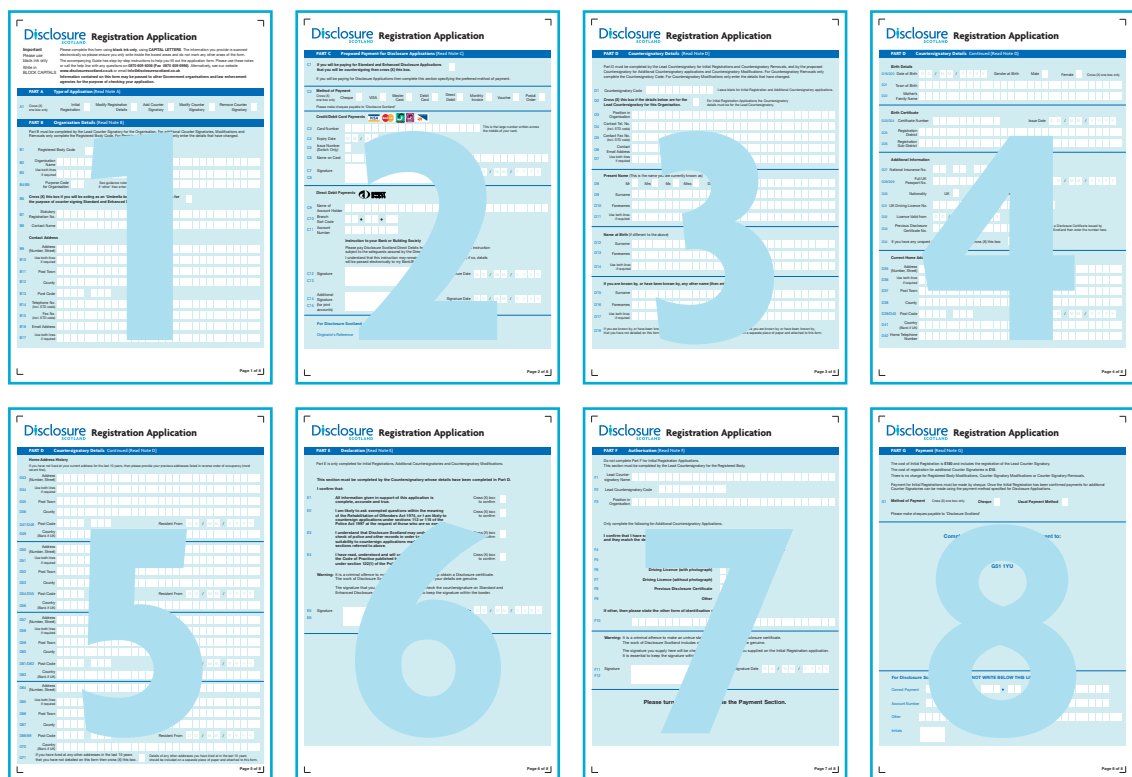


Explanatory Guide on the Code of Practice



If you have any questions concerning the Guide or the Code, please call our Helpline on 0870 609 6006, email us at info@disclosurescotland.co.uk or visit our website at www.disclosurescotland.co.uk

The Explanatory Guide and Code are also available within the Application Process Pages and Publication Pages of our website.

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Introduction

Purpose of the Code of Practice and this Explanatory Guide

1. This Explanatory Guide (“the Guide”) should be read in conjunction with the Code of Practice (“the Code”) published by Scottish Ministers under section 122 of the *Police Act 1997* (“the 1997 Act”). The Code is intended:
 1. to ensure that Disclosure information released by Disclosure Scotland to registered persons, their nominees and other recipients under Part V of the 1997 Act is used properly and fairly;
 2. to provide assurance to those individuals applying for Standard and Enhanced Disclosures that Disclosure information will be used properly and fairly by registered persons, their nominees and other recipients; and
 3. to ensure that Disclosure information is handled and stored appropriately, is kept for only as long as necessary for the purpose it was requested and thereafter disposed of securely by registered persons, their nominees and other recipients.
2. The Code sets out certain obligations about the use of the Disclosure information with which recipients of the information must comply. For this purpose, recipients of Disclosure information means:
 1. persons registered under section 120¹ of the 1997 Act, including bodies corporate, bodies unincorporate, statutory office holders and “Umbrella Bodies” (Umbrella Bodies are bodies which have registered under section 120 for the purpose of countersigning applications on behalf of others who are not registered with Disclosure Scotland) (see Paragraph 16);
 2. employees and agents of registered persons, including persons nominated by bodies corporate, bodies unincorporate and statutory office holders for the purpose of countersigning applications on behalf of them; and
 3. bodies or individuals in respect of whom a registered person has countersigned an application for a Disclosure.
3. This Guide explains the provisions of the Code and provides advice on how those in receipt of Disclosure information can ensure compliance with the obligations set out in the Code. The Guide also provides general information about how the Disclosure scheme operates. While the Guide does not have the force of law, the Code 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. This Guide is regarded as guidance for this purpose.
4. In the Guide, reference to a “Lead Signatory” is a reference to the person in an organisation who signs the registration application and who will be a registered person in his or her own right. Additionally, reference to “nominee” refers to additional Countersignatories.

The Disclosure Scheme

5. The Disclosure scheme is provided for in Part V of the 1997 Act. It is designed to help employers make safer recruitment and appointment decisions in relation to paid or unpaid positions. It is also used by those exercising certain registration and licensing functions.

¹ As amended by section 70(6) of the *Criminal Justice (Scotland) Act 2003*.

6. Part V of the 1997 Act provides for the issue by Scottish Ministers of criminal conviction and criminal record certificates. There are three levels of certificates known as “Basic”, “Standard” and “Enhanced” Disclosures. In Scotland, the criminal record checks are carried out and the Disclosures are issued by Disclosure Scotland on behalf of Scottish Ministers.
7. Widening access to criminal record information is intended to provide those making recruitment and appointment decisions with additional information to enable them to determine whether the past behaviour of a person suggests that they are unsuitable for a particular position. The availability of the Disclosure information should not, however, be regarded as a substitute for any of the full range of existing pre-appointment checks which responsible employers should undertake, including taking up references and enquiring into the person’s previous employment history. The availability of Disclosure information should therefore be seen as complementary to existing recruitment practice and should only be sought after a candidate has been provided with a provisional offer of employment or a voluntary position.
8. Applications for criminal record checks are made by the subjects of those checks, that is, the individual applicant, often at the request of employers, voluntary organisations and licensing and other regulatory bodies. However, the 1997 Act does not place an obligation on any person to apply for a criminal record check. It should be noted, for example, that subsequent legislation, such as the *Protection of Children (Scotland) Act 2003* requires employers to satisfy themselves that a person applying to work in a child care position is not disqualified from working with children. That information is available at present only by making an application under the 1997 Act.

