

ANGUS COUNCIL
PERSONNEL & PROPERTY SERVICES COMMITTEE
7 MAY 2002
PART V OF THE POLICE ACT 1997
DISCLOSURE SCOTLAND – ACCESS TO CRIMINAL RECORD CHECKS
REPORT BY CHIEF EXECUTIVE

ABSTRACT

This report gives details of the new system of disclosing criminal history information to individuals and organisations for employment and other purposes, following implementation of Part V of the Police Act 1997. The report advises of action already taken and of action still to be taken to ensure compliance with the Act.

1. RECOMMENDATION

The Committee note and approve the terms of this report for its interest and in particular agree that the Council meet the cost of payments to Disclosure Scotland on behalf of applicants for Standard and Enhanced Disclosures.

2. INTRODUCTION

Part V of the Police Act 1997 introduces a new system of disclosing criminal history information to individuals and organisations for employment and other purposes.

In Scotland, a new Disclosure Bureau, "Disclosure Scotland" has been established within the Scottish Criminal Record Office for the purposes of issuing disclosure certificates under Part V of the 1997 Act.

The aim of the new Disclosure Scotland service is to enhance public safety and to help employers and voluntary organisations in Scotland make safer recruitment decisions.

The Bureau will provide criminal history information on anyone seeking employment or voluntary posts, which involve positions of trust such as working with children and vulnerable adults.

The new system, which became operational from 27 April 2002, replaces the previous system on the vetting of adults working with children and young people which had been place since 1989 and which was commonly referred to as "SCRO checks".

This report provides information about the new system and advises of progress to date to ensure implementation and of areas which still need to be considered to ensure that our recruitment and selection policies and procedures comply fully with the new system. As the Committee will note the new system extends beyond recruitment and selection to Council jobs into areas such as Foster Parents and applicants for Gaming and Lotteries Licences. Such areas fall outwith the remit of Personnel Services and this report concentrates solely on the implications from a recruitment and selection perspective.

In so advising the Committee the Personnel Manager would wish to point out that despite being included in the Police Act 1997 it was only in February of this year that guidance on the new disclosure system was provided to councils. With an implementation date of 27 April 2002 this unrealistic timescale – and lack of clarity in the guidance given – has caused major difficulties in ensuring that the Council has been appropriately registered with Disclosure Scotland and that our recruitment policies and procedures are amended to reflect and respond to the new system and the associated guidance.

3. TYPES OF DISCLOSURE

Disclosure Scotland will issue three types of certificate – to be known as "Disclosures" which will give details of convictions and/or information or indicate that there is no such information held.

STANDARD DISCLOSURE

A Standard Disclosure will be available in respect of positions exempted under The Rehabilitation of Offenders Act. It will contain details of both spent and unspent convictions held on central records or it will indicate that there are no such matters held on central records. The main categories of positions which will be applicable for a Standard Disclosure are:

- Those whose duties involve regular contact with children and young people under the age of 18, elderly, sick and handicapped people
- Those checked in the interests of national security
- People involved in the administration of law
- Fire arms, explosives, and gaming licences
- Professional groups in health, pharmacy and law
- Senior management in banking and financial services
- Crown appointments

ENHANCED DISCLOSURE

An Enhanced Disclosure will also be available in respect of those seeking certain positions exempted under The Rehabilitation of Offenders Act but it is reserved for those who would be employed in positions involving regularly caring for, training, supervising or being in sole charge of those aged under 18 or (subject to regulations being made) vulnerable adults. It will also be available for certain statutory licensing and registration purposes and for Crown and Judicial appointments. Areas where enhanced disclosures will be available include:

- People who regularly train, supervise, care for or have sole charge of children and young persons under 18
- People (in positions to be specified by regulations) who regularly train, supervise, care for or have sole charge of vulnerable adults
- Applicants for various gaming and lotteries licences
- Applicants for registration for childminding, day care and to act as foster parents or carers
- Applicants for registration as a care service provider or social worker in terms of the Regulation of Care (Scotland) Act 2001

The Enhanced Disclosure will contain details of both spent and unspent convictions. In addition, it will show any information from local police records considered by the Chief Constable to be relevant to the position being sought and which can be disclosed without harming the interests of prevention or detection of crime.

