

The background of the slide features a large, light blue watermark of the City of Vancouver's coat of arms. The crest includes a crown with four maple leaves, a shield divided into four quadrants (top-left: a saltire, top-right: a stag's head, bottom-left: a sailing ship, bottom-right: an eagle), and a banner at the bottom with the motto 'A NE FOR A'.

## **Agenda Item 5**

**Referral from Corporate Partnership  
Forum**

**Falkirk Council**

**Title:** Referral from Corporate Partnership Forum  
**Meeting:** Executive  
**Date:** 25 September 2018  
**Submitted By:** Director of Corporate & Housing Services

**1. Purpose of Report**

- 1.1 The purpose of this report is to seek approval from the Executive Committee for a policy which was considered by the Corporate Partnership Forum on 01 August 2018.

**2. Recommendation(s)**

- 2.1 The Executive is asked to approve the immediate implementation of changes to the Criminal Convictions Checking Policy.

**3. Background**

- 3.1 Members will recall the report to Council in June 2018, at which time new Modernising Industrial Relations arrangements were agreed. The new arrangements set up new consultative forums and disbanded the Joint Consultative Committee.
- 3.2 The newly formed Corporate Partnership Forum meets on a quarterly basis and provides a mechanism for consultation to take place at a corporate level between relevant officers and recognised Trade Unions. This includes consultation on policies with Trade Unions, following which, policies or other matters requiring Member approval, require to be submitted as normal to Executive/Council.
- 3.3 Since setting up the new arrangements, this is the first referral following the first Corporate Partnership Forum.
- 3.4 The Criminal Convictions Checking Policy provides guidance on carrying out criminal convictions checks. The policy merges the PVG & Criminal Convictions Checking Policy and the Overseas Criminal Convictions Checking Policy. The policy has been issued for consultation to Services and considered by the Corporate Partnership Forum.

## **4. Considerations**

- 4.1 The Criminal Convictions Checking policy provides guidance on carrying out criminal convictions checks for those who work with vulnerable adults or children.
- 4.2 To reduce duplication, the policy merges the previous PVG & Criminal Convictions Checking Policy and the Overseas Criminal Convictions Checking Policy.
- 4.3 The changes incorporate the decision of Council in February 2018 to stop retrospective criminal conviction and PVG checks.
- 4.4 It has also been updated to a new format using hyperlinks instead of appendices to make this more user friendly by incorporating 'How To' guides to assist managers and employees.

## **5. Consultation**

- 5.1 Services and Trade Unions have been consulted and comments considered and changes made where appropriate. The policies have been discussed at the Corporate Partnership Forum at which time it was agreed to refer the policy to Executive for approval.

## **6. Implications**

### **Financial**

- 6.1 The removal of the retrospective checking process was agreed as a budget saving at Council in February 2018. This report has no further financial implications arising.

### **Resources**

- 6.2 Resource implications from changing the PVG and disclosure arrangements have been previously highlighted as part of the budget report in February 2018.

### **Legal**

- 6.3 There are no legal implications arising from this report.

### **Risk**

- 6.4 This policy presents no new risks.

## **Equalities**

- 6.5 An EIA was carried out as part of the budget saving process report for the changes to respective criminal conviction checking. No additional equality issues arise.

## **Sustainability/Environmental Impact**

- 6.6 This report merges 2 policies to reduce duplication therefore reduces the number of paper copies where they are made available.

## **7. Conclusions**

- 7.1 Changes to the Criminal Convictions Policy have been proposed to reduce duplication, improve processes and increase efficiency.

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Director of Corporate & Housing Services

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**Date: 11 September 2018**

## **APPENDICES**

Criminal Convictions Checking Policy

### **List of Background Papers:**

**The following papers were relied on in the preparation of this report in terms of the Local Government (Scotland) Act 1973:**

**None**

# Criminal Convictions Checking Policy

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Falkirk Council is committed to ensuring safe recruitment and employment of individuals who work with children and protected adults. We are equally committed to ensuring the fair treatment of those we recruit and employ including those who have previous convictions.

We recognise the importance of security vetting to ensure the safety and security of information, data and assets and to limit and reduce any fraudulent activity within the workplace.

Legislation allows us to carry out criminal conviction checks to ensure the safety and welfare of vulnerable individuals and to ensure suitable security vetting within the workplace.

Disclosure Scotland process checks and share information about people's criminal records. This helps us to employ the right people for certain types of work, like working with children or protected adults.

# **Criminal Convictions Checking Policy**

This policy provides a method of checking the suitability of employees who have criminal convictions for specific posts.

This policy applies to all potential and existing employees whose posts require a criminal conviction check to be carried out. A list of posts requiring a criminal conviction check is updated regularly and held by Human Resources.

## **Spent and Unspent Convictions**

Individuals who have committed an offence are considered to be rehabilitated after varying periods of time and their convictions are then deemed to be spent. Under normal circumstances, individuals do not need to declare any spent convictions. However, the Rehabilitation of Offenders Act recognises that there are some situations where information about spent convictions should remain available and therefore allows spent convictions to be disclosed.

These exceptions include instances where people are applying for positions involving contact with children and protected adults. This information can only be requested in relation to professions excluded or exempted by the Rehabilitation of Offenders Act. The types of work exempted under the order are generally posts where there is a requirement to provide care, training or supervision of children or protected adults, including voluntary positions. There are however other professions covered by the legislation and managers should be familiar with posts within their Service area that fall into this category. A list of occupational areas covered by legislation is provided on Inside Falkirk [\\*hyperlink 1\\*](#).

