

# **Rehabilitation of Offenders Act Discussion Paper: Report into Stakeholder Events**

**January 2014**



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## **1.0 Introduction & Background**

### **1.1. Executive Summary**

Recruit With Conviction were commissioned by Scottish Government to undertake a series of consultation events over late autumn & early winter 2013 to facilitate dialogue regarding the Reducing Reoffending Discussion paper and take forward these discussions to shape appropriate legislation for modern Scotland.

### **1.2. Background**

On 27 August 2013 the Scottish Government published the following paper to stimulate discussion on the possible amendments to the Rehabilitation of Offenders Act 1974, (“the 1974 Act”).

#### **A DISCUSSION PAPER ON THE REHABILITATION OF OFFENDERS ACT 1974**

The 1974 Act has been criticised as not being effective in achieving the important and necessary balance between protecting the public from those whose offending behaviour makes them a risk while also enabling those who simply want the chance of lawful employment, to put their previous offending behaviour behind them and make a positive contribution to the Scottish economy. The Scottish Government considers that, after almost 40 years, there is a need to review both the principles and operation of the 1974 Act in its current form. As such, we are taking this opportunity to have as wide a discussion as possible to gather the evidence necessary to help us consider what changes, if any, are required to modernise the legislation. We do not hold a fixed view about how the regime might be modernised and this discussion paper is designed to provide all those with potential interest the chance to comment before specific proposals are developed.

The paper does not propose any specific changes to the 1974 Act, but seeks views on the operation of the current rehabilitation of offenders legislation.

The discussion paper describes in brief the historical perspective on the development of the 1974 Act and key definitions and concepts; interaction with other legislation including the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007; the operation of rehabilitation periods; the protections available to rehabilitated persons and relevant exclusions.

## **2.0 Events Summary**

The event programme launch was held in Glasgow on 7 November 2013 with a keynote speech from the Right Honourable Cabinet Secretary for Justice Kenny MacAskill MSP along with Pete White from Positive Prisons, Alan Staff of Apex Scotland and Richard Thomson of Recruit With Conviction.

The Remaining sessions were as follows:

Edinburgh 15 November 2013

Aberdeen 22 November 2013

Dundee 26 November 2013

Irvine 3 December 2013

Inverness 4 December 2013

320 bookings were received for the event programme with all events being facilitated by Recruit With Conviction staff on behalf of Scottish Government. Further support through the Community Justice Authorities, Community Planning Partnerships and additional partners with dissemination was gratefully received with thanks to Apex Scotland, Positive Prisons and SACRO.

The business community was particularly canvassed for views and the events were attended by a people with a broad mix of interests including professionals from business, human resources, prisons, police, criminal justice social work, employability agencies, other voluntary sector organisation as well as people with convictions.

All those who had booked to attend were provided with the appropriate links to the full discussion paper along with a request to respond. Each session was held as a Café Conversation style with all feedback being collated for presentation within this report.

Attendees commonly expressed confusion and frustration at the complexity of the legislation despite the clarity of the documentation from the Scottish Government and facilitation at the events. Their comments typically retreated to important practical and informed observation about the difficulties faced by employers and applicants where criminal record disclosure was required rather than technical aspects of the legislation. These practical insights from a range of stakeholders provide some clear messages to inform the broader design, implementation and supporting processes for new legislation which is safe, fair and fit for business.

### **3.0 Consultation Questions and Thematic response**

Attendees were presented with information regarding the current 1974 Act along with key changes proposed in England & Wales under the Legal Aid Sentencing and Punishment of Offenders 2012(LASPO) for comparison.

Each question along with the key common themes that arose from all sessions are listed.

#### **Question 1: Appropriate rehabilitation periods**

Within all sessions there was a high degree of discussion over the exact nature of rehabilitation with an acceptance that the current 1974 Act is “not fit for purpose” and does not accurately represent both the process and timescales of rehabilitation. There was considerable criticism of the current arbitrary periods with the “one size” process being unfit for the modern criminal justice, in particular the changes in sentencing policy over 40 years. There was additional debate as to the current age criteria for calculating rehabilitation periods. The majority agreed that this was necessary with many calling for an increase from the current limit of 18 however no consistent new age level could be agreed upon.

There was very little specific feedback against the table of disposals and suitable rehabilitation periods.

It was agreed that the current rehabilitation periods are excessively long with significant confusion over the process of disclosure for candidates and their employers leading to incorrect disclosure of spent convictions and non-disclosure being reported as commonplace. The current process further creates a culture of mistrust around the disclosure process leading to concerns for employers over recruitment of those with convictions. The minimum change deemed to be acceptable to the majority attending would be parity with the LASPO changes as proposed for England & Wales.

There was considerable appetite for further change with the development of a new system of rehabilitation based upon a greater understanding of current practice in sentencing, causes of crime, restorative justice and a person centred approach. There was widespread consensus that the nature of offending is individual and disclosure & rehabilitation should be therefore be linked to each individual. It was understood that this could create levels of additional bureaucracy leading to more complexity rather than a simplification.

Among the additional suggestions were;

- The creation of a rehabilitation body with statutory responsibility for risk assessing all those convicted of any level of offence and ascribing disclosure periods accordingly.
- Rehabilitation being linked directly to sentencing policy with the judiciary being asked to set disclosure periods at conviction.
- A scale of offences based on the perceived seriousness of the offence rather than the disposal. Crimes of violence or a sexual nature were

perceived as most serious with a declining scale through acquisitive crime to public disorder.

- All low level offences such as fines or community orders should have no disclosure period other than the period of order or time taken to make full payment of fines.
- A system of rehabilitation certification linked to an individual's engagement with their rehabilitation with the potential to reduce disclosure periods. This would act as an incentive for personal reform, engagement and compliance.

The strongest consensus opinion was for a simple clear system that allowed for rehabilitation while striking the correct balance between the safety of the wider public (especially the vulnerable) and the individual's right to privacy.

### **Question 2: Deselecting when Preselecting**

There was widespread agreement that the current system of pre-interview information causes significant problems for people with convictions engaging in the labour market. The majority of respondents believed the current system creates discrimination and further stigmatises those who have been convicted of an offence.

Again the issue of clarity under the current system was raised with many examples given of employers, candidates and support professionals being unaware of the process of disclosure and rehabilitation as which tie in with the 1974 act and good recruitment practice.

It was reported and generally agreed that currently, people with convictions are likely to be excluded at the first sift by many employers. This was however difficult to prove and online recruitment was raised as a common example of this particular issue, when candidates could not progress to the next stage of an application if they ticked the criminal record box. In another example an individual explained that the criminal record question deselected him at the end of an on-line application after he had spent a significant amount of time and effort filling in questions.

Some attendees believed that the disclosure of convictions should not take place until after the first sift of applications, in line with the 2010 equalities act. Although this was understood to be imperfect it was felt that many employers have a good grasp of the principles and this would allow for an easier understanding of any new legislation.

Similarly, some attendees opposed the view that the employment of people with convictions should be positioned as an equality issue.

There was however no consistent agreement on at which stage disclosure should take place;

- Some believed that the timing for disclosure should be at the discretion of the employer to fit in with their existing processes
- Some believed this should take place following short-listing but prior to interview in order to allow the interviewers to make informed choices,

deselect applicants where the interview would be tokenistic or meaningless, but at the same time provide more transparency for applicants and provide more opportunities for people with convictions to compete at interviews.

- Some believed this should only be post interview to allow for the candidate to be seen and assessed.

Ban the box was cited as a sensible approach to a possible code of practice which gained widespread support.

The issues of employer costs in recruitment were raised as it was felt that employers should not have their time wasted by assessing and making an offer of employment to a candidate who would not be recruited due to the nature of their conviction. It was generally agreed that the PVG scheme provides the protections it was developed for.

The issues around additional legislation or guidelines coming into conflict with any new law such as in security and financial industries was raised by several parties across all events.

There were concerns raised around making new legislation accessible to all sizes of employers while maintaining the best model of rehabilitation and labour market opportunities.

- Small and micro employers face problems with the necessary HR provision, training and skills to understand current & new legislation and may be at risk. However they are unencumbered by the systems of other employers and are more likely to make recruitment decisions on what they see face to face as an individual's merit,
- Large & Medium sized Employers have access to appropriate HR support, however this can cause people with convictions to be excluded at an early stage due to volume of applications. There is a need to tie policy & CSR to practical action as examples were given over the conflict this can cause between frontline recruiters and senior staff or HR when recruiting those with a conviction.

There was a strong feeling that unnecessarily complicated legislation which leaves employers open to litigation or punitive measures is likely to be counterproductive. A programme of guidelines and voluntary membership of a scheme with similar principles to the disability "Two Ticks" may gather more support from employers. In contrast others believed that there should be very strong legislation to force employers to improve recruitment practices of people with convictions.

The strongest support was for legislation for employers to carry out a risk and conviction relevance assessment. Within this process clarity of information on the individual applicant would allow for the positives of any rehabilitation activity undertaken to be passed to an employer. By providing employers with this information it was felt they would be empowered to make a reasoned judgement without fear of litigation.



Training, empowerment and authorisation for recruiters was also cited as being of great importance to avoid interviews being meaningless or tokenistic.

**Question 3: What can be done to reduce conviction stereotype anxiety among recruiters?**

There was a level of support for making discrimination on the grounds of a conviction an offence under new legislation however there was also an acceptance that this was likely to be both difficult to prove and counterproductive.

There was a widespread call for a programme of education and a campaigning and training approach for all recruiters in order to de-stigmatise people with convictions and to develop the employment prospects for people in Scotland with a criminal conviction.

The media (particularly the print media) were widely criticised for perpetuating the myths of the offender stereotype.