Types of Disclosures

9. Disclosure Scotland issues three types of Disclosure:
 1. The **Basic Disclosure** is issued to individuals on request, subject to confirmation of identity and payment of the appropriate fee. The Basic Disclosure will contain details of convictions held in central records which are unspent according to the *Rehabilitation of Offenders Act 1974* (see Annex A) or will state that there are no such convictions. It will be issued to the applicant and will not be copied to employers or prospective employers.
 2. The **Standard Disclosure** is available for positions excluded and excepted from the effects of the *Rehabilitation of Offenders Act 1974* by Orders made under that Act (See Annex A). It contains details of both spent and unspent convictions and any cautions (cautions from England, Wales and Northern Ireland) held on central records or it will indicate that there are no such matters held on central records. The Standard Disclosure is available on payment of the appropriate fee to individuals whose application is countersigned by a person whose name is included in the register held by Scottish Ministers under section 120 of the 1997 Act. In addition to the applicant, Disclosure Scotland will send a copy of the Disclosure to the person who countersigned the application.

Examples of those who are eligible for this check are:

 - a. people involved in the administration of law;
 - b. people applying for firearms and explosives licences; and
 - c. senior management in banking and financial services.
 3. The **Enhanced Disclosure** is available when an exempted question is being asked for a prescribed purpose as set out for certain circumstances specified in regulations 9 to 12 of the *Police Act 1997 (Criminal Record) (Scotland) Regulations 2006 (SSI 2006/96)*. These are mainly posts working with children or adults at risk and those involving certain statutory registration,

certification and licensing requirements. It is also available for a number of Crown and judicial appointments under different sections of Part V. As with the Standard Disclosure, the Enhanced Disclosure is available, on payment of the appropriate fee, to individuals whose application is countersigned by a person whose name is included in the register held by Scottish Ministers under section 120 of the 1997 Act, and a copy of the Disclosure will be sent to the applicant and the Countersignatory. Areas where Enhanced Disclosures are available include:

- a. people who are appointed to a child care position as defined by the *Protection of Children (Scotland) Act 2003*;
- b. people who have contact with adults at risk;
- c. applicants for various gaming and lottery licences;
- d. applicants for registration for child minding, day care and to act as foster parents or carers;
- e. applicants for registration as a care service provider, social service worker or social worker in terms of the *Regulation of Care (Scotland) Act 2001*.

10. 1. The Enhanced Disclosure contains details of both spent and unspent convictions and any cautions (cautions from England, Wales and Northern Ireland) held on central records or it will indicate that there are no such matters held on central records.
 2. In addition to these details, the Enhanced Disclosure may also show any information held on local police records considered by the Chief Constable or Chief Officer to be relevant to the position being sought and which can be disclosed without harming the interests of the prevention or detection of crime. It is entirely up to the Chief Constable or Chief Officer to decide what information is disclosed, if any, in these circumstances.
 3. In respect of an Enhanced Disclosure, the Chief Constable or Chief Officer may also disclose information to the Countersignatory only, that is, information which will not form part of the actual Disclosure. Such information will be sent separately to the Countersignatory and will be withheld from the subject of the Disclosure (that is, the individual applicant) in the interests of the prevention or detection of crime.
 4. For the purposes of section 113C(1)(b)² of the 1997 Act, details of an applicant's inclusion on the children's lists covered in section 113C(3) and which are prescribed in regulation 13 of the *Police Act 1997 (Criminal Records) (Scotland) Regulations 2006 (SSI 2006/96)* will be detailed on an Enhanced Disclosure. In this respect, the Enhanced Disclosure will detail whether the subject is either provisionally or fully listed and on which list(s).
 5. For the purposes of section 113D(1)(b)³ of the 1997 Act, the details of an applicant's inclusion on the adults' lists covered in section 113D(3) and which are prescribed in regulation 14 of the *Police Act 1997 (Criminal Records) (Scotland) Regulations 2006 (SSI 2006/96)* will be detailed on an Enhanced Disclosure. In this respect, the Enhanced Disclosure will detail whether the subject is either provisionally or fully listed and on which list(s).
11. Disclosures issued by Disclosure Scotland capture information about convictions in other jurisdictions within the United Kingdom. Employers offering positions only in Scotland will only need to register with Disclosure Scotland.
 12. It is recommended that those offering positions in Scotland and England or Wales should make applications for registration to Disclosure Scotland (for Scottish positions) and to the Criminal Record Bureau (CRB) for positions in England and Wales and submit applications according to the location of the position in question.

² Section 163(2) of the *Serious Organised Crime and Police Act 2005* inserted section 113C into the 1997 Act.

³ Section 163(2) of the *Serious Organised Crime and Police Act 2005* inserted section 113D into the 1997 Act.

