

Wiltshire Council Human Resources

Recruitment of Ex-offenders policy and procedure

This policy can be made available in other languages and formats such as large print and audio on [request](#).

What is it?

This policy outlines the council's procedure for the employment of ex-offenders.

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Who does it apply to?

This policy applies to all Wiltshire Council employees and prospective employees (job applicants), unless a separate contractual policy applies to a transferred employee to whom separate TUPE terms and conditions of employment apply. This policy does not apply to teaching and non-teaching staff employed in maintained schools or academies.

When does it apply?

This policy applies to applicants and employees when applying for a role at the council. It also applies to candidates and employees when a disclosure and barring service (DBS) check or a recheck is required for a role they are to undertake or currently undertake.

What are the main points?

1. The council actively promotes equality of opportunity for all applicants with the right mix of talent, skills and potential and welcomes applications from a wide range of candidates, including those with criminal records. Managers select candidates for interview based on their skills, qualifications, and experience.
2. The council's approach towards employing ex-offenders reflects whether the job is or is not exempt from the provisions of the Rehabilitation of Offenders Act 1974.
3. As an organisation using the [disclosure and barring service](#) (DBS) checking service assessing applicants' suitability for positions of trust, Wiltshire Council complies fully with the [DBS code of practice](#) and undertakes to treat all applicants for positions fairly. The council makes every person subject to a DBS check aware of the DBS code of practice and can make a copy available on request.
4. The council provides this written policy on the recruitment of ex-offenders, which is made available to all applicants at the outset of the recruitment process.

What is the Rehabilitation of Offenders Act 1974?

5. The Rehabilitation of Offenders Act 1974 primarily exists to support the rehabilitation into employment of reformed offenders.
6. Under the Act, following a specified period of time which varies according to the disposal administered or sentence passed, cautions and convictions may become spent. As a result, the offender is regarded as rehabilitated.
7. For most purposes, the 1974 Act treats a rehabilitated person as if they had never committed or been charged or prosecuted for or convicted of or sentenced for the offence and, as such, they are not required to declare their spent caution(s) or conviction(s), for example, when applying for jobs, unless an exception applies.
8. The exceptions where candidates may have to declare spent cautions and convictions are listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.

Jobs covered by the Rehabilitation of Offenders Act 1974

9. The council will not automatically refuse to employ a particular individual just because they have a previous criminal conviction.
10. During the recruitment process, applicants will be asked to disclose any unspent convictions, but will not ask job applicants questions about spent convictions, nor expect them to disclose any spent convictions.
11. If an applicant has a conviction that is not spent and if the nature of the offence is relevant to the job for which they have applied, we will review the individual circumstances of the case and may, at our discretion, decline to select the individual for employment.

Jobs that are exempt from the Rehabilitation of Offenders Act 1974

12. If the job into which the council is seeking to recruit is one of the excluded jobs listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 or the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013, we will require the applicant to disclose all convictions, whether spent or unspent (other than where protected cautions and protected convictions do not need to be disclosed, depending on the job concerned). Even in these circumstances, however, the council will not refuse to employ a particular individual unless the nature of the conviction has some relevance to the job for which the individual has applied.
13. If the job is exempt, we will seek the applicant's agreement to make an application to the Disclosure and Barring Service (DBS) for a standard, enhanced or enhanced with DBS barred lists check (as appropriate). Where the individual is member of the DBS update service, the recruitment team will, with their permission, carry out a status check on any current certificate.
14. A DBS check is only requested after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a DBS check is required, all application forms, job adverts and recruitment briefs will contain a statement that a DBS check will be requested in the event of the individual being offered the position.

Disqualification orders

15. There are some offences which may result in a person being subject to a disqualification order (DO).
16. It is an offence for such a person to apply for a post that is restricted under the DO. The council will report any such applicant to the police.

Spent convictions

17. The rehabilitation period (the length of time before a caution or conviction becomes spent) is determined by the type of disposal administered or the length of the sentence imposed. Rehabilitation periods that run beyond the end of a sentence are made up of the total sentence length plus an additional period that runs from the end of the sentence, referred to as the 'buffer period'. Other rehabilitation periods start from the date of conviction or the date the penalty was imposed.