Examples of best practice and positive recruitment were agreed as one of the best methods of undermining the offender stereotype. Suggestions were made that the public sector should be taking the lead for this process along with existing business leaders. Plenty of good practice for the recruitment of people with criminal records has been developed and does exist.

Some organisations with sophisticated HR systems currently examine job specifications and define relevant convictions as part of the internal person specification, therefore convictions not listed would be either acceptable or risk assessed and a number of variants of this process exist.

There was widespread concern about the value of disclosure information, in that it covers only the limited information about the offence rather than any qualitative data about potential risk or rehabilitation. While such information is documented in a personal disclosure by the individual, there is little an employer can do to corroborate mitigation or personal reforms that an individual may claim.

Other obstructions to the recruitment of people with convictions were cited in the interpretation of guidance from the Financial Services Authority which invokes regulatory recruitment rules on the Finance Sector, CPNI regulations for recruitment in airports, utilities etc. and HMG Baseline Personnel Security Standards which enforce formal vetting processes for reserved civil service appointments and subcontractors in Scotland. Often these vetting processes are not backed up with credible HR strategies and individuals have been denied employment on the grounds on minor and irrelevant summary convictions. In other situations recruitment policies are fair but this is not necessarily implemented in practice.

Guidance from FSA, CPNI and HMG Baseline Personnel Security Standards do not enforce blanket bans on people with unspent convictions; however attendees suggested that there is a tendency for them to be interpreted very conservatively. One of the drivers for conservative interpretation is simplicity

because it is easier to deselect people with convictions than assess any grey area.

HR professionals tend to be very positive about the recruitment of people with convictions but their role within the recruitment process is often as an observer or compliance adviser rather than a decision maker.

**Question 4: How can legislation be improved to achieve safe, fair and effective recruitment?**

The title and language used in the legislation was heavily criticised by attendees, in that the terms “rehabilitation”, “rehabilitation periods” and “offender” are misleading and propagate unnecessary stigma towards an individual who is defined as “not rehabilitated” even though in every practical way they may have conducted themselves as exemplarily citizens since their last offence.

The way in which criminal conviction information is requested was particularly criticised for 2 main reasons:

- If there is no reference to unspent convictions, then the applicant must resort to their “licence to lie” about their spent convictions. For many individuals this is uncomfortable and unnecessary as well as potentially being viewed by the employer as a breach of trust. Despite the fact that the individual is protected from discrimination by the existing 1974 Act, these protections can be ignored on a practical level.
- Where an employer makes no attempt to unpick the circumstances of the individual at the time of offending, the relevance of the conviction or changes that the person has made, then the information contained in the disclosure is effectively meaningless in most cases.

It was suggested that there should be conditions to the way in which conviction information can be asked and potentially linked with rights to accessing Disclosure Scotland information including Basic Certificates.

**Question 5: Should some offences never be spent – always needing disclosed?**

It was the general opinion that some crimes are significantly serious enough to warrant never being spent. However a consensus on at what level this should be set was rarely reached within any of the groups and there were positive arguments for these to be subject to appeal.

There was a commonly held view that crimes of a violent or sexual nature would be the most likely to fall into this category but again the complex nature of recording offences led to no agreement on any demarcation points.

Concerns were raised over fixing offences under permanent disclosure legislation. The current system of individuals submitting a guilty plea in turn for lesser charges may allow for those who would fall into a perceived “dangerous” category to avoid disclosure.

There was a wide opinion that individualising this process would allow for the appropriate balance of individual privacy and public safety to be met. By defining an individual not their conviction as holding the element of risk, both the appropriate individual management plan and disclosure can be clearly recorded for employment and other purposes.

This individualisation was seen as allowing for the previous principles of rehabilitation to be maintained, giving the offender the ability to move on whilst ensuring that the best possible protections remain.

**Question 6: Should employers for some occupations have access to spent convictions or should the type of offence and specific occupation be taken into consideration?**

There was agreement that the safeguards built into the Protection of Vulnerable Groups (Scotland) Act 2007 (PVG) system allowed for an established principle of where relevant convictions would bar employment with those at risk. There was a general concern that creating further levels of bureaucracy could again hinder actual recruitment and it was felt that increasing employer access to PVG was not an effective solution.

The broad agreement was to further reinforce a process of conviction relevance assessment for those employers where additional safeguards or legislation currently exist. It was felt that a blanket ban on employment for specific offences was inappropriate and this should again be on an individual level.

There were also views expressed that for some jobs, a perception of immaculate moral conduct is blown away by recruits having a criminal record at all so full disclosure is required.

**Question 7: After a certain period of time should spent convictions no longer be disclosed under the 2013 Order and how should these time frames be defined?**

There was general agreement that the long term effects of having to disclose due to employment in exempt professions has a negative impact on those who have long standing convictions. Again concerns around the relevance of convictions were raised as part of this process.

Concerns were raised for this as human rights issue with examples given where spouses or children were not aware of individuals long spent convictions which may hinder them to with accessing exempt employment or other exempted roles.

There was a significant lack of knowledge of existing rules under Police Scotland's weeding & retention policy of criminal records and the 20:40 & 30:70 rules, this has the potential for further confusion for employers & jobs seekers. There was a general consensus that a process for the removal of long term minor or single offences should be developed under any new legislation

including an appeal mechanism allowing an individual to request the removal of convictions.

## **4.0 Recommendations**

The 1974 Act is unfit for modern procedure and should be overhauled. The minimum change for any new legislation should be to bring Scotland in line with the proposed changes contained within the LASPO. This legislation should in its language and title not further reinforce the “offender” stereotype.

Disclosure of convictions should be based on individual assessment. Low level or single offences should have minimal or no disclosure period. More serious offences should have periods of disclosure fixed as part of the judicial process dependent on individual context and offending history. The most serious offenders who are assessed as being of risk in the long term should have to disclose their convictions on a permanent basis.

There is a strong feeling that disclosure periods should be based upon a person centred or individual approach. For those who wish to participate with their own rehabilitation there should be the opportunity to reduce periods of disclosure. This should be based upon actively engagement with taking responsibility for their offences and a restorative approach to demonstrate rehabilitation.

For occupations and professions exempted from the 1974 Act, an appeals process for the removal of single and or minor convictions should be introduced to allow those who have not reoffended, the opportunity to fully wipe the slate clean. Existing rules for criminal history weeding should be reviewed and the legislation on the disclosure of weeded convictions should be clarified and communicated.

Appropriate conviction relevance information and assessments guidelines should be available to all levels of employers.

There should be a requirement for employers to undertake Relevance and Risk assessments on potential candidates with convictions prior to making a judgement on their suitability for employment with regard to any disclosed convictions.

Employer examples of good practice should be publicised in order to increase employment opportunities with the public sector taking a lead role in creating good practice by recruiting ex-offenders. Public benefit clauses in procurement should reflect this change.

An employer certification scheme should be introduced to provide employers with the necessary initial support to widen employment access by this client group.

A campaign should be undertaken by Scottish Government in order to educate employers, employees and the wider public on the changes in legislation. This should further be targeted to widen the understanding of the levels of conviction in the Scottish population and aim to reduce the stigma associated with the offender stereotype.

Regardless of what changes are made to the 1974 Act, the whole legislative and practical recruitment environment for people with convictions will remain complicated and information needs to be more accessible, through a web-based knowledgebase as well as a helpline for employers and applicants which is broader than the scope of existing Disclosure Scotland resources.

## **5.0 Additional Themes and Recommendations**

There is widespread confusion about the 1974 Act, Police Act 1997 Part V and Police Scotland's Criminal History System (CHS) weeding and retention guidelines. This leads to under and over disclosure of criminal convictions and the support available to employers and individuals with convictions, is inconsistent.

An employer code of practice for dealing with disclosure of convictions should be implemented and this should be linked with the rights of the employer to access information from Disclosure Scotland including the use of basic certificates.

The employment of people convicted of sex-offences and those released on life licence creates particular public concern on the grounds of morality, emotion, damage to employer brand/business and public safety. There is little awareness of existing supervision or MAPPA functions and activities to protect the public combined with wide and misleading assumptions about how a "sex-offender" or "lifer" is defined and the risks that they might pose. Similarly "hate crimes" create difficulties for HR professionals in a modern multicultural society. While these groups are very small within the context of overall offender numbers and the issue is politically difficult, there are particular problems for people with these convictions to access employment and pay tax even though many have the skills which employers need. Any new legislation or process should account for associated stigma for particular offences which create additional barriers for disclosure and employment and ensure that the personalisation of rehabilitation periods which is favoured by many; does not demonise a minority to such an extent that they remain economically inactive.

## **Appendix 1: Consultation responses**

### **Question 1: Appropriate rehabilitation periods**

Should be 2 rates (under 25 (adolescents) and above 25) and older people should have life skills. Females get lesser sentences.

Get rid of disclosure. Arbitrary rehabilitation won't make a difference to people reoffending.

We don't like the focus on the sentence rather than the crime or offence. It is a bigger picture. What is evidence base? Whole background. This should also relate to information on CHS. Include disclosure periods in sentencing? Group decided this is invalid. How does this relate to risk in the workplace?

The rehab periods laid out in LASPO are largely reflective of a suitable system however only linking rehabilitation periods to the disposal is restrictive.

Single serious offences should be assessed on their own merits rather than linked to an arbitrary measure against the disposal.

The reduction of community based disposals in LASPO does not take habitual offenders of low level acquisitive crime which could harm employers.

Similarly sex offenders often have low tariff disposals with supervision.

