

**Civic Government (Scotland) Act 1982
Consideration of Spent Convictions**

Report by Director, Corporate Resources

1 Purpose of Report

To appraise the Committee of changes brought about by the Criminal Justice Regulations which require a slightly different approach as regards the consideration of spent convictions, etc.

2 Background

The report shown at Item 7(a) outlines the current procedure to be adopted for a Hearing.

The changes to the legislation are summarised as follows:-

The Criminal Justice and Licensing (Scotland) Act 2010 which came into effect in November 2011, made provision for the treatment of fixed penalties, police warnings and other 'Alternatives to Prosecution' (ATP's) and accordingly, the process ought now to be reviewed.

The Rehabilitation of Offenders Act 1974 states that certain convictions become "spent" after several years and cannot be considered by Licensing Committees. However, applications and suspension requests relating to taxi drivers and Private hire car drivers are specifically exempted by the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003. The Committee will continue to be able to see all of a taxi driver's or private hire car driver's previous convictions regardless of their age.

Letters from the police objecting to applications or seeking suspension may also contain details of conduct of the driver which are not convictions. Some of these are now categorised as ATPs. The main types included are –

- (a) Warnings given by the Police or Procurator Fiscal.
- (b) Conditional Offers and Compensation Offers made by the Procurator Fiscal under S302 of the Criminal Procedure (Scotland) Act 1995.
- (c) A Fixed Penalty offered by a constable under S129 of the Anti-social Behaviour (Scotland) Act 2004.
- (d) Certain foreign warnings or fixed penalties.

ATPs are now regarded as being "spent". Warnings become spent as soon as they are issued. The remainder are regarded as being spent within three months of being issued.

Most ATPs appearing on police letters of objection will be “spent”. Offences that resulted in ATP’s which are now spent cannot be considered by the Committee. The exemption allowing the Committee to consider spent convictions does not apply to ATPs.

However, it is open to the police to ask the Committee to consider spent ATPs by exercising their discretion under S 7(3) of the Rehabilitation of Offenders Act 1974. This permits the Committee to consider them if it is satisfied that justice cannot be done except by considering them. The driver would be asked whether he has any views as to this request before the Committee decides whether or not to consider any ATPs.

Many road traffic offences are dealt with by the issuing of Conditional Offers of Fixed Penalties under the Road Traffic Offenders Act 1988. These are not ATPs and can be considered by the Committee regardless of their age.

Letters from the police objecting to applications or seeking suspension will also contain details of complaints and allegations against the driver which have not resulted in conviction or ATPs and details of pending criminal court cases. These are not convictions or ATPs and can be considered by the Committee regardless of their age.

If correct procedures are not followed in relation to spent convictions and ATP’s, any decision by the Committee could be overturned on appeal. The legal adviser to the Committee will highlight any spent ATPs to the Committee when it is considering each application. This new requirement will unfortunately complicate hearings before the Committee but every effort will be made to streamline matters.

In addition in terms of the Data Protection legislation, it now appears that the circulation of these reports in advance may be contrary to best practice.

Failure to declare Convictions has been a problem in the past, despite amendments to the proforma application form.

Current Practice

In accordance with the decision of the Committee on 6 October 2009, to approve the adoption of an amendment to the then existing custom and practice that especially (confidential) Police reports be circulated in advance of Meetings to enable Members to consider whether to declare an interest in an application if the applicant was known to them (which they had been unable hitherto to do as the Reports were tabled at the meeting with no previous indication of the identity of the applicant; and to peruse the significant amount of paperwork, which had led to delays for the parties and the Committee alike.

3 Proposed Procedure

The Committee may wish to consider whether the previous practice of simply tabling reports ought to be reinstated.

Preliminary discussion has taken place with the Taxi Examination Inspector, Lothian and Borders Police. He proposes in future to alter his approach and seek specific approval from the Committee to libel spent convictions, ATPs, etc.

4 Recommendations

The Committee is recommended :-

- (a) to note the terms of the report;
- (b) to agree an amendment to procedure that at least, information as regards spent convictions ought not to be circulated in advance; and
- (c) to consider the report at each Hearing, rather than have it circulated in advance.

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Background Papers:	File CG 10.7 (RGA)	

Background Papers - Criminal Justice and Licensing (Scotland) Act 2010

APPENDIX

Procedure for Considering Applications at Hearings

- 1 The objectors are given the opportunity to explain the basis of their objection (copies of the representations have been previously circulated to the applicant).
- 2 The applicant and the Members are given the opportunity to question the objectors.
- 3 The applicant is given the opportunity to speak in support of the application; and respond to the comments which have been made.
- 4 The objectors and the Members are given the opportunity to question the applicant.
- 5 The objectors and then the applicant are given the opportunity to sum up.
- 6 The Committee take a decision on the matter in the presence of the applicant and the objectors. The Committee may first adjourn but only for the expressly stated purpose of seeking procedural or legal advice (normally from the Clerk or Legal Adviser) and not for the purpose of taking the decision in private. The reasons for making the decision should be explained when conveying the decision.