

PUBLIC VERSION

Title of Report: Staff appointments: Criminal Records Checks

Paper No: 136/10

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Report of: Director of Procurement and Efficiency / Head of Human Resources

1. Purpose

- 1.1 This paper seeks Members approval of the following recommendations that seek to address those concerns in a manner that should maintain the Government's duty of care to service users and employees, whilst preventing the possibility of discrimination against individuals with a criminal record.

2. Recommendations

- 2.1 To ensure the public's continued trust and confidence in the safe provision of its public services the Executive Council are invited to approve:
- a) the proposal that future staff employed within roles designated as *'Sensitive' to be automatically subject to the Criminal Record checking procedure. A list of posts currently designated as 'Sensitive' is provided in **Appendix 1**.
 - b) the attached policy on Criminal Records checks and authorise its immediate implementation. **See Appendix 2**.
 - c) the introduction of a more robust risk management process which not only considers and regularly assesses the associated risk factors within Government posts, but records the recommendations regarding the suitability for employment of persons within such posts where evidence of a criminal record is established.

* 'Sensitive' being defined in this case as posts that should not to be exempt from any form of background checking because they involve working in areas of particular sensitivity and therefore have high risk factors attributed to them in light of the significant impact which may arise in the event of any failings occurring in their safe and proper delivery ie posts involve working with or having unsupervised access to children or vulnerable adults in the community or in the provision of education, health and care services in general.

3 Financial Implications summary

3.1 Any potential additional costs will apply only to overseas checks.

4. **Background**

4.1.1 The recommendations made in this paper are in response to a paper tabled at the Executive Council meeting of 17 December 2009, which flagged concerns and issues raised in relation to the procedure surrounding Criminal Records checks for staff appointments.

4.1.2 A full policy paper was asked for by Executive Council to clearly identify posts which should be subject to checks, the criteria to be used when evaluating suitability for employment where a criminal record was established and identify the process to be followed when making this assessment. The paper was also to deal with whether exceptions can be made, for example with recently retired staff who are then re-employed.

4.1.3 As a result of a review of the practices in this area, the Executive Council is now provided with recommended alterations to existing recruitment processes and a request to introduce more transparent risk assessments in this area to safeguard the welfare, health and safety of the general public and any other user of Government services, (as well as its own employees), whilst at the same time:

- a) Minimising any financial and reputational risk to Government that may arise as the result of legal challenges being instigated based on a perceived failure to protect the public's interests by not applying and operating appropriate checking mechanisms when recruiting public servants;
- b) Allowing the possibility of employment to persons who have a known criminal record into posts within the Government in circumstances where the background, nature and severity of the offence/s can be shown not to be relevant to the job in question by the use of said risk assessment mechanism;
- c) Preventing the employment of persons with unacceptable criminal records into posts designated as *'Sensitive' by the Government, through the use of the updated processes and procedures;

*A small number of positions involving financial undertakings such as cash handling etc or where there are legal constraints to practicing a profession may also fall into this category. Whether such posts are to be designated as 'Sensitive' will be determined by the relevant Strategic Director using the proposed Risk Assessment framework.

4.1.4 Criminal Records checks have been routinely required for immigration purposes since early 2000. These checks have also been required since 2002 by Human Resources for all Civil Service appointments to posts which the HR Department have deemed as 'Sensitive' in that they involve unsupervised access to children or for some other substantial reason.

- 4.1.5 An updated list of proposed 'Sensitive' positions resulting from the review is provided in **Appendix A** of the proposed new Criminal Records check policy laid out in **Appendix 2** of this paper.
- 4.1.6 For locally resident staff who have never lived overseas in the past 10 years checks are carried out by the Royal Falkland Islands Police only; for overseas staff, equivalent checks are required from their Country of residency.
- 4.1.7 Historically on receipt of the pertinent information, the appointing manager, with advice from HR, determined whether a criminal record precluded an individual from being suitable for appointment to the post applied for. The rationale for the decision has not always been recorded in detail.
- 4.1.8 The Head of Human Resources, Chief Medical Officer and Social Services Manager all advise that such checks are particularly necessary in all circumstances where unsupervised access to children or vulnerable adults is involved.