18. The 'buffer periods' are halved for those who are under 18 at date of conviction (except for custodial sentences of six months or less where the 'buffer period' is 18 months).

19. The rehabilitation periods for sentences with additional 'buffer periods' which run from the end date of the sentence are shown in the table below:

Sentence/disposal	Buffer periods for adults (18 and over at the time of conviction or the time the disposal is administered) this applies from the end date of the sentence	Buffer period for young people (under 18 at the time of conviction or the time the disposal is administered). This applied from the end date of the sentence
Custodial sentence of over 4 years, or a public protection sentence	Never spent	Never spent
Custodial sentence of over 30 months (2 ½ years) and up to and including 48 months (4 years)	7 years	3 ½ years
Custodial sentence of over 6 months and up to and including 30 months (2 ½ years)	4 years	2 years
Custodial sentence of 6 months or less	2 years	18 months
Community order or youth rehabilitation order	1 year	6 months

20. The following table sets out the rehabilitation period for sentences which do not have 'buffer periods' and for which the rehabilitation period runs from the date of conviction:

Sentence/disposal	Rehabilitation period for adults (18 and over at the time of conviction or the time the disposal is administered)	Rehabilitation period for young people (under 18 at the time of conviction or the time the disposal is administered).
Fine	1 year	6 months
Conditional discharge	Period of the order	Period of the order
Absolute discharge	None	None
Conditional caution and youth conditional caution	3 months or when the caution ceases to have effect if earlier	3 months
Simple caution, youth caution	Spent immediately	Spent immediately
Compensation order	On the discharge of the order (i.e., when it is paid in full)	On the discharge of the order (i.e., when it is paid in full)
Binding over order	Period of the order	Period of the order
Attendance centre order	Period of the order	Period of the order
Hospital order (with or without a restriction order)	Period of the order	Period of the order
Referral order	Not available for adults	Period of the order
Reparation order	Not available for adults	None

Cautions and convictions that need to be disclosed for jobs that are covered by the Exceptions Order

21. All unspent convictions and cautions must be disclosed. In addition, spent cautions and convictions must be disclosed if they meet the circumstances described in the table below:

Disposal	Age when give/sentences	How long since given/sentenced?
Caution for specified offence	18 or over	Any time
Caution for non-specified offence	18 or over	Less than 6 years
Conviction for specified offence	Any age	Any time
Conviction resulting in custodial sentence	Any age	Any time
	18 or over	Less than 11 years

Conviction for non-specified offence	Under 18	Less than 5 and half years
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22. Any other caution or conviction which does not meet the details set out in the table, such as spent youth reprimands, warnings and cautions is considered protected.

Protected convictions and cautions

23. All reprimands, final warnings, and youth cautions (i.e., cautions issued to those under 18 at the time), are protected.
24. An adult caution may become protected once six years have passed since the caution was given.
25. Convictions may become protected once 11 years have passed since the conviction (five years and six months where the individual was under 18 when convicted).
26. For cautions and convictions to be protected, they must not be for certain [listed offences](#) and must not have resulted in a custodial sentence.
27. Protected cautions and convictions are filtered out of Disclose and Barring Service (DBS) certificate checks.
28. There are a small number of defined positions where filtering does not apply and where full disclosure of all convictions and cautions, including protected cautions and convictions, must be made. These are generally jobs related to national security, police constables, judicial appointments, and firearms certificates. These positions may include other vetting procedures instead of, or in addition to, DBS checks.
29. For more information, please refer to the [DBS filtering guide](#).

New convictions

30. It is essential that you inform your manager (and where required by regulation to any relevant professional registered bodies of which you are a member) of any police investigation, charge, caution, reprimand, fine or conviction, immediately.
31. All such disclosures will be handled in confidence but if you are employed in a 'notifiable occupation', a 'regulated activity' or a 'specified setting', this may result in your suspension from duties while an investigation takes place. Refer to the [disciplinary policy for more information](#).