Where the period of rehabilitation is not complete, the conviction is deemed to be unspent. In all situations unspent convictions will be highlighted on the appropriate Disclosure/PVG Check. Having a previous criminal conviction does not automatically stop an ex-offender from being appointed to a post that is exempted from the act. It is the manager's responsibility to risk assess the relevance of the conviction to the post the individual is applying for.

More information is available in How to carry out PVG and Disclosure Risk Assessments. [\\*How to 1\\*](#).

Whilst checks are carried out as a recruitment check, where a concern is raised during employment, an employee may be required to complete an additional check to ensure they remain suitable for a particular post.

## **Protection of Vulnerable Groups (Scotland) Act 2007 and PVG Scheme**

The Protection of Vulnerable Groups (PVG) Act provides statutory protection to children and protected adults from harm and defines work (paid or unpaid) with children or protected adults as regulated work.

Regulated work falls into two categories - regulated work with Children and regulated work with Protected Adults and these are defined within the PVG Act.

If a role involves working with children or protected adults, employees may be eligible for the Protecting Vulnerable Groups (PVG) scheme.

# Criminal Convictions Checking Policy

PVG is a membership scheme which makes sure its members are allowed to work with children or protected adults. It is designed to ensure that unsuitable individuals do not have access to children or protected adults through their work. It also aims to ensure that individuals who become unsuitable are detected early and prevented from continuing to work, or from seeking work, with children or protected adults.

The PVG Scheme is managed by Disclosure Scotland who maintain lists of individuals who are barred from working with protected groups. The lists provide us and other registered bodies with a way of checking if potential or existing employees are barred from undertaking regulated work.

It is a criminal offence for people who have been disqualified from regulated work to apply for a position working with these groups or for us to employ an individual to work with the groups they are barred from.

The information provided by Disclosure Scotland will depend on the type of check being requested and could include:

- Details of membership
- Details of relevant criminal records (if any)
- Information about a persons inclusion on the list of those barred from working with children and/or protected adults
- Other relevant information held by a local police force or Government body
- Clarification that there is no information held.

The definition of regulated work [\\*hyperlink 2\\*](#) can be found on Inside Falkirk. Detailed information can also be found on the Scottish Government website.

Those in regulated work must maintain membership of the PVG Scheme. More information is available in How to carry out PVG and Disclosure Checks [\\*How to 2\\*](#).

## Disclosure Checks: Basic, Standard and Enhanced Disclosures

Basic, Standard and Enhanced disclosures are available for positions not covered by the PVG Scheme and are governed by legislation.

- Basic disclosure is available for any purpose, for example, employees working with cash.
- Standard disclosure is available for specific posts, for example, solicitors and accountants.
- Enhanced disclosure is available for specific post titles along with posts unrelated to work with vulnerable groups, for example, other appointments involving access to children or protected adults other than through regulated work such as those living in a household with foster children.

A disclosure check provides us with information on previous criminal convictions. The information included in the disclosure certificate will depend on the type of disclosure applied for and could include:

- Details of relevant criminal records (if any)
- Information about a persons inclusion on the list of those barred from working with children and/or protected adults
- Other relevant information held by a local police force or Government Body

# Criminal Convictions Checking Policy

- Clarification that there is no information held.

More information is available in How to carry out PVG and Disclosure Checks [\\*How to 2\\*](#).

## VISOR

ViSOR is the recognised national IT system for the management of people who pose a serious risk of harm to the public. It is Home Office owned and maintained and as such, it is the Home Office that sets the level of vetting required.

To access and use ViSOR all staff with access to the system must be vetted to either Non-Police Personnel Vetting Level 2 (NPPV 2) or Non-Police Personnel Vetting Level 3 (NPPV 3), depending on an individual's role when using ViSOR.

**NPPV 3** is required for only employees who are assigned the Central Point of Contact (CPC) role for ViSOR or the Local Point of Contact (LPC) role or Local Administrator for ViSOR.

**NPPV 2** is required for all other employees accessing or using ViSOR.

NPPV includes the same system checks as Enhanced Disclosure and PVG, and also includes family members and financial checks; all of which are intended to protect the individual and organisation from the potential for manipulation and the inappropriate disclosure of sensitive information. Clearance will be a condition of employment and may impact on an offer of employment or future employment.

ViSOR checks are carried out by Police Scotland. More information is available on Inside Falkirk [\\*hyperlink 3\\*](#).

## Baseline Personnel Security Standard

The Baseline Personnel Security Standard (BPSS) is a set of guidelines followed for effective pre employment screening. We will follow the BPSS guidelines to ensure the identity and integrity of employees with access to official information or systems.

It involves a number of checks:

- Identity check
- Nationality and Immigration Status
- Employment History (past 3 years)
- Verification of Criminal Record (unspent convictions only)
- References covering previous 3 year period
- Checks relating to time spent living or working abroad.

The checks relating to gaps in employment history or additional references covering a 3 year period are considered good practice. All relevant information required as part of this check should be recorded on the [recruitment checklist](#).

## Overseas Criminal Records Checks

Where the post requires a Disclosure or PVG Check and the individual has lived or worked overseas for a period of 3 months or more in the last 5 years, additional overseas criminal records checks should be carried out. More information is available in How to carry out PVG and Disclosure Risk Assessments. [\\*How to 1\\*](#).



# **Criminal Convictions Checking Policy**

## **Payment Arrangements**

Candidates and employees are responsible for all fees relating to criminal conviction checks. A payroll deduction form [\\*hyperlink 4\\*](#) must be signed by the candidate/employee in advance of any applications being submitted to Disclosure Scotland. The form allows for different periods of repayment, which should be discussed with the candidate/employee.

Where a candidate does not sign the form, they should be advised that their application cannot be progressed any further.