The sentence should be reflected in the time and the rehabilitation. Community service should directly mirror period of sentence. Other sentences (such as insanity, hospital, guardianship etc.) should be dealt with under disability legislation. Custodial sentences - there should be a differentiation between multiple sentences and one offs. Admonition etc. - if not guilty verdict, then nothing relevant to record. Need to be clearer what needs to be disclosed. If you end up in court and are sentenced, whatever the sentence, you need to disclose. Anything that doesn't get a sentence you need not tell us. The period of rehabilitation reflects the sentence period (given at court). There should be more attention paid to the way sentences are given.

Question arose of: do we actually need a period? Can it be immediately spent?

Since risk of reoffending is decreased from rehabilitation period, it is deemed necessary but current legislation definitely needs changed.

Encouraged by the changes in England.

Current tables are arbitrary.

Guidelines need to be more flexible and concentrate on the value of sentencing and requires a closer link between sentencing and the rehabilitation period

Suggestion of the period being handed down by the court along with the sentence length and should be determined upon individual circumstances instead of generic tables that are applied to all cases.

Need to educate employers regarding the rehabilitation period legislation so they are aware of the sentencing procedure and how that affects the rehabilitation period.

Sentencing value and changes in sentencing policy such as the use of community orders have a major affect. One size process does not work.

Sentence should be linked to rehab. A good disclosure process without any rehab period may be better. Need a clear cut guideline on timescales. There should be flexibility over rehab periods in the same way as sentencing guidelines.

Objectivity in rehabilitation. Variation is sentencing & how this can affect the longer term. Offence specific approach to rehab. Responsibility- Rehabilitation-

Restorative approach. Rehabilitation as part of risk assessment. Need a definition of rehabilitation.

Care issue; training issue; support issue; mitigation. Age is an important factor with people doing small silly crimes up to mid 20's

A person should not need rehabilitated from a fine.

The rehabilitation periods are too long.

The rehabilitation periods should not be linked to the disposal it needs to be much more closely linked to the crime, mitigating factors and aggravating factors.

From an employer perspective the rehab periods exist but they don't mean anything because employers don't understand them. The bigger issue is the education of employers to move them away from bias, rather than imposing legislation which might not make any difference anyway.

Criminal record information has never been so freely available.

Legislation can be brought in for deselecting when preselecting and it should be linked to human rights legislation.

The tick-box should be moved into the equality form but for some jobs it is relevant to disclose. Most people with convictions don't know what to disclose and when to disclose and so specialist support is required. There are exempt professions and processes need to support these too.

Concern about the cost to the employer, there is a need for information and for this to be assessed but what administrative burden would this bring to employers and what would be the impact on the individual of going all the way through the recruitment process for them to be then deselected on the grounds of a criminal record.

The disclosure certifications should contain much more information about the readiness and rehabilitation of the individual rather than the convictions. This would then corroborate a letter of disclosure. Employers want the best person for the job but there is always a degree of bias when they see any conviction information.

Employers will be anxious about this.

There should be clear information from the outset for applicants about conviction relevance and the disclosure process which is adopted by that employer. This could help to stop individuals deselecting themselves.

If there are offences which employers are automatically barring then this should be displayed up front.

More support should be available to employers.

A change in legislation might not improve the process and there are concerns that it could be.

There should be moral obligations on employers rather than a legal obligation on them. If a quota system was implemented then it would make little or no difference.

There is good practice in the NHS where information is not used until right at the end of the application process and it is blinded from the interview panel. Current periods are too long, long term career implications, lack of understanding for employers and clarity for job seekers. Periods should be reduced based on current experience, short term sentences don't seem relevant to employers. Different industries have different approaches. Code of practice-Conviction Relevance & risk assessment- could this be written into the legislation? Offence & nature/context should be part of the disclosure process

although potential for unintended consequences. Need to be conscious of benefits of disclosure during application process, but clearing the slate has benefit. Employers may see non-disclosure as untrustworthy even when convictions are spent. Current legislation does not allow for protection against discrimination. Could differing European process be applied i.e. Belgian Rehabilitation applications system. UK public protection as lead.

There needs to be an assessment and certificate of rehabilitation. Lack of education for employers on the current situation. There are cross boundary/border issues with employees from Europe or the world. There needs to be a balance between public safety and individual safety. Insurance concerns given as a reason for dismissing staff under the 1974 act. Honesty needs to be part of a collaborative approach to employer engagement, disclosure can be seen as a positive. Practical approach to disclosure on a case by case basis, based upon individual risk assessment and their offence. Current system needs to be changed, risk assessment should be linked to job. Disclosure & rehabilitation should be linked to the context of the crime. New legislation should be based upon the principles of discrimination. The process is about risk assessment, levels needs to be applied i.e. multiple offences (even minor) would be a negative pattern and therefore a risk. One off offences wouldn't then be a risk.

Questions over What shape did rehabilitation take? could rehab periods be linked to rehabilitation work undertaken. Actual process of rehabilitation could be linked to a delivery programme i.e. 2 years' service links to "spent conviction". Varied understanding of rehab periods and potential implications. Age shouldn't be a factor, Nature of offence should be the deciding factor, and psychology of behaviour should also be a factor in determining rehabilitation, possible sub sections of conviction. Fines and consequential financial pressures can lead to further offending rather than reduction. FINES SHOULD BE SPENT UPON FULL PAYMENT. Need to strike the correct balance with safety. Need an objective approach to rehabilitation, disposal should be linked to engagement in rehab but not an enforced programme. EMPLOYERS, Value the voluntary aspects of engagement, Individual explanation is of benefit to employer.

It was felt that "rehabilitation" is not relevant to some sentences. If the justice system works, why not remove need for rehabilitation? If behavioural work can be built in, remove need for rehabilitation. Encourage people to get involved. It was agreed that at least there should be parity/equality with England, but disclosure has to be less than currently and in many cases is not required. Judge on won merit. Should be dependent on the offence. Sentence doesn't always reflect the offence. Crime should be relevant. Some crimes should be individualised. Use a formula - if second offence multiply by 2, 3rd offence by 3) severity including fines is far too high. Move age of differentiation up to 21 and stick with 50% tariff. Relies on person sentencing being responsible for getting right sentence.

Should be based upon a risk assessment dependant on industry. Previous "don't ask, don't tell" systems are now creating barriers. Needs to be individual system of assessment of offender & offence, possible pre vetting system. Need to look at a scale of offences, ex-custody creates more of an issue. Would a system of absolute disclosure be a better option, i.e. all convictions are never spent and must be disclosed would level the process.



Arbitrary periods are an irrelevance.

"Research into statistical modelling for convictions and re-offending should be used to inform rehab periods.

The current rehab periods are very long.

They should be crime related rather than linked just to the disposal because it is difficult to base on a sentence.

The rehab periods are linked at all to any level of risk.

Different sheriffs give out different sentences for similar crimes.

Maximum sentence should be 4 years.

Period of Rehab for community sentence should be linked with completion of the sentence/ paying the fine.

There needs to be flexibility in this legislation and changes in recruitment practice.

All custodial sentences of under 48 months should become immediately spent at the end of the sentence.

For sentences over 48 months they should become spent at the end of the sentence or at the end of licence or supervision.

All other sentences should become spent immediately.

Rehab periods could be determined at the sentencing stage on a case by case basis plus feedback from conduct in prison this could inform the rehabilitation period.

Don't think sentence length is relevant. Can get 6 months for shoplifting but also for assault. Nature of offence or total number of offences is more important.

Lifestyle at the time is a factor. E.g. a 10 year gap.

Can make a judgement when you have decided to employ – Have not pre-judged. This is a more qualitative judgement.

Lots of people won't even go for a job if they think that they will have to disclose. Some organisations encourage people to make early disclosure.

Answer to this question also depends on the job.

Everybody is an individual – there is a context and a point in time when an offence occurs.

Is legislation too prescriptive? Employers may need some legislative guidance.

PVG process can be hard and demoralising.

"Stop talking about risk of employing offenders – what risk

Make community disposals spent immediately

Legislation will not protect anyone in practice.

Shorten periods generally.

There is protection in place from the justice system anyway in the way that offenders are managed. Why should employers need additional protection?

Employers will discriminate against offenders with or without the legislation.

People take career gaps for all sorts of reasons and it can be interpreted as if they were in prison.

Only prison disposals over 6 months should have rehab periods. All other court disposals should become spent immediately. 6 months to 30 Months should be a 7 year rehab period and 6 months to 30 months should be a 10 year rehab period. Disposals over 30 months should never become spent. Where rehab periods apply, it should be half the length for under 18s.

Perhaps some things should be disclosed to employers after a position is secured. However, much emphasis should be placed in “right person at the right time for the right person.

Don't know.

Depends on post applied for but disclosure period is testament to an extension of the sentence.

Offences should be on a sliding scale, indictable/summary etc. Rehabilitation should be based upon the individual actively engaging in rehabilitation. Fixed time periods are not an accurate measurement of rehabilitation. Any new legislation needs to be designed with update mechanisms regarding other changing legislation. Low level offences (summary?) fines community orders should be spent upon completion of fine or order & any licence conditions. The disposal should be lined to the offence rather than the disposal.

The current 1974 act is not fit for purpose.

There needs to be campaigns to stop employers being judgemental.

The existing legislation is inconsistent with the rest of Europe where there is very little disclosure of convictions for ex-offenders applying for work.

The name of the legislation needs to be changed because it propagates the very notion of the offender stereotype.

People do not understand the 20:40 and 30:70 rule either and this compounds the confusion over the legislation.

While employers need to be re-educated – so do offenders.

There needs to be statutory guidance on how this works. There is a tendency for people to over-disclose because they don't understand the legislation and processes.

There are many informal ways to access information including internet searches and despite this being bad practice it still occurs. There should be a clear line between summary and indictable offences. It makes no sense that an indictable offence and a summary offence with the same disposal – have the same rehabilitation periods.

