Justice Committee
Management of Offenders (Scotland) Bill
Written submission from West Lothian Council

Answers to the consultation questions relevant to Part 2 of the Bill

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?

The council generally supports the aim of the Bill to strike a more appropriate balance between the rights of people not to disclose previous offending behaviour and to move on with their lives and the rights of the public to be protected. However, the council does not agree that the proposed changes should apply to those applying for licences under the Civic Government (Scotland) Act 1982 (“the 1982 Act”). In order that the council as licensing authority can regulate those who apply for licences to carry out particular types of work, disclosure of particular offences is a key component in determining such applications as the law requires a decision to be made as to whether they are a fit and proper person to do that work with regard to public safety and prevention of crime. The council is of the view that recent convictions, particularly within the last 5 years, of offences involving violence, dishonesty, sexual impropriety, drugs and for hire car drivers relating to road traffic offences are relevant to licensing applications. Most criminal offences are dealt with by fines so the proposal that fines will become spent after 12 months rather than 5 years will have a serious effect on the licensing process.

Under the 1982 Act applicants apply to be licensed in a number of roles where they are by virtue of the legislation working in positions of trust. Examples of the types of licences are taxi and private hire car drivers, window cleaners, metal dealers, second hand dealers and street traders. These are activities which parliament has seen fit to licence as the holders of such licences may come into contact with members of the public who may be vulnerable. Vulnerable customers such as children, lone female travellers and inebriated persons may depend on the licence holder’s honesty and integrity and rely on their having been deemed a fit and proper person by the council as licensing authority to hold the relevant licence.

In relation to hire car drivers changes introduced in 2016 to the Rehabilitation of Offenders Act 1974 (“the 1974 Act”) and the statutory instruments made under it introduced a complicated system of protected convictions to the already complex legal position regarding spent convictions. These new provisions are difficult to understand and as a result are not generally understood by the public leading to relevant convictions regularly not being declared by applicants. The previous situation was that hire car drivers had to declare all previous convictions. The council based on its experience of the hire car driver licensing scheme and, more generally, concerns which continue to exist around the possible connection between the operation of the hire car trade and offences relating to vulnerable people, is of the view that for hire car drivers all convictions should be declared.
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 council does not agree that the reforms will make the law on disclosure of convictions more intelligible, clear and coherent. The council is of the view that the 1974 Act has been amended so many times that even licensing solicitors experienced in understanding legislative provisions find it extremely difficult to interpret. In addition, the law on when non-convictions including fixed penalties, warnings and alternatives to prosecution (AtPs) become spent is also complex.

The council is of the view that these changes will lead to applicants for licences believing that many convictions are spent after a year and therefore not relevant to their applications. This will no doubt have the effect that more offenders will apply for licences.

The reality will be that despite the changes proposed Police Scotland can invoke the terms of Section 7(3) of the 1974 Act and seek to argue before council committees that justice cannot be done without the committee considering spent convictions. The council’s view is that it is important for Police Scotland to continue to bring all relevant convictions to the attention of the licensing authority in order that it can consider whether the applicant is a fit and proper person to hold a licence. The council is of the view that licensing committees are best placed to carry out such risk assessments and to decide if spent convictions should be considered. Applicants have an opportunity to attend and make their case why a licence should be granted.

The application of what is known as the “two stage test” under Section 7 is a complex and time consuming procedure not readily understood by the public. When the detailed provisions regarding protected convictions for hire car drivers is added to that it becomes impossible for the applicants to understand what may be taken into account in determining their applications.

It is the council’s view that in relation to licensing the 1974 Act should be completely rewritten to be understandable by the general public. It is the council’s view that the changes proposed by this Bill do not go far enough.

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

In order to ensure that licensing authorities are able to carry out a proper assessment of the fitness of applicants as required under the 1982 Act the council is of the view that in relation to licensing there should be different provisions regarding when convictions become spent.

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