A Standard or Enhanced Disclosure would be sought from the individual whom it is proposed to offer the job to and it would be at that stage that the individual would apply to Disclosure Scotland for such a disclosure. Their application must be countersigned by a registered person (an employee of the Council, Section 5 refers). The disclosure will be sent to the individual with the registered person receiving a copy direct from Disclosure Scotland. Where it is an Enhanced Disclosure our copy may also contain information disclosed by a Chief Constable which is not on the individual's copy.

A central list of posts within the Council which will require either a Standard or Enhanced Disclosure has been compiled. This list will be maintained and regularly updated by the Personnel Manager in conjunction with departments.

BASIC DISCLOSURE

The third type of certificate, a Basic Disclosure, will show details of all convictions considered to be unspent under The Rehabilitation of Offenders Act 1974 or state that there are no such convictions. An individual can apply direct to Disclosure Scotland for such a disclosure and show it to a prospective employer should the employer wish to see evidence of any unspent convictions. It is not issued to an employer.

Further consideration is being given by the Personnel Manager to the use of Basic Disclosures in our recruitment and selection practices given the recently published Data Protection Act Code of Practice on Recruitment and Selection which states that information on criminal convictions should only be sought if relevant to the job requirements.

4. REGISTRATION

In order to access the services of Disclosure Scotland the Council was required to apply for registration as a registered body. An application for registration as a registered body requires to be completed and signed by a lead countersignatory, a senior figure within the organisation who has a measure of management responsibility for those making recruitment decisions.

The Chief Executive has registered the Council as a registered body with the Chief Executive the lead countersignatory for the Council.

As lead countersignatory, the Chief Executive will be the principal point of contact between Disclosure Scotland and the Council on all matters connected with the registration of the Council although results of individual Standard and Enhanced Disclosure applications will be sent to the registered persons countersigning these applications (see Section 5).

The Committee is also asked to note that the Council has also registered as an "Umbrella Body" for other organisations for the purpose of countersigning Standard and Enhanced Disclosure applications as it is anticipated that the Council may require to undertake this role for eg grant aided bodies.

5. OBTAINING A DISCLOSURE

For jobs for which the Council requires a Standard or Enhanced Disclosure, once a selection panel has decided on who they would wish to offer the job to they can only make a provisional offer of appointment subject to a disclosure check. At that stage the individual must complete the disclosure application pro forma, it must then be countersigned by a designated countersignatory within the employing department and then forwarded to Disclosure Scotland.

Employees who have countersignatory status require to be registered with Disclosure Scotland similar to the lead countersignatory.

A list of countersignatories has been prepared and submitted to Disclosure Scotland for formal registration. This list will be maintained and updated by the Personnel Manager.

6. FEE FOR DISCLOSURE

The fee per disclosure is currently £13.60. This can be paid either by the individual or prospective employer, ie the Council. Given that the Council would only be seeking a disclosure from someone we wish to appoint (subject to satisfactory disclosure) it is recommended that the Council pay the appropriate fee.

7. CONSIDERATION OF DISCLOSURE INFORMATION

The disclosure check will be sent direct to the individual with a copy to the Council (ie to the countersignatory).

Upon receipt the selection panel will be able to confirm the offer of appointment if no matters are held on central records or, for an Enhanced Disclosure, no additional information from local police has been disclosed. If the disclosure shows that the applicant has a spent or unspent conviction or if any information has been released by local police the following should be considered:

- Whether the conviction or other matter revealed is relevant to the position in question
- The seriousness of any offence revealed
- The length of time since the offence or other matter occurred
- Whether the applicant has a pattern of offending behaviour or other relevant matters
- Whether the applicant's circumstances have changed since the offending behaviour or other relevant matters

Ultimately it is the responsibility of the Council to decide whether to offer the applicant the position.