5. **Key Issues**

- 5.1 In the UK there are differing levels of Criminal Record check that can be obtained ie a Subject Access check under the Data Protection Act or a basic Criminal Record Bureau (CRB) check, both of which detail convictions and cautions on file.
- 5.2 Full disclosure of criminal convictions is a requirement there for any individual applying for an appointment to any post providing accommodation, care, leisure and recreational facilities, schooling, social services, supervision or training to people aged under 18 such as teachers, school caretakers, youth and social workers, child minders as well as those involved in posts providing social services to elderly people, mentally or physically disabled people, alcohol or drug misusers or the chronically sick.
- 5.3 In addition, those who are appointed to any office or employment involving the administration of justice, (including police officers, probation officers etc), must also offer up full disclosure, as must those in certain professions which have legal protection (including lawyers, doctors, dentists, nurses, chemists, and accountants), or where the appointment is to be in a role where national security may be at risk (for example, certain posts in the civil service, defence contractors). Such a disclosure will normally involve an Enhanced Criminal Record Bureau check being obtained.
- 5.4 Historically registering for such checks to be provided to the Government has not been possible even through the Falkland Islands Government London office. It is understood that this to be due to there being no 'Data Protection' legislation in the islands. In any event, persons who have been resident in other countries in the 10 years preceding their appointment can normally only provide Subject Access checks. Alternatively an Interpol check can be requested on occasion if fingerprint identification is provided, but access to this facility is based on

goodwill and therefore cannot be guaranteed and can have financial costs attributed to it.

- 5.5 Due to the legislative and access difficulties surrounding such critical information it is not always possible to receive the same level of data which a UK enhanced check may provide ie full details of cautions and concerns as well as convictions. The Government therefore has to rely heavily upon sight of a Subject Access check obtained by the individual from the Country in which they have resided in previously. This usually refers only to any criminal convictions held on the Country's national computer record. This leads to a degree of vulnerability in the system that could be exploited by undesirable applicants who apply for posts to gain access to vulnerable sectors of the community.
- 5.6 This poses a significant risk for the Government in terms of its reputation for safe and trusted delivery of services and in terms of exposure to potential litigation. This has now been flagged with the Attorney General and the Director of Community Safety to consider in the future.
- 5.7 It is not proposed to allow any exceptions to the requirement for a robust check for individuals employed in 'Sensitive' areas. All future permanent, temporary or casual appointments will therefore be required to undergo a suitable check before they can take up duties without supervision.
- 5.8 It is proposed that having gone through the initial round of the process no further disclosure checks will be required unless:
 - a) an employee moves into a post that requires a full disclosure
 - b) an employee leaves the country for a period for *3 months or more for non work related activities, or;
 - c) the employee has left Government service and is seeking to be re-employed after a period of *3 months has elapsed since their departure from the service;
 - d) it comes to the attention of the Government that further convictions may have arisen during the term of employment and that they have not been disclosed where appropriate to management by the individual concerned.

*this timeframe may be extended in exceptional cases up to a maximum of 6 months where extenuating circumstances exist eg where a staff member has required an extended leave of absence on compassionate grounds etc. The approval for any extension will be granted at the discretion of the CE following consultation with the Head of Human Resources.

- 5.9 It is recommended that the current practice of requiring checks of all staff having unsupervised access to children and vulnerable adults be allowed to continue as this is recognised as best practice for assuring the protection of such a demographic and ensuring an acceptable level of risk ie posts in Department of Health, Education and Social Services and Stanley Leisure Centre.
- 5.10 A large number of staff currently working in such posts however have never been checked therefore it is also strongly recommended that they should now

- 5.11 Where such existing staff are found to be in receipt of a check identifying that a record is held, it is essential that this is brought to the immediate attention of the Strategic Service Director concerned and a joint exercise carried out with HR to assess the risk and document the outcome. The outcome could be the continuation of the contract as is or a recommendation of redeployment if the risk is determined to be too high or, in the worse case scenario, the instigation of disciplinary action where circumstances warrant this to be necessary eg if an individual has deliberately provided false information in their recruitment documentation.
- 5.12 **Appendix B** of the proposed new Criminal Check Policy laid out as **Appendix 2** of this paper provides the details of the proposed 'Risk Assessment' form that would be used to assess both existing positions and all new posts going forward.
- 5.13 It should be noted that certain convictions will permanently preclude a person from employment in posts where there is a potential for unsupervised access to children or vulnerable persons such as those convictions of a sexually exploitative nature. This is in accordance with guidance adopted from the Safeguarding Children guidelines.
- 5.14 Where employees are charged to operate with a significant level of integrity, such as in the Police Force; where there is cash handling or some other key financial responsibilities or where there is access to data concerning children or vulnerable adults eg the Post Office or certain posts within Corporate Resources, potential postholders should also undergo checks before appointment where this is deemed appropriate by the relevant Strategic Director.
- 5.15 In exceptional cases the Chief Executive may allow the appointment of individuals to undertake duties pending receipt of clearance providing their manager can provide adequate evidence in writing that there will be sufficient safeguards to ensure minimal or no risk to the Government by allowing such an exception ie by ensuring supervision of the person at all times.

