



Evidence to  
The Public Bill Committee  
On the Protection of Freedoms Bill

**Submitted by**

**UNLOCK, the National Association of Reformed Offenders**

**May 2011**

## About UNLOCK

**UNLOCK, the National Association of Reformed Offenders** is an independent charity and membership organisation, aiming to achieve equality for people with criminal conviction previous convictions.

We believe in a society in which reformed offenders are able to fulfil their positive potential through equal opportunities, rights and responsibilities.

### **UNLOCK's Mission Statement:**

Driven by the needs of reformed offenders, UNLOCK works to reduce crime by helping them overcome the social exclusion and discrimination that prevents them from successfully reintegrating into society.

UNLOCK empowers reformed offenders to break down barriers to reintegration by offering practical advice, support, information, knowledge and skills. It also acts as their voice to influence discriminatory policies, behaviours and attitudes.

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## **Introduction**

1. Following the Home Secretary's call for a full review of the vetting and barring scheme in October 2010, UNLOCK was invited, along with a small number of organisations, to attend one of the VBS consultation events. This was followed up with a formal submission<sup>1</sup>, which set out our views. Given the very short timescale between the announcement of the review and submission deadline, we sought to build on a briefing paper that we published in February 2010, which was produced after extensive consultation with our members. Many of our recommendations were incorporated in Sunita Mason's resulting review *A Balanced Approach*<sup>2</sup>. We were also pleased to participate as member of Ms Mason's Independent Advisory Panel on the Disclosure of Criminal Records (IAPDCR) to recommend filtering rules for old and/ or minor convictions as recommended in that review.
2. UNLOCK now welcomes the opportunity to submit written evidence to the Public Bill Committee in areas of the Bill which are particularly relevant to reformed offenders, that is:
  - Part five, chapter one: Safeguarding of vulnerable groups
  - Part five, chapter two: Criminal Records
3. In addition to the provisions currently set out in this Bill, we would advocate that further reform should be included within the scope of the Bill, incorporating a number of issues which are inextricably linked with the areas covered in the Bill as it stands. These issues include:
  - I. Reform of the Rehabilitation of Offenders Act 1974 should be included in the scope of the Bill in line with our submission to the Ministry of Justice Green Paper, *Breaking the Cycle*<sup>3</sup>.

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<sup>1</sup> UNLOCKing Employment, Recommendations to the Vetting & Barring Scheme Review  
<http://www.unlock.org.uk/userfiles/file/employment/Recommendations%20to%20the%20Vetting%20&%20Barring%20Scheme%20Review%20November%202010.pdf>

<sup>2</sup> A Balanced Approach – Independent Review by Sunita Mason: UNLOCK Member Briefing March 2010  
<http://www.unlock.org.uk/userfiles/file/employment/UNLOCK%20Summary%20of%20Sunita%20Masons%20Review.pdf>

<sup>3</sup> UNLOCK response to Ministry of Justice Green Paper: *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, March 2011

- II. Introduction of a filtering process on standard and enhanced CRB based on the outcomes of the IAPDCR
- III. Improvements to the CRB process, including the introduction of basic CRB checks and a reduction in the number of illegal standard and enhanced checks, in line with our submission to Phase 1 of the Criminal Records Review<sup>5</sup>.

## **Part 5, Chapter 1: Safeguarding of vulnerable groups**

### **4. Clause 63: Restriction of scope of regulated activities: children**

It is not entirely clear what the overall definition of regulated activity will be. It appears that the changes proposed are piecemeal and do not show a new way of thinking about the definition of regulated activity which is disappointing. It is not clear what the overall impact will be on the number of positions covered by the scheme (and therefore what positions will also be exempt from the Rehabilitation of Offenders Act 1974). Defining what should be exempt from the ROA should be an integral part of this Bill, to ensure that the ROA is used as a primary basis, and then only providing exemptions to it where it is absolutely necessary. Furthermore, there is little mention of revising the period definitions, which was one of the reasons which led to such a large number of positions being defined as regulated activity. In addition, clear guidance needs to be produced to provide a better idea of which positions would be regarded as falling within the revised definition of regulated activity, as this definition appears to change little in terms of the number of roles that would fall within it.

5. **Clause 64: Restriction of definition of vulnerable adults** This clause in itself doesn't appear to change much. The clause which follows (65) appears to have a greater impact as to what will be regarded as regulated activity as it applies to vulnerable adults, as it defines what will change in paragraph 7(1) of Schedule 4.

6. **Clause 65: Restriction of scope of regulated activities: vulnerable adults** There appears to have been very few positions removed from the definition of regulated activity as it applies to vulnerable adults, and so it is difficult to see at this stage how this will significantly reduce the number of positions within scope of the scheme. Furthermore, subsection 9 removes the period condition, which means that if a certain activity is only done once it will be within the scope of the revised scheme, which appears to drastically increase the potential for positions to fall within this category.

