Children and/or Adults Barred List.

For the full definitions of regulated activity in respect of children and adults and further information about filtering visit the publications section on our website:

<https://www.volunteernow.co.uk/publications/>

- Your organisation should also give volunteers the opportunity to submit a separate statement of disclosure if they wish. This may include details such as the particular circumstances around the conviction(s); how circumstances may have changed; and what has been learnt from the experience.
- Consider a person's criminal conviction in the context of his/her overall application to do voluntary work, motivation, ability to carry out the role, and the responsibility of the organisation for the care of staff, volunteers and, if appropriate, service users.
- Assessment of the risk should be made using information on the nature of the offence and the sentence received against the activities of the volunteer role.
- Once the risk assessment is complete and the volunteer is deemed suitable for the role, the supervisor for the individual should be informed of the nature of the offences. It is also important that the volunteer is informed that this information will be passed on.
- If the volunteer is not suitable, explain that it is because the criminal conviction was incompatible with the role in question, or that the reason for not being suitable for the role was other than a criminal conviction.
- Under the Justice Act (NI) 2015, volunteers can now ask the Independent Monitor (IM) to review police information on their Enhanced Certificate where they believe it is inaccurate; is not relevant for the purpose for which the certificate was sought; or it ought not to have been included in the Certificate. In order to do so, volunteers are required to complete the new Certificate Dispute Form available at:
<http://www.nidirect.gov.uk/accessni-advice-complaints-and-disputes>
- Follow good practice in the management of volunteers in all instances, e.g. volunteer policy, recruitment and selection, induction, training, support and supervision.

Thanks to NIACRO for their assistance in compiling this checklist. Applicants can contact NIACRO for further information and support on 9032 0157 or www.niacro.co.uk

Disclaimer

Reasonable precautions have been taken to ensure information in this publication is accurate. However, it is not intended to be legally comprehensive; it is designed to provide guidance in good faith without accepting liability. If relevant, we therefore recommend you take appropriate professional advice before taking any action on the matters covered herein. Charity Registration NO. NIC101309. Company Limited by Guarantee No. NI602399. Registered in Northern Ireland.

SUMMARY OF LEGISLATION

THE REHABILITATION OF OFFENDERS (EXCEPTIONS) ORDER (NI) 1979 (amended by 1987, 2001 and 2003 and 2014 Orders)

A range of occupations (paid and unpaid) are exempted from the legislation; for these posts/roles applicants **MUST** disclose information on both “spent” **AND** “unspent” convictions which are not protected. The list of posts is extensive and can be summarised as follows:

- WORK THAT INVOLVES CONTACT WITH CHILDREN OR YOUNG PEOPLE OR VULNERABLE ADULT GROUPS – e.g. provision of health care or social services, work with children such as youth work, education, or with adults with learning disabilities, mental illness, the elderly.
- PROFESSIONS THAT ARE REGULATED BY LAW - e.g. medical practitioner, nurse, chemist, optician, accountant, manager of an insurance company.
- POSTS INVOLVING NATIONAL SECURITY e.g. security personnel or senior civil service posts.
- POSTS CONCERNED WITH ADMINISTRATION OF JUSTICE e.g. police officers, solicitors, probation officers, traffic wardens, judges, prison officers.

THE REHABILITATION OF OFFENDERS (NI) ORDER 1978

For posts that do not have access to vulnerable groups or sensitive information the 1978 Order applies. ***If a conviction is ‘spent’ you do not have to mention it, even when asked, unless applying for a post which is “excepted” under this legislation.***

Sentence	Aged 18 or over at conviction	Under 18 years at conviction
Absolute Discharge	6 months	
Probation Order, Bind Over, Conditional Discharge, Care/Supervision Order	Date Order ceases OR 1 year – whichever longer	
Attendance Centre Order Juvenile Justice Centre Order Youth Conference Order, Reparation Order, Community Responsibility Order	1 year after Order expires	
Hospital Order	5 years or 2 years after Order expires – whichever longer	
Fine or Community Service Order Combination Orders	5 years	2 ½ years
Prison – (immediate or suspended) OR Young Offenders Centre – sentence of 6 months or less	7 years	3 ½ years
Prison – (immediate or suspended) OR Young Offenders Centre over 6 months up to and including 2 ½ years	10 years	5 years
A period of detention of less than 6 months under Article 45 of the CJ (Children) (NI) Order 1998	N/A	3 years
A period of detention over 6 months but less than 30 months under Article 45 of the CJ (Children) (NI) Order 1998	N/A	5 years
NB: CUSTODIAL SENTENCE OF MORE THAN TWO AND A HALF YEARS CAN NEVER BECOME SPENT		

- Consecutive prison sentences count as a single term when calculating the rehabilitation period.
- If more than one sentence was imposed for an offence, the longer rehabilitation period applies.
- If a person receives new conviction during rehabilitation period:
 - (i) for a summary offence (i.e. can only be tried at Magistrates Court) both rehabilitation periods expire separately;
 - (ii) for a more serious offence (i.e. which **could** be tried at the Crown Court) **neither** conviction will become spent until longest period expires.
- Cautions, reprimands and final warnings are not considered to be convictions and become “spent” immediately unless relevant to “excepted” posts.
- A spent conviction will remain on your criminal record (subject to filtering)
- It is an offence for anyone to give information about spent convictions from official records except in the course of official duties.