6. Legal Implications

- 6.1 FIG owes a duty of care to individuals who might be vulnerable to misconduct by those in sensitive posts. Proper and effective vetting coupled with appropriate risk assessments (properly documented) of any concerns revealed by that vetting is essential to make sure that this duty of care is properly discharged. The adoption of the proposed policy should achieve that aim, and make sure that a consistent practice is adopted by FIG in this area.

7. Financial Implications

- 7.1 In terms of local checks, any costs to departments will be offset by additional income to the police, so there is a net nil effect. Any potential additional costs will apply only to overseas checks.

8. HR Implications

- 8.1 This practice is a vital and necessary addition to the recruitment process as it proactively aids equality of opportunity for employment for those with diverse backgrounds whilst at the same time minimising the Government's exposure to legal challenge. It also serves to protect the Government's integrity in the delivery of its services thereby enhancing the welfare and safety of the community at large.
- 8.2 The strengthening and formalising of the procedure is welcomed in the interest of equity and effective service delivery and though it will involve some additional activity initially in handling the checking process required for existing staff and for dealing with any consequences that arise thereafter as a result of any findings, it should revert to being absorbed within existing workloads upon completion of the internal exercise.
- 8.3 The decision to retrospectively check existing staff will need to be handled with particular sensitivity, however the benefits of having a robust system to safeguard children and the vulnerable in our care is considered to be of paramount importance.
- 8.4 Where individuals are identified as having an existing record, whether or not it was known at the time of appointment, if the degree of risk is felt to be unacceptable at this point in time, as noted previously, steps will be taken to either redeploy the person into a less sensitive area or to dismiss them from service if circumstances merit this.

EXCO DRAFT PAPER 136/10 - APPENDIX 1

List of existing 'Sensitive' Posts

Teachers – all level of education for those under 18

Learning/Classroom Support Assistants

Hospital Doctors

Social Workers

Care Assistants

Houseparents

Sports Coaches

Nurses

Dentists

Opticians

Pharmacists

Physiotherapists

Judicial Appointments

Police Officers

EXCO DRAFT PAPER 136/10 - APPENDIX 2

Proposed Policy

EMPLOYING PEOPLE WITH A CRIMINAL RECORD

POLICY STATEMENT

- 1.1 The Falkland Islands Government is committed to equality of opportunity for all job applicants and aims to select people for employment on the basis of their individual skills, abilities, experience, knowledge and, where appropriate, qualifications and training.
- 1.2 The employment and management of people with criminal records has to be approached in a responsible and balanced way and so the purpose of this policy is to facilitate the Government's capacity to operate in line with recognised best practice in its recruitment of staff with a criminal record.
- 1.3 It aims to ensure that through effective application of the policy the Government maintains its duty of care to service users and employees, whilst not unfairly and unreasonably discriminating against people with a criminal record.
- 1.4 In accordance with this premise, the Government will consider ex-offenders for employment on their individual merits, however it will, as a matter of course, take into consideration whether the job being applied for should or should not be considered as exempt from disclosure. 'Sensitive' being defined in this case as posts that the Government considers to involve particularly sensitive areas of risk and which should therefore be exempt from any waiver regarding background checks, ie the posts involve working with, or having unsupervised access to children or vulnerable adults in the community or the provision of education, health and care services and so applicants will be required to make a full disclosure with regard to any criminal records including both 'spent' and 'unspent' convictions. See Appendix A for the list of posts considered to be 'Sensitive'.
- 1.5 Other Government posts that require a high level of trust and integrity may also fall into this category. Such posts will be determined by the relevant Strategic Director and will only be nominated as such where a thorough risk assessment of the post has indicated that this decision is both proportionate and relevant. See Appendix B for the Risk Assessment template to be used to assess FIG posts.

POLICY PRINCIPLES

- 2.1 All applicants for Government posts will be asked to disclose convictions upon application. Criminal records will only be considered for recruitment purposes when the conviction record is relevant. Having an 'unspent' conviction will not necessarily bar a candidate from employment. This will depend on the circumstances and background to the offence(s).
- 2.2 Any information given will be completely treated as confidential and will be considered only in relation to the post to which the application refers.
- 2.3 Failure by a candidate to reveal information that is directly relevant to the post applied for could lead to the withdrawal of an offer of employment.
- 2.4 Where posts are designated as 'Sensitive', applicants will be advised of that fact at the recruitment stage. All application forms, job adverts and recruitment briefs will contain a statement that a disclosure will be requested in the event of the applicant being offered the position. A Frequently Asked Question sheet will be made available in such circumstances. See Appendix C

