



In Focus

Rehabilitation of Offenders (Amendment) Bill [HL] (HL Bill 20 of 2016–17)

The [Rehabilitation of Offenders \(Amendment\) Bill \[HL\]](#) is a private member's bill introduced by Lord Ramsbotham (Crossbench). The Bill received its first reading in the House of Lords on 26 May 2016, and is scheduled to have its second reading on 27 January 2017. In 2011, a private member's bill introduced by Lord Dholakia (Liberal Democrat), aimed to make changes to the periods of rehabilitation that are required before convictions and sentences become 'spent' under the provisions of the [Rehabilitation of Offenders Act 1974](#). The 2011 Bill passed all stages in the House of Lords but failed to secure a first reading in the House of Commons. In 2015, Lord Ramsbotham introduced a similar private member's bill into the House of Lords, however, this Bill failed to secure a second reading.

The new Bill seeks to amend section 5 of the Rehabilitation of Offenders Act 1974, with changes to the periods of rehabilitation that are required before convictions and sentences become 'spent' under the provisions of the Act. Lord Ramsbotham describes the intention of the Bill as follows:

Successive governments have acknowledged the influence of imperfections in the Rehabilitation of Offenders Act 1974 on any attempt to improve rehabilitation. The Labour Government initiated a major review of the Act in 2002, but its many recommendations were never enacted. Two amendments, subsequently implemented, were included in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, and the need for reform was mentioned in both Mr Kenneth Clark and Mr Chris Grayling's 'rehabilitation revolutions'. Recently the Standing Committee on Youth Justice has produced a report calling for an urgent review of children's criminal records rules, because of their implication for an adult's future. This reform is a central part of the Bill, for which I will be seeking government support in the context of its published white paper, *Prison Safety and Reform*, and its forthcoming Prisons and Courts Bill.¹

The Rehabilitation of Offenders Act 1974 (the 1974 Act) aims to support the rehabilitation of reformed offenders by providing specific periods—subject to the sentence passed or disposal administrated—after which cautions and convictions become 'spent', and an individual is regarded as rehabilitated.² Rehabilitation periods can extend beyond the duration of a sentence into what is termed as a 'buffer' period. For example, a two year custodial sentence given to an adult may become spent after six years: the rehabilitation period being the period of the sentence plus a further 'buffer period' of four years (see tables below).³ Sentences excluded from these provisions include prison and detention sentences of over four years, and all public protection sentences regardless of their length.⁴ In such cases, convictions are never 'spent' and an individual is not rehabilitated for the purposes of the 1974 Act.

When a caution or conviction becomes 'spent', for most purposes the 1974 Act treats a rehabilitated person as if they had not committed the offence.⁵ They are not required to declare their 'spent' caution(s) or conviction(s), for example, when applying for some jobs, insurances, educational courses

or housing applications, unless an exception applies, and an employer cannot refuse to employ or dismiss someone because of their spent caution or conviction, unless an exception applies.⁶ These exceptions apply when an individual applies for certain offices and professions: for example, medical professions; occupations working with vulnerable adults or children; licensed occupations such as firearms licence and working in a position of trust, such as a solicitors.⁷ In such cases, individuals are required to disclose both spent and unspent convictions, cautions, reprimands and warnings through a Disclosure and Barring Service (DBS) check, though since 2013, some old ‘spent’ convictions are now filtered out.⁸ The tables below provide a guide to the present rehabilitation periods.

Table One: Rehabilitation periods for sentences with additional “buffer periods” which run from the end date of the sentence.

Sentence/disposal	Buffer period for adults (18 and over at the time of conviction or the time the disposal is administered). This applies from the end date of the sentence (including the licence period).	Buffer period for young people (under 18 at the time of conviction or the time the disposal is administered). This applies from the end date of the sentence (including the licence period).
Custodial sentence of over 4 years, or a public protection sentence	Never spent	Never spent
Custodial sentence of over 30 months (2½ years) and up to and including 48 months (4 years)	7 Years	3½ years
Custodial sentence of over 6 months and up to and including 30 months (2½ years)	4 Years	2 Years
Custodial sentence of 6 months or less	2 Years	18 Months
Community order or youth rehabilitation order	1 Year	6 Months

(Source: Ministry of Justice, [New Guidance on the Rehabilitation of Offenders Act 1974](#), 4 March 2014, paragraph two).

