



Christina McKelvie
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Room T2.60
The Scottish Parliament

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Dear Ms McKelvie

**HISTORICAL SEXUAL OFFENCES (PARDONS AND DISREGARDS) (SCOTLAND)
BILL**

I refer to the request by the Equalities and Human Rights Committee for further information in relation to the above Bill and respond on behalf of the Scottish Courts and Tribunals Service (the "SCTS") acting in its role to provide efficient and effective administration to the courts. The response does not include the views of the Judiciary.

As an organisation which has made significant progress towards fulfilling our equality outcomes, the SCTS is supportive of the general principles of the Bill and would endorse the opening remarks made during the evidence sessions on what promises to be a significant piece of equality legislation.

Criminal case records

Criminal case records are retained by the SCTS and material from every case is ultimately transferred to the National Records of Scotland (NRS) for the purpose of permanent archiving in line with our record management procedures and public records legislation. In general, criminal case records from the Sheriff Court are transferred to NRS after 25 years and records from the High Court are transferred to NRS after 10 years. The detailed record retention schedule in respect of Sheriff Court records is available on our website at:

http://www.scotcourts.gov.uk/docs/default-source/default-document-library/sheriff_court_records_schedule.pdf?sfvrsn=6

It is our understanding that provisions of the Bill would not be used to require the deletion from the archived court record held by NRS of information about disregarded convictions. Section 16 in particular highlights that "official records" for the purposes of the Bill does not include any records in the care of the Keeper of the Records of

Scotland. It is however acknowledged that there would be scope for an annotation to be made to such a record as a result of the Bill.

Issue by the SCTS of extract convictions

The Scottish Government may wish to further consider the matter of requests made to the courts for extract convictions in relation to unspent convictions, where that conviction has been disregarded. In particular they may wish to consider whether it is necessary that Regulations under section 10 of the Bill would be required to address any concerns that an extract conviction could be issued in respect of a disregarded conviction without that conviction being annotated or otherwise with the effect of the disregard.

However, given the sentences routinely imposed in relation to the disregarded offences, and the relevant rehabilitation periods set out in the Rehabilitation of Offenders Act 1974, we have been advised that given the historical nature of the offences this matter is unlikely to arise.

Application for disregard to the Scottish Ministers

Where further information is sought from the SCTS by the Scottish Ministers under section 6 of the Bill, administrative staff will be involved in identifying the relevant cases(s) and providing that further information, if it is held by the SCTS.

Depending on when the conviction occurred, identifying the relevant case(s) will involve a search of the data held on the SCTS COP II system (I.T. based) or its paper based records such as court sheets, summary complaints or indictments. It is anticipated, that the Scottish Ministers will provide the SCTS with sufficient details (such as the name and date of birth of the applicant and details of the relevant conviction(s)) in order that SCTS staff can identify the relevant case(s) from its COP II system or its paper based records.

Subject to the consideration of any data protection restrictions, it may be that any request of the SCTS for further information could be supported with a copy of the application made under section 5 of the Bill to facilitate the identification of the relevant case(s) by SCTS staff.

The SCTS places a significant weight on matters of confidentiality and in particular where sensitive information requires to be passed between organisations. As was indicated by Police Scotland in their evidence on 8 February 2018, the Scottish Ministers may have to consider how copy applications (if they are to be provided to the SCTS) and the supply of further information can be passed to and from the SCTS in a "*secure and confidential format*" (Detective Superintendent Houston at column 10).

This detail, whilst not being required in legislation, could be reflected in some form of agreement similar to that which operates with the SCTS and Disclosure Scotland for the purposes of exchanging information under the provisions of the Protection of Vulnerable Groups (Scotland) Act 1997. For example, the provision for scanning further information by the courts processing a request under section 6 of the Bill to the Scottish Ministers via a secure email network rather than by post.

Request from other jurisdictions (including England, Wales and Northern Ireland) for disclosure of historical convictions made in Scottish courts.

In the context of disclosing a historical conviction made in Scotland on application from an authority in another jurisdiction, say for example when a person is applying for a sensitive post in that jurisdiction, the SCTS would not have a role in this regard.

Any such application, if it could be made, we understand would be made to Police Scotland in the first instance and from the information held on the criminal history system.

However, an individual from another jurisdiction may request an extract conviction, required for example to satisfy visa applications, or another party may request an extract conviction to use as evidence against an offender in a related court case, for example in family proceedings. Currently, where an application is made in such cases, SCTS staff will ensure that the terms of the Rehabilitation of Offenders Act 1974 are complied with before issuing an extract conviction (see paragraph headed Issue by the SCTS of extract convictions above).

Request for disclosure of historical convictions made in other jurisdictions (including England Wales and Northern Ireland)

SCTS hold no records of convictions made in jurisdictions outside Scotland. However in some cases the existence of such convictions may be made known to the court, at the appropriate time, by the procurator fiscal in a criminal case, or by the police in a civil application made to the court, for example on an application to a civil court by the Chief Constable for the granting of a Sexual Offences Prevention Order.

Application for disregard granted by the Scottish Ministers

The detail of how a successful disregard application is to be given effect to by a relevant record keeper, may be set out in Regulations under section 10 of the Bill as will the definition of a relevant record keeper.

If the SCTS is prescribed as a relevant record keeper for the purposes of the legislation (and it is not clear that this is the intention) it will be required to identify both relevant paper and electronic records, in order that the conviction is to be marked as disregarded.

Redaction/ deletion or otherwise of a conviction on a specified charge/offence, may not be straightforward, for example, where the sentence has been imposed *in cumulo*, i.e. where one sentence covers a number of separate charges/offences, or where one sentence is to run consecutively to another sentence imposed.

I hope this response is of assistance to you. If you require any further information at this stage, please do not hesitate to contact me.

Yours sincerely



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