- 2.5 Criminal record checks will be obtained from a relevant body ie the Royal Falkland Islands Police if the applicant is a Falkland Islands resident or the Criminal Records Bureau, (or Disclosure Scotland), if the individual is from the UK. A similar certification check will be sought out from equivalent international agencies where the applicant is neither a Falkland Island nor UK resident.
- 2.6 Even where a post is recognised as one which is 'Sensitive' and convictions are found through the checking process, the Government may still elect to employ an individual unless the Risk Assessment process identifies that the nature and circumstances of the conviction are such that it would be inappropriate to employ the individual in the role.
- 2.7 FIG is committed to ensuring that all information provided about an individual's criminal convictions, including any information released in disclosures, is used fairly and stored and handled appropriately. Data held on file about an individual's criminal convictions will be held only as long as it is required for employment purposes and will not be disclosed to any unauthorised person.
- 2.8 Any matter revealed in a disclosure will be discussed with the applicant before withdrawing any conditional offer of employment.
- 2.9 All staff who are involved in recruitment and selection will be suitably trained to identify and assess the relevance and circumstances of offences.

In Summary

- 2.10 It is important that people who have been convicted are treated fairly and given every opportunity to establish their suitability for positions.
- 2.11 Criminal record information is sensitive, personal information and must be treated with care and responsibility
- 2.12 People involved in recruitment will be appropriately trained and will not treat the existence of the criminal record checking service as a substitute for systematic recruitment pre-appointment checks such as references.

POLICY GUIDANCE

- 3.1 This guidance enhances the previous policy and practice for carrying out Criminal Record checks.

Recruitment application forms

- 3.2 All applicants will be asked on the general recruitment application form to disclose any 'Unspent' convictions.

Disclosure of information

- 3.3 Where the post is of a sensitive nature ie that it falls under one of the following categories:
- Work involving matters of national security, for example some civil service posts or defence contractors.
 - Work that brings the person into contact with vulnerable groups such as the infirm, elderly, mentally ill and young people under the age of 18.
 - Professions that have legal protection, for example nurses, doctors, dentists, chemists, accountants.
 - Posts concerned with the administration of justice, for example, police officers, lawyers, probation officers, traffic wardens.
 - Health service appointments.

HR will inform individuals on application that ex-offenders must disclose information about both 'spent' and 'unspent' convictions.

Assessing whether the job require a criminal records check.

3.4 If the job involves a substantial level of access to children or vulnerable adults and where that access may be unsupervised and will be regular (ie at least once a month) or sustained (more than 3 occasions per month or overnight) it will be considered 'Sensitive' and require a check. The main elements to be considered when making such a decision will include questioning if:

- The position involves one to one contact with children or other vulnerable adults as employees, customers or clients?
- The position is unsupervised?
- The situation is an isolated one?
- There is regular contact?
- The children or adults are particularly vulnerable?

A fuller description of each of these elements is attached in Appendix D

Interviews

3.5.1 The first step at interview is to assess the candidate's skills, experience, knowledge and qualifications against the criteria in the person specification.

3.5.2 Information about relevant criminal convictions and other issues of concern should be discussed at the interview to assess the job-related risks. Candidates should be given the opportunity to give any other information they wish to draw attention to that may improve understanding and fair decision making.

Requesting a Check

3.6.1 When it is identified that a Criminal Record check is a requirement for a post, recruiters will request this as part of the appointment process. (It will be considered along with references and medical checks to judge whether the applicant is suitable for the post).

3.6.2 The checks currently available to Government are:-

- **Royal Falkland Islands Police Criminal Record Check**; applicable for all periods of residence in the Falkland Islands
- **Copy of a Standard or Enhanced Criminal Record Bureau check** if such a check has been performed by a previous employer
- **Interpol or National Crime Information System (NCIS) check** if possible, there is no right to access this service and current access is informal and dependant upon good will. In addition this does not specifically cover the level of check required for the protection of children and vulnerable adults
- **Subject Access request under the UK Data Protection Act 1998 or similar from country of residence**
- **Through FIGO we can apply for a List 99 check** on all teachers in relation to their work in the UK only. There is no similar agency in other countries.

This list may be subject to change as and when further routes for such checks are made available to the Government.

3.6.3 Any checks must be requested by a member of HR who should confirm the identity of the person applying for the position. If an applicant has changed their name, they must provide evidence of said change.

Cost of checks

- 3.7.1 The Government will pay for the Criminal Record check if required from Royal Falkland Islands Police. Other charges may be levied against the individual for such certification. Where this is the case, the charge may be reimbursed at the discretion of the Chief Executive following consultation with the Head of Human Resources.

Can the successful candidate start work before receipt of a response from the relevant official bodies is provided?