Should a candidate have a check undertaken and choose not to start employment they remain responsible for the cost of the check. The recruiting manager is responsible for writing to the candidate to advise them on the method of repayment.

## **Countersignatory Obligations**

Countersignatories are authorised by Disclosure Scotland to sign off applications for PVG and disclosure checks on behalf of Falkirk Council. As such, anyone signing disclosure applications must be registered with Disclosure Scotland. As a registered countersignatory, there are specific obligations: <https://www.mygov.scot/register-organisation-disclosure/signatories/>

It is essential that all countersignatories familiarise themselves with this and the information on secure handling, use, storage, retention and destruction of disclosure information.

If a Countersignatory receives any correspondence from Disclosure Scotland about a PVG member which they did not specifically request through a check, whether they are still employed or have left Falkirk Council, they should contact the HR Helpdesk. The individual may have moved to another department or taken up secondary employment and other relevant countersignatories must be made aware of the correspondence in order to take any necessary actions.

## **Secure Handling, Use, Storage & Retention**

We comply fully with the Disclosure Scotland Code of Practice, and Data Protection Act 2018 regarding the correct handling, holding and destroying of Disclosure information. Information on these requirements can be found on Inside Falkirk [\\*hyperlink 5\\*](#).

Whilst PVG/disclosure records must not be retained for any longer than required, a clearance form [\\*hyperlink 6\\*](#) must be completed and filed in the personal file. A copy of any required risk assessments are held on paper file by HR for future reference. Membership numbers and disclosure certificate numbers are recorded on the HR/Payroll (Resourcelink) system for future reference.

Counter-signatories, under the direction of the Council's Lead Signatory, are responsible for ensuring that PVG/disclosure records are stored in secure conditions in accordance with the Code of Practice. Information on counter-signatories can be obtained by contacting the HR Helpdesk. Aside from certain limited exceptions, it is an offence to share records with a third party.

# **Criminal Convictions Checking Policy**

## **Referrals Process**

Disclosure Scotland represents Scottish Ministers when making decision relating to referred individuals who have committed harmful conduct in Scotland.

Under the PVG Act organisations have a duty to report any harmful behaviour that might affect whether the person is allowed to work with children or protected adults. This applies whether the person is a member of the PVG Scheme or not.

We must make a referral to Disclosure Scotland explaining what's happened. This only has to be done if the harmful behaviour meant that the person involved:

- was dismissed as a result
- would have been dismissed but left before they could be
- was transferred permanently away from work with children or protected adults

If any of these disciplinary actions were taken, we must make a referral to Disclosure Scotland within 3 months of the decision being made.

If you are considering making a referral to Disclosure Scotland, you must discuss this with your Service HR Business Partner prior to any referral being submitted. Advice may also be required from Governance.

A referral form is available from the Disclosure Scotland website <https://www.mygov.scot/pvg-referrals/>

## Hyperlink 1

### **Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 Excluded and Exempted Posts:**

Please note this is not an exhaustive list, it includes posts considered relevant to Falkirk Council. If you have any queries please refer to Human Resources for a full list of all excluded posts

- Advocate, solicitor.
- Accountant.
- Registered teacher.
- Actuary.
- Registered European lawyer, registered foreign lawyer.
- Social worker.
- Social service worker.
- Any office, employment or work which is concerned with the administration of, or is otherwise normally carried out wholly or partly within the precincts of a prison, remand centre, young offenders institution, detention centre or removal centre, and members of visiting committees for prisons appointed under rules made under section 39 of the Prisons (Scotland) Act 1989(4) and members of visiting committees for remand centres and young offenders institutions appointed under section 19(3)(5) of that Act.
- Any employment or work which is concerned with the provision of a care service.
- Any regulated work with children.
- Any employment which is concerned with the monitoring, for the purposes of child protection, of communications by means of the internet.
- The Principal Reporter or officers appointed under section 128(5) of the Local Government etc. (Scotland) Act 1994(10) to assist that officer.
- Members of a panel established by virtue of section 101(1) of the Children (Scotland) Act 1995(11) (panels for curators *ad litem*, reporting officers and safeguarders).
- Any regulated work with adults.
- Taxi driver or private hire driver.
- Any occupation in respect of which a licence or registration is required by or under Part V (driving instruction) of the Road Traffic Act 1988(18).

# How to carry out PVG & Disclosure Risk Assessment & Overseas Checks

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We have a duty to ensure adequate protection of children and protected adults and safe working systems and practices. It is particularly important that decisions taken on the suitability of individuals to work in regulated activity relating to children and, or protected adults, are consistent and that risks are managed.

In recruitment situations, a candidate may advise that they have a criminal conviction, or that criminal proceedings (which may result in a conviction) are pending. This should be regarded as strictly confidential. Depending on the nature of the conviction, we reserve the right to withdraw consideration of their application. Alternatively we may proceed to consider the candidate, subject to a criminal records check being made with Disclosure Scotland.

It is a condition of employment for council employees that they disclose details of any of the following that occur prior to commencing, or during the course of employment:

## How to carry out PVG & Disclosure Risk Assessment & Overseas Checks

- Involvement in police investigations
- Criminal charges
- Police cautions
- Disciplinary action taken by professional or regulatory bodies.

If a current employee advises that they have a criminal conviction, a risk assessment should be undertaken by their manager. The manager will assess the information disclosed and decide whether or not it materially affects the individual's suitability for their particular post. Minor issues or offences will be disregarded if they have no direct relevance to an individual's job.

A criminal convictions check through Disclosure Scotland will normally only identify the appropriate criminal convictions for candidates from the UK. If candidates have lived or worked outside the UK for 3 months or more in the past 5 years and the post requires a criminal records check, a further overseas check is also required. Successful candidates should be asked to obtain the most comprehensive level of criminal records check from the country that they have previously lived and/or worked in. More details can be found at the end of this document.

