Justice Committee
Management of Offenders (Scotland) Bill

Written submission from West Lothian Licensing Board

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 West Lothian Licensing Board 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 Board does not agree that the proposed changes should apply to those applying for licences under the Licensing (Scotland) Act 2005 (“the 2005 Act”).

In order that the Board can effectively regulate those who apply for premises licences to sell alcohol and personal licences to work in and manage such premises disclosure of particular offences is a key component in determining such applications. This is now more important as parliament has seen fit to recently reintroduce a fit and proper test for applicants for both types of licences. Therefore, the law requires a decision to be made as to whether applicants are fit and proper persons to hold a premises licence or a personal licence. In addition in determining both types of applications the Board is required to consider the five licensing objectives –

- Preventing Crime and Disorder
- Securing Public Safety
- Preventing Public Nuisance
- Protecting and Improving Public Health
- Protecting Children and Young Persons from Harm

The Board is of the view that recent convictions, particularly within the last 5 years, of offences involving violence, dishonesty, sexual impropriety and drugs 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 2005 Act applicants apply to be licensed in a number of roles where they are by virtue of the legislation working in positions of trust. These roles have been identified by parliament as requiring to be licensed the holders of such licences may come into contact with members of the public who may be vulnerable. Vulnerable customers such as children, lone females and inebriated persons should be able to depend on the licence holder’s honesty and integrity and rely on their having been deemed a fit and proper person by the Board to hold an alcohol licence.
At present the 2005 Act does not allow spent convictions to be considered in determining alcohol licences. However, it is acknowledged that section 52 of the Air Weapons and Licensing (Scotland) Act 2015 once it is brought into effect will allow spent convictions to be considered subject to the provisions of Section 7(3) of the Rehabilitation of Offenders Act 1974 (“the 1974 Act”) see reference in question 5 below.

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 Board does not agree that the reforms will make the law on disclosure of convictions more intelligible, clear and coherent. The Board 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 Board 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 Boards that justice cannot be done without the committee considering spent convictions. The Board’s view is that it is important for Police Scotland to continue to bring all relevant convictions to their attention in order that it can consider whether the applicant is a fit and proper person to hold a licence. The Board is of the view it is 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. It is the Board’s view that in relation to licensing the 1974 Act should be completely rewritten to be understandable by the general public. It is the Board’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 Boards are able to carry out a proper assessment of the fitness of applicants as required under the 2005 Act the Board is of the view that in relation to licensing there should be different provisions regarding when convictions become spent in order to uphold the licensing objectives.

Audrey Watson
Depute Clerk
West Lothian Licensing Board
13 April 2018