- 3.8.1 The successful candidate should not normally start work until a relevant criminal records check has been received and proven to be satisfactory, (and the individual has also received suitable reference and medical clearances).
- 3.8.2 Only in exceptional cases, namely where the Chief Executive has been assured that a full risk assessment has been carried out on a post and, as a result, the assessed risk is minimal and has been recorded as such and in addition there is a high level of supervision guaranteed to be made available to monitor the individual in post until a satisfactory check has been received, may it be possible to consider a start date after the criminal check has been applied for but before it has been received.

When the check arrives

- 3.9.1 If the check reveals a record of a criminal nature, the applicant must have the opportunity to discuss the information contained in the check before the recruiter makes a decision. This will also apply where an individual has been exceptionally granted a start date prior to the check's receipt. A decision to go forward and make a formal offer or to confirm an appointment will only be made following such a discussion.
- 3.9.2 If the information in the check contradicts the information provided by the applicant, the recruiter should cover the reasons as to why this is the case as part of this discussion as there may be many reasons why the information is contradictory. Where it is found that the individual deliberately misled the appointment panel without good reason or for personal gain, any offer will be withdrawn.
- 3.9.3 In the case of existing employees moving to new posts that require checks to be completed, where there are no acceptable reasons provided for any contradictions offered disciplinary action will be initiated.
- 3.9.4 Applicants have the right of appeal to the CRB/Royal Falkland Islands Police/relevant checking authority if they disagree with the information contained in the check received from these bodies.

Assessing the relevance of criminal records

- 3.10.1 The appropriateness of employing someone with a criminal record will vary depending on the nature of the position and the circumstances and background of the offences. When assessing suitability, applicant's skills, experience and conviction circumstances will be weighed against the risk assessment criteria for the job.
- 3.10.2 The FIG Risk Assessment Framework should be completed by the relevant Strategic Director and Head of Human Resources, with input from the potential line manager and/or recruitment panellists as necessary.

Confidentiality

- 3.11.1 Information relating to offences should be treated and remain on a strictly confidential basis.
- 3.11.2 Criminal Record check information will be restricted to recruiters and HR employees. Such information will be kept within the Personal File in secure storage.
- 3.11.3 Once the appointment is confirmed, HR will note on the personal file that a check has been done, recording the date the information was received and include the relevant information on the risk assessment.
- 3.11.4 If an offer is withdrawn then the correspondence will be kept on the relevant filing system, (including the check).
- 3.11.5 The Government will not release information on employees gained from checks to other organisations.

Existing employees

- 3.12.1 If it comes to light that an existing employee:
 - had not been asked to make an appropriate disclosure at the recruitment stage and should have been or;
 - previously had not required a check, but later does as per the terms of this policy or;
 - has incurred convictions since being checked originally;checks will be instigated immediately upon discovery that this is the case.
- 3.12.2 In such cases when a check reveals a relevant conviction would result in a recognised risk if the employee were to remain in post, discussions will be arranged between the employee, the manager and HR to decide how to manage the situation effectively.
- 3.12.3 The employee may be accompanied by their trade union representative or a work colleague to such meetings. Such discussions may not necessarily result in a recommendation to dismiss. All appropriate options will be considered at the meeting.
- 3.12.4 Where there is a possibility that an existing employee may move roles into one that requires a check, a satisfactory check must be produced before the individual can be confirmed in post.
- 3.12.5 Existing employees must alert HR to any convictions they incur during the course of their employment. A discussion as noted in 3.12.2 will then be instigated as appropriate.

Contractors, Consultants and Locums

- 3.13 The Government will require assurances that contractors have in place a system that ensures their employees are checked in line with the requirements outlined in this policy as appropriate. It is the responsibility of the Directorate engaging the contractor, consultant or locum to ensure that adequate safeguards are in place.

Training of staff

- 3.14 Government staff involved in leading the recruitment and selection of staff will be required to be appropriately trained and conversant with this policy and its provisions.

APPENDIX A

Key areas where posts are designated as 'Sensitive', (as defined by FIG)

All posts in the Department of Health and Education, (including Social Services)

All staff in the Leisure Centre

All staff in the Royal Falkland Islands Police

All sub contractors working in the above areas

Any other post within any Directorate where the responsible Strategic Director deems it appropriate.

Examples of the types of roles covered include positions such as:

Teachers – all level of education for those under 18

Learning/Classroom Support Assistants

Medical Doctors

Social Workers

Care Assistants

Houseparents

Sports Coaches

Nurses

Dentists

Opticians

Pharmacists

Physiotherapists

Health Care Professionals

Judicial Appointments

Police Officers

Sports Attendants

This list is not exhaustive.

APPENDIX B

Falkland Islands Government Recruitment or Continuation in post of persons with a Criminal Record

RISK ASSESSMENT FRAMEWORK

1. BACKGROUND

This framework is to assist Departmental managers in the assessing a) whether a post falls under the category of 'Sensitive' and b) an applicant's/employee's suitability against a post in the light of the individual's criminal record status/offending background.