### Criminal Convictions

On receipt of Disclosure/PVG certificates, HR will notify managers if there are any convictions on the certificate and they will be asked to carry out a risk assessment, to consider if any information disclosed makes the candidate unsuitable for employment. Managers should record their assessment on the Disclosure Scotland Risk Assessment Form (H21A) and to return this to HR for filing. All risk assessment paperwork should be returned to HR for retention in a central file. This should not be held on the personal or recruitment file.

### Risk Assessment

The risk assessment will take into account the type and nature of the conviction, the relevance of the conviction to the post and our duty to ensure adequate protection of children and protected adults. Advice can be obtained from Governance on what the nature of the information, charge or conviction may mean. Having a criminal record does not automatically make a person unsuitable for work with children or protected adults.

If any documentation suggests an individual is considered for listing, the manager **MUST** refer the matter to Governance and HR for further consideration. If any individual is barred from working with a particular group, they **MUST NOT**, in any circumstance, be offered any work within that particular regulated workforce.

In some circumstances we may be provided with information from the police that is considered relevant. This information is not provided to the candidate and is considered confidential, for example, where an individual has been or is presently under investigation by the Police.

Full consideration should be given to any such information disclosed and the relevance of this to the post applied for. Governance & HR advice should be

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obtained in these circumstances. Any information of this type which is disclosed **MUST NOT** be shared with the candidate.

If a decision is taken to withdraw the recommendation for employment based on the information from the police, the candidate will be advised that they have been unsuccessful as a result of the information received from the disclosure/PVG check. The candidate will not be advised of the detail of the information received. If necessary as part of the process, the recruiting manager should confirm that we cannot disclose any further information.

### **Overseas Criminal Records Checks**

It is the candidate's responsibility to provide and pay for a separate overseas criminal records check. Certificates and other original documents obtained remain their property and may be used for future employment purposes.

### **Authenticity**

Documents should come from the police or judicial authority, government department or embassy of the countries concerned. It must be an official statement confirming that the person does not have any history or pending criminal record proceedings. Original documents should be provided. Some countries offer a certificate in English or the option of a translated duplicate. Many countries do not. If a translation is required this must be carried out by a Falkirk Council approved source. Further information can be found on Inside Falkirk. If a translation has been required, ensure that the original document and the translation are inspected.

While managers are not expected to be an expert in recognising forged documents, they must check for evidence of tampering. Be suspicious of plausible explanations for missing or damaged originals; for example where the candidate claims a document has been damaged by liquid spillage or has accidentally been laundered.

Extra care should be used to check references, the dates of previous employment and any other biographical information supplied by the candidate. It is the recruiting manager's responsibility to question any gaps in the application form and records received and to check where the candidate has been employed during gaps. The manager should cross reference documentation and check for consistency between information in the passport, work permits, references, and work history in the application form. Inspect closely the overseas documents produced for issue date and certificate numbers to ensure they are authentic.

Verification of authenticity of certificates provided may be available from the embassy or consulate of the country of origin. It is important to take care with documents confirming identity for foreign nationals. Documents to confirm suitability are likely to differ to those which confirm permission to work in the UK. The Centre for the Protection of National Infrastructure (CPNI) may be able to provide further information and intelligence on checking identity and related issues.

### **Alternative Checks/documents**

We appreciate that obtaining an overseas criminal record check can be difficult and differs from country to country. In some cases it will prove impossible for a candidate to obtain the required statement, particularly where the country is experiencing

## **How to carry out PVG & Disclosure Risk Assessment & Overseas Checks**

political difficulties. Political refugees may find it very difficult to obtain the required statement. The accuracy of the information received may also be questionable. There may also be concerns that such a request could put the individual's personal safety in jeopardy.

In these situations, additional checking may be useful in assessing the suitability of candidates.

This can include:

- seeking a reference from an academic institution if the candidate has been studying abroad
- seeking references from all employers instead of just from the most recent employers
- checking professional registration
- verifying documents

Permission from the candidate should be sought before any contact is made. Although refusal may raise suspicions this should not be a reason to automatically reject the candidate without further investigation.

### **References**

It should not be assumed that referees can read English. In some circumstances it may be necessary to send a translation of the reference request letter or form.

### **Convictions**

Offences in different jurisdictions may not be directly comparable to offences committed in Scotland. This means that certain crimes may be described or categorised differently. In addition the record may include convictions for activities that would not be regarded as crimes in Scotland and vice versa. Governance or Police Scotland may be able to provide advice on what a foreign conviction equates to in Scottish law. The Apex Scotland Disclosure Helpline offers advice on what UK convictions mean and may also be able to advise on foreign convictions.

### **Limited information available**

A reasonable period should be given to get the information. If after 6 weeks no response has been received managers should consider whether to:

- Allow more time
- Make a risk assessment on the partial information already available , or
- Reject the candidate

If no overseas criminal record check or only partial checks have been obtained, this should not be a reason to automatically reject the candidate.

When deciding how to proceed, the manager should consider what action has been taken to try and obtain the check and seek evidence of the dates and actions the candidate has taken. This evidence should be considered along with anecdotal information such as whether similar difficulties have been encountered by other candidates applying to the same source. It may also be useful to consult HR colleagues or other Local Authorities to provide further information.

## **How to carry out PVG & Disclosure Risk Assessment & Overseas Checks**

Consider whether other information, such as information from references, means that the lack of a comprehensive authenticated criminal record check is less important. The assessment of suitability should consider the completeness, quality and authenticity of evidence provided.