Registration

Who may be registered

13. Persons or bodies wishing to countersign applications for Standard and Enhanced Disclosures must be registered with Disclosure Scotland. Those applying for registration must satisfy certain conditions. The conditions are that the person applying for registration must be:
 1. a body corporate or unincorporate, or
 2. a person appointed to an office by virtue of any enactment, or
 3. an individual who employs others in the course of a businessand must be able to satisfy Disclosure Scotland that they are likely to ask exempted questions under the terms of the *Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003* (as amended) (see Annex A) or that they are likely to countersign applications for Standard and Enhanced Disclosures at the request of bodies or individuals asking exempted questions.
14. During the Registration process, Disclosure Scotland checks whether or not the Lead Signatory and any additional Countersignatories (that is, nominees) are suitable persons to have access to Disclosure information. Such individuals, if considered suitable, will not receive a Disclosure to confirm this but they will be advised in writing that they have been accepted and they will receive details of their Registered Body Code and unique Countersignatory Code.
15. Registered persons or bodies have no role in relation to Basic Disclosures. However, the advice given in this Guide about handling Disclosure information will be relevant for those who may see Basic Disclosures in the course of their duties.
16. A body that is likely to countersign Disclosure applications at the request of other bodies or individuals asking exempted questions is an Umbrella Body. By using an Umbrella Body an employer who is entitled to receive Disclosure information but has chosen not to register may be able to gain access to such information via the Umbrella Body.
17. In terms of Paragraph 5 of the Code, bodies countersigning Disclosure applications on behalf of others must:
 - A** in relation to Standard Disclosures:
 1. satisfy themselves that those on whose behalf they intend to countersign applications are entitled to receive Disclosure information by virtue of that body or person being entitled to ask exempted questions under the *Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003* (as amended) in respect of the position applied for; and
 2. take reasonable steps to ensure that those to whom they pass Disclosure information observe the Code. Reasonable steps should include keeping records of those on whose behalf they act and evidence that they are ensuring those to whom they pass information to observe the Code.
 - B** in relation to Enhanced Disclosures:
 1. satisfy themselves that those on whose behalf they intend to countersign applications are entitled to receive Disclosure information by virtue of that body or person being entitled to receive Disclosure information by virtue of their being entitled to ask an exempted question for a prescribed purpose as set out in the *Police Act 1997 (Criminal Records) (Scotland) Regulations 2006 (SSI 2006/96)*; and

2. take reasonable steps to ensure that those to whom they pass Disclosure information observe the Code. Reasonable steps should include keeping records of those on whose behalf they act and evidence that they are ensuring those to whom they pass information observe the Code.
18. Umbrella Bodies may be asked by Disclosure Scotland to disclose details of those persons or bodies on whose behalf they wish to countersign applications.

Central Registered Body in Scotland

19. The *Central Registered Body in Scotland* (CRBS) has been established under the auspices of *Volunteer Development Scotland*. The CRBS will act as the main Umbrella Body⁴ for the voluntary sector in Scotland. This follows a decision by Scottish Ministers that they will meet the cost of Disclosure checks for all unpaid volunteers working with children and adults at risk in the voluntary sector in Scotland.

The CRBS will process applications for Enhanced Disclosures in accordance with the Code. The CRBS must determine and at all times be satisfied regarding the eligibility of organisations on whose behalf it countersigns applications to seek Disclosure information. Failure by bodies corporate or unincorporate to comply with the requirements of the CRBS and the Code may result in refusal to countersign and process applications on behalf of the enrolled organisations.

The CRBS must satisfy itself that enrolled organisations on whose behalf it countersigns Disclosure applications are at all times:

1. valid not-for-profit organisations;
2. entitled to receive Disclosure information by virtue of their being entitled to ask exempted questions for a prescribed purpose; and
3. compliant with the provisions of the Code.

There will be no charge to enrol with the CRBS. The CRBS will process applications for Enhanced Disclosures on behalf of any voluntary body which is enrolled with it, but only unpaid volunteers will receive Disclosures free of charge. Paid workers in the voluntary sector will be required to pay for Disclosures in the normal way. The CRBS will, however, be able to countersign applications for free Disclosures and for those that have to be paid for.

The Register

20. A Regulations made under the 1997 Act set out the details which are to be included in the register maintained by Disclosure Scotland on behalf of Scottish Ministers. These shall be:
1. the name, address and date of birth of the person and any telephone or facsimile number or any electronic mailing address which has been notified by that person to the Scottish Ministers for communication purposes;
 2. the date on which the name of the person was first listed in the register;
 3. the number assigned to the person on being so listed;
 4. the nature and purpose of the exempted questions, if any, that the person is likely to ask;
 5. where the person is a body corporate or unincorporate:
 - i whether the body is likely to countersign applications for Standard and Enhanced Disclosures at the request of bodies or individuals asking exempted questions or who are entitled to receive Disclosure information for a prescribed purpose and, if so, the nature and purpose of those questions;

⁴ A revised application form was introduced on 15 December 2006. From that date organisations in the voluntary sector can obtain free Disclosures for those persons working with vulnerable groups direct from Disclosure Scotland. Further information and guidance is available from Disclosure Scotland.

- ii the name, address and date of birth of any individual for the time being nominated by such body corporate or unincorporate as being authorised to act for the body in relation to countersigning of applications for Standard and Enhanced Disclosures and any telephone or facsimile number or electronic mailing address which has been notified by that body to the Scottish Ministers for communication purposes;
 - iii a date on which the name of that nominated individual was first listed on the register;
 - iv the number assigned to that nominated individual on being listed; and
 - v a specimen of the signature of that nominated individual.
6. where the person is a statutory office holder:
- i the name, address and date of birth of any individual for the time being nominated by such statutory office holder as being authorised to act for it or, as the case may be, him or her in relation to countersigning applications for Standard and Enhanced Disclosures and any telephone or facsimile number or electronic mailing address which has been notified by that body to the Scottish Ministers for communication purposes;
 - ii a date on which the name of that nominated individual was first listed on the register;
 - iii the number assigned to that nominated individual on being listed; and
 - iv a specimen of the signature of that nominated individual.
7. in respect of each registered person other than a body corporate or unincorporate, a specimen of any signature which will be used by that person for the purposes of countersigning applications for Standard and Enhanced Disclosures.
- B** In Paragraph A above, any reference to the address of a registered person is a reference to the address of the principal place of business of that person, subject to the requirement that where that person's principal place of business is not within Scotland, the address of the principal place of business in Scotland shall also be included on the register.
- C** A registered person shall notify Disclosure Scotland in writing, as soon as is reasonably practicable, of the details of any alteration to the information that has been supplied by that person for the purposes of Paragraph A1, 4, 5 and 6.
- 21.** Applicants for registration will be required to supply information for A1, 4, 5(i), (ii) and (v) and 6(i) and (iv) and 7 in Paragraph 20 above. As regards the information about the nature and purpose of the exempted questions, applicants should specify the basis they, or those on whose behalf they will be countersigning applications for Disclosures, have for asking exempted questions and the type of questions they are likely to ask. For example, the nature and purpose of the exempted questions that a local authority or the proprietor of a residential establishment for children might wish to ask could be questions about whether there were any convictions, offences, conduct or circumstances that would be regarded as spent under the *Rehabilitation of Offenders Act 1974* but that should be disclosed in order to consider a person's suitability to be employed to provide social work services for children.
- 22.** Inclusion in the register will confirm eligibility to receive Standard and Enhanced Disclosure information. It does not imply any endorsement by Disclosure Scotland of a registered person or organisation. Those registered should not imply otherwise.

