

Peculiarities of the Protection of Ex-Convicts' Right to Employment in Great Britain

SHULIKA, Viktoriia ^{1*}, YATSYSHYN, Mykhailo ²

⁽¹⁾  0000-0003-3202-0463; Lesya Ukrainka Volyn National University, Ukraine. vikabiskub@ukr.net

⁽²⁾  0000-0003-4502-9563; Lesya Ukrainka Volyn National University, Ukraine. 9999mm@ukr.net

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ABSTRACT

This article critically examines the intricacies of legal regulations pertaining to the employment rights of ex-convicts in the United Kingdom. The study comprises an analysis of both governmental institutions and non-governmental organizations that exert influence over the employment prospects of individuals who have completed their sentences. Noteworthy organizations of significant size and reach are analyzed to understand their impact on the employment landscape for ex-offenders. Furthermore, the authors meticulously analyze key legislation and secondary legislation governing the realm of employment agencies in this context, such as the Rehabilitation of Offenders Act 1974, the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013, and the Equality Act 2010. The article places particular emphasis on comprehending the unique aspects of the "Ban the Box" campaign and the influence of the National Association for the Care and Resettlement of Offenders on the employment prospects of ex-convicts.

RESUMO

Este artigo examina criticamente as complexidades da regulamentação legal relacionada aos direitos de emprego de ex-detentos no Reino Unido. O estudo compreende uma análise tanto de instituições governamentais quanto de organizações não governamentais que exercem influência sobre as perspectivas de emprego de indivíduos que cumpriram suas penas. Organizações notáveis de grande porte e alcance são analisadas para entender seu impacto no panorama de emprego para ex-infratores. Além disso, os autores analisam minuciosamente a legislação-chave e a legislação secundária que regem o âmbito das agências de emprego neste contexto, como a Lei de Reabilitação de Infratores de 1974, a Ordem de Exclusões e Exceções da Lei de Reabilitação de Infratores de 1974 (Escócia) de 2013, e a Lei da Igualdade de 2010. O artigo coloca particular ênfase em compreender os aspectos únicos da campanha "Ban the Box" e a influência da Associação Nacional para o Cuidado e Reintegração de Infratores nas perspectivas de emprego de ex-detentos.

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Introduction

In Great Britain, as in many other countries, the employment of individuals who have served their sentences is a crucial aspect of their reintegration into society and reducing recidivism. According to a study conducted by the University of Oxford in September 2023, over 20% of the UK's working-age population has a criminal record (Business in the Community's (BITC), 2024b). However, data from Business in the Community's (BITC) study "Inclusive Recruitment: Opening Doors" suggests that approximately 55% of employers would reject applicants with criminal convictions (Business in the Community's (BITC), 2024b).

The aim of this article is to examine the concept of served and unserved sentences in the context of the employment rights of ex-convicts in the United Kingdom. It seeks to explore the legal regulations and mechanisms that enable the reintegration of offenders into the workforce and assess their effectiveness.

The purpose of this research is to provide a comprehensive understanding of the peculiarities surrounding the protection and promotion of employment rights for individuals who have completed their sentences in the UK. It aims to analyze the legal framework, identify any gaps or challenges, and contribute to a broader discourse on offender rehabilitation and reducing recidivism.

Statistics have consistently shown that securing employment plays a vital role in offender rehabilitation, and failure to find employment significantly increases the likelihood of reoffending. It is important to encourage applicants to disclose any criminal history during the recruitment process to avoid complications later on. Nevertheless, in compliance with data protection regulations, information regarding criminal records should only be considered once a conditional job offer has been made. The employment of individuals with a criminal record will depend on the nature of the job they have applied for and the circumstances of their offenses (Lehmann et al., 2020).

Recruiting departments must not unfairly discriminate against applicants based on their criminal history. Employing or dismissing someone solely because of a spent caution or conviction is unlawful, except in specific cases (e.g., individuals on the barred list for working with children or those with certain criminal convictions being barred from working in the legal or high-level financial sectors) (University of Oxford, 2023).