There is information on the Government website which offers advice about obtaining criminal record information from a number of countries and how an individual can obtain their criminal record or certificate of good conduct from overseas. This can be accessed at <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>

### **Suitability of appointment**

The decision on whether to confirm employment should be verified by the appropriate recruiting manager in consultation with the Head of Human Resources & Business Transformation.

If the check reveals a criminal record, this should be assessed using the same risk assessment criteria that would be applied to similar information from Disclosure Scotland.

If it is not possible to confirm the appointment, either because conviction history is incompatible with the duties of the post or because insufficient information has been obtained, the reasons should be discussed with the candidate. The candidate must have the opportunity to raise concerns about how the evidence provided has been interpreted, to allow for simple issues, such as an error in translation, to be brought to the attention of the Council.

### **Current Employees**

If a current employee has a career break or an overseas exchange or secondment, managers should ensure that the employee is aware that the Council will require the employee to complete a Disclosure/PVG check prior to return to work if relevant for their post. Checks should also be carried out to include any other countries of residence for 3 months or over during the break, exchange or secondment. It will usually be the employee's responsibility to source the necessary documents although in some situations, for example, exchanges or secondment, it may be sufficient to agree with the host organisation that the employee will remain bound by the Council's disciplinary procedure and that arrest, charge, or conviction while abroad should be made known to the Council.

Other possible approaches include:

- Seeking a reference from the host organisation upon return
- Making it a condition of permission to take leave that the employee should obtain an overseas criminal conviction check upon return
- Seeking a report on the employee's performance during secondment from the host organisation.

It is the manager's responsibility to identify and complete any relevant checks. If an employee is about to return from work overseas and these arrangements have not been agreed in advance managers must contact Human Resources for advice.



## How to carry out PVG & Disclosure Risk Assessment & Overseas Checks

### Useful Contacts

A list of useful sources is given below. The list was correct at the time of writing. Note that these external resources may change or move unexpectedly. Please let HR know about any links that need to be added, removed or updated. Phone numbers for the agencies below have not been given. Where contact by phone is possible the number can generally be found on the home page or contact us page of the web site.

What	Web site or page
Disclosure Scotland	<a href="https://www.mygov.scot/working-jobs/finding-a-job/disclosure/">https://www.mygov.scot/working-jobs/finding-a-job/disclosure/</a>
Disclosure and Barring Service (DBS)	<a href="http://www.gov.uk/government/organisations/disclosure-and-barring-service">www.gov.uk/government/organisations/disclosure-and-barring-service</a>
Foreign and Commonwealth Office (FCO)	<a href="http://www.gov.uk/government/organisations/foreign-commonwealth-office">www.gov.uk/government/organisations/foreign-commonwealth-office</a>
Apex Scotland	<a href="http://www.apexscotland.org.uk">www.apexscotland.org.uk</a>
Centre for the Protection of National infrastructure (CPNI)	<a href="http://www.cpni.gov.uk">www.cpni.gov.uk</a>
The Protection of Vulnerable Groups(Scotland) Act 2007	<a href="http://www.gov.scot/Publications/2008/09/29114859/2">http://www.gov.scot/Publications/2008/09/29114859/2</a>
BPSS Checks Cabinet Office	<a href="http://www.cabinetoffice.gov.uk/media/45160/hmg_bpss.pdf">http://www.cabinetoffice.gov.uk/media/45160/hmg_bpss.pdf</a>
Visas and Immigration (UKVI)	<a href="https://www.gov.uk/government/organisations/uk-visas-and-immigration">https://www.gov.uk/government/organisations/uk-visas-and-immigration</a>

## Criminal Convictions Checks – Risk Assessment Template

The suitability for employment of a person with a criminal record will vary, depending on the nature of the job and the details and circumstances of any convictions. An assessment of the conviction circumstances should be weighed against the risk assessment criteria for the job. The manager must identify what risks might be involved and what precautions put in place in order to provide satisfactory safeguards, if possible.

Service	
Job title	
Candidate name & address Or employee name and employee number	

The candidate's criminal record should be assessed in relation to the tasks they will be required to perform and the circumstances in which the work is to be carried out. The following are recommended for consideration:

<b>The answer to these questions will help identify the level of and groups at risk</b>	<b>YES/NO</b>
Does the post involve one-to-one contact with children, protected adults or other vulnerable groups of employees, customers or clients?	
Will the post holder be closely supervised?	
Will the postholder have access to unsupervised children or other vulnerable groups?	
Does the post involve any direct responsibility for finance or items of value?	
Does the post involve direct contact with the public?	
Does the post have an expected level of professional authority/integrity/accountability?	
Will the nature of the job present any opportunities for the post holder to re-offend in the place of work?	

### Assessing the risk in relation to the conviction

In some cases, the relationship between the offence and the post will be clear enough to decide easily on the suitability of the candidate for the job. It should be remembered that no two offences are exactly alike and whilst it will not be possible to carry out a thorough risk assessment on each individual, it is recommended that the following issues are taken into account as a minimum requirement assess whether the individual is suitable to be offered the post or to continue working in the post.

- The seriousness of the offence and its relevance to the safety of other employees, customers, clients and property
- The length of time since the offence occurred, evidence suggests that the risk of reoffending for those who have not offended for 7-10 years is similar to those who have never offended
- The age of the candidate at the time of the offence

- Any relevant information offered by the candidate about the circumstances which led to the offence being committed, for example, the influence of domestic or financial difficulties, whether the candidate is a looked after child, are in continuing care or are a care leaver – research suggests that those in the care system are more likely to have a criminal record due to their home environment and particular circumstances
- Whether the offence was a one-off or part of a history of offending
- Whether the candidate's circumstances have changed since the offence was committed, making re-offending less likely
- The country in which the offence was committed; some activities are offences in Scotland and not in England and Wales, and vice versa
- Whether the offence has since been de-criminalised by Parliament

The chair of the interview panel/manager must discuss any matter revealed in a criminal convictions check (except that revealed to the employer only and not for release to the candidate), with the candidate before completing the risk assessment. Discussion allows the candidate an opportunity to provide their version of the circumstances surrounding the disclosed information. The discussion is part of the decision making process.

