Justice Committee

Management of Offenders (Scotland) Bill

Written submission from Recruit With Conviction

Recruit With Conviction is pleased to respond to the call for evidence for the Management of Offenders (Scotland) Bill

1. **Overall, do you support Part 1 of the Bill concerning the electronic monitoring of offenders?**

Recruit With Conviction support the amendments as detailed in Part 1 as to the appropriate use of Electronic Monitoring. Additional use of tagging should be supported by an increase in presumption against custody of under 12 months as proposed.

2. **The Scottish Government wishes electronic monitoring to play a greater role within the criminal justice system. Will the reforms in Part 1 of the Bill help enable this? If not, what further changes (legislative or non-legislative) are required?**

Increased use of tagging should be coupled with increased resources for supporting people who are tagged with appropriate services such as support for employment. Tagging arrangements must allow for the flexibility of movement for the purposes of safe employment and other activities which support desistance.

3. **Do you have any views on any specific aspects of Part 1? – for instance, revisions to the list of circumstances in which electronic monitoring may be imposed or the creation of a power to enable future monitoring devices to contain GPS technology or technology that can measure alcohol or drug ingestion.**

Further provision for people with convictions such as GPS monitoring to allow those who are under restriction orders to maintain or gain employment should also be included.

4. **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?**

Recruit With Conviction support the proposed amendment to the periods of disclosure of convictions and in particular the change of language from “Rehabilitation” periods to “Disclosure”. Recruit With Conviction’s experience is that the need to disclose convictions for excessive lengths of time creates stereotyped bias against people with convictions from employers and the wider public coupled with conviction disclosure anxiety which stops people applying for employment, promotions, education and voluntary work if they are required to disclose.
Modern technology including forensic science have allowed the courts to prosecute serious offences more often and to link more serial offences more to the same individuals. This has resulted in longer sentencing (due to evidence capture of more crimes) and more appropriate supervision of people with convictions. This would have been impossible in 1974.

With the continuing existence of exclusions and exemptions to the 1974 Act for a wide range of professions and the modern protection mechanisms for more serious crimes (and the existence of robust protection arrangements and controls to prevent harm of children and vulnerable adults), Recruit With Conviction broadly agree with all of the proposals to change disclosure periods.

Ongoing action research undertaken by Recruit With Conviction consistently observes complex disclosure behaviours on the part of applicants and recruiters. These behaviours are personal, emotional and unpredictable. On the part of applicants with convictions, they can manifest in anxiety, anger or apathy. Recruiters tend to over-attribute risk to disclosure however ban the box processes to delay disclosure, permit more opportunities for applicants and recruiters to come face to face. This tends to address some negative preconceptions and contributes to smoothing the path to employment.

Although Recruit With Conviction recognises that this mix of barriers will not be addressed purely by legislative change, the removal of a significant number of people from the requirement to disclose will support development of more suitable and sustainable employment practices and new opportunities for people with convictions to compete for employment.

Recruit With Conviction recognises that the commencement of disclosure periods from the date of adjournment or deferral will support those who are engaged in desistance from criminality and reduce the further penalties of having to disclose convictions from the deferred date despite compliance. This is further supported by the amendments to the “drag through” effect of multiple convictions being addressed in order to reduce the excessive or permanent periods for disclosure of previous convictions.

The amendments for those from the forensic mental health estate are welcome, the stigma involved in conviction disclosure combined with other barriers such as mental health problems has a compound negative effect on bias and this contributes to a multiplying effect. This has led to some of the lowest levels of any form of positive outcomes from this cohort. The ability for those who have engaged with and responded to treatment to reduce or remove their disclosure of precious mental health issues strikes the correct balance between individual and public safety and can only support the improvement of their reintegration and ongoing wellness.

5. 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?

The current mix of legislation involved in the disclosure of convictions is complicated and whilst Recruit With Conviction welcomes these amendment’s Recruit With...
Conviction suggests that there is a need to raise awareness regarding new legislation. Whilst the proposals simplify this a bit, identifying if, what, when, why and how to disclose is significantly more complex than the legislation. Training for key workers and recruiters is crucial however implementation of (spent/unspent/protected) markers on subject access requests for criminal records requires to be implemented as a matter of urgency.

This is an important social justice issue, around 1 in 5 of the working age population has a previous conviction and this is skewed to higher levels among people who are unemployed. The likelihood of having a conviction has additional escalators for poverty and other characteristics. Recruit With Conviction’s action research commonly uncovers examples of middle-aged people with a single minor conviction from their youth, who continually avoid putting themselves into situations where disclosure of convictions might arise and how this triggers anxiety in them. In some cases, people carry this anxiety even after being assured that their conviction is spent and protected and cannot show up. Therefore any assumptions around the intelligibility of disclosure law or the sufficiency of information should be observed with caution.

Concise information within the context on criminal record subject access requests as described and effective training and guidance are the bare minimum.

The current disparity between Scotland and the rest of the UK has led to issues with applicants and employers being directed by false information leading to inappropriate disclosure, lost employment and associated problems.

Although this will now be brought broadly into line, a requirement for all recruiters (in receipt of disclosure information) to be properly trained to make proportionate decisions and for those recruiters to be empowered and authorised to select a person with a conviction or convictions if they are the right person for the job.

Whilst Recruit With Conviction recognises that it has not been possible for the amendments to include occupations which are exempt from the current act and therefore primarily subject to PVG 2007 this will continue to cause confusion. The adoption and understanding of protectable convictions in 2015 is not widespread and this has led to those who may have had their conviction disclosure reduced under pvg, “over-disclosing” convictions as well as employers receiving information which is no longer relevant.

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

Given the structural limitations for the Act, to allow even shorter and more realistic disclosure periods for most people with convictions, Recruit With Conviction believes that all the proposals support improvement for safe and sustainable employment and are suitable as a stop-gap until more robust primary legislation is implemented, which could better contribute to the rehabilitation of people with convictions.

Such primary legislation is still required to enable suitable, safe and sustainable employment such as certificates of rehabilitation for people with convictions. Where
improvements fit outside the devolution agreement, then the Scottish Government should seek to collaborate with the UK government over further devolution of power to enable a more progressive system in Scotland or for such measures to be legislated across the UK.

Ironically, the changes start to put rehabilitation into the “Rehabilitation of Offenders Act” for some people for the first time. Especially for those who are engaged in recovery from substance misuse (if they have recent community orders/admonishments etc). The new opportunity to wipe the slate clean, must be considered and applied appropriately in the working practices of key workers across the community justice and health workforces.

7. Do you support Part 3 of the Bill, which makes provision for the Parole Board for Scotland, in terms of its membership and appointment system; its functions and requirements in relation to prisoners, its independence, and its administration?

Recruit With Conviction broadly supports the provision

8. Do you have any further views on the role, purpose and functions of the Parole Board?

Recruit With Conviction suggests that the parole board should increase its efforts to ensure an appropriately representative membership.

Recruit with Conviction
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