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<http://www.unlock.org.uk/userfiles/file/roa/BTC%20Consultation%20-%20UNLOCK%20response%20March%202011.pdf>

<sup>5</sup> UNLOCKing Employment: Submission to the Criminal Records Review – Phase 1, December, 2010

<http://www.unlock.org.uk/userfiles/file/employment/Submission%20to%20the%20Criminal%20Records%20Review.pdf>

**7. Clause 66: Alteration of test for barring decisions**

Only barring those who have, or intend to, work in regulated activity, appears to be a sensible proposal which will reduce unnecessary bureaucracy. However, how 'intention of working' is interpreted will be important, as this will impact on who the ISA decides to make a barring decision on. Those who fall within the automatic barring subject to representations will have the ability to make representations before a decision is reached. This is a sensible move and is in line with the issue raised by the Royal College of Nursing in their recent judicial review. However, there is no ability for those convicted of automatic barring offences to make representations, which remains a matter of concern. Furthermore, there appear to be no changes made to the process of representations (i.e. how they can only be made in writing at the moment).

**8. Clause 67: Abolition of controlled activity**

Whilst the ongoing value of the controlled activity category has long been questioned, it appears that the majority of the controlled activity positions now sit within regulated activity, which is clearly not a positive move, as it brings more positions within scope.

**9. Clause 68: Abolition of monitoring**

The system of continuous monitoring for those working in regulated activity will effectively still be in force anyway since positions regarded as regulated activity will be subject to an enhanced CRB check and an employer will be able to register an interest to keep up to date as to whether the individuals barred system changes.

**10. Clause 69: Information for purposes of making barring decisions**

It is not clear why the test for disclosure of information to the ISA should be the same as that which would apply to an enhanced CRB check. If the threshold for disclosing this information to the ISA was lower (i.e. more likely that the information is disclosed to the ISA) it could arguably justify a higher threshold for disclosure on the face of a CRB (i.e. less information disclosed). It is, however, positive to see the ability for regulations to be made which only sends certain conviction information to the ISA, but no detail on what these regulations would be (i.e. what conviction information wouldn't be sent to the ISA) is provided in the Bill or in its explanatory notes.

**11. Clause 70: Review of barring decisions**

It is a positive move to remove arbitrary time limits before an individual can request the ISA to review their case. However, the circumstances in which the ISA may remove a person from the list is relatively vague. More detail is needed on what threshold a particular case would need to meet before a review would be successful.

**12. Clause 71: Information about barring decisions**

The key element in this process is ensuring that only for positions which are defined as regulated activity is there an ability to request, register and to receive barring information. The test (i.e. no reason to believe that the declaration is false) doesn't appear to be very rigorous. There needs to be a process which allows individuals to inform an authority of a position which is not regulated activity but where an employer is requesting barring information, so that this information is not provided to the employer. There also needs to be a process which allows individuals to revoke their consent for a particular employer to receive continuous updates.

**13. Clause 72: Duty to check whether person barred**

This will mean that every position which is regulated activity will more than likely request an enhanced CRB check to be undertaken. As a result, what is classed as regulated activity is fundamentally important.

**14. Clause 73: Restrictions on duplication with Scottish and Northern Ireland barred lists**

This appears to be a logical proposal.

**15. Clause 74: Professional bodies**

There is an issue with the ability of a professional body to apply to the ISA on an ad hoc basis, as it is not clear whether individual consent would be required before barred list information would be shared.

**16. Clause 75: Supervisory authorities**

This appears to be a logical proposal.

**17. Clause 76: Removal of notification to employer before barring**

This means that, where the ISA is dealing with a particular case, they will no longer notify the employer until a final decision has been made, which is a positive move.

**Part 5, Chapter 2: Criminal records**

**18. Clause 77: Restriction on information provided to registered persons**

This is a positive move. This puts the individual in control of the information that is disclosed, being able to manage the process of disclosure and ensure that any inaccuracies are dealt with before they are disclosed to an employer. However, there are serious concerns around how this may circumvent the safeguards within the Police Act 1997, i.e. who will be able to request to see a CRB check. At the moment, the interaction between an employer and the CRB ensures a level of protection, by ensuring that, in theory at least, only positions eligible for such information can be in receipt of it. However, removing this connection risks employers being able to request certificates

from individuals without the legal authority to do so, and this will put individuals in a vulnerable situation. There appears to be no safeguards to protect against this.

**19. Clause 78: Minimum age for applicants for certificates or to be registered**

This is a sensible move.

**20. Clause 79: Enhanced criminal record certificates: additional safeguards**

The disclosure of non-conviction information is a contentious issue. It is unclear what practical effect the slight increase in the threshold will have, and it would be useful to see practical examples of where information would have previously been disclosed and wouldn't be now. Furthermore, it is not clear how referring a matter to a different police force to review a case is an effective and independent disputes process. A separate ombudsman-like process would seem to be more suitable for this kind of situation.

**21. Clause 80: Updating certificates**

The principle of continuous updating a CRB checks is logical. However, it would seem to be more effective to allow individuals to receive an online update of their own criminal record, and for the relevant registered person to be informed of this change, to then enable the individual to provide an updated copy of their record online. It appears burdensome to require an individual to re-apply for a certificate, and presumably pay a further fee (currently £36) for something which is already being paid for annually.

**22. Clause 81: Criminal conviction certificates: conditional cautions**

This appears to be a clarification of the process when issuing basic checks to ensure that all unspent information is included on them, which is sensible.