23. The details of registrations are confidential and are not made known by Disclosure Scotland to anyone without permission. However, those registered may wish to make some contact details available for members of the public or prospective recruits. This is particularly true for Umbrella Bodies. Those seeking registration are invited to consider what information, if any, about the registration should be made publicly available. No registered person or body or any other organisation is permitted to incorporate the Disclosure Scotland logo into any publicity or promotional material.
24. Registered persons must let Disclosure Scotland know of any changes which are likely to affect the details of their registration. Such changes could include new address or contact details for either registered bodies and/or Countersignatories, removal of Countersignatories or additions of Countersignatories. Such changes should be notified to Disclosure Scotland by using a Registration application form (available from Disclosure Scotland).

How to apply for Registration

25. Applications for registration should be made in writing, on a form available from Disclosure Scotland. Information about how to apply and details of the appropriate fees are available on the Disclosure Scotland website (www.disclosurescotland.co.uk). Full details will also be provided with the registration information pack provided to all prospective registered bodies or persons.

Identity

26. Each application for registration should be accompanied by such evidence of identity as may be requested by Disclosure Scotland. Full details will be provided in the registration information pack.

Registered Persons and Countersignatories

27. Disclosure Scotland wishes to ensure that those applying for registration are not only entitled to ask exempted questions, or receive Disclosure information in relation to a prescribed purpose (which is an exempted question asked in relation to positions, matters or individuals covered by regulations 10 to 12 of *SSI 2006/96*), but are also supported in their application for registration by a figure of authority in their organisation. Accordingly, each application for registration as a Registered Body should be countersigned by someone within the organisation to which the individual belongs, who in addition to becoming a registered person, will also have the status of being the Lead Signatory.
28. The Lead Signatory should be a senior figure within the organisation. For example, a human resources director would be a suitable figure although, clearly, many organisations may not have an obvious equivalent. The test will be that the individual should be a person who has a measure of management responsibility for those making recruitment decisions. The Lead Signatory will not be expected necessarily to countersign applications for Disclosures with the frequency of other Countersignatories.
29. The Lead Signatory will be the principal point of contact between Disclosure Scotland and the organisation on all matters connected with the registration of that organisation. The exception is that results of individual Disclosure applications (in the form of Disclosure certificates and, where appropriate, other relevant information provided directly by police forces to the organisation) will be sent to the person who countersigned the application. Additionally, Disclosure Scotland will normally contact the Countersignatory of a particular application if any further information or clarification is required in relation to it.

- 30.** Each organisation represented on the register will only have one Lead Signatory at all times. If a Lead Signatory leaves the register for any reason or is suspended, a new Lead Signatory must be appointed by the organisation without delay. Please also refer to Paragraph 27.
- 31.** An individual who is applying to become the Lead Signatory may sign Parts E and F of his or her own application for registration. He or she should indicate that this is the case in his or her application. Individuals applying to become additional Countersignatories should sign the Declaration at Part E of the Registration application form and the Lead Signatory for the organisation should sign the Authorisation (Part F) of the Registration application form.

Complying with the Code of Practice

Introduction

- 32.** All registered persons, their nominees and other recipients of Standard or Enhanced Disclosure information are covered by the Code. The Code contains specific obligations with which those in receipt of Disclosure information must comply. These obligations are concerned with:
1. what registered persons or their nominees who countersign applications must do;
 2. fair use of Disclosure information;
 3. handling of information; and
 4. assurance.
- 33.** Failure to comply with the Code may result in Scottish Ministers refusing to issue Disclosures. This applies equally to failure by registered persons and their nominees, or whatever body or individual on whose behalf a Disclosure application has been countersigned. In addition, if Scottish Ministers believe that a registered person, or someone on whose behalf a registered person has countersigned an application has failed to comply with the Code, then they may remove the person from the register or impose conditions on him as respects his continued inclusion on the register.
- 34.** Registered persons or their nominees countersigning applications:

A Standard Disclosures:

1. Registered persons or their nominees who countersign Standard Disclosure applications must be satisfied that they are entitled to receive Disclosure information by virtue of their being entitled to ask exempted questions (*please refer to Annex A*) under the *Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003* (as amended) in respect of the position applied for.
2. If acting as an Umbrella Body, registered persons must satisfy themselves that those on whose behalf they intend to countersign applications are entitled to receive Disclosure information by virtue of that body or person being entitled to ask exempted questions (*please refer to Annex A*) under the *Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003* (as amended) in respect of the position applied for; and take reasonable steps to ensure that those to whom they pass Disclosure information observe the Code. Reasonable steps should include keeping records of those on whose behalf they act and evidence that they are ensuring those to whom they pass information observe the Code.

B Enhanced Disclosures:

1. Registered persons or their nominees who countersign Enhanced Disclosure applications must be satisfied that they are entitled to receive Disclosure information by virtue of their being entitled to ask an exempted question for a prescribed purpose as set out in the *Police Act 1997 (Criminal Records) (Scotland) Regulations 2006 (SSI 2006/96)*.
2. If acting as an Umbrella Body, satisfy themselves that those on whose behalf they intend to countersign applications are entitled to receive Disclosure information by virtue of that body or person being entitled to receive Disclosure information by virtue of their being entitled to ask an exempted question for a prescribed purpose as set out in the *Police Act 1997 (Criminal Records) (Scotland) Regulations 2006 (SSI 2006/96)*; and

take reasonable steps to ensure that those to whom they pass Disclosure information observe the Code. Reasonable steps should include keeping records of those on whose behalf they act and evidence that they are ensuring those to whom they pass information to observe the Code.