Table Two: Sets out the rehabilitation period for sentences which do not have “buffer periods” and for which the rehabilitation period runs from the date of conviction

Sentence/disposal	Rehabilitation period for adults (18 and over at the time of conviction or the time the disposal is administered).	Rehabilitation period for young people (under 18 at the time of conviction or the time the disposal is administered).
Fine	1 year	6 months
Conditional discharge	Period of the order	Period of the order
Absolute discharge	None	None
Conditional caution and youth conditional caution	3 months or when the caution ceases to have effect if earlier	3 months
Simple caution, youth caution	Spent immediately	Spent immediately
Compensation order	On the discharge of the order (ie when it is paid in full)	On the discharge of the order (ie when it is paid in full)
Binding over order	Period of the order	Period of the order
Attendance centre order	Period of the order	Period of the order

Hospital order (with or without a restriction order)	Period of the order	Period of the order
Referral order	Not available for adults	Period of the order
Reparation order	Not available for adults	None

(Source: Ministry of Justice, [New Guidance on the Rehabilitation of Offenders Act 1974](#), 4 March 2014, paragraph two).

The Bill aims to introduce a rehabilitation period for sentences exceeding four years (48 months), by allowing them to become ‘spent’ over a period that comprises of the sentence-length, plus a ‘buffer period’ of four years. Such sentences are currently never ‘spent’. Further, it seeks to simplify some categories of sentences shorter than four years into a single category with a new ‘buffer period’ of two years. For example, this would include one of the current categories relating to sentences between two and a half years and four years with a ‘buffer period’ of seven years, and place it into one category with a ‘buffer period’ of two years.⁹

Previous Reforms of the Rehabilitation of Offenders Act 1974 and Recent Proposals

In response to criticisms of the 1974 Act and the length of rehabilitation periods, and in addition to the two attempts to reform through private member’s bills, there have been previous attempts by governments to make changes.

In response to the consultation in July 2002¹⁰—which included proposals to reduce rehabilitation periods, including sentences of over 30 months—the then Labour Government announced that it intended to publish a draft bill to implement the changes “as soon as is practicable”.¹¹ Subsequently, in 2006 it said that it had further reviewed the position “in the light of the Safeguarding Vulnerable Groups Act 2006, based on the recommendations of the Bichard report, which made significant changes to the disclosure landscape” and therefore “no timescale for [these reforms] has yet been set”.¹² No draft bill was published before 2010.

In 2010, a Coalition Government green paper recognised that the 1974 Act was “often criticised as being inconsistent with contemporary sentencing practice, with the result that it can fail in its aim to help reformed offenders resettle into society”.¹³ Accordingly, the Government said that it would look at how it could be reformed, with considerations including:

Broadening the scope of the Act so that it covers all offenders who receive a determinate sentence; reducing the length of rehabilitation periods; producing a clearer, simplified classification of rehabilitation periods, with perhaps as few as two or three classes; and modernising and simplifying the language of the legislation.¹⁴

The Coalition Government subsequently suggested that it would introduce reforms as amendments to the Legal Aid, Sentencing and Punishment of Offenders Bill.¹⁵ Consequently, section 139 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 amended the 1974 Act by reducing some of the rehabilitation periods for both custodial and non-custodial sentences and by increasing the upper limit to now include sentences of up to four years (and applying retrospectively).¹⁶

However, criticisms still remain in relation to the 1974 Act. Christopher Stacey, co-director of the charity, [Unlock](#), argues that despite the “positives, the reforms are not perfect”.¹⁷ In particular, he comments on the importance of allowing individuals with sentences of over four years to be ‘spent’ and argues excluding such individuals from the 1974 Act implies that they are “inherently ‘unreformable’ or ‘irreclaimable’ and acts as a disincentive to any attempt at reform on their part”.

