

RECRUITING PEOPLE WITH CONFLICT-RELATED CONVICTIONS

Employers' Guidance



Office of the
**First Minister and
Deputy First Minister**
www.ofmdfmi.gov.uk

1 Introduction

- 1.1 This guidance is for all employers in the public, private and voluntary sectors. It has been developed by a working group co-chaired by Sir George Quigley and Nigel Hamilton and comprising representatives of Government departments, the Irish Congress of Trades Unions, the Confederation of British Industry and a representative group of ex-prisoners. It fulfils the commitment to the ex-prisoners' constituency in the Good Friday Agreement and also the commitment given more recently by the Government in the St Andrews Agreement.
- 1.2 The group was tasked, over a year ago, with looking at the impediments to ex-prisoners with conflict-related convictions accessing employment, goods, facilities and services. This guidance focuses on recruitment, in regard this particular group of ex prisoners, but is readily transferable to deal with goods, facilities and services. Separate guidance will be developed and promulgated in regard to goods, facilities and services.
- 1.3 The guidance is designed to assist employers follow best practice in recruiting people with conflict-related convictions. Those are convictions arising directly from the most recent period of conflict in Northern Ireland. Generally, they are offences listed in the relevant schedules to the various Emergency Provisions (Northern Ireland) Acts pre-April 1998.

- 1.4 The guidance is not meant to be comprehensive, nor is it meant to deal with every eventuality. The Government recognises that the transposition of the agreed principles underpinning the guidance will be for employing organisations and their human resource professionals.
- 1.5 In summary, the basic principle arising out of the main report by the working group is that any conviction for a conflict-related offence that pre-dates the Good Friday Agreement (April 1998) should not be taken into account unless it is materially relevant to the employment being sought. Below is a simple, step-by-step guide to be followed by employers in dealing with job applicants who have conflict-related convictions.

2 Context

"The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, retraining and/or re-skilling, and further education."

The Good Friday Agreement (April 1998)

- 2.1 Figures estimate that up to 30,000 people have spent time in prison due to the conflict in, or about, Northern Ireland. The vast majority were young men when convicted. The Good Friday Agreement recognised the role of prisoners in the peace process and their influence in wider peace building processes.

- 2.2 Many ex-prisoners, since release, have played active and positive roles in conflict transformation processes within republicanism and loyalism. The importance of these processes has been well documented and evidenced by a number of international studies.
- 2.3 The report of the ex-prisoners' working group provides personal accounts documenting the experience of this group of former prisoners as they have sought to access employment, facilities, goods and services. It reveals systemic, structural and attitudinal barriers in accessing employment in the public and private sectors; and in accessing goods, facilities and services more generally.
- 2.4 The report argues that there are significant societal and economic imperatives to address positively the reintegration of ex-prisoners with conflict-related convictions.
- 2.5 The key principle arising from the work of the group is:

".....that conflict-related convictions of 'politically motivated' ex-prisoners, or their membership of any organisation, should not generally be taken into account [in accessing employment, facilities, goods or services] provided that the act to which the conviction relates, or the membership, predates the Agreement. Only if the conviction, or membership, is materially relevant to the employment, facility, goods or service applied for, should this general rule not apply"

- 2.6 In other words, a conviction arising from the conflict should not bar an applicant from obtaining employment, facilities, and goods or services unless that conviction is manifestly incompatible with the job, facility or service in question. The onus of demonstrating incompatibility would, in the view of the group, rest with whoever was alleging it and the seriousness of the offence would not, *per se*, constitute adequate grounds.
- 2.7 The report goes on to argue that where an applicant is ruled out of consideration at any stage he/she should be given the opportunity to outline his/her perspective before a final decision is taken.
- 2.8 In addition, the report argues that there should be a right of appeal by such an applicant who is denied on the grounds that a sentence was materially relevant. It is expected that it would only be in very exceptional circumstances that such grounds could be successfully invoked. It was also agreed that for reasons of practicality, any changes would not be retrospective.

2.9 It is worth noting that the (then) Mr Justice Kerr argued in a successful legal case by a former prisoner challenging a decision not to grant a taxi driving licence to the applicant:

*“The Agreement contemplated that mechanisms would be put in place for the accelerated release of prisoners and that those prisoners who benefited from that programme would be reintegrated into the community. It appears to me, therefore, that particular attention should be paid to the fact that a prisoner released under the terms of the Northern Ireland Sentences Act 1998 has been adjudged **not to be a danger to the public.**”*

2.10 Whilst this judgement related to those ‘risk assessed’ and released under the Agreement, the working group view is that this is an important principle on which all conflict-related convictions arising from the most recent period of conflict should be considered.