Understanding the Rehabilitation of Offenders Act (ROA) 1974 in the UK

In recognition of the importance of ex-convict rehabilitation, the UK government, in collaboration with various organizations, offers several programs and initiatives to assist in their successful employment and societal reintegration post-release. These efforts aim to reduce reoffending rates and support ex-offenders in making positive changes in their lives. To better understand the intricacies of employment for individuals who have served their

sentences in Great Britain, it is important to familiarize oneself with the relevant regulatory framework. One such key legislation is the Rehabilitation of Offenders Act (ROA) 1974, which governs the disclosure of criminal records to employers in England, Wales, and Northern Ireland. This act differentiates between "spent" and "unspent" convictions, with individuals not required to disclose spent convictions to potential employers after a certain period. The length of time for a conviction to become spent depends on the severity and type of the sentence (UK Legislation, 2024).

Oxford University researchers have conducted extensive research to elucidate the concept of served and unserved sentences while determining the extent of convicts' mandatory rights and freedoms (Hammond, 1996; Rhode, 2003; Schnittker et al., 2022).

Thus, McGuinness et al. (2013) emphasize the significance of the Rehabilitation of Offenders Act 1974 in facilitating the reintegration of offenders into employment, provided they have not reoffended. Under this Act, certain convictions, cautions, reprimands, and final warnings for a specific offense can be considered 'spent' after a designated rehabilitation period.

According to Nagin et al. (2009) convictions not resulting in a custodial sentence or carrying a sentence of less than four years are accompanied by specified rehabilitation periods. During these periods, referred to as 'unspent convictions,' employers may request disclosure of such convictions through checkboxes in e-recruitment systems.

Cullen & Jonson (2011) state that once the rehabilitation period has expired without further convictions, the offense is deemed spent, allowing rehabilitated individuals to be treated as if they were never convicted. Consequently, they are not obligated to declare spent cautions or convictions when applying for most jobs, unless the position falls under the Act's exceptions. These exceptions may include clinical work or certain roles involving children or other vulnerable groups, where the disclosure of spent convictions is necessary (University of Oxford, 2023).

In Scotland, similar provisions are outlined in The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013. These laws aim to strike a balance between ex-offenders' rights and ensuring public safety (UK Legislation, 2013).

Methodology

Research Hypothesis. The hypothesis of this research is that the Rehabilitation of Offenders Act 1974 plays a crucial role in enabling the rehabilitation of offenders into employment, provided they have not reoffended. It is hypothesized that by mitigating the impact of criminal records after a designated rehabilitation period, the Act facilitates the successful reintegration of ex-convicts into society, reducing barriers to employment, and contributing to the reduction of recidivism rates.

Research Object. The research object is the legal regulation of the employment rights of individuals who have served their sentences in the United Kingdom. Specifically, it focuses on the peculiarities and intricacies within this legal framework.

Research Subject. The research subject is the ex-convicts or individuals who have completed their sentences in the UK and their rights and opportunities for employment. The study examines the legal protections, processes, and challenges that these individuals face when seeking employment and reintegrating into society.

The methodological basis of this research relies on a range of scientific and specialized methods (Table 1).

Table 1.

Research Methods

| Method | Data |
|-------------------------------------|--|
| System Method | This involves a comprehensive analysis of the complex phenomena related to the penal system of Great Britain. It encompasses the examination of legal and political descriptions to identify key features of employment that are influenced by the system. |
| System-Structural Method | This method is employed to expose and categorize the elements within the unit of study, establishing connections between these elements. It aims to identify and systematize the fundamental divergences between the legal norms guaranteeing employment for individuals who have completed their sentences and the actual institutions that may not always align with these norms. |
| Structural-Functional Method | This method involves breaking down the intricate object of study into its constituent parts and establishing connections among them. It explores the structural components of the employment system for ex-prisoners, such as pre-release professional orientation, post-release support programs from the government, and the role of institutions and non-governmental organizations in providing assistance and preventing discrimination. Additionally, community groups are engaged to form a public perception of individuals who have served their sentences and to highlight the importance of their employment in specific professions. |
| Specially-Legal Method | This method utilizes legal terminology to describe the phenomena within the legal reality. It provides a legal analysis of the laws and employs comparative techniques to expose the specific characteristics of the legal regulations governing the employment of individuals who have been incarcerated in prisons in England and Wales, as well as Scotland. |