In all cases it should be noted that:

- it is important to maintain an open, non-judgemental attitude when undertaking this assessment.
- the aim of this procedure is to ensure that the applicant receives a fair and objective assessment as part of the Government's commitment to preventing unfair discrimination against ex-offenders.

For each Risk Assessment Framework review the following principles will apply:

- the safety and well-being of service users, staff and others will be the overriding priority at all times
- the essential requirements of the person specification for the post in question must be fully met.

It should be noted that where:

(a) Posts require a Criminal Records Check or a Subject Access Check:

a satisfactory disclosure will be required from the appointee which will reveal all spent and unspent criminal records. This assessment framework is to be applied again if

- (i) a shortlisted applicant or recommended appointee has indicated that s/he has a current criminal record and/or a spent record in advance of the check being undertaken, and this information is relevant to the post.
- (ii) the results of a check do not appear to be satisfactory when compared with the requirements of the post.

(b) Posts which do not require a Criminal Records Check:

This assessment framework may be applied to assist assessing the potential risk impact of employing a shortlisted applicant/recommended appointee who has indicated that s/he has an unspent criminal record.

Part A. FRAMEWORK FOR ASSESSMENT – ASSESSING A POST FOR ‘SENSITIVE’ STATUS

Directorate :

Post Title :

Line Manager :

To assess the nature of the role against the risks involved to establish whether the post should be considered as an ‘Sensitive’ post as defined in the Falkland Islands Government Criminal Records Checking Policy please complete the below:

Question	Additional Information	Comments/Assessment	Yes/No
Q1. Is this post one which includes positions of trust, clinical areas, financial management, working regularly children (aged under 18 years), vulnerable adults or the elderly.		1. positions of trust, 2. clinical areas, 3. financial management, 4. working regularly children (aged under 18 years), 5. vulnerable adults 6. the elderly.	
Q2. Are other legal constraints applicable to the role and its operation?			
Q3. Does the post involve direct responsibility for finance or items of value?			
Q4. Does the post involve direct contact with members of the public?			
Q5. Does the post involve access to data concerning children or vulnerable adults?			

For a post to be considered as an ‘Sensitive’ post you do not require a ‘yes’ response in every box. A ‘yes’ in one of the boxes may be considered sufficient to merit an ‘Sensitive’ status if the tasks which make up the role involve a significant level of the activity outlined in any of the questions.

This post is/is not to be designated as an ‘Sensitive’ Government post for the following

reasons:.....

.....

Signed.....

Date.....

Head of Human Resources

Counter Signed

Date.....

Strategic Director

Notes for successfully completing an assessment of a post for 'Sensitive' status

Q1 For these posts details of spent records/convictions must be made known to the prospective employer. It is illegal to employ certain offenders in some occupations.

Q2 The UK's Protection of Children Act 1999 (POCA) maintains a list of people who must not work with children. This list will be checked for any Falkland Islands or UK resident as part of an Enhanced Disclosure for posts which involve work with children. Resident of other National States will be checked against any equivalent list if available in their country.

The UK also operates a Protection of Vulnerable Adults (POVA) scheme which maintains a list of people who must not work with vulnerable adults. This list will be checked as part of an Enhanced Disclosure for posts which involve work with vulnerable adults where the applicant is a resident of the Falkland Islands or the UK. Resident of other National States will be checked against any equivalent list if available in their country.

Q3. If yes, consider what could happen and the seriousness of that eventuality.

Q4. If yes, consider what could happen and the seriousness of that eventuality.

Q5. If yes, consider what could happen and the seriousness of that eventuality

Part B. FRAMEWORK FOR ASSESSMENT – ASSESSING THE APPLICANT AGAINST A POST

To ensure consistency in decisions made, where a previous offence/criminal conviction is confirmed by a disclosure the following assessment should be completed to make a decision on employability of an individual in the role applied for.

The purpose of this Risk Assessment process is to give an indication of Low, Medium, Medium to High or High Risk, in order to make a justifiable decision about whether or not to appoint a candidate.

The specific issues taken into account are:

- the nature of the offence
- when the offence occurred
- the age of the applicant when the offence occurred
- multiple offences

An average scoring of 1 will be considered a low risk - the applicant may be appointed

An average scoring of 2 will be considered a relatively low risk – the applicant may be appointed if reviewers are content that the applicant is unlikely to re-offend and that there are sufficient management measures in place to prevent any re-offending impacting the safe delivery of the service and to protect the Government against any legal exposure should this ever happen.