2.11 The guidance is not asking employers or service providers to give preferential treatment to ex-prisoners with conflict-related convictions; that would run counter to fair employment and equality legislation. Rather, the guidance aims to ensure that such a conviction is not taken into account, unless it is materially relevant to the post or service in question.

2.12 The guidance is seeking to ensure that an ex-prisoner (with a conflict-related offence) is able, in the case of employment, to compete with other applicants on a level basis, and that the employer should, having regard to paragraph 2.9, make his/her decision on the basis of skills and experience.

- 2.13 The guidance has been agreed by Government, the Irish Congress of Trades Unions and the Confederation of British Industry. While it focuses on employment it should nonetheless be easily transferable to goods, facilities and services.
- 2.14 Finally, this guidance needs to be read in conjunction with existing legislative obligations and any new guidance which may be developed from time to time as a consequence of the introduction of a new system of employment-related criminal record checks. A summary of the legislation is provided in the annex to this guidance.

3 The recruitment process

- 3.1 Whether using online recruitment or more traditional recruitment processes such as advertisement, it is important that the methods of recruitment are applied consistently.
- 3.2 Online recruitment, also known as e-recruitment, is the use of technology to attract candidates and aid the recruitment process. Surveys have shown that online recruitment in both the public and private sectors has grown significantly with greater use being made of email applications in the last three years. The technology can be used to:
- advertise vacancies – on organisations' websites or job sites;
 - deal with the applications – email enquires, emailed application forms/CVs, online completion of application forms;
 - select candidates – online testing.

- 3.3 The public and private sector are increasingly using online recruitment to speed up the recruitment process, reach a wider pool of applicants, streamline administration and reduce recruitment costs.
- 3.4 Whichever format of recruitment is used, the fact that an applicant has a conflict-related criminal record should not play a part until the individual has successfully gone through a selection process. In accordance with best practice, application forms should normally not require a criminal record declaration except where the job is covered by the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979, because, for example, it involves working with the vulnerable. Only after an individual has been recommended for appointment and only where relevant to the specific post should a record check be undertaken.

4 Weighing up the risks

- 4.1 The evidence shows that in most instances there is very little risk involved in employing an ex-prisoner. The majority of ex-prisoners in work are competent, reliable employees who pose no risk to their colleagues, clients or the business for whom they work. This also holds true, probably to an even greater extent, for those in Northern Ireland with conflict-related convictions.

- 4.2 It is the case that for many in that category, they would not have been imprisoned had it not been for the onset of the most recent and prolonged period of civil disorder and violence that caused so much damage and hurt and shaped the lives of so many during those 35 years.
- 4.3 It is for this reason that it is always best to consider each applicant on his/her merits. The appropriate approach is to determine whether the person you are interviewing is the best person for the vacancy. If they are, it then becomes a case of determining whether the criminal record is materially relevant or not for that particular post.
- 4.4 This guidance, whilst addressing ex-prisoners with conflict-related convictions, underscores best practice; namely that the main focus of decision making should be on those offences which are materially relevant in terms of the duties the post holder will be expected to undertake.
- 4.5 In line with best practice, employing organisations should ensure that recruitment and employment practices deal fairly and equitably with all candidates, including those who have a conflict-related conviction. For example, they might usefully consider the following extract from “Employing people with criminal records” produced by the Chartered Institute of Personnel and Development.

4.6 Objective assessments will:

- **focus on a person's abilities, skills, experience and qualifications;**
- **consider the nature of the conviction and its relevance to the job in question;**
- **identify the risks to the organisation's business, customers, clients and employees;**
- **recognise that having a record does not always mean a lack of skills, qualifications and experience;**
- **note that high-quality training, leading to qualifications, is available in many prisons.**

4.7 Assessing records will:

- **always be based in confidentiality and discretion when requesting and handling records;**
- **encourage applicant honesty by stating that applicants will be considered on merit and ability;**
- **not include requests for spent conviction records unless the job is exempt under the Rehabilitation of Offenders legislation;**
- **advise applicants to submit confidential records separately from the usual application form and to a named employee;**
- **comply with data protection law;**
- **ensure access to record information is only on a need to know basis.**

4.8 In making employment decisions organisations should make objective assessments, adopt an open mind and focus on merit and ability to do the job.

5 Considering Conflict-Related Convictions

- 5.1 In this section convictions relate to conflict-related ones.
- 5.2 Only after interview when the successful candidate for employment has been chosen, should the issue of a conviction, be considered.
- 5.3 In the case of the Northern Ireland Civil Service a criminal record check is sought after an individual is recommended for appointment. If it transpires that the individual has a record, a statement of disclosure form is issued for completion by the applicant. This provides the opportunity to put the nature of the offence/conviction in context and provide any supporting material eg, testimonials, references etc.
- 5.4 There are three possible scenarios once a successful candidate has been selected and a record check occurs:
- if the candidate does not possess a conviction, the appointment is made;
 - if the candidate has declared a conviction, but the employer considers that it is not materially relevant to the post, the appointment is made;
 - if the candidate has declared a conviction and the employer considers that it is, or could be, materially relevant, and is manifestly incompatible with the post then the appointment is not immediately offered.