Results and Discussion

The UK government operates offender rehabilitation programs, both during and after prison terms. These programs prioritize education, vocational training, counseling, and support to assist ex-convicts in acquiring the necessary skills and confidence for employment. Probation services play a vital role in supervising and supporting ex-offenders upon their

release, with probation officers working closely with individuals to address their needs, ensure court order compliance, and aid in reintegration, including job placement assistance.

Several employment support programs cater specifically to ex-offenders, offering job training, workshops on interview skills and resume writing, and connections to employers open to hiring individuals with criminal records. Government-backed employment services also assist ex-convicts with job searching, resume writing, interview preparation, and facilitating connections with potential employers, aiming to match them with suitable opportunities based on their skills and experience.

Initiatives and Programs in the UK

The "Ban the Box" initiative seeks to eliminate the checkbox on job applications inquiring about criminal records, thereby delaying the disclosure of such information during the hiring process. This campaign allows employers to evaluate candidates based on qualifications and skills before considering their criminal history, providing ex-offenders a fair chance to be evaluated on merit. Transparent recruitment practices benefit both individuals with criminal convictions and businesses, promoting diversity in talent pools and reducing the unnecessary exclusion of skilled individuals. To encourage employer participation, the campaign maintains an annual list of companies and organizations that have joined the Ban the Box initiative.

For instance, the British company "007 Pest Control" has embraced this campaign by implementing a policy that only asks about criminal convictions when a Disclosure and Barring Service check is required and after the initial application stage. The company's director, Mr. Myles, eloquently expressed their stance, stating, "Sometimes in life, people make simple mistakes, whether for survival, battling addiction, or merely being in the wrong place at the wrong time. Nearly half of all adult offenders re-offend within a year. However, evidence shows that employment reduces re-offending by 25-33%. We want to assist that 25-33%." (Business in the Community's (BITC), 2022)

The NACRO (National Association for the Care and Resettlement of Offenders), a founding member of Business in the Community's Ban the Box campaign (Business in the Community's (BITC), 2024a), engages in activities primarily described below.

In the process of studying the employment of individuals who have completed their sentences in prisons, it is important to highlight the existence of the governmental organization known as the Civil Service "Prison Leaver Recruitment" (PLR). This organization offers employment opportunities to individuals facing significant barriers in gaining meaningful employment, including recent prison leavers or those with unspent convictions. The PLR recognizes the significance of securing meaningful employment within a year of release as it aids in reintegration into society and making a positive contribution. The Civil Service collaborates with experts who provide support both within and outside of prison. Many Civil

Service departments operate the "Ban the Box" campaign, which signifies their commitment not to inquire about criminal convictions during the application process (Civil Service Careers, 2021).

For a better understanding of the issue of employment for former prisoners and their opportunities, excerpts from an interview with a former prisoner published by Nick Johnson, a reporter and journalist for the United Kingdom government blog on August 17, 2020, can provide insights. When asked about education and job search facilities available in prison, the former prisoner replied with the following: "In prison, I had the option to choose between labor that paid more, up to £50 a week depending on the task, or education that provided a basic allowance of £8 a week.

The education courses included subjects such as painting and decorating, bricklaying, plastering, along with basic maths and English. Since I had already completed GCSE-level qualifications in maths and English, I chose to pursue painting and decorating, mainly because my uncle worked in that field, and I believed it would increase my chances of finding work with him after my release. I utilized my other education time to improve my CV, utilize the library resources, and seek guidance from mentors and teachers regarding available opportunities. It was my painting and decorating education teacher who recommended me for this project and encouraged me to take it seriously" (Johnson, 2020). Here, we consider the involvement of prisoners in educational courses and work within prisons as commendable efforts to help them acquire legal and paid professions upon release.

