

## **Children's Rights and Wellbeing Impact Assessment**

# **Management of Offenders (Scotland) Bill – Reform of the Rehabilitation of Offenders Act 1974.**

**Final CRWIA - Web version of Policy CRWIA – Management of Offenders Bill - reform of the Rehabilitation of Offenders Act 1974**

<b>CRWIA title</b> <b>Date of publication</b>	
<b>Policy/measure</b>	Management of Offenders Bill - reform of the Rehabilitation of Offenders Act 1974
<b>Summary of policy aims and desired outcomes</b>	<p>A summary of the specific policy objectives for reforming the 1974 Act are as follows:</p> <ol style="list-style-type: none"> <li>1) Extend the scope of the protections under the 1974 Act from sentences exceeding 30 months to sentences exceeding 48 months in order that anyone who has been sentenced to a custodial period of 48 months or less can become a person who is not required to disclose their conviction,</li> <li>2) Simplifying the structure, improving the terminology and rules of the 1974 Act,(e.g. change the term ‘rehabilitation’ period to ‘disclosure’ period),</li> <li>3) The disclosure periods for individuals under the age of 18 on date of conviction should continue to be halved and the buffer periods associated with custodial sentences should also be halved,</li> <li>5) Disposals from a children’s hearing on offence grounds should have a disclosure period of zero and as such, become spent immediately for both a discharge and a compulsory supervision order,</li> <li>6) The disclosure periods for financial penalties should be reduced,</li> <li>7) The disclosure periods for absolute discharge, admonishment and community disposals should be reduced, and</li> <li>8) The disclosure periods for custodial sentences of 48 months or less should be reduced.</li> </ol> <p>It is considered that these reforms will modernise and improve the 1974 Act and will contribute towards the Scottish Ministers’ wider policies for penal reform; reducing re-offending; tackling inequalities; enhancing social justice; increasing public confidence; strengthening community resilience; growing the economy and achieving sustainable economic growth by removing overly restrictive barriers to people engaging in employment, training and economic activity.</p>
<b>Directorate;</b> <b>Division;</b> <b>Team</b>	Criminal Justice Directorate Criminal Law Division Criminal Law & Practice Unit

<p><b>Executive Summary</b></p>	<p>The Rehabilitation of Offenders Act 1974, (“the 1974 Act”), provides the legal framework relating to the requirements falling on people with previous criminal activity in their background to disclose this information in certain situations, such as applying for a job or obtaining insurance. The 1974 Act has, for a variety of reasons, been subject to criticism since it was first introduced and is now viewed as over-complicated, poorly understood and, consequently, difficult to apply in practice . It is said to be increasingly out of step with sentencing law and contemporary sentencing practice in Scotland and there have been increased calls for reform and, in particular, for the rehabilitation periods linked to disposals to be reduced.</p> <p>The purpose of reforming the 1974 Act is to develop a scheme that offers a more effective balance between the competing demands of protecting the public and rehabilitation and integration into the community. The changes are also designed to make the scheme easier to understand for those who have been convicted of an offence, for Disclosure Scotland to administer the scheme and for employers and others to understand how the scheme operates.</p>
<p><b>Background</b></p>	<p>The 1974 Act provides the legal framework relating to the requirements falling on people with previous criminal activity in their background to disclose this information in certain situations, for example applying for a job or obtaining insurance.</p> <p>In Scotland under the terms the 1974 Act, anyone who has been convicted of a criminal offence and sentenced to prison for 30 months or less can become rehabilitated after a specified period provided he or she receives no further convictions. A person can also become rehabilitated after receiving an alternative to prosecution (AtP), such as a fiscal warning or a fiscal fine. After the specified rehabilitation period has passed, the original conviction or AtP is considered to be spent. Anyone receiving a custodial sentence of over 30 months is never deemed to be rehabilitated under the terms of the 1974 Act.</p> <p>The general rule is that, once a conviction or AtP is spent, that individual does not have to reveal it and cannot be prejudiced by it. This means that if a person’s convictions or AtPs are all spent is asked for example, on a job application form, or at a job interview, or on a home insurance form whether they have a criminal record, they do not have to reveal or admit its existence. Moreover, an employer cannot refuse to employ someone or dismiss someone because of a spent conviction or AtP.</p>

The rehabilitation period for a conviction depends on the sentence imposed for that offence. For example, if a person receives a custodial sentence not exceeding six months, the rehabilitation period is currently seven years and if they receive a fine, it is currently five years from the date of the conviction. These periods are halved if the individual was under 18 at the date of their conviction. The rehabilitation period for an alternative to prosecution depends on the type of alternative to prosecution received. For example, if a person receives a fiscal fine or a fiscal compensation order the rehabilitation period is 3 months from the date it was given.