- 35.** A registered person acting as an Umbrella Body will therefore need to have some knowledge about the organisation offering the position and about the nature of the position in question. The Umbrella Body should also make those on whose behalf it countersigns Disclosure applications aware of the terms of the Code and this Guide and about the consequences of non-compliance with the Code. Umbrella Bodies should seek written assurances from organisations that they are observing the Code. It will also be reasonable, in some circumstances, for Umbrella Bodies to visit organisations to check that the Code is being observed. If an Umbrella Body has reason to believe that an organisation on whose behalf it countersigns Disclosure applications has failed to comply with the Code, it should immediately report the circumstances to Disclosure Scotland.

Fair use of Disclosure information

- 36.** The Code states that those who receive Disclosure information must:
1. not use Disclosure information for purposes other than those for which it has been provided;
 2. have regard to any guidance issued by Disclosure Scotland on the use of the Disclosure information; and
 3. not unfairly discriminate against the subject (that is, the individual applicant) of Disclosure information on the basis of any conviction or other details revealed.
- 37.** Standard and Enhanced Disclosure information is made available for purposes of assisting decisions about the suitability of an individual for a particular position. The Disclosure information should not be used for considering the individual's suitability for other positions.
- 38.** As noted at Paragraph 3 above, this Guide is regarded as guidance. As such, those who receive Disclosure information should comply with it in terms of the Code.
- 39.** For those with convictions, gainful employment is often the most successful way of avoiding re-offending. Scottish Ministers are, therefore, keen to ensure that those members of the community who may have convictions are not unfairly treated in the process of considering them for positions. The fact that a person has a conviction should not necessarily make him or her unsuitable to work with children, or adults at risk. The person's suitability should be looked at as a whole in the light of all the information available. The existence of a criminal record should therefore not automatically be taken to mean that a person is unsuitable. Employers receiving Disclosure information should consider the relevance of the information in relation to the position for which the subject, that is, the individual applicant of the information, is being considered.
- 40.** It is important that someone who is disqualified from working with children is not appointed to work (paid or unpaid) with them. An employer commits an offence if this happens. There is not, at present, an equivalent offence relating to work with adults at risk in Scotland.
- 41.** 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. Disclosure Scotland has a sample policy and this is available to download from the Application Process (Sample Policies) Page or the Publications Page on the Disclosure Scotland website (www.disclosurescotland.co.uk).

Handling Disclosure information

42. All Disclosure information is sensitive, personal information. Information contained within Standard and Enhanced Disclosures may be particularly sensitive. Registered persons and their nominees should handle sensitive criminal record and other information responsibly. Others in receipt of Disclosure information should also handle it responsibly. Information supplied to a registered person or a nominee which is not shown on an Enhanced Disclosure, as outlined in Paragraph 10.3 above, must not be disclosed to the subject (that is, the individual applicant) of the Disclosure.
43. Disclosure information must be handled only by those persons within an organisation entitled to see it in the course of their duties.
44. Registered bodies must have a written security policy on the handling, holding and destroying of Disclosure information. Those registered bodies who countersign Disclosure applications on behalf of others, when acting as Umbrella Bodies, must, in addition, ensure that those on whose behalf they countersign Disclosure applications have such a written policy. A specimen policy is available from Disclosure Scotland and can be downloaded from the Application Process (Sample Policies) or Publications Page of the Disclosure Scotland website (www.disclosurescotland.co.uk). Part V of the 1997 Act sets out certain offences relating to the inappropriate use of Disclosure information. Details are given in Annex B. There may be circumstances when a person in possession of Disclosure information is asked to reveal details of the information to a third party in connection with legal proceedings, for example, in a case submitted to an Industrial Tribunal. In that event, the registered person should inform Disclosure Scotland immediately of any such request and prior to the release of any information.
45. Disclosure information must be stored in secure conditions. Documents should be kept in lockable and non-portable storage units. Keys or combinations for such storage units should not be freely available within an organisation and access must be restricted to named individuals. Access to rooms containing storage units should be restricted, as far as is practicable, to staff engaged in recruitment work.
46. Once a recruitment or other relevant decision has been made, those within the Registered Body or recruiting organisation in possession of Disclosure information must not retain such information for longer than is required for the purpose for which the Disclosure was obtained. In general, this should be no longer than 90 days after the date on which the recruitment or other relevant decision has been taken, or after the date on which any dispute⁵ about the accuracy of the Disclosure information has been resolved. This period should be exceeded only in exceptional circumstances which justify retention for a longer period and when this happens, the subject must be notified in writing that the Disclosure information is being held beyond that date. Where, however, Disclosure information has been obtained by a registered person acting as an Umbrella Body or a nominee on behalf of others, the Disclosure information should not be retained by the registered person or the nominee after it has been disclosed to those on whose behalf it was obtained.

⁵ Details of the disputes/appeals procedure are available on the FAQ Page and Publications Page of the Disclosure Scotland website www.disclosurescotland.co.uk

- 47.** Recipients of Disclosure information may, however, keep a record of each Disclosure application submitted, including the issue date of the Disclosure information, the name of the subject (that is, the individual applicant), the type of Disclosure, the position applied for, the unique number of the Disclosure issued by Disclosure Scotland and the recruitment decision taken. A specimen *tracking* form which may be used for this purpose is available within the Publications (Other Disclosure Scotland Documents) Page of the Disclosure Scotland website (www.disclosurescotland.co.uk). This information may be required later, for example, during the course of an inspection of a care service registered under the *Regulation of Care (Scotland) Act 2001*. It is also recommended that a written record is kept of all those to whom Disclosure information is passed for the purposes of a clear audit trail.
- 48.** Disclosure information should be destroyed by suitable secure means, that is, shredding, pulping or burning. It should not be kept in any insecure receptacle, such as a waste bin or confidential waste sack, whilst awaiting destruction. No photocopy or other image of the Disclosure information may be retained.

