

**Rehabilitation of Offenders Act 1974  
Consideration of Spent Convictions****Report by Director, Corporate Resources****1 Purpose of Report**

To advise Members that consideration has been given to the format of application forms for licences in order to reflect the legal position and provide applicants with more detailed guidance, when completing such forms; and to seek endorsement of the proposed format.

**2 Background**

Changes to legislation, including those contained in the Criminal Justice and Licensing (Scotland) Act 2010 which came into effect in November 2011, have impacted on the consideration of spent convictions, Alternatives to Prosecution) (ATPs), etc.

**3 Proposed Change in Application Forms, etc**

- 3.1 In an attempt to overcome problems associated with the failure of applicants to declare convictions and also all other offences which reflect on their fitness and properness, consideration has been given again to the information which is requested of applicants at the application stage. Currently, the question shown **in Appendix 1** is asked of Taxi and Private Hire Car Drivers. It is worded in this fashion because the Council is entitled to ask for this information in terms of the Rehabilitation of Offenders Act 1974.
- 3.2 In terms of the other licensing activities, the question shown in **Appendix 2** or a variation is asked. There is no requirement such applicants to declare spent convictions.
- 3.3 A revised version of the Hire Car Drivers' declaration is shown at **Appendix 3**.
- 3.4 As regards the others, the question shown in **Appendix 4** is considered appropriate.
- 3.5 Supplementary Notes for Guidance containing the information shown in **Appendix 5** will be issued.
- 3.6 Supplementary Notes for Guidance containing the information shown in **Appendix 6** will be issued.

**4 Report Implications****4.1 Resource**

There are no resource implications arising.

#### **4.2 Risk**

The risk relates to the failure to implement a review.

#### **4.3 Single Midlothian Plan and Business Transformation Themes addressed in this report:**

- ☐ Community safety
- ☐ Adult health, care and housing
- ☐ Getting it right for every Midlothian child
- ☐ Improving opportunities in Midlothian
- ☐ Sustainable growth
- ☐ Business transformation and Best Value
- x ☐ None of the above

#### **4.4 Impact on Performance and Outcomes**

There is no impact.

#### **4.5 Adopting a Preventative Approach**

By adopting this course of action, the Committee is preventing recourse.

#### **4.6 Involving Communities and Other Stakeholders**

Consultation has taken place with the Council's Court Agents, Messrs Anderson, Strathern on the proposed alterations and guidance of which they are supportive.

#### **4.7 Ensuring Equalities**

The report ensures equality.

#### **4.8 Supporting Sustainable Development**

The action contributes to sustainable development.

#### **4.9 IT Issues**

There are no IT issues arising.

### **5 Recommendation**

The Committee is recommended :-

- (a) to note the terms of the report; and
- (b) to endorse the proposed amendments.

**17 December 2013**

**Contact Person:**  
**Background Papers:**

**R G Atack**  
**Application Forms**

**Tel No: 0131 271 3161**

## APPENDIX 1

(relative to paragraph 3.1)

14. State below particulars or any convictions against you (continue on a separate sheet, if necessary). If there are none please indicate accordingly.

Date	Court	Offence	Sentence

ALL CONVICTIONS AND OFFENCES MUST BE DECLARED, including those which might normally be expected to be spent in terms of the Rehabilitation of Offenders Act and those not resulting in imprisonment or fines e.g. Community Service Orders, Compensation Orders, Deferred Sentences, Probation Orders, Admonitions, Children's Panel Adjudications, etc. Fixed Penalty fines should also be declared.

Alternatively – if you have none of these please complete the following declaration.

I have none of these

.....  
(signature)

## APPENDIX 2

(relative to paragraph 3.2)

12. State below particulars of any convictions against you and the persons named in question 1 and 2 above (continue on a separate sheet if necessary). If there are none please indicate accordingly.

Name	Date	Court	Offence	Sentence

N.B. Subject to the provisions of the Rehabilitation of Offenders Act 1974, ALL CONVICTIONS MUST BE DECLARED, including those not resulting in imprisonment or fines e.g. Community Service Orders, Compensation Orders, Deferred Sentences, Probation Orders, Admonitions etc.

### APPENDIX 3

(relative to paragraph 3.3)

14. State below particulars or any convictions against you (continue on a separate sheet, if necessary). If there are none please indicate accordingly.

**Before completing this section please read the guidance note.**

**All convictions, including those which are spent in terms of the Rehabilitation of Offenders Act 1974, must be listed.**

**All Alternatives to Prosecutions (ATPs), except those which are spent in terms of the 1974 Act, must be listed.**

**All Fixed Penalty offences shown on your driving licence, together with any you have accepted but which do not yet appear on your licence, must also be listed.**

Date	Court	Offence	Sentence

Alternatively – if you have none of these please complete the following declaration.