Sentencing policy means that some people escape custody for a range of situational factors and then benefit from shorter disclosure periods also. This in itself is a punishment for poverty where homeless people are more likely to receive custodial sentences and are then further punished by the existing terms of the 1974 Act.

There needs to be an incentive to reduce the rehab periods. This can then be used in an assets based approach and as part of the recovery capital for the individual.

Summary offences should become spent immediately.

The good element about LASPO is that the rehab period does not start until the end of all licence conditions.

## **Question 2: Deselecting when Preselecting**

Wrong to be deselected right away - is there hard evidence. Job application forms should relate to nature of job vacancy. Employers ignorant through a lack of information (individuals also ignorant - system too complex). Wording on applications should be changed and you will be asked questions on disclosure later in the process. People don't know when to disclose and how to do it.

Depends on type of conviction and job (i.e. work with children) when access to more vulnerable groups (teachers, care jobs) categorise jobs and offences. Definition of term "rehabilitation" needs updating. Link to diversity/disability. Change company policies. Give people an interview. Positive discrimination can have detrimental effect on employment levels.

Where there is a gap in CV. By not disclosing, have disclosed. How do people get beyond initial sift? Should be different mechanism for people who have been out of the job market (as opposed to those who collect a non-custodial sentence) and different crimes should be treated differently. Offer a disclosure certificate which should be able to be personalised.

Ban the box. Sacro does not allow deselection with police. Sealed envelope when shortlisted, assess case on its merits. Give individuals the opportunity to discuss background. Difference in size of organisation large organisations policies might be ok; small employers have a different context - tribunal option? PVG listing. Human rights/police/information. How do you convince employers to look further into background? Stigma is issue. It's about information. People should only disclose after interview. Automatic box can apply to prevent people applying for some jobs. Convictions aren't always negative. BALANCE. PVG not mandatory. Disclosure Scotland - define. Public opinion affects employer's decisions.

So much of this work is done by recruitment agencies these days and much of this is down to the relationship between agency and the final recruiter. The REC Recruitment and Employment Confederation is the umbrella body for recruitment agencies and they do set out a code of practice for the recruitment of people with criminal records.

A big part of the problem is that individuals self-select out of opportunities. In other words the offender stereotype is self-fulfilling so employers need to give people with criminal records confidence that their application will be dealt with professionally and that risk assessment will be conducted realistically.

Nobody knows how many students have criminal records and since employability support does not focus on undergraduates this could be an unseen issue.

Delaying disclosure until later in the recruitment process would definitely help minimise the likelihood of very bad practice and more ex-offenders would get to interview.

The nature of recruitment has significantly changed and most companies undertake on-line recruitment processes.

Hard to apply. Greater consequences for organisations who discriminate. Depends on the industry, different standards apply. Gateway questions - leading to conversation which unearths the truth. Online application pathway. People don't automatically get bounced out. Spent convictions are disregarded for some jobs. More specialist roles require full disclosure. Standard jobs checked by random sample 10%. Integrity test - easier for larger organisations. Online application - HR function. Recruitment systems allow for pathways. Possibly more difficult for people who disclose a conviction may have greater challenge. In current economic climate weeding out people with conviction as a way to decrease applicants. Decrease risk? Common in private sector. Less common in third sector. Tender documents ask employers who want government contracts/local authorities to outline the recruitment process so almost self-perpetuating what can Scot Gov do to ensure that the tendering

process does not put those additional demands on employers in private sector. Better to sell the business case.

The banking industry representatives were concerned about legislation which would be inconsistent with the FSA guidance on suitable employees for FSA regulated positions and the administrative burdens associated with deciphering who they can/should/could/can't employ.

Not all banking positions are exempt from ROA though and employability organisations were concerned about (almost) blanket bans on unspent convictions, individuals self-selecting themselves out if applying to the industry and knock on effects to the local economy where the labour market is dominated by the sector.

Considered from employer perspective.

Employer anxiety/worried about the high level of risk.

Can occur high cost and time wastage if the box is moved further to the end of the recruitment process.

Why spend resources if the applicant is going to be rejected anyway?

Overall they want the best person for the job.

Why take on trouble?

Need to protect other vulnerable employees

Issue of subconscious bias: difficult to put a stop to regardless of when information is disclosed.

Questions arose of equality and human rights.

This should be linked into the education process for employers.

Issue of how this will affect outsourcing.

General consensus that it is appropriate for the box to be moved.

Suggestion that there is a lack of information for the potential employee.

Clear advertisement for job – Job description as a filtering process.

It should be made very clear that the applicant will have to disclose certain information regarding offenses at the beginning of the recruitment process.

Allows for self-selecting/deselecting if unsuitable for the job.

Suggestion that “the box” should be moved forward to prevent time wasting but deselecting should occur later to ensure fairness to employee – issue of subconscious bias.

All information should be available for both parties.

Readiness to work/rehabilitation period should be taken into consideration.

Risk that moving the box backwards could result in the employee getting the same negative reaction, only later in the process – more demoralising for applicant, waste of time.

Large firms need to influence smaller firms regarding changes in recruitment

Suggestion of a minimum number of ex-offenders calculated on organisation size – deemed controversial by group as this creates many complications in the recruitment process.

Acknowledgement that asking for sickness/absenteeism is unfair – should this be the same for convictions.

All information needs to be disclosed eventually.

Benefit of disclosing early is that it creates a bond of trust between the employer and applicant – better attitude from the outset.

Employer costs needs to be taken into consideration. Information should be upfront but deselecting cannot be on that basis, should be linked to rehab.

Relevance information should be added to disclosure. Disclosure should be

post offer rather than earlier. Employer anxiety will lead to a pre disposition towards candidates. Should always be the best candidate but there will always be bias. PVG should still apply as safety should always be paramount. Tick box is discriminating. Can it be done within the law? Need for education for employers.

Issues with outsourcing recruitment and use of online algorithm to preclude people with offending backgrounds (amongst other gaps in employment history). There is an element of subjectivity as well as objectivity in the disclosure of information and the police and their civilian staff apply an element of common sense. Human rights is a big factor and this area could be brought into equalities. There needs to be recognition of the readiness and rehabilitation of offender.

Some job application websites are stopping applications from people who tick the unspent convictions box.

Sometimes this at the end of the application process so an individual can spend lots of time applying.

Doesn't ask if I'm a drug user, a racist or homophobic.

There is some good practice in Recruiting people with criminal records and some employers do this very well.

Ex-offenders are full of hope when they leave prison and often want to pay back the loyalty to their family.

Currently don't ask the Question on our forms but we are under pressure from government and CPNI to start asking the question about convictions.

Also FSA have rules and we see this also moving into supply chains of these organisations.

Needs to be better joins with the supply and demand sides of labour market to make sure that people are trained for work that exists and is available to people with criminal records.

It is very unfair for people to be deselected before they can apply and many employers automatically deselect on the grounds of criminal records.

There should be records kept on recruits with criminal records and this should be monitored.

The under 18 rule for rehab periods is wrong because many people commit crime well before their 18th birthday and then are not convicted until well after that.

Many ex-offenders become very successful in setting up their own businesses. They are desperate to work and often are the best person.

Even if rehab periods are shortened people still have CV gaps.

It will definitely help if we can implement processes which allow more people to get to interview.

We need to address unconscious bias in interviews.

If you put it into legislation then employers will just seek to get extra positions exempt from the 1974 Act.

The disposal is a blunt instrument in defining rehab periods.

Recruiters are Human beings and it is very hard for them to deal with it. As soon as you see the criminal record tick box, you think – is this going to be more work for me? Is this person going to be trustworthy, Am I allowed to recruit this person? – will it cost me more to recruit this person?

It might be safer to recruit someone with a conviction because at least you will know their history.

There is too much information available about minor convictions which then makes things more difficult to recruit someone.

I did a lot of good work in prison but none of that information is available to employers.

There should be codes of practice for employers to ask for information in the right way and at the right time.

Clarity of information, employer education is necessary due to lack of knowledge. Need a campaign. Individual managers need supported, need to demystify. Economic growth model. Current practice leads to discrimination. Deselection should be part of the new law, needs to be followed by training & support. SPS/Justice could give out info on rehab periods. New law needs more teeth/power over employer discrimination. Discrimination felt by young people and in particular from the police, are the current spent periods appropriate for young people. Current ages are not relevant to modern understanding, "light bulb Moment" can be as late as thirties now." Issues around young adult development, age limit should go to 25 at least possibly thirty. Links to DWP & Universal credit to re-offending. Needs to be an individual assessment of offences. Could rehab be linked to assessment and then application process, Certificate of rehabilitation judicial impact is of importance. Legislation has an effect on how rehab is applied, should the judiciary be making an objective decision on rehab, Rehabilitation assessment as part of the sentencing process.

There needs to be education for employers and HR staff. A 3rd party risk assessment agency could use a star rating. Partnership approach to allow for better assessment individuals. Needs to be statutory guidance updates from Scottish Government with ongoing programme of education. Legislation itself may not be enough.

Employer relationship needs developed, other barriers have become de-stigmatised, and individual employer policy can be a major barrier. Exempt professions, Deselecting is discriminating, law currently discriminates, deselecting could be left until later in the process. Employers lack basic understanding of employment legislation, employer engagement is key, agencies manage (client) expectation and adopt retrospective career planning. Employers are expected to take the best person, Discrimination on convictions is apparent, non-disclosure should be discouraged, context of offence is vitally important. Legislation should make clear that spent information is spent. "Spent should be spent" Conviction relevance should be applied, examples of good practice in relevance testing within the care & support sectors, Employers will discount on extra special candidates, Stronger post shortlisting approach to deselection.

