

Council, 17 October 2013

Rehabilitation of Offenders Act and the Guidance on health and character

Executive summary and recommendations

Introduction

The Council considered a paper at its meeting in July 2013 on the implications of changes to the Rehabilitation of Offenders Act 1974 on our processes and documentation. The attached paper sets out some consequential amendments that will need to be made to our guidance on health and character in light of those changes.

We last consulted on the guidance on health and character in 2011 and published a revised version of the guidance in May 2012.

At its meeting on 12 September 2013, the Education and Training Committee considered this paper. The Committee agreed to approve the proposed changes to the guidance on health and character and recommend them to the Council.

Decision

The Council is invited to agree the changes set out in the attached paper, subject to any minor amendments made during the publications process (which includes Plain English scrutiny).

Background information

- The Council considered a paper on the implications of changes to the Rehabilitation of Offenders Act 1974 at its meeting in July 2013:

www.hcpc-uk.org/assets/documents/100040C0Enc07-rehabilitationofoffendersact.pdf

- Minor amendments have been made to the paper considered by the Education and Training Committee in September 2013 to correct minor drafting errors.

Resource implications

The resource implications include arranging for the laying out and publication of the revised guidance. These implications are accounted for in Policy and Standards Department and Communications Department planning for 2013-2014.

Financial implications

Laying out and publishing of the revised guidance. These implications are accounted for in Policy and Standards Department budgeting for 2013-2014.

Appendices

None

Date of paper

7 October 2013

Rehabilitation of Offenders Act and the Guidance on health and character

1. Introduction

- 1.1 The Council considered a paper at its meeting in July 2013 on the implications of changes to the Rehabilitation of Offenders Act 1974 on our processes and documentation. This paper sets out some consequential amendments that will need to be made to our guidance on health and character in light of those changes.
- 1.2 The Rehabilitation of Offenders Act 1974 (the **Act**) seeks to aid the resettlement of ex-offenders by not requiring them to answer questions regarding their 'spent' convictions.
- 1.3 The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (the **Exceptions Order**) creates exceptions to the Act and requires the disclosure of all convictions and cautions in relation to applications to engage in activities involving vulnerable persons or requiring a high degree of trust. We are one of the bodies identified in the Exceptions Order and, as such, applicants and registrants must disclose convictions and cautions to us, even if they are spent.
- 1.4 Earlier this year, in *R (T) v Chief Constable of Greater Manchester and Others* [2013] EWCA Civ. 25, the Court of Appeal held that the Exceptions Order was incompatible with Article 8 of the European Convention on Human Rights (ECHR) in that it requires the blanket disclosure of all spent convictions and cautions, including historic and minor ones which may not be relevant, and thus is disproportionate.
- 1.5 In consequence, the Government has introduced the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 to 'protect' certain cautions and convictions which are sufficiently old and minor to have no bearing on suitability decisions. As a result, a person will no longer need to disclose such cautions and convictions and they will not appear on Disclosure and Barring Service certificates.
- 1.6 The changes will not affect 'listed offences' which must always be disclosed. There are about 250 such offences and they include terrorism, human trafficking, serious violent and sexual offences and other offences which are of specific relevance to the safeguarding of children and vulnerable adults. The changes will also not apply to any conviction for which a custodial sentence was imposed.
- 1.7 A caution will be protected from disclosure after a period of six years or, in the case of a young offender, two years. A conviction will be protected from disclosure after a period of eleven years or, in the case of a young offender, five and a half years. However, this only applies if:

- the conviction resulted in a non-custodial sentence; and
- the person has no other convictions, whether a young offender or an adult.

2. Guidance on health and character

- 2.1 We publish guidance on the processes we follow to assess the health and character of both applicants to the Register and existing registrants (www.hcpc-uk.org/publications/brochures/index.asp?id=220).
- 2.2 We will need to make several changes to the guidance to reflect the changes to the Exceptions Order. The proposed amendments are set out below, under the relevant section heading from the guidance with the page number shown in brackets. Additions are shown as underlined text, whilst deletions are shown as ~~strikethrough text~~.

The character declaration (page 8)

We ask you to fill in a self-declaration about your character as part of your application. In this declaration you need to tell us if you:

- have ever been convicted of a criminal offence or received a police caution or conditional discharge for a criminal offence other than a protected caution or protected conviction
- [...]

~~The All of the professions that we regulate are exempt from the requirements of the Rehabilitation of Offenders Act 1974 does not apply to an application to join the Register.~~ This means that when you apply to join the Register, you must declare **any** convictions or cautions that you may have. ~~This includes any convictions or cautions including those~~ that are considered 'spent' because they happened some time ago, unless they are a protected conviction or protected caution. ~~‡ This also includes~~ convictions or cautions that you may have received in countries outside the United Kingdom, if the offence is one that could have resulted in a conviction or caution in the UK.

You do not need to tell us about a **caution** if:

- you received it more than six years ago or, if you were under eighteen at the time, more than two years ago; and
- it was not for a 'listed offence' (see below).

You do not need to tell us about a **conviction** if:

- it resulted in a non-custodial sentence; and
- it was not for a 'listed offence'; and
- you have no other convictions (whether as an adult or under eighteen); and
- you received the conviction more than eleven years ago (or if a under eighteen, more than five and a half years ago).

You **must always** tell us about a caution or conviction if it is for a 'listed offence' under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Listed

offences include serious violent and sexual offences and offences which raise concerns about whether individuals should work with children or vulnerable adults.

You can find further guidance on listed offences on the Disclosure and Barring Service website: www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check

Convictions and cautions received when you were young (page 20)

'All of the professions that we regulate are exempt from the requirements of the Rehabilitation of Offenders Act 1974. This means that you must declare any convictions or cautions that you may have, even if you received them when you were under the age of 18. This includes any convictions or cautions that are considered 'spent' because they happened some time ago, unless they are a protected conviction or protected caution.

'Protected convictions or cautions' are ones that you do not need to tell us about.

You do not need to tell us about a conviction if:

- it resulted in a non-custodial sentence;
- you have no other convictions (whether as an adult or young person); and
- you were under eighteen and received the conviction more than five and a half years ago.

There is more information about protected cautions on page xx.

Unless ~~the~~ an offence is very serious, it is unlikely that ~~these types of a~~ a convictions or cautions that you received when you were young would normally affect your application for registration. However, you should still declare them if they are not protected.'

3. Decision

- 3.1 Usually, we would consult publicly on any proposed changes to our guidance. However, the changes we have proposed are minor consequential amendments to reflect a change in legislation. In addition, the Council has already agreed at its July 2013 meeting to make changes to other documents, so these changes must be made to ensure consistency between documents.
- 3.2 The Executive considers that on this occasion, it is not necessary to consult on the proposed changes to the guidance. This has been confirmed by legal advice.
- 3.3 The Council is invited to agree the changes set out above, subject to any minor amendments made during the publications process (which includes Plain English scrutiny).