

Disclosure (Scotland) Bill

Written submission from Release Scotland

About Us

Release Scotland was created as a joint initiative by business and Scottish Government. Release Scotland enjoys the ongoing support of Disclosure Scotland and Scottish Government and features businesses such as Virgin Trains, REED, and Greggs. Release Scotland recently supported a Disclosure Scotland event on the Disclosure Bill and spoke to employers such as Royal Mail, TSB, Arnold Clark, and Aviva. Release Scotland are concerned with championing business voice in the important debate on ethical recruitment for people with convictions. This includes emphasising to business that this debate really is a business matter, and matters to business. Our role includes encouraging more businesses to recruit people with convictions and our aim is to devise a simple framework by business, for business on how to recruit safely and fairly in the interests of both the individual and the organisation.

Maree Todd MP summarised the situation as follows: “For most offenders, the passage of time and the adoption of a crime-free lifestyle provide a basis for their accessing work and making a greater contribution to society. However, we recognise that the situation can be very difficult for employers. That is why I encourage employers who are wary of employing people with convictions to sign up to Release Scotland...”

Overview of Response

This response is given in the context of the rise of the gig economy and development of complex supply chains which has made the labour market a far more complicated structure than ever before. With more people finding work through job boards, social media platforms such as LinkedIn, recruitment agencies, and gig platforms the employment relationship is changing. Many new employment models have sprung up such as Direct Engagement, zero hours, Gig platform models such as Upwork, and innovative new recruitment platforms. The complex nature of supply chains has further compounded the lack of standardisation on how organisations recruit, and compounded the confusion for individuals when going through a job application process.

This response focuses on the business voice in the debate with the aim of ensuring wider take up across the business community for ethical recruitment in a way that is deemed safe and fit for purpose for business. Release Scotland believe the hiring of people with convictions is not business doing good, but it is good for business.

There are 3 core sections to the response:

1. Ensuring Safety is Not Compromised
2. Ensuring Simplicity for Business
3. A Solution to Ethical Recruitment

Ensuring Safety is not compromised

Overall Release Scotland is positive about, and highly support of, the Disclosure (Scotland) Bill but recognises the greatest barrier to business normalising the recruitment of people with convictions is the perceived threat posed to that business of something going wrong. This barrier should not be overlooked, and the best way to achieve greater recruitment of people with convictions is to work with business to alleviate those concerns.

Renewable 5 year membership to PVG is a sensible idea insofar as it will reduce active numbers of people in the scheme and ensure the scheme is directed towards those most relevant to it, but the system needs to be clear to employers. *This needs to include rules around lapsed renewals for those in employment, and the process for individuals applying for a regulated role whose renewal has previously expired* (what is the likely length of time required to resolve the issue, what would an employer do in the short term, can employers pay for this directly?). Will the legal position facing employers hiring or employing a person with a lapsed registration be clear - will this be an offence by the employer, is an individual allows their registration to lapse in employment?

Release Scotland is positive about Scottish Government ending the **court referral process** as this will make things simpler for business, along with the obvious benefit for individuals.

With regard to the **sharing of information by Police Scotland**, extending the scope beyond those already in the PVG scheme is a very positive safeguarding move. What would the expectations be of employers who have hired those individuals? Would they have committed an offence in doing so and would this be acted on, or would Disclosure Scotland simply notify the organisation for action? Who would take up a possible case against an employer, would it be Police Scotland or Disclosure Scotland? In the case of recruitment agencies would this also be an offence under the Conduct Agency Regulations and referred to the Employment Agencies Standards Inspectorate?

Under plans for **Local Authorities able to make referrals** would this include about individuals who are not employees? What if the worker was employed by a recruitment agency? In these cases it would also be important to ensure the employee's rights are properly upheld, with the legal duty sitting with the employing organisation but the safeguarding investigation conducted by the Local Authority.

Whilst Release Scotland agree with the opportunity for individuals to **challenge ORI**, we believe an employer must be notified to ensure appropriate controls can be implemented during the hiring process.

Many businesses in the UK recruit across England and Scotland and therefore the increasing disparity between criminal record regimes is posing a very real challenge to business who may not be able to employ an individual in one location, but could in another. Release Scotland understand the difference and importance of the separation between governments but *urge Scottish Government and Disclosure Scotland to engage DBS and UK Government on this issue with the opportunity of leading this debate.*

Ensuring Simplicity for Business

To answer this part of the consultation Release Scotland engaged the Criminal Records Trade Body (CRTB) which is the trade body for the largest criminal record check processing organisations in the UK. The trade body works closely with the Disclosure and Barring Scheme (DBS) and Disclosure Scotland.

Release Scotland believe the move to core activities giving rise to **regulated roles** (roles holding power or influence) from doing regulated work is innovative, responsive to the current climate, and the right thing to do. However, how this is made clear to businesses will be very important to ensure compliance and appropriate safeguarding. The majority of organisations are very committed to safeguarding and to ensure compliance with the law, so this system would need to be straightforward for businesses to understand. It is also important that it does not become possible for individuals who are unsuitable to circumvent the system and obtain work in these setting through other means, such as extended supply chains. For example, is it possible that certain roles in one organisation would meet this test but not in another organisation?

Release Scotland support the proposed simplification of the Disclosure regime to two main levels to better simplify the employment landscape for businesses. The eligibility criteria, minimum legal duty, and process will be key for businesses to understand to ensure clarity and the desired simplicity. *Release Scotland urge Scottish Government and Disclosure Scotland to work with employers when designing the regime in more detail.*

The business community will strongly agree with online. In December 2018 the Home Office introduced online as part of the statutory defence when employing non UK nationals, and both UK GOV and Scottish Government are designing digital identity strategies meaning the majority of recruitment in future will be conducted digitally, at least outside of the actual interview itself. For Disclosure Scotland to remain a paper-based process will limit the opportunities from digitalisation open to business and harm the Scottish economy. Since the introduction of digital systems in England and Wales (the DBS “e-Bulk” scheme) hiring times have vastly reduced enabling individuals to begin work sooner and therefore earn, as well as enabling businesses to be more productive. However, the proposed Digital Certificate must be easy for individuals to share and be resistant to fraud. Where employers have previously been able to assure themselves directly, they will be reliant on individuals in the new system. Therefore this process must be robust. The consent process must also be simple for individuals and businesses and not put unnecessary barriers into what should otherwise be a more streamlined process than the one in existence today. The third party may not always be clear in the modern gig economy, so whilst it is a principle of GDPR for consent to be specific, it must avoid being a burden in the process.

Time to hire is consistently one of the main concern for businesses, therefore if the application process can only be enacted by an individual there needs to be a way for this to be monitored and/or facilitated by employers. *Ideally, the process should still be led by business with consent from an individual.*

A Solution to Ethical Recruitment

Release Scotland wholeheartedly agree with establishing clear procedures for the **registration of accredited bodies**. We believe this should include ensuring employers meet best practice standards when recruiting people with convictions as well as ensuring compliance with legal obligations. This is an opportunity for Scottish Government to consider a world-leading framework co-designed by business to 'normalise' the recruitment of people with convictions *and should be broadened to every organisation processing Level 1 as well as Level 2 disclosures*. We believe this opportunity should not be missed by narrowing it to only those signing Level 2 applications. By working with business to promote an ethical recruitment framework which could, in time, broaden out beyond people with convictions to other under-represented groups, Scotland could implement, via the Disclosure (Scotland) Bill, a cultural norm for businesses employing individuals. However, on either just Level 2 signatories or across both, it should be considered how this would be upheld and/or monitored?