If the information provided by Disclosure Scotland does not agree with that provided by a candidate the chair of the interview panel/manager should discuss the discrepancy with the individual before reaching a decision. If a person disputes the information on the certificate it is a matter for the candidate to challenge and resolve directly with Disclosure Scotland

Detail the outcome of the assessment in the box below; including the rationale for the decision (the nature of the conviction should not be detailed). The decision taken should be able to withstand any level of scrutiny, either by the public, clients, parents or media, although this should not be the reason for the decision.

This will be approved/rejected and countersigned by the Head of Service.

### Candidates

If the decision is taken to withdraw the recommendation for employment based on the information received, the candidate will be advised that they have been unsuccessful as a result of the information received from the criminal convictions check.

### Existing Employees

If the manager concludes that the risk is such that the employee cannot remain in their substantive post, every effort should be made to redeploy the employee to an alternative post using the processes contained in the Rehabilitation and Redeployment Policy, provided the nature of the conviction allows this to happen. In cases where the employee is unable to be redeployed, managers may be required to consider the option

of dismissal. This will however, only be considered where there are no other options available to keep the employee in employment. In these situations, managers should contact HR for further advice.

All managers involved must follow the rules on confidentiality in the Code of Practice.

LINE MANAGER PRINT NAME & SIGN

.....

DATE.....

HEAD OF SERVICE PRINT NAME & SIGN

.....

DATE.....

**Please now forward to HR Helpdesk, Municipal Buildings, Falkirk, FK1 5RS for retention. You should not keep a copy of this document.**

## Hyperlink 2

### Definition of regulated work with children:

Regulated work with children is defined by the act as –

- (1) Where the normal duties include carrying out the following:
  - Caring for children
  - Teaching, instructing, training or supervising children
  - Being in sole charge of children
  - Unsupervised contact with children
  - Providing advice or guidance to children which relates to physical or emotional wellbeing, education or training
  - Moderating certain interactive communication services
  - Provision of care home services for children
  - Provision of independent health care services for children
  - Work on any part of day care premises at a time when children are being looked after in that part.
- (2) Where the normal duties include working in a:
  - Children's detention institution
  - Children's hospital
  - Educational institution
  - Children's home
- (3) In the position of:
  - Manager of an education institution
  - Member of a Council committee concerned with education, accommodation social work service or health care to children
  - Member of a children's panel
  - Chief Social Work Officer
  - Chief Education Officer
  - Foster Carer
  - Trustee of a Children's Charity
- (4) Any post whose normal duties include the day to day supervision or management of an individual doing regulated work with children.

### Definition of regulated work with adults:

Regulated work with adults is defined by the act as –

- (1) Where the normal duties include carrying out the following:
  - Caring for protected adults
  - Teaching, instructing, training or supervising adults
  - Being in sole charge of adults
  - Providing advice or guidance to adults which relates to physical or emotional wellbeing, education or training
  - Provision of care home services for adults

## Hyperlink 2

(2) Where the normal duties include working in a:

- Care home
- Residential establishment or accommodation provided by, or the provision is secured by Council order under the Social Work (Scotland) Act 1968 (c.49) or section 25 of the Mental Health (Care and Treatment)(Scotland) Act 2003

(3) In the position of:

- Member of a Council committee concerned with education, accommodation social work service or health care to adults
- Chief Social Work Officer
- Trustee of a Charity

(4) Any post whose normal duties include the day to day supervision or management of an individual doing regulated work with adults.

# make it happen

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## council of the future

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The Safer Recruitment Working Group agree which conviction check is most suitable for each job title.

For posts that require PVG membership, person specifications should state “maintain PVG Scheme membership” and job descriptions should include a statement under the demands section as follows: “This job requires contact with vulnerable groups, therefore you will require to gain/maintain PVG Scheme membership”.

For posts that require Disclosure checks, the person specifications should state “satisfactory disclosure check” in the essential criteria.

When recruiting to vacant posts requiring PVG/Disclosure, a screening question is included in the application form. Candidates will also be advised at this stage of the payment arrangements.

### **Confirmation of identity**

Three forms of ID are required which, as a minimum, should confirm the candidate’s date of birth, national insurance number and current address, for example, photocard

## How to carry out PVG and disclosure checks

or paper (not counterpart) driving licence, passport, utility bill, rental agreement/mortgage, or bank statement.

Original identity documents, not copies, should be checked at interview and the recruiting manager should ensure that these are valid on the date of check, if applicable. Utility bills should be provided from a period within the previous three months and should be addressed to the candidate. The recruitment checklist [\\*hyperlink\\*](#) must be completed, confirming which documents have been checked.

Evidence provided of the candidate's identity should be checked and compared against the details provided on the recruitment application form.

For Basic Disclosure Checks, copies of identity documents should be made and sent to Disclosure Scotland along with the disclosure application form. There is no requirement to send copies of ID documents to Disclosure Scotland for any other type of application.

Please contact HR if you are unsure about combinations of documents. Photographic ID should be provided where possible.