However, it is crucial to acknowledge the challenges that individuals face in securing work placements or apprenticeships. For instance, a former prisoner working as a painter expressed frustration at the limited opportunities available, noting that painting was the only option during their time in prison. It is hoped that more diverse opportunities will become available in the future.

It is worth mentioning that some companies establish employment contracts with individuals still serving sentences, allowing them to work even before their release from prison. Ariana Silvestri, a member of the European Penal Association project, explores the complexities of employing individuals before they complete their sentences. Silvestri highlights the increasing presence of private companies operating within prisons but notes criticism regarding reduced workforces while expanding prison contracts. Some companies pay prisoners low wages and even subject them to overtime, with reports of some prisoners working up to 60 hours per week. While vocational training within prisons, such as clothing and furniture production or electrical engineering, often includes paid work, opportunities vary across prisons. In Scotland, vocational training encompasses disciplines like bricklaying, painting and decorating, hairdressing/barbering, and cleaning, but availability differs across the prison estate (Silvestri, Edizioni, 2013).

Policies and Support Systems

Despite the British Government's active efforts, in collaboration with the legislature, to facilitate employment for individuals who have completed their sentences, certain prohibitions and restrictions exist. The University of Oxford outlines factors to consider when assessing disclosed criminal history. These factors include the legality of employing certain offenders in specific occupations involving children or vulnerable groups, the nature and relevance of the crime to the proposed role within the University, the seriousness of the offense and its implications for the safety of staff, students, the public, or property. Other factors include the timing and circumstances of the offense, any explanation provided by the individual, patterns of re-offending, the severity of the sentence, the requirements of the position (e.g., responsibility for valuable items or sensitive information), the potential risks associated with the role, opportunities and mitigations to reduce reoffending, and the level of supervision necessary during early stages of employment (University of Oxford, 2023).

The National Probation Service (NPS) in England and Wales is responsible for supervising individuals who are released from prison on license. Their role involves assisting ex-offenders in reintegrating into society, which often includes supporting their search for employment.

Community Rehabilitation Companies (CRCs) have the responsibility of providing rehabilitation and offender management services, including assistance in finding employment for ex-offenders. Jobcentres across the UK offer various forms of support and resources to job seekers, including those with criminal records. These Jobcentres aid individuals in job searching, CV preparation, and access to training programs. Additionally, many prisons in the UK offer education and employment programs to prepare inmates for reentry into the workforce. These programs often include vocational training and job placement assistance.

Numerous charities and non-profit organizations in the UK are dedicated to helping ex-offenders find employment and reintegrate into society. Examples include NACRO and Working Chance. NACRO, formerly known as the National Association for the Care and Resettlement of Offenders, is a charitable organization in the United Kingdom that focuses on criminal and social justice issues. NACRO provides various services and programs aimed at reducing reoffending and promoting rehabilitation. This includes employment support, housing assistance, education and training programs, as well as advocacy for policy changes in the criminal justice system. NACRO also conducts research and campaigns for the improvement of criminal justice policies and practices in the UK.

In NACRO's guide for employers, titled "Asking Applicants about Criminal Records," there are recommended guidelines for interacting with potential employees who have criminal records. Notably, employers have the right to ask applicants to disclose their criminal records, but the specific question asked should be determined by the requirements of the job being recruited for. Under the Rehabilitation of Offenders Act 1974, employers can request details of

any convictions that are not yet spent (unspent). For jobs covered by this act, employers should utilize the provided sample criminal record declaration form. If recruiting for positions exempt from the act, employers are entitled to request details of: 1) any unspent convictions, and 2) any spent cautions or convictions that are ineligible for filtering (NACRO, 2024).

Moreover, it is considered best practice for employers to ask applicants to disclose their criminal records in a manner that encourages honesty. Prospective applicants should be informed from the outset of the specific information that will be requested and why, as well as at which stage of the application process this information will be sought. It should be emphasized that the information will solely be used to inform the overall assessment of the applicant's suitability for the role, when relevant. Providing this information will assist prospective applicants in deciding whether to proceed with their application. Employers should carefully consider the reasons for requesting this information and the specific details required to assess the relevance of an applicant's criminal record to the applied role and their suitability for it.