- 5.5** In the third scenario the employer should make contact with the candidate to explain his/her decision. If the candidate accepts the employer's consideration, the employer may move on to the next highest placed candidate.
- 5.6** If after explanation the candidate does not accept the employer's consideration, it is recommended that he/she meet with the employer to discuss the issue. The candidate may bring along a representative and may supply supporting evidence in regard his/her case that the conviction is not materially relevant. The applicant should be given the opportunity to make his/her views known regarding the conviction and its relevance, or otherwise, to the post.
- 5.7** If, after this discussion, the employer continues to consider that the conviction is materially relevant and manifestly incompatible with the post, the candidate may bring the matter to a review panel. The review panel (the modalities of which are set out in section 6) is non statutory. It will receive complaints and concerns raised by individuals. Such complaints and also evidence of good practice will form the basis of an annual report to the Secretary of State on the operation of this voluntary tripartite arrangement.

6 Tripartite Review Panel

- 6.1** Only if a satisfactory outcome cannot be arrived at through informal discussion between potential employer and candidate should the next step be to refer the matter to a review panel. The panel, which will be non statutory, will comprise representatives of the three parties to this guidance.

6.2 It will be serviced by a part-time secretariat and will be tasked with considering individual complaints and also cataloguing evidence of good practice. It will be asked to provide the Secretary of State with a detailed annual report on the operation of the voluntary agreement. The operation of the guidance will be reviewed after 18 months. If there is evidence that the voluntary arrangement is demonstrably not working it is the view of the Government that the voluntary arrangement should be put on a statutory basis.

7 Tripartite Endorsement

7.1 It is the agreed view of Government, the CBI in Northern Ireland and the ICTU that this voluntary guidance, which will require detailed working through by employing organisations, represents an important step forward in the reintegration of ex prisoners with conflict-related offences.

7.2 The parties to the guidance also acknowledge that in working through this process, the onus of proving material relevance lies with the employer. Unless the employer can argue convincingly that the conviction is materially relevant and manifestly incompatible with the post, the applicant (who at this stage is, all other things being equal, the preferred candidate for the job) should be offered the post.

7.3 The three parties to this guidance are also of the view that before coming to a decision, the employer should consider carefully the following. Namely that:

- the onus of proof is on the employer to show material relevance;
- the conviction must be manifestly incompatible with the position in question;
- the seriousness of the offence is not in and of itself enough to make a conviction materially relevant; and
- it will only be in very exceptional circumstances that a conviction will be relevant.

7.4 Finally, following the recent Fair Employment Tribunal judgement in *McConkey and Marks v the Simon Community* the Government has initiated, as a matter of urgency, a review of fair employment legislation to consider whether there is a need to amend Article 2 (4) of the Fair Employment and Treatment Order 1998 in the Tribunal words

“.....to reflect those changed circumstances [in light of the Good Friday Agreement] and not least to reflect the terms of the said Agreement with its reference to the introduction of measures to facilitate the reintegration of prisoners into the community in the area of employment”

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Annex

The current legislation

The Rehabilitation of Offenders (Northern Ireland) Order 1978 seeks to ensure that ex-offenders who have not re-offended for a period of time since the date of their conviction are not discriminated against when applying for jobs. The Order enables ex-prisoners to 'wipe the slate clean' of their criminal records at the appropriate time in that they are no longer legally required to disclose to organisations convictions that are 'spent', unless the job they are applying to is covered by the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979. A range of different types of work, occupations, employment and professions are exempted. This includes work that involves access to children, young people and vulnerable people. In such cases organisations are legally entitled to ask applicants for details of convictions, irrespective of whether they are 'spent' or 'unspent' under the Act.

Part V of the Police Act 1997 which is to be enacted in Northern Ireland later in 2007 will allow for the two types of disclosure of criminal records relevant to employers. A Standard Disclosure which applies to posts exempted under the Rehabilitation of Offenders (Northern Ireland) Order 1978 and relates particularly to certain sensitive areas of employment, such as jobs involving regular contact with children and vulnerable adults. The second type, Enhanced Disclosure, applies to posts involving greater contact with children and vulnerable adults. In Northern Ireland this service will be provided by Access Northern Ireland (which will link both to Disclosure Scotland and the Criminal Records Bureau).

The Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 is aimed at preventing unsuitable people from working with children and/or vulnerable adults. The Safeguarding Vulnerable Groups Act, which received Royal Assent in November 2006 will extend to Northern Ireland and will introduce a new vetting and barring scheme.