# APPENDIX E: RELEVANT LEGISLATION

### INTRODUCTION TO THE LEGISLATION

The Council is committed to safeguarding the welfare of those accessing our services and has a statutory duty of care towards vulnerable members of society under the Safeguarding Vulnerable Groups Act (2006) and the Exceptions Order to the Rehabilitation of Offenders Act (1975). However, this duty must be carried out with due regard to all other relevant legislation including the Rehabilitation of Offenders Act (1974), the Data Protection Act (2018), the DBS/Disclosure Scotland (DS) Codes of Conduct and the Human Rights Act (1998). In effect the Council needs to balance the legislation carefully to ensure we recognise the rights of ex-offenders and remain within the legal requirements of the law whilst meeting our Safeguarding responsibilities.

The Protection of Freedoms Act (2012)

The Rehabilitation of Offenders Act (1974)

Amendment Order to the Rehabilitation of Offenders Act (2013)

The Data Protection Act (2018)

The DBS/DS Code of Conduct

The Human Rights Act (1998)

The Safeguarding Vulnerable Groups Act (2006)

Exceptions Order to the Rehabilitation of Offenders Act (1975)

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**The Safeguarding Vulnerable Groups Act (2006)**

The Safeguarding Vulnerable Groups Act (SVA) (2006) provides the legislative framework for the new Vetting and Barring scheme (VBS). In summary the Act allows for the Disclosure and Barring Service (DBS) to make all decisions about who should be barred from working with children and vulnerable groups. The DBS will consider those activities that are classified as ‘regulated’. These activities include both paid and unpaid (voluntary) work. This Act has been superseded to a degree by the Protection of Freedoms Act (2012). Regulated Activity based upon the SVA can be seen under [Appendix](http://www.lincolnshire.gov.uk/jobs/manuals/employment-manual/recruitment-selection-and-induction/disclosure-and-barring-service-(dbs)-policy-and-procedures/114222.article) B: Posts requiring an enhanced DBS check (previous definition).

**The Rehabilitation of Offenders Act (1974)**

The Rehabilitation of Offenders Act (1974) (ROA) ensures those people who have been convicted of a criminal offence in the past are not discriminated against when seeking appropriate employment. After a certain period of time certain (not all) convictions will become ‘spent’ which means a person no longer needs to disclose these to potential employers. See the Policy on the Rehabilitation of Offenders and Self Disclosure. However there are a number of professions and posts where the ROA is ‘over ridden’ by the Exceptions Order to the Rehabilitation of Offenders Act (1975) and the Amendment Order to the Rehabilitation of Offenders Act (2013) – see below.

**Exceptions Order to the Rehabilitation of Offenders Act (1975) and Amendment Order (2013)**

Various kinds of employment, occupations and professions are ‘exempted’ and this 'Exceptions Order' to the Rehabilitation of Offenders Act (1974) overrules the employment rights an ex-offender would otherwise have in respect of ‘spent’ convictions. Ex-offenders have to disclose information about spent and unspent convictions provided the employer states clearly on the job advert and literature and the application form that the job applied for is exempted. These posts are those where it is legally permissible to ask an applicant to complete an enhanced DBS check (which discloses information on all spent and unspent convictions). [Appendix](http://www.lincolnshire.gov.uk/jobs/manuals/employment-manual/recruitment-selection-and-induction/disclosure-and-barring-service-(dbs)-policy-and-procedures/114222.article) A: Posts requiring an enhanced check for regulated activity (current definition) and [Appendix](http://www.lincolnshire.gov.uk/jobs/manuals/employment-manual/recruitment-selection-and-induction/disclosure-and-barring-service-(dbs)-policy-and-procedures/114222.article) B: Posts requiring an enhanced DBS check (previous definition).

However, the Amendment Order (2013) introduces provisions into the Exceptions Order. The Exceptions Order currently provides for full disclosure of a person’s criminal history, regardless of how old or minor the disposal. The Court of Appeal has found that this blanket disclosure of all cautions and convictions is incompatible with Article 8 of the European Convention on Human Rights. The purpose of this amendment is, therefore, to remedy this incompatibility by ‘filtering’ certain cautions and convictions, which are sufficiently old and minor to have no bearing on an employment decision. This means that the individual will no longer have to reveal these cautions and convictions nor will they appear on standard and enhanced disclosure certificates. For further information see the policy on Rehabilitation of Offenders and Self Disclosure

**The Protection of Freedoms Act (2012)**

The Protection of Freedoms Act (2012) makes a number of amendments to the vetting and barring scheme under the Safeguarding Vulnerable Groups Act (2006), which are in force from 10th September 2012. The 2012 Act introduces a new definition of “regulated activity” in relation to children and adults and the activities covered. See [Appendix](http://www.lincolnshire.gov.uk/jobs/manuals/employment-manual/recruitment-selection-and-induction/disclosure-and-barring-service-(dbs)-policy-and-procedures/114222.article) A: Posts requiring an enhanced check for regulated activity (current definition).

**The Data Protection Act (2018)**

The Data Protection Act (2018) is the UK's implementation of the General Data Protection Regulation (GDPR). Everyone responsible for using personal data has to follow strict rules called 'data protection principles'. They must make sure the information is: used fairly, lawfully and transparently**.** [See Privacy Notice – Recruitment](https://www.lincolnshire.gov.uk/local-democracy/information-and-data/privacy-notices/privacy-notice-recruitment/132537.article).

Individuals have the right to see their own personal data subject to the rights of confidentiality of any third parties involved in that information and will receive their own copy of the Enhanced DBS check certificate.

**The Disclosure Scotland and DBS Codes of Practice**

The Codes of Practice are produced by the Disclosure & Barring Service and Disclosure Scotland. All staff, Members, Partnerships, Agencies and Contractors must abide by its contents. The Codes are published under section 122 of the Police Act 1997 in connection with the use of information provided to registered persons (Disclosure information) under Part V of that Act.

It is a requirement of the DBS and Disclosure Scotland Codes of Practice that all Registered Bodies must treat applicants who have a criminal record fairly and not to discriminate because of a conviction or other information revealed. The DBS and Disclosure Scotland are empowered to refuse to issue a disclosure if they believe that a registered person, or someone on whose behalf a registered person has acted, has failed to comply with the Code of Practice. These codes can be accessed at:

* [DBS Code of Practice](https://www.gov.uk/government/publications/dbs-code-of-practice)
* [Disclosure Scotland Code of Practice](https://www.disclosurescotland.co.uk/publications/index.htm)

**The Human Rights Act (1998)**

Under the Human Rights Act anyone who believes their rights as set out in the European Convention on Human Rights have been violated by a Public Authority is able to raise their complaint before a UK court. Managers should therefore be aware of the possibility of legal challenge from ex-offenders who believe their rights have been violated under Article 14 of the Act, which guarantees freedom from discrimination and also Article 8 of the Act, which provides for Right to Respect for Private and Family Life

Equally, they should be aware that victims of physical/verbal/sexual abuse caused by employees known to have a criminal record might also seek legal challenge on the grounds that the organisation failed to protect them sufficiently. In order to avoid prosecution by the courts, the Council needs to apply policies in such a manner that ensure vulnerable people are protected but at the same time treat ex-offenders fairly.

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