Assurance

- 49.** The Code requires recipients of Disclosure information to:
1. undertake at the request of Disclosure Scotland an audit of their handling, holding and destruction of Disclosure information. This may take the form of:
 - i completing a self-assessment form which will be issued by Disclosure Scotland to registered persons on a periodic basis. This form will contain questions which, when answered, will assist Disclosure Scotland in determining adherence by the Registered Body to the Code, the Guide and the law.
 - ii co-operate with Disclosure Scotland staff during any compliance checks (audits), including visits to Registered Body's premises, which they, the Disclosure Scotland staff, may carry out in order that they satisfy themselves that those receiving Disclosure information are using the information provided in accordance with the Code, the Guide and the law. (See paragraphs 50 to 52 below.)
 - iii co-operate with persons registered under section 120 of the 1997 Act as far as possible to assist in their compliance with the Code.
 2. report to Disclosure Scotland any evidence of failure, either on their own part or on the part of another party to comply with the Code; and
 3. report to Disclosure Scotland any reasonable suspicion that an offence has been committed under sections 123 and 124⁶ of the Act (see Annex B).
- 50.** In conducting compliance checks (audits), Disclosure Scotland will, in particular, seek to:
1. ensure that the obligations of those registered in respect of security and retention of Disclosures are being met;
 2. confirm that those registered are seeking the appropriate level of Disclosure in respect of the position being applied for;
 3. confirm that information provided by Disclosure Scotland and, where applicable, police forces (in respect of information provided in terms of section 113B(5)⁷ of the Act) is not being used unfairly to the detriment of persons who have been convicted in the past;
 4. advise those registered on good practice in the use of criminal record information; and

⁶ The *Serious Organised Crime and Police Act 2005* Schedule 14, Paragraph 12 amended section 124 of the 1997 Act.

⁷ Section 163(2) of the *Serious Organised Crime and Police Act 2005* inserted section 113B into the 1997 Act.

5. identify those persons who are no longer likely to wish to countersign applications (possibly because they no longer work for the organisation or their roles have changed and they no longer have a role in processing Disclosures).
51. Disclosure Scotland will conduct compliance checks as it thinks necessary and may also do so following receipt of complaints from members of the public about the behaviour of those registered or in receipt of Disclosure information. Compliance checks may also be carried out at the request of a registered person, or a nominee, if that person reports that the organisation of which he or she is a part may be in breach of the Code or is using Disclosure information inappropriately.
52. Disclosure Scotland will normally pre-arrange compliance check visits. However, it reserves the right to undertake such checks on an unannounced basis. Disclosure Scotland will provide written reports, with recommendations, where appropriate, to those who have been the subject of compliance checks. It may undertake follow-up compliance checks to verify that any recommendations made as a result of an earlier compliance check have been implemented. If a compliance visit indicates that an offence may have been committed, Disclosure Scotland will report this to the Police.

Countersigning Applications for Disclosures

Registered Persons and Countersignatories signing their own Disclosure

53. Lead Signatories and other Countersignatories are not permitted to countersign their own Disclosure application forms. If a Lead Signatory or other Countersignatory requires a Disclosure then they should ensure that some other Countersignatory countersigns their Disclosure application form. In such circumstances, and if an organisation only has a Lead Signatory then it may add an additional Countersignatory or it could use the services of an Umbrella Body.

Identity of the applicant

54. It is good recruitment practice for employers to satisfy themselves of the identity of those applying for positions. Although Disclosure Scotland will conduct its own identity checks, these should be supplemented by the initial checks undertaken by organisations in respect of prospective employees, volunteers and those taking up positions which are the subject of the Disclosure check. Whilst Disclosure Scotland will have a record of the types of documents which were viewed for identification purposes, it is recommended that employers retain details of identity checks undertaken in case of further enquiry by Disclosure Scotland.

55. Those countersigning Disclosure applications should encourage those involved in the recruitment process to ask for documentary evidence of identity from applicants. It is recommended that at least **three** forms of identification are seen. It would be desirable if at least one of these is photographic (for example, a current passport, new style UK driving licence, etc.) *plus* at least **one** item of address related evidence (for example, a utility or telephone bill, bank, credit card or mortgage statement containing the name and address of the applicant). In the absence of photographic evidence, a full birth certificate issued at the time of birth will carry more weight than one issued more recently. Consistency of information with the information provided by the applicant in his or her application for the position tends to lead to a greater level of confidence in his or her identity.

56. Where an applicant claims to have changed his or her name by deed poll or any other mechanism, the employer should seek evidence of such a change.

57. A Disclosure issued by Disclosure Scotland must not be taken as evidence of identity.

Overseas applicants

58. Insofar as the Disclosure process is concerned, there are two issues to be considered regarding the appointment of overseas applicants; the first relates to the identity of the applicant and the second relates to checking his or her criminal record.

59. Identity of the applicant:

1. Employers should take particular care during the recruitment process, ensuring they follow up references and undertake other relevant checks before making an appointment.
2. Consideration should still be given to the information described in Paragraphs 54 and 55, albeit this will relate to foreign documents.

60. Criminal record checks:

Registered persons and bodies should consider carefully before deciding whether to request a Disclosure in respect of an applicant with no, or very little, address history in the UK. As a consequence, it may be of limited value to obtain a Disclosure for such an applicant. Further information on this matter and guidance is given in the following paragraphs.

1. Disclosure Scotland performs its duties in accordance with UK legislation and has no jurisdiction to obtain criminal record information from other countries. However, the Scottish Executive is working with the UK Government to improve the exchange of criminal record information with other European Union countries and non-EU countries which provide significant numbers of overseas workers in caring positions.
2. In the meantime, employers can ask prospective employees to provide a criminal record certificate, where available, from their government or an appropriate government/police agency. Guidance on the availability of this service is provided by the CRB in England, and can be accessed via the link on the FAQ "*Is foreign conviction information included in Disclosures?*" on our website (www.disclosurescotland.co.uk).
3. It is suggested that the onus is put onto the applicant to provide details of their criminal conviction history from their home country. It should be remembered, however, that these may require to be translated from the relevant language into English and they may contain details of convictions which may not have a direct equivalent or similar conviction in Scots or English law. Disclosure Scotland has no role in this process and the applicant or the employer has to meet any additional cost.

Consideration of information contained in Disclosures

Factors to take into account when considering the suitability of the applicant prior to offering him/her the position applied for

- 61.** Recruiters should consider the following:
1. whether the conviction or other matter(s) revealed on the Disclosure is relevant to the position in question;
 2. the seriousness of any offence revealed;
 3. whether the person is fully listed and disqualified from working with particular vulnerable groups;
 4. the length of the time since the offence or other matter(s) occurred;
 5. whether the applicant has a pattern of offending behaviour or other relevant matters;
 6. whether the applicant's circumstances have changed since the offending behaviour or the other relevant matters.
- 62.** It is the responsibility of the employer to decide whether to offer the applicant the position. Having said that, if the person is disqualified from working with children and is applying for such a position then the employer will not have any discretion in the matter. It is an offence to employ someone who is disqualified from working with children in a child care post. The Disclosure will advise whether or not the applicant is subject to any such disqualification.