There was a lot of discussion about whether this should sit within other legislation (such as discrimination) which would mean it is a reserved power. It was felt that it should be included in the areas of employment/recruitment where you cannot ask (as with all the diversity stuff). It was also felt that a voluntary code of practice, or charter, for businesses should be established, and there should be work to change the mind-set of businesses and greater promotion of good role models. SPS encourage people to disclose and try to stress the risk of not disclosing. Issues of information appearing on the Internet/social media.

Review regularly. Need for education of employers.

Education for employers and recruiters is key. Individual assessment by the employer or third party should be the process, needs to be an objective assessment of the individual. Rehabilitation has to be an ongoing process with appropriate ongoing risk assessment. The media has a responsibility for perpetuating negative images of offenders. Conviction stigma goes much deeper than just employment, family and wider society as well. Disclosure should be based around current equalities legislation.

Disclosure must be after interview but the information should be present. New system should follow other equalities legislation. The Law should be clear this is a form of discrimination and constitute an offence. Job offers could be subject to disclosure and a relevance test. Needs to be a new system that suits all sizes of employers.

If the CR box is not ticked then employers don't find out except if the employer uses PVG or disclosure certificates.

Having a face to face discussion is valuable.

Apply experience appropriately when applying.

Peer support is important to help influence employers.

There should be a statutory obligation on employers to carry out a risk assessment. This should be linked to equalities legislation.

Educating employers is very important.

There should be suite of things – Legislation and Education of employer's campaign.

Will change if put on a discrimination basis.

Disclosure up front is the cause of this happening.

Legislate employers to risk assess as part of the paper sifting process.

It should sit on the same basis as other anti-discriminate legislation.

No to tick box.

Enlightened practice is the exception not the rule.

Should wait until you are offered the job – right at the end.

Helpful to discuss convictions.

Should be within the law.

But possibly more part of equalities legislation?

Recruiters will use a range of measures to get round the equality rules. E.g. internet search and unofficial search channels.

Difference between large organisations with HR dept. and small employers – should be the same system for each.

Where relevant to the post, disclosure should be up front. However, legislation should be such that an employer has statutory obligations to assess risk.

If disclosed prior to interview, person should be able to talk through.

People should not always have to disclose prior to interview as they will be judged upon prior to interview. Length of sentence may not have been appropriate. Judge may have given too harsh a sentence? However depending on job applied for would impact on whether you should disclose prior to interview. i.e. nursing.

"Yes should/could be treated same way as other anti-discriminatory legislation  
Important that prospective employees know what they can apply for to prevent on-going rejection and demoralisation.

Need to be able to maintain a good selection process within recruitment.

Candidates however needs to be able to access interviews. There is a huge issue around lack of knowledge with the 74 act. Current legislation itself creates

discrimination. Information on convictions should not be available until after the first application sift.

Ban the box is a relatively good idea because too many people are weeded out. This is not just about criminal records but a host of other areas where recruitment processes are poor.

There needs to be clear processes for overcoming the ambiguity of what to disclose, for non-exempt and exempt professions as well as weeding and when to disclose.

There was a strong feeling in the inverness group that over burdensome or punitive legislation for employers would be counter-productive.

### **Question 3: What can be done to reduce conviction stereotype anxiety among recruiters?**

It is a training issue - recruiters don't understand the legislation. Every employer should be required to have someone who is competent to deal with disclosure information. Experience shows that ex-prisoners / offenders can be reliable highly motivated employees. Prejudice is hard to legislate against - campaign of information and training. Funding to provide employer and HR (and communities) with appropriate training. Transition period required - references and experience. It's a cracking idea.

By employer and top down. Change companies and cultures. Should not be so judgement based. How do we break this down into manageable chunks for employers? There are 2 ends of the spectrum - those employers that positively recruit and those that don't - no middle ground. Who determines risk? Could be better partnership working with the voluntary sector, as a lot smaller businesses don't have the network. Share stats with bigger employers. Individualised support. Turn negative into positive. Public sector should be part of the solution rather than the problem- does so for diversity and this should be the same. Needs a system that is more transparent. Issues of human rights.

Organisations pander to members / customers. Brand is too important. How do I find the people I can trust? Previous convictions are no indication for future crime - intelligence sometimes different from candidates. Positive case studies might help change perception. Information is available on disclosure website.

Better education for employers is more important than legislation. Even after so many years of sex-discrimination legislation – there is still a glass ceiling for women in many workplaces.

Very little can be done to support small employers, they struggle anyway with employment legislation, however most new jobs are to be created by smaller employers and they are in some ways best placed to recruit people with criminal records because the boss recruits and the boss may not be answerable to anyone else.

There needs to be proper guidance for employers and rules to ensure that recruiters know that their employer will recruit people with criminal records so long as they are the right person for the job.

There is a possibility of creating a matrix of offences and job types so that recruiters know who they can recruit.

Policy and procedures can help but at the moment many employers do have good policies and procedures for the recruitment of offenders but still maintain



very poor practice because the final decision is made by line managers and HR specialists do not want to stick their neck out for the recruitment of an offender because there is no legal requirement.

Justice Authorities could provide better risk information to employers to help them risk assess criminal conviction information.

Need for better guidance which is more widely available. The legislation is long, complex and technical. It's a burden for people to rake through. Information guidance - context of offenders. Guidance needs to be in a format that people can access and understand, especially the escalation process. There is a need for awareness raising. If recruiting for a scarce skill, recruiting managers can create a strong case for employing. All employers must have a policy on rehabilitation of ex-offenders but better information should be readily available. Time away from the offence shows distance travelled and the changes in their lives. More info - better communication.

Acknowledgment that employer ignorance does need addressed.

Need for a campaign to change perception and gain public awareness.

Lack of understanding powers prejudice.

Information evidence needs publicised.

Particularly in the private sector – needs to be made aware of success stories of employees with past convictions.

Ex-offenders who have first-hand experience need to speak out and educate – difficult due to stigma.

Need to bridge the gap.

Interviews to gain better perspective of individual and de-mystify the stereotype.

Possibility of an employer compensation scheme if something goes wrong to reduce anxiety or fear of risk levels – deemed questionable by team due to lack of funding – not sustainable.

Educating employers on the incentives of employing ex-offenders.

Adding value to the business.

Potential skills gained from experience e.g. security guard understanding skills.

Humanistic approach – need to take a holistic view of applicant.

Need for ambassadors/case studies/success stories.

Show employers how to view to the person as an employee first and an offender second.

Issue that anxiety is very real and shouldn't be underestimated.

Programmes and workshop to educate.

Employers need support, 3rd party organisation or social work. Employers need the best information they need no doubts. It should not be an expectation that employers "do a favour". Interviews should take place to give the employer the chance to see the individual. Positive discrimination along the lines of two ticks.

Employer education programme. Information on actual conviction and individual. System needs to be simple for the employer, need to see examples of good practice for employers. Potential employer compensation scheme?

Good examples and testimony. Demystification and breaking down of stereotypes Use of business networks and practical support links. Data protection and contacting of police, could the police actually give endorsements of individuals. Needs to be linked to SPS and offender management services.

There is a need for a national agency such as Recruit With Conviction to lobby, educate, train, recruit businesses and ambassadors. There is also a role off pre training with employers and colleges preparing people for employment and to

become recruiters. It was felt that a consolidated push was needed on success stories - case studies, famous people, workshops, programmes, ambassadors. Incentivise businesses rather than indemnifying them. Make it cool for employers.

Training recruiters is so important.

The power of testimony is so important to allow positive examples to get promoted.

Employers need to know how important it is to recruit ex-offenders and the impact that a job makes. How they can change lives, how they can contribute to society.

Ambassador networks sounds like a good idea.

Demystifying stereotypes.

We need to get employers engaged but how do we get more employers engaged.

CIPD and others can really help more.

Get employers and prisons working more closely together?

The police can play a great role in supporting employers with information on people that they are working with in Dedicated Offender Management Units. Police working in Dedicated Offender Management Units know plenty of people who are very ready for work. Work is very important to them and without work they will get bored and return to offending.

Ideally employers would come to the police in these units and ask for individuals who are ready for work.

This could be a nationwide programme as part of a Police Nationwide Offender Management Programme.

It's something that doesn't cross our minds as an employers to think about recruiting people with criminal records and greater awareness of the issue needs to be promoted to employers.

Police testimonies for individual would be very important.

What is the advantage of recruiting people with a criminal record?

Prison changes your whole approach to life in every way and it can make you a better and stronger hearted person and the things that you value – like a job.

Needs to be a zero tolerance approach to misuse of stereotypes like the criminal record one.

Employers don't have faith in prison through care arrangements.

There are no resources to help people over the age of 25 to get work.

There needs to be somebody to speak on behalf of individuals with a criminal records and to advocate for them.

It should be an offence to discriminate on the grounds of a criminal record.

Being an offender is a choice rather than a feature which is outside your control like race or gender so it is different from wider discrimination.

The stereotyping is the bigger issue rather than the legislation, employers will always find a way to navigate someone out of work or deselect them if they have a criminal record – regardless of the legislation.

Comes back to CV gaps when someone has been in prison.

It is wrong that minor crimes can be held against people.

The judiciary need to be more consistent with sentencing.

Legislation should not be about extra punishment – should just be about protecting people from re-offending and allowing people to move on.

It's not about the legislation it's all about support and education for employers but the legislation can lead some of this change.

Sometimes the language used in crime prevention about the consequences of getting a criminal record reinforce the stereotype and also the self-selecting stereotype.

The legislation is not helping people to rehabilitate.

Question Exclusion and exceptions

If the offence does not relate to the job then it should not be available to recruiters.