An average scoring of 3 will be considered a medium risk - further details should be gathered from the applicant to review any mitigating factors. Appointment should only ever be made with such a scoring if the reviewers can gather sufficient evidence to show that the risk of re-offending is negligible and any risk factors can be robustly managed either through additional supervision or through amending the duties to mitigate the risk.

An average score of 4 or above will be considered as a medium to high or high risk - no appointment would be made in this instance.

Assessing the nature of the conviction and its relevance to the role

Candidate Name :

Date of Birth:

Age:

Post Applied for :

Has the conviction been Declared? Y/N

Risk Factors Relating to the post		
Question	Comments/Assessment	Risk 1 --low 5---high
Q1. Will the post offer an opportunity to re-offend?		
Q2. Consider whether the offence could create unacceptable risks for:	<ul style="list-style-type: none"> - other employees - pupils/patients/customers - service users - suppliers - the public at large - property - the reputation of FIG 	

Risk Factors Relating to the Crime		
Question	Comments/Assessment	Risk 1 --low 5---high
Q3. What type of crime was it and to what level?		
Q4. How old was the individual and has a significant period of time passed since the offence occurred?		
Q5. Has the offence been decriminalised since the conviction?		
Q6. Consider the country in which the offence was committed.		
Q7 What were the circumstances of the conviction? - when did it occur? - was it a one-off or part of a history of offending?		

Likelihood of re-offending		
Question	Comments/Assessment	Risk 1 --low 5---high
Q8. What evidence is there of: - remorse? - motivation to change since the offence occurred? - successful rehabilitation?		
Q9. From the evidence gathered does it look like the applicant is likely to re-offend?		
Q10. What factors might decrease or increase risk of re-offending if appointed to the role?		

Table of Risk	Average Score 1=Low; 5=High.	
Overall Risk Factor Relating to Post		
Overall Risk Factor Relating to Crime/Record		
Likelihood of re-offending		
Total Average Risk Factor		

Risk Acceptable; person recommended for appointment? Y/N

Signed(Director)

Signed(HR)

Date

Date

Notes for successfully completing an assessment of the applicant against a post

Q1. Consider opportunity for this and in particular whether one-to-one or unsupervised contact might occur.

Q2. Consider in particular whether one-to-one or unsupervised contact might occur.

Q3. In general, custodial sentences are more serious and the longer the sentence the more seriously the Courts viewed the crime at that time.

Q4. In the UK, rehabilitation periods are cut in half where the person was under 18 at the time of conviction.

Q5. On occasions certain activities may be decriminalised. Consider whether the fact that the individual partook of the activity may still warrant cause for concern.

Q6. For example some activities are offences in Scotland and not in England & Wales, and vice versa.

Q7. The applicant may be approached for more details

Q8. Supporting evidence may be available from specialist agencies e.g. Probation Service

Q9. Consider whether the individual's circumstances have changed since the offence.

Q10. Consider supervision, location, options

Appendix C
Disclosure of Criminal records
Question and answer sheet for new applicants

Q. If I have a criminal conviction, can I still be employed?

A. Having a criminal record will not necessarily bar anyone from working with the Falkland Islands Government. It will depend on the nature of the position and the circumstances and background of the offence.

We conduct a greater level of checks on staff who work with certain groups such as children and vulnerable adults and other posts which require a significant level of trust and integrity. We will however consider a range of factors before making our decision to appoint – the nature of the offence - the age at which it was committed – its relevance to the post in question - whether the applicant has a pattern of offending behaviour -whether the applicants circumstances have changed since the offending behaviour - the circumstances surrounding the offence and the explanation(s) offered by the convicted individual.

Q. Why does the Falkland Islands Government ask for disclosure of criminal convictions?

A. We do this because it is our responsibility to protect the welfare, health and safety of the community we serve. In doing this, we balance the need to prevent unsuitable people from working in sensitive posts, against the possibility of discrimination against rehabilitated ex-offenders.

Q. What positions can the Government obtain disclosures for?

A. Any employment or other work which is concerned with the provision of health, education, policing and caring services and which is of such a kind as to enable the holder of that employment or the person engaged in that work to have access to persons in receipt of such services in the course of their normal duties. Post involving high levels of integrity and public trust may also require full disclosure.

Q. What is a criminal record?

A. A record of convictions held usually on National Police authorities computer systems for individuals convicted of crimes. These tend to hold information about criminal records, i.e. convictions, cautions, reprimands and warnings.

Q. What is a Criminal Records Check?

A. Our organisation undertakes criminal records checks for some posts. A standard check is used primarily for posts that involve working with children or vulnerable adults. They may also be used to check staff working in other roles, e.g. accountancy related jobs.