What to do if a criminal record or allegation is disclosed or revealed

32. Managers must first assess the relevance and circumstances of the offences in relation to the role that the applicant is applying for. You must have regard to factors such as:
 - a. The person's age at the time of the offence;
 - b. How long ago the offence took place;
 - c. Whether it was an isolated offence or part of a pattern of offending;
 - d. The nature of the offence;
 - e. Its relevance to the post
 - f. What else is known about the person's conduct before and since the offence.
33. At interview, or in a separate discussion, managers must ensure that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment.
34. The manager should consult with the [HR advisory team](#) and discuss any matter revealed with the person seeking the position before withdrawing an invitation to interview or a conditional offer of employment.

Roles and responsibilities

Applicant and employee responsibilities

35. To complete the application form honestly, declaring any unspent convictions. Also, to declare spent convictions where the role applied for is exempt from the Rehabilitation of Offenders Act 1974.
36. If you have been made the subject of a disqualification order, you must not apply for roles for which you are not permitted to apply.
37. To declare when an unspent conviction becomes spent.
38. To declare any new cautions, reprimands, warnings, or convictions which are incurred after being employed by the council.

Line manager responsibilities

39. To keep confidential any information disclosed to you by applicants regarding spent or unspent criminal convictions. Such information only to be discussed with the recruitment team.
40. To update the job description for any role working with children or vulnerable adults to clearly show that a DBS check is required.

41. Never to employ any candidate into a role unless all checks have been carried out and confirmed as complete and satisfactory by the recruitment team.
42. To adhere to this policy and apply in all circumstances.
43. To seek advice from HR where you do not understand any aspect of this policy.

HR responsibilities

44. To provide advice and guidance on the interpretation of this policy.
45. The recruitment team will carry out all disclosure and barring service checks and will liaise with the manager on the outcome. Refer to [disclosure and barring service checks policy](#) for more information.
46. To support the manager where the result of a disclosure and barring service check means that the applicant may no longer be suitable for the role and the job offer may have to be withdrawn.

Frequently asked questions

47. **I have an unspent criminal conviction. May I apply for a role with Wiltshire Council?**

Yes, you may apply for a role with the council, unless you are the subject of a disqualification order, barring you from applying for specific roles. You may not apply for those specific roles, but you may be able to apply for others. You should contact the [recruitment team](#) for further advice.

48. **I have been newly employed by Wiltshire Council and have subsequently been convicted of a crime. Do I need to declare this conviction to the council?**

Yes, you do need to declare any subsequent convictions in order that the council may make an assessment as to whether you may continue to be employed in the particular role you currently do. It may be that the conviction does not affect the role you do or that you may be able to transfer to a different role.

49. **I was convicted of a crime with a prison sentence of 4 years. I only served 2 years of this sentence. Am I obliged to declare this spent conviction?**

Yes, as any conviction of longer than 4 years is always considered unspent, irrespective of how many years or months of the sentence you actually served.

Definitions

Spent conviction	A criminal conviction which is ignored after the punishment has been served and the rehabilitation period has expired so that the crime is considered to be redeemed and at an end.
Unspent conviction	A criminal conviction which can never be redeemed.
Protected conviction	A protected conviction does not need to be declared.
Disclosure and Barring Service	A government agency tasked with carrying out checks into applicants and employees' backgrounds when applying for or carrying out certain roles.

Equality Impact Assessment

This policy has been equality impact assessed to identify opportunities to promote equality and mitigate any negative or adverse impacts on particular groups.

Legislation

- [Rehabilitation of offenders' act 1974](#)
- [The Rehabilitation of Offenders Act 1974 \(Exceptions\) Order 1975 \(Amendment\) Order 2013](#)
- [Rehabilitation of offenders act 1974 \(exceptions\) Order 1975 \(Amendment\) Order 2020](#)
- [DBS code of practice](#)
- [Safeguarding vulnerable groups act 2006](#)
- [Legal aid, sentencing and punishment of offenders act 2012](#)
- [Protection of Freedoms Act 2012](#)

Further advice and information

If you require help in accessing or understanding this policy or completing any of the associated forms, you should contact your line manager or trade union representative if you are a member.

If, due to the nature of your query, it is not appropriate to contact your line manager you should contact your head of service who will nominate an appropriate manager or colleague to help you.

Related Policies

There are a number of related policies and procedures that you should be aware of including:

- [Disciplinary](#)
- [Disclosure and barring service checks](#)
- [Storage of disclosure information](#)
- [Recruitment](#)

Training:

- [Safeguarding](#)