There should be an appeal mechanism to allow some convictions to automatically drop off for exemptions from the act.

The legislation should look at an individualised approach and an appeals process should be implemented.

Social Workers could and should inform this individualised approach and the appeal process.

Information needs to be disseminated particularly to the private sector with good case studies, champions and education. We need to bust the stereotype and change perceptions and employers want to see examples of good practice.

There is a need to inform and educate and there should be a national campaign similar to the "see me" campaign.

We should promote processes where more individuals with convictions get to interview. This would help to demystify the perceptions of offenders.

There should be an employer compensation scheme so that if they took a risk in recruiting someone with convictions and it all went wrong then they should be compensated by the state.

Making employers aware of all of the incentives of recruiting people with criminal records.

There should be development of a network of ambassadors in Scotland in a similar way to the work in England.

Need a big campaign around ex-offenders, along the lines of two tick's symbol.

Media has a role to play in a de-stigmatising process, CSR from companies.

Social benefit clauses linked to recruiting from this group. Need to be careful about stereotyping in a positive manner as it is still stereotyping. Recruiter training and Csr policy need to be properly aligned, need to sell benefits of recruiting offenders. Employers have liability concerns, Insurance industry has further role as to how they apply rules. Employer concern over losing or being charged more for insurance. Better structuring of disclosure for insurance purposes. Requirement for conviction relevance as part of new law. An independent assessor body, may be the model to follow. Disclosure details should be post interview.

Legislation should be based around the 2010 equalities act, could use a discretionary model for disclosure. Are insurance companies driving discrimination or is this just an excuse from employers. Additional disclosure by public has caused job loss for individuals.

Employer education for minimising stereotype, Need a campaign. Employers are unaware of legal status and their responsibilities. Proactive recruitment will undermine stereotype, need to use examples of good practice, public sector could be leading and not the worst example. Inclusive recruitment is best practice but specialists have better knowledge, good practice examples, employer education for all groups of barriers, balance across all groups and

need for work readiness. Employers want candidates with minimum hassle involved, best ability and core employability skills, disclosure with context is key to success. "End of process" for the individual. Rehabilitation information and assessment of work readiness.

There was discussion about how you can use legislation (not necessarily attached to Rehabilitation of offenders Act, but perhaps discrimination or human rights), promotion and campaigns, roles models and a trickle effect, although this takes a long time. It was also suggested that a carrot and stick approach, applicable to public sector and larger employers for NOT employing people with offending backgrounds. Is it possible to incentivise businesses? In addition, all discussions focus on the 2% who end up in a custodial sentence and not the 98% who don't. How do you legislate for them?

Need for education of employers. Programmes such as Recovery Ayr show that people can change.

Need positive examples of recruitment of ex-offenders and trailblazers, Timpson's, John Lewis, and Virgin. Prison leavers are not ready for employment.

Education and use of good examples, use individuals. Needs advertising, publicising or a campaign. Needs to overcome employers who have been "once burned". Can be less of a problem for small employers as they are able to make an instant decision. Self-employment for offenders as a route to new jobs. Scottish Government Campaign. Tie in with Youth opportunity or employer incentives.

Provide evidence to employers that a prisoner has engaged in the rehabilitation process by taking up opportunities to address their learning, skills & employability needs and so, demonstrating some "quality assurance" employer may rely upon.

More of an issue for small organisations. Larger orgs likely to have multiple decision makers,

CRBS can advise for volunteers before referral to disclosure Scotland.

Education.... Education....Education is the key.

Legislation can be the starting point for change.

Need more advertising and campaigning.

Some employers have had their fingers burnt.

Employers often prefer personal recommendations.

We need a long campaign to change views.

Educate employers, HR depts., and agencies. Potentially also introduce legislation.

Education.

Appeal process.

Risk Assessment.

Guidance available.

Need to support organisations about positive risk taking.

In relation to my experience of previous offenders this can/should be viewed as an asset in terms of positive role modelling.

Need to engage with junior staff in order to remove conviction anxiety at its root.

Education programme to demystify. Need for a simplification of existing system in order to widen the pool of candidates. Need a re-education programme for other staff. Current system has a punitive approach rather than reform. Supply

chains could be used by purchasers in order to widen opportunities. Need for good practice examples to show positives of recruitment.

**Question 4: How can legislation be improved to achieve safe, fair and effective recruitment?**

How are you getting on since conviction? Is it for too long? What is relevance of offence? Multiple convictions is a complex issue. Why we need this rehabilitation act anyway - it is just adding to a sentence. Too generalised Ex-offenders and employers don't know, so it is too complicated. Vagaries of PVG - not one blanket system. Challenge company policies. If not reoffending after 4 years, likelihood of reoffending reduced - could this not be tied not the spent convictions? Reduce time limited 7 years to 5 years to less (nothing?). Should there be something that has no time period or increases according to increases in sentencing?

Should be person centred rather than crime centred. Should be able to appeal Bring timescales down for spent - depends on disposal. Retention of information must be coordinated. Where do we sit with our conviction history? Disclosure process must change to fit degree of knowledge we need to have. Need to know basis. Evidence needed at many level. Duty of care. Internet information. Discriminatory use. Must take into account changes in access to information. Protection of and for the individual. Support to give confidence to employers. Campaign of public information.

Define spent convictions in context of the offence rather than the disposal.

To change standard rehab periods and generally bring them down.

Rehab periods should be about rehab and not arbitrary time periods.

Behaviour of people in prison should influence rehab periods.

Not uncomfortable with basic disclosure but should we stop using enhanced disclosure for convictions that happened years ago? They are spent and irrelevant. The law says these convictions are spent. It is in the past. Should depend on the role. Legislation is too black and white. Too general. Candidates can challenge the need for disclosure. Discrimination goes across the board health etc. balancing risk - organisations are under pressure - unconscious discrimination. Generally not hard to fill posts these days. Can ex-offenders still challenge discrimination? Guaranteed interview process - difficult. Ex-offenders should be able to present themselves better and tell the story positively and honestly. More entry level jobs that are available for people to build a success story

Prison is and artificial environment – not a correct representation of real life.

Need for a balance of reintegration of individual into society.

Society does have a demand.

Need for broad, simpler processes with less specific criteria – a move away from unnecessary complex processes.

Acknowledgement that it is better to work – less likely to re-offend

Rather than using timescales to gage how serious the offense was, specify more about the offense – focus on more information.

Person/individual centred.

Discrimination cannot be prevented from a change in legislation alone – we know this from gender, race, and age issues – a need for cultural change.

Society demands punishment balance.

Will always struggle to be fair.

A need for broad yet concise legislation with better information.

Suggestion that the name of legislation needs changed – name is an oxymoron.

Create a more positive image.

Integration.

Making employer's part of the rehabilitating process.

Focus on the individual and each sentence.

Be clear about expectations.

Legislation must protect both the employer and the offender.

40/30/20/70 – time removed from record line.

Spent convictions are never really spent.

When spent should be fully forgotten – completely off record.

Information so readily available due to technology advances.

Difference between having a record and having access to records.

Sentencing- can an additional judgement be made linking to rehabilitation and how this can be done, conditions etc. Need balance of society and individual needs. Integration and rehab are priority. Wider societal perception of fairness.

Disclosure should be broad whilst also concise. Disclosure system needs simplification. MAPPA candidates would need a huge resource.

Write it in plain English. How to prevent information appearing on the internet?

Age is important factor and it was felt that the period of 5 years around the age of 21 there is a lack of common sense (also includes suicide rates). Who do we need to be protected from?

Look at it from job/crime/age/personalisation/profession. There needs to be a culture change.

Remove rehab timescales against the disposal and link it to the offence.

The whole process needs to be person centred both from the needs of the employer and the employee and how this is risk modelled.

The legislation needs to be based on discriminatory based. While diversity legislation can improve processes, a real culture shift is needed.

Sentencing is linked to this issue and a lack of consistency and a perceived lack of consistency in sentencing undermines the whole process. However sentencers have a vast amount of information available at the time of sentencing and this would be the ideal time to set disclosure periods which could be subject to increases or decreases depending on the engagement of the individual.

The best information should be available to employers to make an informed choice.

The name of the legislation needs to be improved to mention integration and readiness for work. Employers don't see themselves as part of the rehab process and the time periods should be linked to readiness for work.

We need to be clear about who do we need to protect employers from. Out of the cohort of individuals who have a criminal record – there are only a small proportion who have any likelihood of causing harm to employers.

The data weeding rules need to be brought into the legislation.

Medical model of assessment could be used, 3rd party will provide a risk assessment of individual. The offence should be the marker rather than the sentence. The offence should be linked to employment (list of offences-list of jobs) potential for too many grey areas. Possible for a phased system, red/amber/green offences. Application for removals according to exceptions

order and or PVG. Needs a simpler systems, PVG should be maintained, protected convictions. Could disclosure be more tightly linked to sentence e.g. 10 years=10 years, 5 years=5 years? 1974 act is not actually relevant in its current form, lying as part of recruitment creates a position of mistrust. Offenders need the ability to move on. Balance needs to be struck with safety/discrimination/rehabilitation. Language of the legislation itself needs to change, emotive words "life" "offender". Agencies can actually bypass disclosure process for good or bad, Issues with accessibility of international information. Rehab should be linked to conviction possible graded system, lower offences tied to shorter rehab periods to allow for people to move on Guidance around Risk assessment and possible system for risk assessment, this system could be based upon points/scale & context of offence/penalties followed by resolution of problems to indicate rehabilitation. Risk assessment should be on an individual basis, this could be linked to the judicial system of reports in court system or individual social work assessment at point of conviction. Post interview system based on disclosure and education. "Spent" certificates of rehabilitation.