For those posts that involve a greater degree of contact with children or vulnerable adults, i.e. the type of work that involves regularly caring for, supervising, training or being in sole charge of such people, candidates will require an Enhanced check. For both cases we are checking candidates to see if they have any convictions, current and spent, as well as cautions, reprimands and final warnings. We also make checks on staff working with children against the UK's POCA (Protection of Children's Act) Lists or other National equivalents where they exist. This list contains names of people who are banned from working with children.

Q. What is a Rehabilitation period?

A. A rehabilitation period is a set length of time from the date of conviction. After this period, with certain exceptions, an ex-offender is not normally obliged to mention the conviction, when applying for a job. In FIG, there are certain circumstances / jobs that a conviction must be declared, e.g. a nurse working on a children's ward.

- Q. What is a spent conviction?**
A. A 'spent' conviction sets out to make life easier for many people who have been convicted of a criminal offence, but then have had a period in which they have not committed any further offences. In general, the more severe a penalty is, the longer the rehabilitation period. Once a rehabilitation period has expired and no further offending has taken place, a conviction is considered to be 'spent'. When assessing the suitability of a person for a position of trust, a potential employer is entitled to ask a job candidate to reveal all convictions, whether spent or not. This is to ensure that children and other vulnerable groups are adequately protected from those in positions of authority over them, e.g. a nurse who looks after children.
- Q. What is an 'unspent' conviction?**
A. A conviction is described as 'unspent', if the rehabilitation period associated with it has not yet lapsed. A rehabilitation period is a set length of time from the date of conviction, according to the sentence imposed.
- Q. How do I know if the job I am applying for is required to provide details of all convictions, spent or unspent?**
A. There are some jobs which are positions of trust and are ones which involve a far greater degree of contact with children or vulnerable adults, e.g. a nurse working on a children's ward or a cleaner on a children's ward. For these types of jobs, we require to see a person's full criminal history in order to assess their suitability for a position.
- Q. What is a caution?**
A. A caution is a formal warning about future conduct given by a senior police officer, usually in the police station, after a person has committed an offence. It is used as an alternative to a charge and possible prosecution.
- Q. What is a reprimand?**
A. A reprimand is issued by the police to a young person under 18 for a minor first offence.
- Q. What is a warning?**
A. A young person given a second formal warning about future conduct is given a final warning.
- Q. What is the definition of a child?**
A. The UK's Criminal Justice Court Service Act (CJCSA) defines a child as someone who is under 18 (under 16 if the child is employed). FIG use this definition for this purpose.
- Q. What is the definition of a vulnerable adult?**
A. A vulnerable adult means a person aged 18 or over who has a condition of the following type:
- a learning or physical disability;
- a physical or mental illness, chronic or otherwise, including an addiction to alcohol or drugs; or
- a reduction in physical or mental capacity.
- Q. If I am recruited from abroad, will I still be checked for criminal records?**
A. Yes - we will carry out necessary police checks in line with that Country's justice system and those checks will be of a similar nature to those established by us for this requirement.

Appendix D

Criteria to be considered when identifying posts subject to checks

Judgements on whether or not the amount of access to children and/or vulnerable adults can be regarded as substantial can be based on the following criteria:

Does the position involve one to one contact?

Such contact is relevant, especially if it occurs on a regular basis, away from the child or vulnerable adult's home, or separate from other adults or children.

Is the position unsupervised?

Where no other responsible adult is likely to be present and the position involves appreciable periods of time with children or vulnerable adults this should be taken into account.

Is the situation an isolated one?

There is greater vulnerability where a child or vulnerable adult is living away from home, eg in residential care, possibly for lengthy periods, and this may be enhanced the further the child/adult in question is from the parental home or where parental visits are infrequent. A similar situation could arise where there is opportunity to take children/vulnerable adult singly, or in a group, away from the family surroundings (for example, on holiday).

Is there regular contact?

The more regular contact a person has with the same child/vulnerable adult, or group of their peers, the greater the opportunity to put the child/vulnerable adult at risk. This is especially so if the contact is unsupervised, or occurs away from other children/adults. Intermittent contact would not normally be regarded as constituting substantial access for the purpose of requesting checks although there may be exceptional circumstances. Checks should not be carried out simply because an individual works at, or visits, schools, or other establishments where children/vulnerable adults are present, as part of their duties, unless those duties would normally bring them into unsupervised contact with the same children/vulnerable adults on a regular basis.

Are the children particularly vulnerable?

It may be considered that younger children are more vulnerable than older children and generally less able to protect themselves, but the nature of the risk must also be considered. Younger children may be at more risk of sexual abuse; older children from drugs. More particularly, children with a physical or mental disability or who have social or behavioural problems are likely to be more vulnerable than those who are without disability and/or have a stable home background.

The above criteria can aid judgement and should generally be considered together, though there will be individual circumstances where one factor alone would be enough to justify a check.