However, there are some categories of employment and proceedings to which the 1974 Act does not apply as it is considered appropriate that access to specific criminal convictions should continue to be available for the purposes of public protection. These 'higher level' disclosures are necessary when people are seeking employment with vulnerable groups such as working with children or the elderly. None of the proposals for reforming the 1974 Act will affect how the system of higher level disclosures operates.

Reform of the 1974 Act will affect any person who can be prosecuted for committing a criminal offence and lives or works in Scotland. Currently, over one-third of the adult male population and one tenth of the adult female population in Scotland are likely to have at least one criminal conviction. Therefore, it is clear that the 1974 Act currently affects many people in our society. The consequences of having to self-disclose previous offending behaviour for long periods of time and for such information to be included on a basic disclosure certificate because they are not spent can have an on-going impact on people's ability to gain employment, attend university or college, volunteer, secure an apprenticeship or get insurance or a bank account, etc.

The 1974 Act has now been on the statute book for over 42 years. It has been subject to criticism as being over-complicated, poorly understood and, consequently, difficult to apply in practice. In addition, it has been said to be increasingly out of step with prosecution practice, sentencing law and contemporary sentencing practice in Scotland and there have been calls for reform and, in particular, for the rehabilitation periods linked to disposals to be reduced.

It is clear that access to employment is crucial for individuals with a previous conviction to be able to move on with their lives and put their past offending behind them. As such, suitable access to employment can also contribute towards a reduction in the rate of re-offending. However, the blanket

	<p>rejection of those individuals with a previous conviction by many employers, sometimes due to not understanding the operation of the 1974 Act, is a substantial impediment to that process. This approach is replicated in other areas key to successful resettlement, including the provision of education, housing, banking facilities and insurance.</p> <p>The purpose of reforming the 1974 Act is to develop a scheme that offers a more effective balance between the competing demands of protecting the public and rehabilitation and integration into the community. The changes are also designed to make the scheme easier to understand for those who have been convicted of an offence, for Disclosure Scotland to administer the scheme and for employers and others to understand how the scheme operates.</p> <p>Therefore, all protected characteristics will obtain a positive outcome.</p> <p>The reforms will contribute towards the following National outcomes;</p> <ul style="list-style-type: none"> <li>• We realise our full potential with more and better employment opportunities for our people.</li> <li>• We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.</li> <li>• We live our lives safe from crime, disorder and danger.</li> </ul> <p>The reforms will also make a contribution towards;</p> <ul style="list-style-type: none"> <li>• Reducing underemployment,</li> <li>• Increasing the proportion of young people in learning, training or work,</li> <li>• Improving mental wellbeing,</li> <li>• Improving people's perceptions about the crime rate in their area,</li> <li>• Reducing reconviction rates,</li> <li>• Reducing crime victimisation rates, and</li> <li>• Reducing the proportion of individuals living in poverty.</li> </ul>
<p><b>Scope of the CRWIA</b></p>	<p>The reforms to the 1974 Act in Scotland will ensure the legislation strikes the correct balance between the rights children not to disclose their previous offending behaviour and to move on with their lives while also ensuring the rights of the public to be protected are effectively maintained.</p> <p>However, we appreciate that there are groups of vulnerable and marginalised children who require special protection from the government - and these are often the children who are</p>


	<p>most at risk of having their rights ignored or infringed. They include children in trouble with the law.</p> <p>The UNCRC makes it clear that, wherever possible, children should be dealt with outside the criminal justice system. A welfare response suited to the child's individual needs and circumstances can better address the underlying causes of the behaviour that first brought the child to the attention of criminal justice agencies.</p> <p>This is where our proposals to have a zero disclosure period for referrals to a children's hearing is important.</p> <p><b>Achieving:</b> As the reforms will result in fewer children having to disclose their previous offending and those who are required to do so will do so for a shorter period than is currently the case we believe this will help them in accomplishing their goals and thereby boost their skills, increase their confidence and self-esteem and allow them to move on with their lives and be all they can be.</p> <p><b>Active:</b> As the reforms will result in fewer children having to disclose their previous offending and those who are required to do so will do so for a shorter period than is currently the case we believe this will provide those children with more opportunities to take part in a wider range of activities.</p> <p><b>Responsible:</b> As the reforms will result in fewer children having to disclose their previous offending and those who are required to do so will do so for a shorter period than is currently the case we believe this will lead to less stigmatisation of those children which will allow them to take an active role within their home, school and community.</p> <p><b>Included:</b> As the reforms will result in fewer children having to disclose their previous offending and those who are required to do so will do so for a shorter period than is currently the case we believe this will help those children to feel that they are a full member of the community in which they live and learn and will aid them in their learning journey and allow them not be feel discriminated against.</p>
<p><b>Children and young people's views and experiences</b></p>	<p>As part of the engagement events we visited Polmont Young Offenders institution to gather views on reforms of the 1974 Act. It was clear from those discussions that young people also wanted the 1974 Act reformed in Scotland.</p> <p>A consultation paper was published in May 2015. Responses were received from Scottish Children's Reporter Administration, Children's Hearings Scotland, Scotland's Commissioner for Children, Families Outside, Barnardo's</p>