Can't discount convictions but need to allow for change. Current system creates a culture of lying. People don't know or understand current legislation, Where to disclose, what & when. Possible categories of offending. High -Low etc. with links to levels of employment i.e. breach = Low. Matrix of disclosure Employment-offence-disclosure. Current system does not allow for context. All offences have a value judgement attached. (Again context of offending) Opportunity to explain should be part of the legislation, Rehabilitation assessment? Judicial assessment could include a rehabilitation scale/score. Rehab certificate could be seen as a positive in the recruitment process. 3Rd party assessment is of benefit to employers, they appreciate it. Good risk assessment is key for any recruitment.

Some suggestions - take the list of all convictions and pick a list of those that need to have a rehabilitation period and then make it zero tolerance rehabilitation. Another option would be a sliding scale - serve half and then second half is your rehabilitation period (under license?). Take English system including excluded/protected jobs and no need to disclose after 11 years. No appeal to get off convictions? Or have rehabilitation kicking in on second offence?

Understandable. No indefinite timescale. Incentivise for people who try to improve. Need a review process (like a parole board) - monthly, quarterly, annually - public body act as agency.

Needs to be a full disclosure in confidence. Follow current principles of licensing (taxi/alcohol) to assess individual, could also be based around PVG. The law should be clear on not discriminating based on the offence. There must be an individual assessment prior to deciding on employment, according to the conviction.

Currently a lack of knowledge around 74 act. Any new process should have an appeals mechanism. Should be based on offence and not the disposal. Need to have safeguards over the objectivity. Rehabilitation cannot be defined by time alone. Needs to strike the balance between with the objectivity of offence. Current language of act is wrong. New law should be brought into line with the equalities act.

Setting rehab periods should be a role of the judge to put in certain conditions (if you do this and this then you don't need to disclose).

Deferred sentence based on good behaviour.

At the discretion of the judge build in tariff to sentencing guidelines.

Discount if you plea early

Role of peer evaluation and reflective practice.

The determination of the time convictions become spent is part of the judgement/ sentence of the court/judge.

This would be more flexible and could take into account the nature of the offence.

Employers don't necessarily have the right to know but individuals don't realise their rights so they over-disclose.

Employability workers don't have a good enough understanding of the legislation to support individuals.

1974 Act is useless because people aren't familiar with enough with it or don't understand it.

Legislation enables appeal whereas PVG doesn't.

Problem is more how legislation is interpreted.

May be that we need better publicity on the legislation.

Focusing on the nature of the offence – can be differently /charged/prosecuted by police and others.

Rehabilitation should be measured by behaviour – not time.

Fairness is key to the legislation.

Name "Rehabilitation" is wrong – more about equalities?

"Possible prisons e.g. (psychology services) could have an input into decision of length of time before a sentence is spent. Prisons have a valuable insight into prisoner progress, attitude, ethic engagement etc.

For less serious offences – When is a conviction spent? This could be at the discretion of court based on mitigation, history, etc.

The 1974 act apparently has no teeth. Should there be implications for those who break it or will this just make more offenders?!?

If good behaviour maintained for a period of time (i.e. half the sentence) then could the disclose time be reduced by a percentage.

The judge at sentencing could apply duration until the crime is spent and no longer disclose able. They are in the position to assess the risk.

A simple system is probably unachievable. Starting afresh with a new system would be better. Rehabilitation should be the leading principle of new legislation. The period of rehabilitation should not in itself be a barrier or exclude candidates. Employers should be able to access accurate and relevant information on candidates. Rehabilitation should be linked to context of offence and relevant risk. Accountability & taking of responsibility should prove and therefore shorten rehab periods. A rehab assessment process should be adopted. Need to maintain protection for the individual within any new legislation. The legislation must be accessible to small and large business. Balance of public safety with the individual's right to privacy. Need to look at wider issues as part of a holistic approach to employment. Must be wary not to create a new level of offender stereotype for those with ongoing or indefinite disclosure.



**Question 5: Should some offences never be spent – always needing disclosed?**

The group found it difficult to agree on what should always be disclosed although accepted that "serious" offences should or could be. There would need to be an evidence based assessment possibly done by a professional Yes, for some offences. But role of monitoring /supervision. Where a person was to where person is and the processes should be taken into account. Best predictor of future is past behaviours. Keep high risk offenders off the street and keep society safe. Get it right for the majority allows skills for high risk to be concentrated.

How do you get a legislative process that is personalised? It should be an offence to discriminate and we need to get this into the equality spectrum. If the issue relates to managing risk we need to balance that job and the crime Anything with a life licence? Murder? Murder of a child? Anything automatic makes for Sentencing process and options must be changed. Licences should be disclosed somehow. It is the person who is rehabilitated, not the or conviction - each on its merit. Changes to sentencing required to enable and fit to changes to ROA. PVG has guidance on what is automatic box relating to same offences.

Certain serious crimes where there is a likelihood of somebody never being safe should have a never rehabilitated marker against the individual, however in all cases there should be an appeal mechanism against this.

Yes there are kinds of offences that must always be disclosed. Can the sentences given be used as a guide to those kinds of crimes? Relevance - custodial and non-custodial; types of crime and nature of the crime; severity, relevance to job. How to differentiate - "passport of rehabilitation" - widen the descriptions to reflect the nature of the crime/reason for imprisonment. Nuisance versus danger; why not make the length of the rehabilitation period link more closely to the length of the sentence given? The legislation needs to keep up with the way the CJ service changes.

General consensus of yes.

Should make a judgement on the person, not just the crime.

Suggestion of putting crimes into category.

Social disorder, financial gain and power.

Crimes of power is hardest to rehabilitate and should be always disclosed.

A focus on the intent to commit crime.

Different degrees – difficulty in placing offenders into categories.

So many variables – impossible to define in exact terms

Offences that include abuse to children should never be spent.

Issues of defining age.

Comes down to a belief in people's ability to change.

Flexibility – not a black and white situation.

Needs to be a judgment on individual – an assessment at case level.

Again brings up issue of employer anxiety.

PR problems on reputation.

Some offenses are more important for different occupations.

E.g. retail jobs are more interested in shoplifting.

No two situations are the same.

Not the crime it's the individual. System of categories based on intent of crime, public/social disorder-needs support programme; financial gain- needs support and redirecting; power- needs intensive support. Any system needs to not be too rigid and have flexibility.

Criminal history system is wrong. Do we believe in people's capacity to change or not? We need to have more information about crimes. We need an assessment of risk in the community. We need bail or exclusion activities with vulnerable groups but there are other ways of doing things and there are so many variables.

"It is impossible to answer in any detail because there are so many variables. Sexual abuse against children is very emotive but it would not be right to completely take out one offence.

If we believe in people's capacity to change then there needs to be an appeal process so that convictions can become spent.

There are some crimes which should always be disclosed but these need to be assessed by people who understand more about the nature of the offences.

There needs to be flexibility because this is not a black and white process.

Crimes of power against people should have longer or indefinite rehab periods but the assessment should be made against the individual rather than just their crime/s.

Yes, Crimes of violence. Combination of offence & offender. Depends on the offence & needs contextualising. Types of crime. Needs to be an individual process.

All offences "should" be able to be rehabilitated but in reality people do need to know information where it involves murder, sex offences, fraud, drugs offences. Is it possible to have a certificate when people come out (this is what I did whilst I was inside.....)? Should there be an independent monitor (like a retired sheriff)? The difficulty is because you look at a specific offence and you need to be able to look at the individual.

Yes some - sex offenders, terrorists.

The conviction and crime itself should be the starting point. Needs to be on an individual basis of crime and surrounding factors.

Context of individual offence should be the lead. Based upon individuals assessment and not the offence. Balance of safety there are offenders who need removed from society.

Sex offenders/fire raising/ terrorism.

Not just about the crime but about the person.

Type of crime needs considered as does personalisation.

Sentence doesn't always fit the crime so base on type of offence.

Employers should think differently and we need to get positive stories out to them.

Employers should be incentivised to recruit offenders

Some offences should be defined by the court/judicial process as never spent on a case by case basis.

What the probability of a risk to society should be behind each case.

Individual circumstances are so important – but people only see the conviction – not the story.

Individual cases are very different.

Response to different offences has changed over time.

Appeals process might help people move on where appropriate.

Sexual offences – very wide range included in this.

You can only legislate for what you know but we recognise many crimes are never detected/prosecuted/convicted.

Police intelligence may have value in terms of PVG but can also be flawed.

Possibly if a crime is committed against a specific person/s for a specific reason, then a person may be less likely to reoffend. However, a crime which is a random act based on politics, religion, sexual orientation may be more difficult to rehabilitate & therefore always disclosed.

Yes some offences/crimes should never be rehabilitated. However guidance re what crime was and what length of sentence would be appropriate as there are some offences i.e. underage children having sex and male being put on sex offenders register. This can be seen as unfair as both were consenting. Needs to be a better way of categorising offences.

Some offences should never be rehabilitated??? Violent (extreme) sex offences. Offences against children etc...etc.

Context and objectivity of offence. Positive angle on process of disclosure.

Current system is too rigid and needs to have a flexible approach or be based on an individual system. Any new system should be based on Relevance tests for particular employment rather than existing blanket approach. Employers should be able to maintain the right to select candidates without fear of litigation. A scale defining level of offences and how they can then be removed. Possible credits based system for rehabilitation.

**Question 6: Should employers for some occupations have access to spent convictions or should the type of offence and specific occupation be taken into consideration?**

Case-by-case; campaign; sentencing changes; information behind disclosure retention; use of existing info systems; other legislation needs to be changed to enable.