Validity of Disclosures

- 63.** Disclosures carry no pre-determined period of validity or absolute guarantee of accuracy. Standard and Enhanced Disclosures will be position specific and considered valid only at the time of their issue. The Code prescribes that Disclosure information must not be used for purposes other than those for which it has been provided. It is recommended that a new Disclosure be sought for each new recruit or when someone is moving to another post, that is, for posts which are appropriate for Disclosure – as outlined in Paragraph 9 of this Guide.
- 64.** Where the information provided on a Disclosure differs significantly from that provided by an applicant (possibly within a criminal convictions self-declaration form provided by the applicant at the time of his/her application for the position), the employer (registered person) should discuss any discrepancy with the applicant before reaching a recruitment decision. The subject of the Disclosure (the applicant) may also apply to Disclosure Scotland for a new Disclosure if he or she believes that it may contain inaccurate information. If Disclosure Scotland is satisfied that the original Disclosure contains inaccurate information they will issue a new Disclosure. Any new Standard or Enhanced Disclosure will be copied to the person who countersigned the application. Details of the disputes/appeals procedure are available on the FAQ Page and Publications Page of the Disclosure Scotland website (www.disclosurescotland.co.uk).

Terminating Registration

Request from Countersignatory to be withdrawn from the Register

65. A person who considers that he or she is no longer likely to wish to ask exempted questions, or receive Disclosure information in relation to a prescribed purpose, in the role in which he or she had originally registered, should ask to be removed from the register. Any such request should be made by completing the appropriate parts of the Registration application form, available from Disclosure Scotland, and submitting the completed form to Disclosure Scotland. Such forms should also be signed in the appropriate place by the Lead Signatory. He or she shall be free, thereafter, to apply to re-join the register, if required, on payment of the appropriate fee.

Individuals deemed not suitable to access Disclosure information

66. Disclosure Scotland, acting on behalf of Scottish Ministers, may refuse to accept, or continue to accept, the nomination of an individual if, in the opinion of Disclosure Scotland, that individual is not a suitable person to have access to information which has become, or is likely to become, available to that individual as a result of registration of the body or statutory office holder which nominated that individual. In addition, Disclosure Scotland may also refuse to accept, or to continue to accept, the inclusion on the register of any person if their registration is likely to result in information becoming available to an unsuitable person. The procedure to be followed when registration is refused or cancelled is set out in the *Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2006 (SSI 2006/97)*.
67. In summary, the regulations require that before Disclosure Scotland refuses to accept, or continue to accept, the nomination of an individual they shall notify in writing:
1. the body or statutory office holder concerned, and that body or statutory office holder may submit the name of an individual in substitution; and
 2. the individual nominated that they are of that opinion and the reasons for that opinion and shall inform that individual of the right to make representations.
68. Any individual who has been notified as set out in the regulations may, within 28 days of the service of such notice, make representations in writing to Disclosure Scotland as to why Disclosure Scotland should not refuse to accept or continue to accept their nomination and Disclosure Scotland will consider any such representations.
69. After considering such representations, Disclosure Scotland shall inform the nominated individual:
1. that they are of the opinion that they should refuse to accept or continue to accept the nomination of that individual, and the reasons for that opinion; or
 2. that they do not propose to refuse to accept or continue to accept the nomination of that individual.
70. If no representations are received within 28 days, Disclosure Scotland may proceed at the end of that period to refuse to accept or continue to accept that individual's nomination.
71. If representations are received and Disclosure Scotland decide to refuse to accept or continue to accept the nomination of that individual, the period within which that decision shall be implemented is the end of a further period of 28 days beginning with the day of service of the notification of the results of Disclosure Scotland's considerations of their representations.

- 72.** No individual may be nominated if Disclosure Scotland has, within the period of two years prior to the date on which the nomination is received by them, refused to accept or continue to accept that individual's nomination.

Removal of a Countersignatory from the Register by Disclosure Scotland

- 73.** Disclosure Scotland may remove from the register any person who is, in the opinion of Disclosure Scotland, no longer likely to wish to countersign applications for Standard or Enhanced Disclosures.
- 74.** Before removing a person from the register, Disclosure Scotland shall notify that person in writing that they are of that opinion and the reasons for that opinion and shall inform that person of the right to make representations.
- 75.** A person who has been so notified may, within 28 days of the service of such notice, make representations in writing to Disclosure Scotland as to why that person should not be removed from the register and Disclosure Scotland shall consider any such representations.
- 76.** After considering such representations, Disclosure Scotland shall inform the registered person:
1. that they are of the opinion that that person is unlikely to wish to countersign applications for Standard or Enhanced Disclosures and the reasons for that opinion and that that person will be removed from the register at the end of a further period of 28 days; or
 2. that they do not propose to take any further action.
- 77.** If no representations are received within 28 days, Disclosure Scotland may remove the person from the register at the end of that period.
- 78.** Where:
1. Disclosure Scotland are satisfied in the case of a registered person or a person nominated by them, that the person has died or is incapable, by reason of physical impairment or mental disorder, of countersigning applications for Standard or Enhanced Disclosures; or
 2. the registered person has requested that Disclosure Scotland remove that person from the register,
- the relevant paragraphs of the regulations (*SSI 2006/97 regulation 5 (2) to (5)*) shall not apply.
- 79.** If Disclosure Scotland, acting on behalf of Scottish Ministers, decide to remove a person from the register other than for the reason that the person is no longer likely to countersign applications under section 113A or 113B, then the person will be notified of the date on which deregistration will take place. The person concerned will have a right to make representations against the decision within 28 days of the service of the notification. Full details of the process to be followed are set out in regulation 6 of *SSI 2006/97*.