8. VALIDITY OF DISCLOSURES

Standard and Enhanced Disclosures are position specific, are valid only at the time of issue and must not be used for purposes other than those for which originally provided.

It is therefore recommended, in accordance with the Code of Practice, that for any posts for which a disclosure is required a new disclosure is sought each time it is proposed to make an appointment to such a post even if the individual had been subject to a previous disclosure.

Although there is no requirement to periodically seek a new disclosure once a person has been appointed nor is there any requirement to seek a disclosure for existing employees who have not been subject to the disclosure process the Personnel Manager would propose to discuss both these issues with the Chief Officers Management Team and report back to this Committee in due course.

9. CODE OF PRACTICE

A Code of Practice has been published under Section 12 of the Act in connection with the use of information provided to registered persons under Part V of the Act. The Council, as a registered body, is required to comply with the Code of Practice.

The Code is intended to:

- Ensure that the disclosure information released will be used properly and fairly
- Provide assurances to those applying for Standard and Enhanced Disclosures that the disclosure information will be used properly and fairly
- Ensure that disclosure information is handled and stored appropriately and is kept for only as long as necessary and thereafter disposed of securely

Section 8 of the Code makes it obligatory for the Council to have a written security policy on handling, holding and destroying disclosure information and the Personnel Manager is currently drafting such a policy.

The Disclosure Bureau is empowered to refuse to issue a disclosure if it is believed that there has been a failure to comply with the Code of Practice.

The Code has been supplemented by a non statutory explanatory guide issued by the Scottish Criminal Record Office's Disclosure Bureau.

The explanatory guide explains the provision of the Code more fully as well as providing information about how the disclosure scheme will operate. While the guide does not have the force of law, the Code of Practice places on those who receive disclosure information an obligation to have regard to any guidance issued by Disclosure Scotland on the use of such information. The explanatory guide is regarded as guidance for this purpose.

Section 21 of the explanatory guide states "Good employers will have a written policy on the recruitment of people who have been convicted in the past. This is best practice and it should be considered by all employers".

While the Council does not currently have a policy per se our recruitment and selection manual does make reference to the treatment of applicants with convictions and does adequately cover the "factors to take into account" mentioned in the explanatory guide. Notwithstanding, the Personnel Manager is currently drafting a policy on the recruitment of ex-offenders for consideration.

10. FINANCIAL IMPLICATIONS

The one off fee of £150 for registering as a registered body has already been paid and will be met from the Personnel Revenue Budget.

The cost of registering employees as a countersignatory is £10 per person. Again this is a one off charge.

As previously stated there will be a charge for each application for a Standard or Enhanced Disclosure, currently £13.60. Should the Committee agree to meet this cost as recommended it is estimated that the overall cost will be £20,000 per annum. It is difficult to accurately determine the level of expenditure as it will be dependent upon turnover in those jobs requiring such a disclosure.

Both countersignatory and disclosure fees would require to be met by departments from within their revenue budgets.

11. HUMAN RIGHTS IMPLICATIONS

As Angus Council is relying on the terms of the Police Act 1997, the right to obtain information on an individual's criminal history could not be challenged without challenging the primary legislation.

In view of the sensitivity of the information, it is however essential that the disclosure, storage, archiving or sharing of that information with any other individuals, including councillors, other employees or third party organisations would require to be strictly controlled. Any breach of appropriate procedures could result in the Council being in breach of Article 8 of the European Convention on Human Rights (The Right to Respect for Private and Family Life). The Council will therefore require to adhere to the Code of Practice referred to in paragraph 9 and so long as no breaches of that Code occur, the Council will be entitled to rely upon the primary legislation and Code in dealing with disclosures of this type.

12. CONSULTATION

This report has been informed by discussions undertaken in the short life working group led by Personnel Services and including representatives from Contract Services, Education, Finance, Housing, Law & Administration, Leisure Services, Planning & Transport and Social Work departments.

The Director of Finance and Director of Law & Administration have been consulted on the terms of this report.

A B Watson
Chief Executive

HR/PersMan

NOTE No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.