There should be a matrix of convictions and offences which define whether or not a particular spent conviction is directly relevant to the occupation.

For relevant offences. The regulators in some institutions demand knowing disclosure and everything whether relevant or not. Govt depts. - local authorities under tendering process make demands of service providers to outline how they disclose.

Questioning the point of information being spent if it is still accessible?

Can't object to an employer wanting to have full disclosure.

Right to know vs. automatic refusal.

PVG checks are necessary but still potential for employment.

Relevance – need for a more expanded disclosure process – assumption of no conviction but checks if necessary.

Balance – what is relevant to the job?

Individuals need the right to appeal any refusal based on past offending background – similar processes for other discrimination issues.

Need a safety net for employers.

PVG is a better option but not perfect.

Blanket bans are not effective.

Needs to be based on individual and make a judgment after other assessments.

Personalisation of crime, risk assessment.

Easy to refer to extremes in these situations – harder to address the middle area.

Depends on the type of offense.

Relevance and proportionality.

Needs to be a degree of trust between employer and employee.

Suggestion of disclosure of everything – seen as controversial by team.

Current process doesn't work. PVG has some benefits but needs further development. Blanket barring is not effective- needs to be objective judgement.

Needs of the individual must be balanced with employment. Relevance and individualisation of process. People need chances and the ability to change.

Safety net for employer. Should crimes be directly linked to occupations?

Relevance assessments need to be done.

Shouldn't be across the board and should be about relevance and proportionality. Employers are far more of a reference. There is a need to educate employers. Risk assessment is there to provide a distinction between right to know and ability for employers to make informed decisions

There is a distinction between right to know and blanket bans but the exemptions order should be regularly reviewed.

There should be an expanded disclosure service so that there should be disclosure only of relevant offences rather than all offences.

There should be a right to appeal for an individual when they are discriminated against on the grounds of an unrelated criminal conviction.

There needs to be a safety net for employers, blanket barring is not effective or fair and PVG needs improved.

It should all be about relevance and proportionality rather than hard rules.

Perhaps everything should get disclosed for every job to make employers see conviction information more and help them come to terms with it.

If it's spent, it's spent (although it isn't the case at the moment). If it has to be job specific, there should be a matrix to help people understand - matched to job. There should be a case by case approach and more person centred. Is it possible to build in an appeal mechanism?

Relevance and context.

Yes, child sex crime. Military offences should be added. Does this just undermine the 1974 act? Again needs to be a person centred approach based upon assessment of the individual.

Need to make sure objectivity of police intelligence is maintained.

"There should be a process of applying for rehabilitation.

The system of protected cautions and convictions in England seems to make sense.

Yes, the debate should be around which occupations/professions.

Yes but this should be regulated and monitored very closely with regard to limiting both the occupation and what crimes should be accessible.

Yes particularly where working with vulnerable adults/children. Relevance test would be beneficial.

"Yes recruiters for vulnerable groups should have access to spent conviction info and process.

But info on spent convictions should not be available for most jobs if not element of risk.

**Question 7: After a certain period of time should spent convictions no longer be disclosed under the 2013 order and how should these time frames be defined?**

Not looking to change protected professions

"Weeding" of info on CHS. Policies on same info (e.g. held for 20 years or individual is 40) subject access for £10 fee. Need to match subject access info. Case history after 12 years is destroyed. If nothing showing. What/why are you disclosing? Charged but not convicted? To assist employers - quality assurance from home office available to assist risk management. Passage of time.....

each case on its merit. Do you really need to disclose / human rights for everybody - look at everything on its merit. Family situation must be taken into account. Use of sentencing a crime in a proportionate manner - level of fairness. Increasing risk by bouncing some employment. Long term drive. Issue is not just legislation - it is one of culture perception stoked by media.

There should be a second spent conviction period applied when convictions are completely removed from the record. The 20:40 30:70 rule covers excessive time periods and individuals are not aware of this which can lead to over disclosure, especially since the guidance for disclosure of except professions (from employers) speaks in very tough language about non-disclosure and in some cases states non-disclosure is a criminal offence. This leaves the individual feeling vulnerable.

Relating to the length of sentences, crimes relevant to the work area should require disclosure of relevant spent/unspent sentences.

Complications already, do we need to make it more complex?

Problem that employers don't understand already.

Lack of knowledge base.

From employer perspective – need to collect as much data as possible to make an informed decision – truest picture and the best representation of applicant.

Can a negative become a positive – bring value into the workplace.

Dependent on the crime.

Needs to be considered from a Human Rights angle.

Individual approach – even friends and family may not know.

Personalisation issue – person centred.

Disclose everything and make a judgment later – issue of unconscious bias.

People are often reluctant to disclose everything.

Social responsibility of the employer – help reduce re-offending by providing opportunities.

Employer will want all information. Relevance is not the driver. Reluctance to include information, can this be a true picture of the individual. Already complicated and employers don't understand legislation as it is. Need to know and be linked to job description.

Depends on the crime and the details of the crime. People are rehabilitated after a period. Link to CSR.

The legislation needs to be written in plain English.

It depends on the crime and the details of the crime and the human rights angle needs to be considered.

For many people with convictions, their family and friends would not be aware of historic convictions.

The line needs to be drawn by subject experts.

The need to know should be linked to job description relevance but it needs to be person centred.

Yes there should be an additional level of removing old crimes, possibly by an assessment board.

Should be an appeals process to remove old convictions.

Worthy of further debate

Yes, however this be on application basis whose outcome is assessed on an individual basis.

Yes.

Conviction should no longer be disclosed where minor crimes have occurred, especially when the offence occurred under the age of 18.

Depends on the crime as sentence can be spurious.

## Appendix 2 – Discussion event question set

### Rehabilitation Periods under the Rehabilitation of Offenders Act 1974

Below is a comparison of current and proposed rehabilitation periods and examples showing the actual difference in rehabilitation periods between Scotland and England & Wales, once the provisions of the Legal Aid Sentencing and Punishment of Offenders Act 2012 has been implemented. Please note that many professions are exempt from protection of the Act.

<b>Custodial Sentence</b>	<b>Rehabilitation period</b>	<b>Rehabilitation period (under 18)</b>
A sentence for a term exceeding thirty months but not exceeding 48 months.		
A sentence for a term exceeding six months but not exceeding thirty months.		
A sentence for a term not exceeding six months		
Any other range of sentence lengths, e.g. over 48 months and above (please specify)		
<b>Community Sentence</b>	<b>Rehabilitation period</b>	<b>Rehabilitation period (under 18)</b>
Probation		
Community Service Order		
Supervised attendance Order		
Restriction of liberty Order		
Drug treatment & testing Order		
Community reparation Order		
Anti-Social behaviour Order		
Community Payback Order		
<b>Financial Penalty</b>	<b>Rehabilitation period</b>	<b>Rehabilitation period (under 18)</b>
Fine		
Compensation Order		
<b>Other sentence</b>	<b>Rehabilitation period</b>	<b>Rehabilitation period (under 18)</b>
Insanity, hospital, guardianship Order		
Admonition		
Absolute Discharge		
Conditional discharge		
<b>Alternative to Prosecution</b>	<b>Rehabilitation period</b>	<b>Rehabilitation period (under 18)</b>
Warnings given by a constable		
Warnings given by Procurator Fiscal		
Fixed penalty notices given under section 129 of the Antisocial Behaviour (Scotland) Act 2004		
Fiscal fines		
Fiscal compensation Orders		
Fiscal work Orders		
Fiscal activity/treatment Orders		
Notice to comply with a restoration Order		

**Question 1**

What do you think the appropriate rehabilitation period should be for the following disposals set out in the table below? (e.g. spent immediately or 1, 2, 3 months etc or 1, 2, 3 years etc.)

**Question 2**

**Deselecting when preselecting** is the process where job candidates are automatically removed from the first stage of application process because they have a criminal record. This denies applicants with a criminal record the opportunity to compete for work.

Would it be appropriate for legislation to regulate **deselecting when preselecting**?

Yes: How would this work?

No: Why not?

**Question 3.**

**Conviction stereotype anxiety** can stop a candidate with a criminal record from getting the job even if they are the right person and the criminal record is not relevant. The recruiter may not be empowered or even authorised to recruit someone with a criminal record or they may not be appropriately trained. Note: Risk relevance is different and is used to deselect candidates if their previous offending behaviour presents a realistic risk of harm in employment.

What could or should be done to minimise **conviction stereotype anxiety** among recruiters?



The Rehabilitation of Offenders Act 1974 allows certain convictions to become **spent** after a period of time so long as the individual is not reconvicted. In practice, some employers discriminate against individuals with unspent convictions, however once the conviction is **spent**, an individual can legally deny the existence of that conviction. If an employer discovers information about a **spent** conviction, they must not hold it against the individual.

The date that a conviction becomes spent is defined by the court disposal and the age of the individual when they are convicted.

Note: Some occupations are exempt from the Act and in such cases, all convictions, spent or unspent can be taken into consideration.

#### **Question 4**

With an aim to achieve **safe, fair** and **effective** recruitment and employment of people with criminal records, consider how this legislation might be improved.

#### **Question 5**

Do you think some criminal offences or crimes should never be rehabilitated? (i.e. a person would always have to disclose it) If so how these offences should be defined?

#### **Question 6**

Should recruiters for certain occupations and professions have access to spent conviction information or should the type of offence and the specific occupation be taken into consideration?

#### **Question 7**

After a certain period of time, should spent convictions no longer be disclosed under the 2013 Order and how should these time frames be defined?

Note: The 2013 Order is the legislation that dis-applies the protections under the Rehabilitation of Offenders Act. Therefore, spent convictions can be disclosed to the occupations or professions covered by the Order.



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