Further, the Standing Committee on Youth Justice in [Growing up, Moving on: The International Treatment of Childhood Criminal Records](#), March 2016, looked at the treatment of childhood criminal records across a number of countries in Europe, Australasia and three states in the USA. In relation to England and Wales, its report found that:

Although England and Wales has a separate youth justice system, both children's and adult's criminal records are dealt with under a single legal regime. Statutory provisions set down a highly complicated set of 'rehabilitation periods', which vary depending on the sentence, after which convictions are deemed 'spent'. Children's criminal records are, generally, 'spent' in half the time it takes an adult's record to become 'spent'. Once spent, the presumption is that the conviction will not have to be disclosed for most jobs/purposes. There are extensive exceptions to this general rule, however; where these apply, records are liable to be disclosed for indefinite periods, although these can be limited by the 'filtering' provisions (for some checks). The system is complex and confusing and has been subject to much criticism.¹⁸

Further Reading:

- House of Commons Library, [The Rehabilitation of Offenders Act 1974](#), 10 November 2015
- House of Commons Library, [The Retention and Disclosure of Criminal Records](#), 12 August 2015

¹ This text was provided by Lord Ramsbotham on request from the Library.

² Ministry of Justice, [New Guidance on the Rehabilitation of Offenders Act 1974](#), 4 March 2014, paragraph one.

³ *ibid*, paragraph two.

⁴ *ibid*, paragraph one explains that a public protection sentence, the provisions for which are set out in part 12 of the Criminal Justice Act 2003 and part 8 of the Armed Forces Act 2006, means a sentence of imprisonment or detention imposed for specified sexual and violent offences. These sentences include imprisonment or detention for public protection, extended sentences of imprisonment or detention for public protection, and extended determinate sentences.

⁵ *ibid*, paragraph one and section 4 of the Rehabilitation of Offenders Act 1974.

⁶ *ibid*, paragraph one.

⁷ For a full list of exceptions on declarations of cautions and convictions, see the [Rehabilitation of Offenders Act 1974 \(Exceptions\) Order 1975 \(SI 1975/1023\)](#).

⁸ Disclosure and Barring Service, '[Guidance: DBS Filtering Guide](#)', 13 December 2013. See also the case of [R \(On the application of T and another\) \(Respondents\) v Secretary of State for the Home Department and another \(Appellants\) \[2014\] UKSC 35](#).

⁹ See [Rehabilitation of Offenders \(Amendment\) Bill \[HL\] 2016–17 bill document](#) and table under section 5(2)(b) of the Rehabilitation of Offenders Act 1974 as amended by section 139 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

¹⁰ Home Office, [Breaking the Circle: A Report of the Review of the Rehabilitation of Offenders Act](#), July 2002.

¹¹ Home Office, [Breaking The Circle: A Summary of the Views of Consultees and the Government Response to the Report of the Review of the Rehabilitation of Offenders Act 1974](#), April 2003, p 10.

¹² [HC Hansard, 2 April 2009, col 1466W](#).

¹³ Ministry of Justice, [Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders](#), December 2010, p 34.

¹⁴ *ibid*.

¹⁵ [HL Hansard, 12 December 2011, col WA222](#).

¹⁶ Ministry of Justice, '[Reforms to Help Reduce Reoffending Come into Force](#)', 10 March 2014.

¹⁷ Christopher Stacey, '[Are the Changes to the Rehabilitation of Offenders Act Enough?](#)', *The Record*, 5 March 2014, (On-line magazine run by the charity, Unlock)

¹⁸ Standing Committee on Youth Justice, [Growing up, Moving on: The International Treatment of Childhood Criminal Records](#), March 2016, p 31.

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