

# Employing People with Criminal Records

Factsheet 13  
October 2006



## INTRODUCTION

### THE REHABILITATION OF OFFENDERS ACT 1974

- ⇒ Any conviction for a criminal offence is 'spent' as long as the conviction did not carry a sentence excluded from the Act, if no additional convictions took place during the rehabilitation period or if the rehabilitation period has passed.
- ⇒ Once a conviction is spent, the rehabilitated person does not have to declare it in most circumstances.
- ⇒ Custodial sentences of more than two and a half years are never considered spent.
- ⇒ Under this Act, it is an offence for anyone to reveal information about spent convictions unless they have the authority or permission to do so.

### THE POLICE ACT 1997

Part 5 of the Act applies in England, Wales and Scotland and;

- ⇒ Enables access to criminal record checks;
- ⇒ Supports those afforded by the Rehabilitation of Offenders Act 1974;
- ⇒ Ensures that employers are registered with the CRB/SCRO if they would like disclosures on individuals;
- ⇒ Sets out three conviction disclosure categories (set out below).

### THE THREE CONVICTION DISCLOSURE CATEGORIES

- ⇒ **Basic (BD)** will show all convictions at a national level which are not spent under the Rehabilitation of Offenders Act 1974 and will only be issued to those who are able to choose to show it to employers.
- ⇒ **Standard (SD)** shows all convictions, including those which are 'spent', and nationally held cautions. This category is available for posts and/or purposes that are exceptions to the Act and will include those who are regularly involved with children, young people, the elderly, the sick or the handicapped.
- ⇒ **Enhanced (ED)** contains information similar to that in a SD but will also include local police records, for example relevant non-conviction information. An application for an ED must be countersigned by a registered person. This is available for those applying for positions that involve regular care for, training, supervising or being in sole charge of young people for certain statutory licensing and judicial purposes.

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## RISK ASSESSMENT

### Job Risk Assessment

Certain issues need to be considered when potentially employing an ex-offender;

- ⇒ Does the position involve one-to-one contact with children, elderly etc? It is illegal to employ certain offenders in some occupations.
- ⇒ Consider legal constraints, for example employing those with motoring convictions as drivers.
- ⇒ In the post, is there direct responsibility for finance or items of value?  
Does the position involve direct contact with members of the public?  
Would there be opportunities where the person in question could re-offend?  
If the answer is yes, the employer must assess potential consequences and the seriousness of this. They must consider the nature of the offence and the impact of the rehabilitation as the offence may create unacceptable risks for other employees, customers, members of the public etc.

### Assessment of the ex-Offender

Employers are advised to keep an open mind when employing an ex-offender as many now have access to rehabilitation programmes, which may provide advice and guidance to employers. Consideration should be made with regards to;

- ⇒ Assessments/reports made by those involved in the rehabilitation of the applicant, for example the Probation Service
- ⇒ The seriousness of the offence
- ⇒ The effectiveness of the rehabilitation
- ⇒ Is there a history of re-offending
- ⇒ Have the circumstances improved, e.g. improved personal living, therapy for addictions
- ⇒ Where the offence was committed? Not all offences that occur, for example, in England are applicable in Scotland.
- ⇒ The degree of remorse
- ⇒ Has the offence since been de-criminalised by Parliament

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## Implementing safeguards

- ⇒ Check insurance policies to ensure that it does not exclude some ex-offenders in specific occupations.
- ⇒ Consider human rights, discrimination, data protection or duty of care.
- ⇒ Level of supervision, which may be required, in early stages of employment.
- ⇒ Consider training or briefing that may be beneficial to the supervisor to manage the post-holder in the work context.
- ⇒ Consider supervision, whether direct or indirect, that involves the ex-offender.

## Managing Sensitive Information & Data Protection

- ⇒ Records of the ex-offenders offences must be kept confidential.
- ⇒ Only those who are directly involved in the recruitment process are aware of the criminal record.
- ⇒ If the application proves successful then they must be informed who and the reason as to why certain people know of the conviction.
- ⇒ The records of offences must be kept in a secure and lockable filing cabinet, to which access is strictly limited.
- ⇒ Ex-offenders are only expected to declare unspent convictions unless the job is within care, education, health service, jurisdiction and legal sectors. Full details can be found at <http://www.seequality.org.uk/exoffenders.html>

## Further Information

- ⇒ Chartered Institute of Personnel & Development (CIPD)  
<http://www.cipd.co.uk/subjects/dvsequl/exoffenders/crimrec.htm>
- ⇒ Criminal Records Bureau  
[http://www.crb.gov.uk/PDF/cipd\\_quick\\_facts\\_guide.pdf#search=%22employing%20people%20with%20criminal%20records%22](http://www.crb.gov.uk/PDF/cipd_quick_facts_guide.pdf#search=%22employing%20people%20with%20criminal%20records%22)
- ⇒ NACRO - Changing lives, reducing crime  
<http://www.nacro.org.uk/data/resources/nacro-2005020104.pdf#search=%22employing%20people%20with%20criminal%20records%22>

This is the fourth in a series of business factsheets on diversity and cohesion issues, which reflect priorities in ONE HULL's new Community Strategy.