



## Disclosure (Scotland) Bill – stage 1 briefing

The Law Society of Scotland is the professional body for almost 12,000 Scottish solicitors. We seek to influence the creation of a fairer and more just society and are strongly committed to our statutory duty to work in the public interest and to both protect and promote the rule of law.

As a professional body, we have experience of the current disclosure system. The scheme is integral to how we promote and maintain professional principles as a regulator - on admission to the profession, re-entry to the profession or as part of our anti-money laundering regulation. Any reforms to the current disclosure system must not diminish the protection to the public, while respecting the rights of the individual and ensuring that the process is clear, predictable and certain to all involved.

We provided a [written response](#) to the call for evidence from the Education and Skills Committee of the Scottish Parliament; we subsequently provided [oral evidence](#) to the Committee on the Bill.

### Our role

We are the professional body statutorily required to represent the interests of the solicitor profession and the interests of the public in relation to the profession<sup>1</sup>. We are also required to have regard to regulatory objectives, including protecting and promoting the interests of consumers and the public interest generally and promoting and maintaining adherence to the professional principles.

An effective disclosure regime is crucial to our role, allowing us to admit individuals who are fit and proper to the profession. This differs from the employer and employee relationship, and the role of solicitor, as an officer of the court, differs from other types of employment.

Solicitors occupy a privileged position, trusted by the public with their most confidential concerns, their most valuable assets and most important interests. They are trusted by the justice system to fulfil duties to the court and uphold the rule of law. Solicitors must meet the highest standards of honesty, integrity and professionalism in order to deserve that trust. A fair and just society and thriving and competitive economy require that individuals and businesses can have confidence that Scotland's legal and regulatory system will support them by providing appropriate protection of their rights and interests, whether in the commercial or personal sphere.

### Supporting simplification

We support the development of a simplified regime for disclosure in Scotland, balancing an individual's right to privacy with protection of the public interest. The current disclosure regime is complex and can be difficult to navigate. We also appreciate the reasons for changing the way in which offences committed before the age of 18 are treated. However, the Bill proposes significant changes to the disclosure system which, if enacted, may restrict the information which will be disclosed to us through future disclosure certificates.

### The two-part test: 'relevant' and 'ought to be disclosed'

Whether a particular conviction will be disclosed may depend on the offence; the age of the offender at commission; the amount of time which has elapsed since the conviction; and an assessment (initially by Disclosure Scotland but reviewable – at the instance of the subject of the certificate only - by an independent reviewer and the sheriff) as to whether the conviction is "relevant" for the purpose for which the certificate is sought and "ought to be disclosed". The role of solicitor is broad and we are keen to ensure, in particular, that



there is greater detail around the relevance of any convictions to ensure that we can discharge our functions effectively in the public interest.

Scottish Government and Disclosure Scotland have outlined the approach around guidance, both statutory and non-statutory, that would support the two part test in practice and we are keen to contribute to this work, to ensure that the disclosure regime provides effective protection and balance between the competing needs of the system overall.

We also welcome the recommendation in the stage 1 report from the Education and Skills Committee that high-level principles could be included in the Bill, and the commitment from Scottish Government to bring forward amendments at stage 2 to this effect, which will provide greater certainty for individuals and organisations involved in the disclosure process.

## **PVG: protected adult**

The Protection of Vulnerable Groups (PVG) scheme has been in operation since 2011, and we welcome the opportunity to review and reform this process that the current Disclosure Bill provides. The scope of the current scheme is large, with more than a million people registered, reflecting the breath of services provided to vulnerable groups across the public, private and third sectors. We believe, however, that the definition of 'protected adult' may benefit from further scrutiny. Section 76 of the Bill defines a protected adult as "an individual aged 18 or over who, by reason of physical or mental disability, illness or old age... has significantly impaired ability to protect themselves from physical or psychological harm, or... requires assistance with the activities of daily living."

We highlighted in our written and oral evidence that as the definition of 'protected adult' in section 76 is different to that in other legislation for vulnerable people, there could be, for instance, situations in which an individual could qualify for a personal independence payment, or disability assistance as it will be in future, and need a carer to meet their assessed needs but still not be considered to be a protected adult for the purposes of the legislation. Similarly, individuals vulnerable because of their circumstances, such as victims of domestic abuse, would not be within scope. We welcome the commitment from Scottish Government to look at the definition in section 76 of the Act at stage 2.

## **Lists of offences**

The Bill separates criminal offences, largely depending on their seriousness, into List A and List B offences. There is the capacity to amend these lists by regulations, for instance, to follow the work of the Scottish Sentencing Council around sentencing outcomes. We have highlighted some issues around the lists that could be amended during the passage of the current Bill, including the current difference between embezzlement (List A) and fraud (List B). There are also several other offences involving dishonesty which are not included in List A, such as attempt to pervert and attempt to defeat the ends of justice (the latter not included at all).

## **Conclusion**

Overall, we support the provisions of the Bill. We welcome the Scottish Government's commitment to bringing forward amendments at stage 2 to ensure that the Bill provides effective balance between human rights and protections for the individual and would be happy to engage with Scottish Government, Disclosure Scotland and others to ensure that it does so.