

BRIEFING NOTE: REHABILITATION OF OFFENDERS LEGISLATION

In June 2014, the UK Supreme Court (UKSC) issued a decision regarding the disclosure of convictions in England and Wales. That case dealt with convictions on standard or enhanced disclosures that are considered '*spent*' under the Rehabilitation of Offenders Act 1974. The court held that the system of automatic disclosure of all such convictions in higher level disclosures violated Article 8 (respect for private and family life) of the European Convention on Human Rights and Fundamental Freedoms.

In Scotland higher level disclosures means standard and enhanced disclosures issued under the Police Act 1997 and in regard to the Protecting Vulnerable Groups scheme records. The Scottish Government have now concluded that the current arrangements in Scotland may be incompatible with the ECHR; both in terms of the duty placed on the individual to self-disclose convictions and the duty on Scottish Ministers (via Disclosure Scotland). As a result, new legislation was enacted which came into force on 10th September 2015. The Scottish Government believes that the amended regime will strike a balance between the interests of public protection and the rights of individuals with a criminal record to respect for their private life.

The amended regime creates a new category of '*protected convictions*' as summarised below:-

Protected convictions are minor historical ('*spent*') convictions; a conviction will only be "*protected*" if it is categorised as "*less serious*" and it meets one of the 3 criteria below:

- ✓ The sentence imposed was admonition or absolute discharge, or the discharge of the referral of a child's case to a children's hearing **OR**
- ✓ The person was under 18 years of age at the time the offence was committed and at least 7 years 6 months have passed since the date of that conviction **OR**
- ✓ The person was over 18 years of age at the time the offence was committed and at least 15 years have passed since the date of that conviction.

In terms of civic government licensing, the new provisions will primarily affect applications for the grant, renewal, or cancellation of a licence to be a taxi driver or private hire driver. Discussions have now been held between council officers and Police Scotland. New procedures will be implemented by Police Scotland to ensure that '*protected convictions*' are not disclosed to the council when providing information in relation to licence applications. The applications forms currently in use are being revised but meantime applicants may inadvertently self-disclose details of convictions which are now protected. Officers will review and redact any such details as required.