Suspension of Service

- 80.** In cases where Disclosure Scotland considers that:
1. a registered person, or one of their nominees, who countersigned an application has failed to comply with the Code; or
 2. a body or person on whose behalf the application was countersigned has failed to comply with the Code

Disclosure Scotland may refuse to issue Disclosures in respect of the applications countersigned by that body or person. The sanction of suspending Countersignatories will not be imposed without proper investigation about the substance of the complaints. All Countersignatories are advised that there are offences set out in section 124 of the 1997 Act (please refer to Annex B) in relation to unauthorised disclosure of information provided following an application for a Standard or Enhanced Disclosure. If it appears that an offence has been committed, then Disclosure Scotland will contact the police. Where a breach appears to apply across an organisation, the suspension may apply across the organisation.

- 81.** Disclosure Scotland will notify the registered person who is the Lead Signatory of the organisation concerned about the suspension and its justification.
- 82.** Disclosure Scotland will, at the request of the suspended person or body, consider whether to lift the suspension, but will not do so until it is satisfied that the person or body in question will thereafter fully comply with the Code. Should Disclosure Scotland decide to lift the suspension, there will be no charge incurred by the organisation other than where it wishes to add additional or replacement Countersignatories.

Lost Disclosures

- 83.** If a registered person, or one of their nominees, or any person to whom he or she passes Disclosure information, loses or otherwise misplaces a Disclosure, the registered person, or nominee, will undertake to inform Disclosure Scotland immediately. On request, he or she should provide full details of the circumstances of the loss. Disclosure Scotland will consider whether it is appropriate to issue a replacement Disclosure. Loss may be considered as a breach of the Code. The registered person, or nominee, must also advise the relevant applicant immediately of the loss.

ANNEX A

The Rehabilitation of Offenders Act 1974 – Outline of Provisions

1. The *Rehabilitation of Offenders Act 1974* (ROA) sets out to improve the rehabilitation prospects of people who have been convicted of a criminal offence and served their sentence. Under the terms of the ROA, anyone who has been convicted of a criminal offence and sentenced to less than two and a half years in prison can be regarded as rehabilitated after a specified period with no further convictions. After the specified period the original conviction is considered to be spent. This period varies between 6 months and 10 years depending on the length of sentence. Generally speaking, the ROA provides that a spent conviction need not normally be disclosed when a person is asked about his or her previous record, and the rehabilitated person cannot be prejudiced if the spent conviction later comes to light.
2. However, there are some categories of employment to which the ROA does not apply and for the purposes of which convictions otherwise defined as spent have still to be disclosed. These categories of employment may be regarded as “exclusions” from the provisions in ROA which allow an offender to avoid disclosing spent convictions in response to questions. ROA allows the list of exclusions to be specified in secondary legislation. The types of employment where questions about spent convictions can be asked include work in child care positions, care services, the health professions and in the financial sector.
3. Where the 1997 Act refers to asking “exempted questions”, it means asking questions about spent convictions in circumstances in which the usual effects of ROA (section 4(2)(a) or (b)) have been excluded by order made by the Scottish Ministers.
4. The current provision for Scotland (at the time of printing of this Guide) on matters excluded from section 4(2)(a) and (b) of ROA is the *Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 (SSI 2003/231)* (as amended).

Details of the most recent Exclusions and Exceptions Orders are available on the Publications page of Disclosure Scotland’s website at www.disclosurescotland.co.uk under “Legislation”.

ANNEX B

Offences

Note: This Annex shows the offences set out in the 1997 Act. If you need further information about the offences, it is recommended that professional legal advice is sought.

The following is taken from section 124 of the 1997 Act

Offences - disclosure

1. A member, officer or employee of a body registered under section 120 commits an offence if he discloses information provided following an application under section 113A or 113B unless he discloses it, in the course of his duties-
 - (a) to another member, officer or employee of the registered body,
 - (b) to a member, officer or employee of a body at the request of which the registered body countersigned the application, or
 - (c) to an individual at whose request the registered body countersigned the relevant application.
2. Where information is provided under section 113A or 113B following an application countersigned at the request of a body which is not registered under section 120, a member, officer or employee of the body commits an offence if he discloses the information unless he discloses it, in the course of his duties, to another member, officer or employee of that body.
3. Where information is provided under section 113A or 113B following an application countersigned by or at the request of an individual-
 - (a) the individual commits an offence if he discloses the information unless he discloses it to an employee of his for the purpose of the employee's duties, and
 - (b) an employee of the individual commits an offence if he discloses the information unless he discloses it, in the course of his duties, to another employee of the individual.
4. Where information provided under section 113A or 113B is disclosed to a person and the disclosure-
 - (a) is an offence under this section, or
 - (b) would be an offence under this section but for subsection (5) or (6)(a), (d), (e) or (f),the person to whom the information is disclosed commits an offence (subject to subsections (5) and (6)) if he discloses it to any other person.
5. Subsections (1) to (4) do not apply to a disclosure of information provided in accordance with section 113B(5) which is made with the written consent of the chief officer who provided the information.
6. Subsections (1) to (4) do not apply to a disclosure of information contained in a certificate under section 113A or 113B which is made-
 - (a) with the written consent of the applicant for the certificate, or
 - (b) to a government department, or
 - (c) to a person appointed to an office by virtue of any enactment, or
 - (d) in accordance with an obligation to provide information under or by virtue of any enactment, or
 - (e) for the purposes of answering an exempted question (within the meaning of section 113A) of a kind specified in regulations made by the Secretary of State, or
 - (f) for some other purpose specified in regulations made by the Secretary of State.

7. A person who is guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 3 on the standard scale, or to both.

The following is adapted from section 123 of the 1997 Act

Offences - Falsification, etc.

In addition to offences resulting from inappropriate disclosure of Disclosure information, there are other offences which apply to applicants or Countersignatories who provide false information under Part V of the 1997 Act.

1. A person, in these circumstances, commits an offence if, with the intent to deceive, they:
 - (a) make a false certificate,
 - (b) alter a certificate,
 - (c) use a certificate which relates to another person in a way which suggests that it relates to them, or
 - (d) allow a certificate which relates to them to be used by another person in a way which suggests that it relates to that other person.
2. A person commits an offence if they knowingly make a false statement for the purposes of obtaining, or enabling another person to obtain, a certificate.
3. A person who is guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

