

## Disclosure of Criminal Convictions by Young People up to age 18

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Disclosure of previous convictions is complex and can be confusing for young people, families and professionals. This information sheet highlights what must be self-disclosed and what is disclosed by the state.

### Legislation

The Rehabilitation of Offenders Act 1974 as it applies in Scotland, states that where someone has been convicted of a criminal offence in court, this conviction can be considered “spent” following a rehabilitation period. That provision applies to all disposals except where the penalty was a custodial sentence or imprisonment of more than 30 months ([Scottish Government 2015](#)). Where a penalty is a custodial sentence or imprisonment of more than 30 months, the conviction never becomes spent which means it is disclosed by the person and the state for the rest of the person’s life.

Young people who have offence grounds accepted or established in the Children’s Hearing System are regarded as having a conviction for the purposes of rehabilitation and disclosure. In cases where the hearing discharge the referral, the rehabilitation period is six months from when grounds were accepted or proved. If a young person is subject to a Compulsory Supervision Order (CSO), the rehabilitation period is one year from when the order was made or if the order continues beyond one year, when the order is terminated.

For convictions capable of rehabilitation under the [Rehabilitation of Offenders Act 1974](#), the time that must elapse before the conviction is “spent” varies depending on the penalty imposed. For people aged under 18 at the date of conviction, the rehabilitation period is halved for most disposals as compared to those aged 18 or more receiving the same disposal.

Once a conviction is “spent” it does not need to be self disclosed (and Disclosure Scotland will not disclose it either) except in particular circumstances. However, the rehabilitation period for a conviction that is not spent can be extended if you are convicted on indictment during that period.

[The Police Act 1997](#) and the Protection of Vulnerable Groups (Scotland) Act 2007 set out the disclosures that Disclosure Scotland make and their content. The 1997 Act provides for: basic, standard, and enhanced disclosures. The 2007 Act provides for: scheme record, short scheme record and statement of scheme membership disclosures. Only the scheme record disclosure can contain conviction information, the other PVG disclosures show information about scheme membership status but do not show any conviction information.

Where a basic disclosure is used, only unspent convictions need to be self disclosed and

unspent convictions are shown. It will not highlight Category 2 AtP's which are unspent.

The standard, enhanced and scheme record ('higher level disclosures') are available only where the exceptions and exclusions in the [Rehabilitation of Offenders Act 1974 \(Exclusions and Exceptions\) \(Scotland\) Order 2013](#) (as amended) apply.

The rehabilitation and disclosure legislation was reformed (2015) to reduce the information that Disclosure Scotland can include and also to restrict what has to be self disclosed. Disclosure Scotland has produced a [table](#) outlining what information they will disclose.

Disclosure Scotland may also disclose information about a spent conviction for an offence on the [Rules List](#) (schedule 8B of the 1997 Act) but only after the applicant agrees that disclosure can happen, or if not, to ask a sheriff to review what Disclosure Scotland intend to disclose.

A potential employer may ask about any unspent convictions or unspent cautions, and spent convictions for an offence on the [Always Disclose List](#) (this list is at schedule 8A of the 1997 Act). A potential employer cannot ask about: alternatives to prosecution ("AtP"), a spent conviction for an offence on the Rules List, or protected convictions.

A conviction is a 'protected conviction' if;

- it is a spent conviction, and
- either
  - o it is not a conviction for an offence listed in schedule 8A or 8B (of the 1997 Act), or
  - o it is a conviction for an offence listed in schedule 8B and at least one of the conditions specified is satisfied.
- The conditions are;
  - o the disposal was an admonition or an absolute discharge (including discharging of the referral by a Children's Hearing),
  - o the person was aged under 18 on the date of conviction and at least seven years and six months have passed since the date of the conviction,
  - o the person was aged 18 or over on the date of conviction and at least 15 years have passed since the date of the conviction.

## Young People's Rights

To find out what personal information the Police hold about them, a young person may submit a "subject access request" to [Police Scotland](#) under the [Data Protection Act 1998](#) at a cost of £10. It is an offence to make a subject access request in relation to employment matters or as a condition for being provided with a service (e.g. by a housing authority). Where information regarding a young person's unspent conviction history is required this can be obtained by applying direct to Disclosure Scotland, who will provide a Criminal Conviction Certificate (a basic disclosure).

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