### **PVG Scheme**

Employees must hold PVG membership for the regulated workforce they are working with

#### **New Employees**

- Candidates who are already scheme members and working within the same regulated workforce will be required to obtain a short scheme record update. Where new conviction information is identified, a full scheme record will be provided by Disclosure Scotland. (Cost £18)
- Candidates who are already scheme members but required to work with a different regulated workforce, will be required to join the scheme for that particular group (Cost £59)
- Candidates who are not already scheme members will be required to submit an application to join the PVG scheme. (Cost £59)

#### **Existing employees**

- Employees who are not already scheme members, who apply for a post within a regulated workforce will be required to submit an application to join the PVG scheme (Cost £59)
- Employees who are already PVG scheme members through their existing employment with Falkirk Council who apply for a post within the same regulated workforce do not require to do a further PVG check. Managers should however make sure that the relevant details are recorded on the Council's HR/Payroll system
- In exceptional cases, a further update/record can be required as part of a risk assessment process



## **How to carry out PVG and disclosure checks**

- Employees who are already PVG scheme members but who apply for a job within a different regulated workforce will be required to join the scheme for that particular regulated group. (Cost £59)

### **PVG Scheme – Leaving employment**

- It is the responsibility of the individual to notify Disclosure Scotland if they leave employment with Falkirk Council.
- HR will notify Disclosure Scotland every 6 months of those who have left employment to ensure we do not receive updated information.

### **Disclosure Checks**

A disclosure certificate is only accurate at the time of the check being carried out and relevant to a particular post, therefore a new disclosure must be processed, irrespective of whether a previous check has been conducted. (Cost £25)

Where an existing employee applies for an internal post, a new disclosure will still be required in each instance. It is important that a new check is carried out in order to ensure that all the relevant details are obtained for the new post. It is not appropriate to accept a candidate's copy of their disclosure certificate, a copy of a previous employer's disclosure certificate or a disclosure certificate from a previous check carried out by Falkirk Council.

### **Completed Disclosure & PVG Application Forms**

Disclosure and PVG application forms are available from the local Business Support team for each office or from Disclosure Scotland.

Managers must send the relevant Disclosure/PVG application form and payroll form to the candidate with the recommendation for appointment letter. Candidates must be asked to complete these and return in a sealed envelope. If ID has not been checked at interview the candidate must be asked to bring this in before the application can be sent.

Once these have been returned they must be signed by a relevant Countersignatory. As such, managers should send the Disclosure Scotland application form, signed mandate and ID verification form to the HR Helpdesk for countersigning and processing. This applies to all services except Children's Services and Social Work Adult Services who should return this to the Staffing & Recruitment Team.

## **Hyperlink 3 - ViSOR**

### **ViSOR - what is involved in NPPV 2 & NPPV 3 vetting**

Police Scotland Vetting Unit undertakes NPPV on behalf of Falkirk Council.

The requirements for NPPV 2 and NPPV 3 vetting are as follows:

**NPPV 2** - The individual member of staff must provide their full details, address/s for the past 5 years as well as details of their:

- spouse/partner
- any children (including dependants & stepchildren)
- any other person resident at their current address.

All are subject of checks which include all conviction information, spent and unspent, and any other non-conviction information considered to be relevant by the police or other Government bodies. In addition, individual members of staff must provide details of their financial circumstances and those of their spouse/civil partner/partner, in the last 10 years (including details of any court orders, repossession, bankruptcy, debt referral orders etc.).

**NPPV 3** - The individual member of staff must provide their full details, address/s for the past 10 years as well as details of their:

- spouse/partner
- previous spouse/partners
- parents/step parents/guardians
- any children (including dependants & stepchildren)
- brother(s)/sister(s) and half/step and brother(s)/sister(s)
- any other person resident at their current address.
- secondary employment/business interests
- financial circumstances and those of their spouse/civil partner/partner, in last 10 years (including details of any court orders, repossession, bankruptcy, debt referral orders etc.).

All are subject of checks which include all conviction information, spent and unspent, and any other non conviction information considered to be relevant by the police or other Government bodies.

### **What happens if a candidate fails NPPV vetting?**

Where a candidate fails the vetting clearance applied for, the Vetting Unit will inform the candidate, and only the candidate, of the reason for the failure. It is up to the individual candidate to decide whether to disclose the reason to their line manager, however; if the reason is deemed to be a serious risk to the organisation, Police Scotland will make a pro-active disclosure.

If the candidate and/or their line manager believes there are mitigating or other influencing circumstances that may have affected the application, an appeal can be made to the Police Scotland Vetting Unit. The application will be re-assessed again in light of the new information by an independent review officer and the outcome will be made known to the candidate. The decision at this stage is final.

### **Hyperlink 3 - ViSOR**

#### **Financial failure**

If the failure is as a result of financial concerns and an appeal is made, the Vetting Unit may contact the organisation concerned, if agreed to by the candidate. They will discuss further the reasons surrounding the decision with a view to resolving if further assurances and conditions are met.

**Hyperlink 4**  
**Disclosure and PVG scheme payroll deduction form**

**Employee Instructions:** Please complete part A and B and return to your manager.

**Manager:** Please ensure parts A, B & C have been completed fully and then pass to payroll to complete part D only. Please ensure form is an original and not a photocopy.

**PART A – EMPLOYEE/APPLICANT DETAILS**

Forename		Surname			
Start Date		Employee Number		NI No	
Address					

**PART B – EMPLOYEE/APPLICANT MANDATE**

Please indicate which type of fee is payable:

- PVG membership (£59) ☐
- PVG Update (£18) ☐
- Basic/Standard/Enhanced Disclosure (£25) ☐

I hereby authorise the Payroll Manager, Falkirk Council to deduct the above amount from my salary to cover the cost of Disclosure/PVG fees. I also authorise any outstanding monies to be deducted from my final pay should I leave Falkirk Council before the balance is paid in full.