	<p>Scotland, Circle and Centre for Youth &amp; Crime Justice. We also e-mailed the consultation paper directly to the Scottish Youth Parliament, Youth Scotland and YouthLink Scotland but unfortunately did not receive a reply.</p> <p>It is clear that reform of the 1974 Act will impact on children in a positive way and this is welcomed by children's organisations and children.</p>
<p><b>Key Findings</b></p> <p>To include impact on UNCRC rights and contribution to wellbeing indicators</p>	<p>Overall, we consider that the policy will have a positive impact on the rights of children. Each proposal is a positive move and will result in less disclosure, more children being protected from having to disclose under the 1974 Act and the legislation will be easier for children to understand and how it applies to them.</p> <p>This is because reform of the 1974 Act will also simplify the structure, improve the terminology and rules. This a positive move for all, including children, as the Act as drafted was extremely difficult to understand.</p> <p>The disclosure periods for all court disposals will be reduced under the reforms. This is a positive policy move for all, including children.</p> <p>The reforms to the 1974 Act will ensure referrals to children's hearings on offence grounds are no longer disclosed on a basic disclosure. Therefore, when a child is referred to children's hearing on offence grounds and is discharged or receives a compulsory supervision Order the disclosure period will be zero, (i.e. it will be spent immediately). This ensures the referral will never be disclosed under basic disclosure. This is a positive policy move for children referred to a children's hearing.</p> <p>Under the current legislation, disclosure periods are halved for those committing offences under the age of 18, unless it is specified otherwise. Reform of the 1974 Act will maintain this current policy and ensure it applies to all court disposals which is a positive outcome for those convicted of an offence under the age of 18. As a result, the disclosure periods for individuals under the age of 18 on date of conviction will continue to be halved and the buffer periods associated with custodial sentences will also be halved. Given disclosure periods are being reduced, this means children will benefit from these general reductions too.</p>
<p><b>Conclusions and Recommendations</b></p>	<p>We consider it is appropriate and necessary to proceed with the proposals for reforming the 1974 Act.</p> <p>We consider that the reforms will impact on children in a</p>



	<p>positive way. There will be less disclosure of previous offending behaviour for children. This will allow children who have committed offences to move on with their lives sooner than was previously the case. This will allow the majority to put their past mistakes behind them and go on to make a valuable contribution to society and live a fulfilled life.</p> <p>The evidence has shown us that reform of the 1974 Act is necessary and appropriate.</p> <p>The reforms will;</p> <ul style="list-style-type: none"> <li>• help children to accomplish their goals and thereby boost their skills, increase their confidence and self-esteem and allow them to move on with their lives and be all they can be.</li> <li>• provide those children who have committed offences in their past with more opportunities to take part in a wider range of activities as a result of being able to put their past offending behind them.</li> <li>• lead to less stigmatisation of children who have offended in the past which will allow them to take a more active role within their home, school and community.</li> <li>• help children who have offended in the past to feel that they are able to be full members of the community in which they live and learn and this will aid them in their learning journey and allow them not be feel discriminated against.</li> </ul>
<p><b>Monitoring and review</b></p>	<p>We will work with our Community Justice and Justice Analytical Service colleagues to assess whether the reforms have had a positive impact on reducing reoffending and helping those concerned move on with their lives in a positive manner.</p> <p>We will also engage with employers with the aid of our Community Justice colleagues and stakeholders, (e.g. Recruit with Conviction, Positive Prisons? Positive Futures, SACRO, Apex Scotland and children's groups, e.g. Barnardos Scotland, Families Outside, Children's Hearings Scotland, Scotland's Commissioner for Children), to assess the impact of the reforms on recruitment, education, improved life chances and whether the aim of making the legislation easier to understand for children is working. We will also monitor the outcomes of reforms to assess whether further reform is required.</p>



<b>CRWIA Declaration</b>	
<b>CRWIA required</b>	<b>CRWIA not required</b>
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<b>Authorisation</b>	
<b>Policy lead</b>  Nigel Graham, Senior Policy Adviser, Criminal Justice Division	<b>Date</b>  
<b>Deputy Director or equivalent</b>  Willie Cowan, Deputy Director, Criminal Justice Division.	<b>Date: 05/12/2017</b>  



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