



Response to Disclosure (Scotland) Bill Consultation

Submitted by: Business in the Community

About us

Business in the Community is the oldest and largest business-led membership organisation dedicated to responsible business. We were created nearly 40 years ago by HRH The Prince of Wales to champion responsible business.

We inspire, engage and challenge members and we mobilise that collective strength as a force for good in society to:

- Create a skilled, inclusive workforce today and for the future
- Build thriving communities in which to live and work
- Innovate to repair and sustain our planet.

Today, we have a vibrant membership of hundreds of businesses, large and small, connected by the conviction that their success is inextricably linked to society's prosperity.

Business in the Community and Ban the Box

Business in the Community has long been an advocate of removing barriers to employment for people with criminal convictions. With Walgreens Boots Alliance, we set up the national Reducing Reoffending through Employment Network in 2012 and launched the Ban the Box campaign in the UK in 2013. The campaign urges employers to remove the tick box from application forms that asks about criminal convictions and to decide whether, when and how best to ask for that information later in the recruitment process. The campaign has gained traction nationally, with more than 130 employers currently signed up, covering more than 187,000 roles. It has been adopted by the Civil Service in England and features in the Ministry of Justice's employer guide.

The campaign was officially launched in Scotland on its 5th anniversary in 2018. Since then Business in the Community has joined Release Scotland Steering Group. Now Ban the Box is promoted as part of the Release Scotland approach to recruitment.





Responsible business perspective

Business in the Community welcomes the direction of the Disclosure (Scotland) Bill, especially its focus on rehabilitation and the removal of barriers to work for people with criminal convictions. Its aim to strike a balance between rehabilitation and safeguarding is also to be commended, as is the empowerment of individuals to have control over their data.

Our member businesses engaged in inclusive employment are proactive in providing opportunities to people with criminal convictions and removing barriers in their recruitment processes. These businesses have seen the powerful impact employment has on individuals' lives and are aware of its role in reducing reoffending.

Ban the Box is a meaningful way that employers can indicate their willingness to open up their mainstream recruitment practices to people with criminal convictions. It is aligned to the rehabilitation aspect of the proposed Disclosure (Scotland) Bill.

We would encourage the Scottish Government to adopt the Ban the Box commitment and promote it as part of the Disclosure (Scotland) Bill and surrounding communications. This could be done through signposting by organisations such as Scottish Enterprise, Highlands and Islands Enterprise and the South of Scotland Enterprise agencies.

Whilst we welcome the direction of the Bill, we do have some further comments and recommendations for the Scottish Government as they consider this Bill. Our aim is to ensure it creates a system that supports employers and individuals as they contribute to an inclusive, diverse workforce as part of a vibrant wellbeing economy in Scotland.

Response to specific aspects of the bill

The Disclosure (Scotland) Bill will seek to make the following changes to current provisions which we believe are relevant to employers.

Replacing the concept of 'doing regulated work' with a list of core activities giving rise to 'regulated roles' that trigger mandatory PVG scheme membership (voluntary and paid). 'Regulated roles' will be synonymous with roles holding power or influence over children or adults who are vulnerable as a result of receiving a service;

BITC agrees that the concept of 'doing regulated work versus regulated roles' to trigger a PVG scheme membership requirement is a good one, as job duties can vary widely from role titles. However, this change does require clear guidance for where responsibility lies to trigger the PVG scheme application and how and when this should be done. For example, how regularly does the individual need to 'do regulated work' in order to require a PVG, and whose responsibility is it to





know that the work is regulated and will trigger the PVG scheme? What guidance will be given to large and small businesses on this change and who will provide it? Who will determine the level of influence on vulnerable groups which will trigger a classification of regulated work? Especially for small organisations who lack a dedicated HR function, clear guidance and support is essential to ensure the law is being followed, as well as to give confidence to employers that they are doing the right thing.

Reducing four main levels of disclosure (basic, standard, enhanced and PVG) to two (Level 1 and Level 2). The ten products offered under the current structure that contain vetting information will be reduced to four within the new two-level structure, plus 'confirmation of scheme membership' as a replacement for the 'statement of scheme membership';

BITC welcomes the simplification of a complex system. A two-tier approach will make it clearer for businesses to understand when and why checks are needed and should improve the effectiveness of the scheme.

Changing the period after which an application can be made for removal of a conviction for an offence on schedule 8A of the 1997 Act (now re-stated and amended in List A of schedule 1 in the Bill). In relation to spent convictions for offences currently listed on schedule 8B of the 1997 Act (re-stated and amended in List B, set out in schedule 2 of the Bill), the disclosure period will be shortened. The process for asking for convictions to be removed from a disclosure will be in the form of an internal application to Disclosure Scotland for removal, followed by a right to apply for review by the independent reviewer and from there an appeal to the sheriff on a point of law;

BITC agrees with this change and believes that this will assist rehabilitated individuals in securing work and will remove one of the barriers they face to employment due to bias.

There will be new rules on the disclosure of convictions obtained by a person whilst under the age of 18. These will prevent automatic disclosure of such convictions. Instead an assessment will be made as to whether such convictions should be disclosed, and this will be subject to a right of review by the independent reviewer.

BITC agrees with this change and believes that this will assist individuals making the transition to adulthood without the negative narrative from childhood prosecutions serving as a barrier in the next stage of life. Responsible employers will welcome details that no longer have a bearing on employment risk being taken out of the equation when considering prospective employees.

All products available via online application. Digital certificates with one "certificate" produced which the applicant can then share. Applicants for disclosure will need to explicitly consent for their disclosure to be shared with a third party.



BITC sees the benefits from a digital system, including reducing wait-times for employers going through this process. However, it is essential to remember that as Scotland has a diverse and disparate economic landscape, many businesses (and predominately SMEs) do not have access to reliable and fast internet, and therefore the system design should consider those with slower connection speeds and those who require an analogue interface.

Whilst we welcome the right of individuals to view their data before prospective or current employers, we recognise that there is the potential for this to slow the process down should the individual request changes to their data. Guidance for individuals and employers on both the opportunity to review and request changes, and the potential implications of decisions made around this to the process, must be provided, with responsibility for this provision being transparently assigned for accountability.

[Revised fee structure for which further consultation will be required. Free checks for qualifying volunteers will continue](#)

Given the changes to the law in regard to 'doing regulated work' versus 'regulated roles' and the potential for this to mean that employers are triggering the PVG scheme more frequently as people's roles mutate over time in and out of the system, it is essential that the consultation on fee structures takes this into account. The Disclosure (Scotland) scheme should be intended to balance rehabilitation of the individual with safeguarding of the community but should not create barriers for employers, especially SMEs, from supporting the rehabilitation through the provision of employment opportunities. If the fee structure proves too prohibitive, employers may change how they design roles in a way that restricts opportunities for progression as well as restrict their willingness to recruit people with convictions.

For further information or any queries about our submission please contact:

Dr Cynthia Marks, Senior Manager – Policy and Operations
Business in the Community Scotland