I have none of these .....  
(signature)

### APPENDIX 4

(relative to paragraph 3.4)

#### Applications for all licences except Hire Car Drivers

6. State below particulars or any convictions against you (continue on a separate sheet, if necessary). If there are none please indicate accordingly.

**Before completing this section please read the guidance note.**

**All convictions and Alternatives to Prosecutions (ATPs), except those which are spent in terms of the Rehabilitation of Offenders Act 1974, must be listed.**

**All Fixed Penalty offences shown on your driving licence, together with any you have accepted but which do not yet appear on your licence, must also be listed.**

Name	Date	Court	Offence	Sentence

Alternatively – if you have none of these please complete the following declaration.

I have none of these .....  
(signature)

<b>Appendix 5</b> <b>(relative to paragraph 3.5)</b>
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Guidance Note:

The Rehabilitation of Offenders Act 1974 refers to a conviction as any finding by a court that a person has committed a criminal offence.

Although you are not required to disclose any ATPs which are “spent” in terms of the 1974 Act, the Police may raise an objection on the basis of spent ATPs and the Council as licensing authority may decide to consider these if they are thought necessary to determine your application.

As an alternative to prosecution through the courts, a person may be given an ATP. You would have been given an ATP in respect of an offence in the following circumstances:

- (A) you have been given a warning by a constable or a procurator fiscal;
- (B) you have accepted or are deemed to have accepted a conditional offer to pay a fixed penalty issued under section 302 of the 1995 Act or a compensation offer issued under section 302A of the 1995 Act, and this includes, by implication, acceptance or deemed acceptance of **or** a combined fixed penalty and compensation offer which can be made under section 302B of the 1995 Act;
- (C) you have had a work order made against you under section 303ZA of the 1995 Act, offering you the opportunity of undertaking unpaid work;
- (D) you have been given a fixed penalty notice under section 129 of the Antisocial Behaviour etc. (Scotland) Act 2004; or
- (E) you have accepted an offer from a procurator fiscal to undertake an activity or treatment or to receive services.

An ATP given in respect of categories (A) and (D) become spent at the time they are given whilst those in categories (B), (C) and (E) become spent after 3 months from the date on which they are given.

Many road traffic offences are dealt with through the issue of Fixed Penalties under the Road Traffic Offenders Act 1988. These are not ATPs and therefore can be considered by the Committee.

If you are uncertain as to the details/dates of any crimes or offences you should contact Disclosure (Scotland) Tel.No 0870 609 6006 or [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk). The search attracts a fee payable to Disclosure Scotland.

Alternatively you can also call at any police office and pick up the appropriate Data Protection Form, requesting ‘*subject access*’ to your record. The fee is £10. The search attracts a fee payable to Disclosure Scotland.

## APPENDIX 6

### (relative to paragraph 3.6)

The Rehabilitation of Offenders Act 1974 refers to a conviction as any finding by a court that a person has committed a criminal offence.

The 1974 Act provides protection to people who are convicted of a criminal offence and receive a prison sentence of 2.5 years or less. After a certain period of time, which varies according to the length of sentence passed, these convictions become "spent" and the offender is considered to be rehabilitated. If you think a conviction is "spent" you should seek independent legal advice. Although you are not required to disclose any convictions or ATPs which are "spent" in terms of the Rehabilitation of Offenders Act 1974, the Police may raise an objection on the basis of spent convictions and the Council as licensing authority may decide to consider these if they are thought necessary to determine your application.

As an alternative to prosecution through the courts, a person may be given an ATP. You would have been given an ATP in respect of an offence in the following circumstances:

- (A) you have been given a warning by a constable or a procurator fiscal;
- (B) you have accepted or are deemed to have accepted-a conditional offer to pay a fixed penalty issued under section 302 of the 1995 Act or a compensation offer issued under section 302A of the 1995 Act, and this includes, by implication, acceptance or deemed- or acceptance of a combined fixed penalty and compensation offer which can be made under section 302B of the 1995 Act;
- (C) you have had a work order made against you under section 303ZA of the 1995 Act, which offered you the opportunity of undertaking unpaid work;
- (D) you have been given a fixed penalty notice under section 129 of the Antisocial Behaviour etc. (Scotland) Act 2004; or
- (E) you have accepted an offer from a procurator fiscal to undertake an activity or treatment or to receive services.

ATPs given in respect of categories (A) and (D) become spent at the time they are given whilst those in categories (B), (C) and (E) become spent after 3 months from the date on which they are given.

Many road traffic offences are dealt with through the issue of Fixed Penalties under the Road Traffic Offenders Act 1988. These are not ATPs and therefore can be considered by the Licensing Authority.

If you are uncertain as to the details/dates of any crimes or offences you should contact Disclosure (Scotland) Tel.No 0870 609 6006 or

[www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk). The search attracts a fee payable to Disclosure Scotland.

Alternatively you can also call at any police office and pick up the appropriate Data Protection Form, requesting '*subject access*' to your record at a cost of £10.