All cases will be assessed on an individual basis, taking the following factors into consideration:

- 1) Relevance of the conviction to the applied position.
- 2) Severity of any disclosed offenses.
- 3) Age at the time of the offense(s).
- 4) Length of time since the offense(s) occurred.
- 5) Existence of a pattern of offending behavior.
- 6) Circumstances and explanations surrounding the offense(s).
- 7) Changes in circumstances since the offending behavior (Nacro, 2024).

Local government authorities often provide support services for ex-offenders in their communities, including employment assistance programs, to ensure compliance with the rights and freedoms of former prisoners. It is important to note the presence of diverse Anti-Discrimination Laws in the UK. Moreover, in certain roles or industries, employers may conduct risk assessments to evaluate the potential risk an ex-offender's criminal history may pose to the job or organization. These assessments are typically carried out on a case-by-case basis to balance rehabilitation with safety concerns.

The UK government continues to recognize the importance of reducing reoffending rates and supporting the rehabilitation of ex-offenders (Johnson, 2023). It invests in various rehabilitation programs, vocational training, and educational opportunities to facilitate successful reintegration. Some prisons in the UK offer employment and vocational training programs for inmates to develop job skills during their sentences, enhancing their employability upon release.

The specific rules and practices regarding employing ex-offenders may vary depending on the nature of the offense, the type of employment, and the region within the UK. Employers

are encouraged to consider the individual circumstances of ex-offenders and make informed decisions that promote rehabilitation, reduce recidivism, and maintain organizational safety and security.

The Equality Act 2010 is a significant piece of legislation in the UK, consolidating and strengthening previous anti-discrimination laws (Butler, 2016). It aims to protect individuals from discrimination and promote equality in various aspects of life, including employment, education, housing, and the provision of goods and services. It plays a crucial role in fostering inclusivity, diversity, and equal opportunities in the UK. It provides legal protection for individuals experiencing discrimination and helps foster a fair and equitable society. The Act identifies specific "protected characteristics" that are safeguarded from discrimination, including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. Furthermore, the Act addresses different forms of discrimination, such as direct discrimination (treating someone less favorably due to a protected characteristic), indirect discrimination (applying policies or practices that disadvantage people with a protected characteristic), harassment (unwanted conduct that violates a person's dignity or creates an intimidating environment), and victimization (treating someone unfairly because they have made or supported a complaint under the Act).

The Act also covers all aspects of the employment relationship, including recruitment, terms and conditions of employment, promotion, training, and dismissal. Additionally, it includes provisions related to pay equality and disability accommodations in the workplace, ensuring that public services and educational institutions do not discriminate against individuals based on protected characteristics.

The Act prohibits businesses and service providers from discriminating against customers or clients based on their protected characteristics. It also imposes a duty on employers and service providers to make reasonable adjustments for disabled individuals, ensuring equal access to employment opportunities and services. The Act allows for positive action in certain situations, enabling employers to take specific measures to address underrepresentation or meet the particular needs of individuals with protected characteristics (UK Legislation, 2010).

Conclusion

The specific rules and practices related to employing ex-offenders may vary depending on factors such as the nature of the offense, the type of employment, and the jurisdiction within Great Britain. Employers are encouraged to consider the individual circumstances of ex-offenders, promote rehabilitation, and reduce recidivism while ensuring the safety and security of their organizations.

The findings of this research can contribute to the development of evidence-based policies and interventions aimed at improving the employment outcomes of ex-convicts. By identifying key features of employment that are influenced by the penal system, policymakers and relevant stakeholders can implement targeted strategies to address any existing barriers and promote successful reintegration into the workforce. Furthermore, this research can serve as a foundation for future studies, allowing for comparative analysis with other countries' penal systems and employment outcomes. Cross-national research can provide insights into best practices and innovative approaches that may assist in the design and implementation of effective employment programs for ex-convicts.

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