Please choose from one of the following options:

- One payment ☐
- Equal monthly / weekly payments over 6 months ☐
- Equal monthly / weekly payments over 2 years \* ☐

\* Casual Workers and Modern Apprentices can extend repayment over a 2 year period. In exceptional circumstances, this arrangement can be extended to employees other than Casual Workers and Modern Apprentices.

Employee  
Signature \_\_\_\_\_ Date \_\_\_\_\_

**PART C – TO BE COMPLETED BY THE SERVICE ONLY**

Please tick one of the following to indicate the cost centre used (this **must** be same code as the one the invoice has been coded to):

- |                           |                          |                          |                          |
|---------------------------|--------------------------|--------------------------|--------------------------|
| Education (204000-1404)   | <input type="checkbox"/> | Catering (603001 4925)   | <input type="checkbox"/> |
| Social Work (301001 1404) | <input type="checkbox"/> | Governance (761001 4150) | <input type="checkbox"/> |
| Development (401001 1404) | <input type="checkbox"/> | Housing (102012 1404)    | <input type="checkbox"/> |
| Finance (786001 4150)     | <input type="checkbox"/> |                          |                          |
| Cleaning (604001 4925)    | <input type="checkbox"/> |                          |                          |

**PART D – TO BE COMPLETED BY PAYROLL ONLY**

First Payment Date (first available pay run): \_\_\_\_\_

Final Payment Date, *if applicable*: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## **Hyperlink 5**

### **Secure handling, use, storage, retention and destruction of disclosure information**

#### **Introduction**

1. The Code of Practice ("the Code") is published by Scottish Ministers under section 122 of Part V of The Police Act 1997 ("the 1997 Act"). The Code sets out obligations for registered bodies, counter signatories and other recipients of disclosure information issued under the 1997 Act and the Protection of Vulnerable Groups (Scotland) Act 2007 ("the 2007 Act").

#### **General Principles**

2. We comply with the Code and the 1997 and 2007 Acts regarding the handling, holding, storage, destruction and retention of disclosure information provided by Disclosure Scotland. We comply with the Data Protection Act 1998 ("the 1998 Act"). We will provide a copy of this policy to anyone who requests to see it.

#### **Usage**

3. We will use disclosure information only for the purpose for which it was requested and provided. Disclosure information will not be used or disclosed in a manner incompatible with that purpose. We will not share disclosure information with a third party unless the subject has given their written consent and has been made aware of the purpose of the sharing.

#### **Handling**

4. We recognise that, under section 1241 of the 1997 Act and sections 66 and 67 of the 2007 Act, it is a criminal offence to disclose disclosure information to any unauthorised person. Disclosure information is only shared with those authorised to see it in the course of their duties. We will not disclose information provided under subsection 113B(5)2 of the 1997 Act, namely information which is not included in the certificate, to the subject.

#### **Access and Storage**

5. We do not keep disclosure information on an individual's personnel file. It is kept securely, in lockable, non-portable storage containers. Access to storage units is strictly controlled and is limited to authorised named individuals, who are entitled to see such information in the course of their duties. We keep membership and certificate numbers on electronic personal files.

#### **Retention**

6. To comply with the 1998 Act, we do not keep disclosure information for longer than necessary. For the 1997 Act, this will be the date the relevant decision has been taken, allowing for the resolution of any disputes or complaints. For the 2007 Act, this will be the date an individual ceases to do regulated work for this organisation. We will not retain any paper or electronic image of the disclosure information. We will, however, record the date of issue, the individual's name, the disclosure type and the purpose for which it was requested, the unique reference number of the disclosure and details of our decision. The same conditions relating to secure storage and access apply irrespective of the period of retention.

## Hyperlink 5

### Disposal

7. We will ensure that disclosure information is destroyed in a secure manner i.e. by shredding, pulping or burning. We will ensure that disclosure information which is awaiting destruction will not be kept in any insecure receptacle (such as a waste bin or unlocked desk/cabinet).

*The Serious Organised Crime and Police Act 2005 ("the 2005 Act") schedule 14, paragraph 12 amended section 124*

*2 Subsection 163(2) of the 2005 Act inserted subsection 113B into the 1997 Act. Subsection 113B(5) of the 2005 Act replaces subsection 115(8) of the 1997 Act.*

**Hyperlink 6**  
**Disclosure/PVG scheme clearance form**

Name: «Name»  
Service: «Service»  
Location: «Location»  
Job Title: «Job Title»

**Section 1 Disclosure Certificates Only**

Disclosure Level: Basic/Standard/Enhanced (please circle as appropriate)

Disclosure Number: \_\_\_\_\_

Date of Issue: \_\_\_\_\_

**Section 2 PVG Scheme Membership (Only For Regulated Work)**

**PVG Scheme Record / Scheme Record Update**

PVG Membership Number: \_\_\_\_\_

Disclosure Number: \_\_\_\_\_

Regulated workforce to which this relates: Children/Adults/Both\_(please circle as appropriate)

Date of Issue: \_\_\_\_\_

Following submission of the above named person's Disclosure/PVG Scheme Application, and receipt of the relevant documentation, it is assessed that the person is considered appropriate to undertake the duties of the post.

I also confirm that the Disclosure Certificate/PVG Scheme Record/Record Update has been confidentially disposed of, with no copies being retained within the Service in line with the requirements of the Data Protection Act 1998.

\_\_\_\_\_  
Service Authorised Signatory

\_\_\_\_\_  
Date of Authorisation

After authorisation, this form should be returned to Human Resources along with all other Notification of New Appointment paperwork for filing.