

Disclosure of charges by Young People under 18

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Disclosure of offences can be complicated and lead to uncertainty for practitioners, young people and their families. This information sheet provides a broad overview of the current situation for young people charged with offences, yet have not been convicted in court or who have had offence “grounds” accepted or established in the children’s hearings system.

Alternatives to Prosecution (AtP’s)

For the purpose of this paper, AtP’s are defined as disposals which do not result in a young person receiving a conviction in a criminal court. With this in mind, there are a range of disposal options, according to the Criminal Justice and Licensing (Scotland) Act 2010 ([section 1.6.1](#)) that fall into two [categories](#) for rehabilitation purposes.

Category 1

- Recorded Police Warnings (RPW’s)
- Police warnings/Restorative Justice Warnings
- Fiscal warning

Category 2

- Fiscal fine
- Fiscal work order
- Diversion from Prosecution

Legislation and Disclosure

System of basic disclosure

For those young people who have received a disposal described above, the rules regarding what information they must disclose themselves or will be disclosed about them by the state (i.e. by Disclosure Scotland or the Police) are different to the rules that apply to those convicted in a criminal court of an offence.

The Rehabilitation of Offenders Act 1974 (schedule 3, paragraph 1) states that those who receive an AtP covered in category 1 (e.g. Recorded Police Warning or Fiscal Warning) can consider their offence “spent” at the point of disposal. Those who receive a category two AtP, such as a fiscal fine must disclose this for a period of three months after which it is considered spent.

Basic disclosures will only highlight convictions that are “unspent”. However, an exception to this is Category 2 AtP’s which are not included on a basic disclosure even if they are “unspent”. The law states however, that someone must self-disclose all Category 2 AtP’s which are unspent.

System of standard and enhanced disclosure, and the PVG Scheme

Higher level disclosure is the phrase used to describe the overall system that allows for

additional scrutiny of a person's criminal convictions if they want to work in some positions which are considered to involve a certain degree of trust and responsibility.

Standard disclosures highlight any unspent convictions, unspent cautions and relevant spent convictions.

Enhanced disclosures reflect any unspent convictions, unspent cautions and relevant spent convictions.

PVG Scheme

A PVG scheme record will show unspent convictions, unspent cautions and relevant spent convictions.

Other Relevant Information

In addition to the information mentioned above, an enhanced disclosure or a PVG scheme record may include Other Relevant Information (ORI) from police forces or certain Government agencies in the UK. Where the chief officer of the force or agency holds information, there are two tests that must be applied before it can be released to Disclosure Scotland for inclusion on the enhanced disclosure or PVG scheme record:

- “The chief officer must reasonably believe information to be relevant for the purpose of the disclosure
- And
- The information, in the chief officer's opinion, ought to be included in the certificate”.

There are now many offences addressed through Early and Effective Intervention (EEI) processes, to ensure young people receive proportionate and timely support. Whilst this means that young people are not considered to have a conviction, information held by the Police and other agencies could be disclosed in an enhanced disclosure or PVG if it meets the above tests.

Although the Police [Recording, Weeding and Retention of Information on Criminal History System \(CHS\)](#) guidance for non-conviction offences sets out the duration for which information will be retained by the Police on this system, where young people have been involved in offences which may be considered relevant to their disclosure, it is still possible for information regarding such offences to be disclosed under ORI by the Police.

References (excluding those hyperlinked)

[Police Act 1997](#)

[Protection of Vulnerable Groups Act \(Scotland\) 2007](#)

[Rehabilitation of Offenders Act 1974](#)

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