Justice Committee

Management of Offenders (Scotland) Bill

Written submission from the Association of British Insurers

About the ABI

The Association of British Insurers (ABI) is the voice of the UK’s world-leading insurance and long-term savings industry. Our members constitute over 90% of the insurance market in the UK and 20% across the EU. Employing more than 23,000 people in Scotland including almost 10,000 people in General Insurance in Glasgow, and 300,000 people in the UK, the insurance sector is an important contributor to the Scottish and UK economies.

We welcome the opportunity to respond to the Justice Committee’s Call for Views on the Management of Offenders (Scotland) Bill. We previously responded to the 2015 Scottish Government discussion paper on the Rehabilitation of Offenders Act 1974. Rehabilitation periods are important to the insurance industry in terms of assessing risk and any changes to rehabilitation periods should be carefully considered for their implications on the insurance market. Our response is limited to Part 2 of the Bill and the potential impacts on insurers and their customers.

Q4. Overall, do you support Part 2 of the Bill? The Scottish Government’s view is that it will provide a more appropriate balance between the public’s right to protection and a former offender’s right to “move on” with their life, by, overall, reducing the legal need for disclosure. Do you agree?

1. Setting customers’ premiums on the basis of risk is the fairest way to set insurance premiums. Data on convictions for offences including theft, arson and fraud is used by insurers, alongside a number of other factors, when assessing the risk presented by a customer, where there is evidence of a link between such data and risk. Reducing the legal need for disclosure would limit the ability of insurers to use this data to assess risk. While the degree to which this data is used to price insurance will vary between product lines and insurers, losing the ability to take it into account could have an inflationary effect on some insurance premiums. This may include, amongst others, insurance for property but we note it would not apply to the disclosure of road traffic offences which remain a reserved matter.

2. If the Scottish Parliament chooses to reduce the period for which previous convictions must be disclosed, insurers may have to adjust their underwriting methodologies to respond to this reform of the law. Not being able to use certain risk factors when determining the price of insurance would mean that insurers have to spread the risk across all their policyholders in that market. This would mean that the vast majority of policyholders in Scotland without criminal convictions have to subsidise the premiums of those who do and whose convictions must no longer be taken into account.
3. Convictions for a number of crimes, including arson, theft and fraud, are highly relevant factors for the price of insurance. The reduction of rehabilitation periods for custodial sentences will prevent insurers from taking into account such convictions and has potential adverse implications for the appropriate recognition and pricing of risk.

4. We note that the analysis of responses to the 2015 Scottish Government Discussion Paper on the Rehabilitation of Offenders Act 1974 found that almost all respondents agreed that the 1974 Act was not still fit for purpose and supported a major overhaul. However, opinions were divided on whether spent convictions should no longer be disclosed after a certain period of time with a small majority, mainly local authorities, opposed to the proposal on the basis that full information is required in order to undertake a full risk assessment.

5. Reducing the period during which convictions must be disclosed would make it more difficult for insurers to accurately determine an individual's risk and would effectively mean non-offenders would subsidise the higher risk posed by offenders who are no longer required to disclose their offences, and that this subsidy would be through higher premiums.

6. Insurers have a fundamental responsibility to all policyholders to achieve an equitable contribution to the risk pool from which the losses and liabilities of claimants are met. The Bill as proposed will make it more difficult for insurers to maintain a risk pool that is fair to all policyholders, adds further complexity to an already poorly understood area of the law and increases the administrative burden on organisations operating across multiple jurisdictions.

7. We therefore do not agree with the proposal to reduce the legal need for disclosure as set out in the Bill.

Q5. Do you agree with the Scottish Government that other reforms in Part 2 will make the law on disclosure of convictions more intelligible, clear and coherent?

8. We are concerned that the proposed changes will create further confusion about which convictions must be disclosed, both among consumers and suppliers of services including insurance. Consumer understanding of this particularly complex aspect of the law is already poor, and many people find the rules of disclosure of convictions difficult to understand. We do not believe that the proposed reforms will make the law on disclosure of convictions more intelligible, clear and coherent.

9. Insurers are committed to providing consumers with clear information about the use of previous convictions and related offences during and after the point of sale to minimise confusion and help people find cover. The ABI's Good Practice Guide on Insurers' Approach to People with Convictions and Related Offences\(^1\) assists insurers in their treatment of personal household and motor customers with

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convictions and related offences to ensure that customers with previous convictions are treated fairly. The Good Practice Guide is currently being updated to reflect legislative and regulatory developments and we are committed to regular reviews to promote good market practice.

10. The poor understanding of this area of the law is especially true in circumstances where it is unclear for consumers which nation is their relevant jurisdiction, such as when they live in Scotland and work in England or vice versa.

11. We would seek clarification on the effect of people moving from one jurisdiction to another and the effect this may have on disclosure requirements. Should a policyholder move from England to Scotland (or vice versa) during the term of their insurance policy, a conviction may become spent or unspent overnight. This could result in the policy falling outside of acceptance criteria or incurring a large additional or return premium.

12. Creating further confusion could lead to an increase in misrepresentations. It could also lead to an increase in accidental disclosures of spent convictions that must not be taken into account. Insurers have a statutory obligation to ignore accidentally disclosed spent convictions. Any differences in rehabilitation periods and disclosure requirements would cause insurers significant administrative costs to ensure that they are compliant.

13. The existence of different rehabilitation periods and disclosure requirements dependent on residency may lead to accidental breaches of the law by either individuals or service providers. We do not believe that disclosure periods should vary between Scots law and other jurisdictions in the UK. We believe that customers and businesses alike would benefit from a system that is clear, transparent and consistent across the different legal jurisdictions within the UK.

Q6. Do you have any further views on law and policy around disclosure of convictions?

14. The insurance industry is a major source of employment, accounting for 300,000 employees across the UK including more than 23,000 people in Scotland. Like many other employers, insurers could face problems in determining a prospective employee’s conviction record and applying consistent employee policies, particularly where they have operations both in Scotland and in other parts of the UK.

15. Creating different rules regarding legal disclosure periods in Scotland means that insurers would have to change their question sets and point of sale documentation specifically for Scotland. This could increase the cost of writing insurance business in Scotland compared to other parts of the UK. It would also mean that insurers and brokers offering products to customers across the UK would have to create appropriate processes to make sure that the correct approach is given depending on the jurisdiction in which the consumer lives, increasing compliance costs.
16. Data protection legislation requires insurers to ensure that any personal data they hold or process is accurate and, where applicable, up to date. The variances in legislative requirements with regards to the disclosure of criminal convictions add further complexity and increase compliance costs for all organisations that process personal data. Under the General Data Protection Regulation (GDPR), insurers have an obligation to maintain data retention schedules. For insurers that operate in multiple jurisdictions, adopting additional schedules for convictions data in different jurisdictions will make this process even more complicated.

Association of British Insurers
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