

## Criminal Records Bill [HL] HL Bill 23 of 2017–19

### Summary

The [Criminals Records 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 29 June 2017, and is scheduled to receive its second reading on 23 February 2018. The Bill proposes to amend the length of time it takes for an offender's caution or conviction to become 'spent' under the [Rehabilitation of Offenders Act 1974](#). Setting out the purpose of the Bill, Lord Ramsbotham explained:

The Rehabilitation of Offenders Act 1974 has long been criticised because, by demanding the disclosure of many offences, particularly those committed as a child, it prevents rehabilitation. The Labour Government published a review entitled *Breaking the Circle* in 2002, followed by a consultation, but did not change the Act. As part of its 'Rehabilitation Revolution', the Coalition Government published another consultation document entitled *Breaking the Cycle* in 2010, in which the Act was described as 'being inconsistent with contemporary sentencing practice'. There was however no mention of the Act in the Government's response to the consultation, but two reforms were included in the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Since then a Disclosure and Barring Service has been introduced, which the Law Commission has pronounced to lack coherence. The Bill seeks to clarify the present position regarding the disclosure of offences, and rename the Act the Criminal Records Act.<sup>1</sup>

Clause 1 of the Bill would amend section 5 of the Rehabilitation of Offenders Act 1974 (rehabilitation periods for particular sentences):

- Subsection 2 of the Bill would substitute subsection (1) of the Act and exclude a number of sentences—including imprisonment for life and imprisonment for public protection—from the effects of the Bill.
- Subsection 3 of the Bill would substitute subsection (2) of the Act and amend rehabilitation periods for a number of sentences.
- Subsection 4 of the Bill would substitute subsection (3) of the Act and state “where no provision is made for a community or youth order for the last day on which the order is to have effect, the rehabilitation period for the order is one year”.

Clause 2 would repeal article 3 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No 9 Saving Provision and Specification of Commencement Date) Order 2014 (SI 2014/423). Lastly, clause 3 would provide for the Bill's extent (England and Wales), commencement and short title.

## Rehabilitation of Offenders Act 1974

### **'Spent' Cautions and Convictions**

The [Rehabilitation of Offenders Act 1974](#) applies to anyone convicted of a criminal offence or a service disciplinary offence by either a civilian court, a Service Court or the Commanding Officer.<sup>2</sup> The aim of the Act is to support ex-offenders by treating them as 'rehabilitated' and to facilitate their re-entry into society and employment by enabling eligible convictions or cautions to become 'spent' after a period of time, known as a 'rehabilitation period'.<sup>3</sup> Once the period is over, and the caution or conviction becomes spent, the offender is regarded as rehabilitated and should be treated as if they never committed the offence.<sup>4</sup> For example, the offender does not have to declare their spent cautions or convictions when applying for jobs or insurance, some educational courses or housing applications.<sup>5</sup> In addition, an employer cannot refuse to employ or dismiss an individual due to their spent caution or conviction.<sup>6</sup>

However, there are exceptions where an offender may be asked to disclose their caution or conviction, even if it has been spent. These exceptions are set out by the [Rehabilitation of Offenders Act 1974 \(Exceptions\) Order 1975](#), and permit normally prohibited 'exempted' questions to be asked in order to help assess a person's suitability for certain occupations or types of employment which involve particular risks, sensitivities or high levels of trust. To ensure an individual has disclosed any spent convictions, employers can ask for a criminal records disclosure from the Disclosure and Barring Service (DBS), in which the offender must state all of their cautions or convictions (unless they are protected<sup>7</sup>) even if they are spent.<sup>8</sup> However, since 2013, some old spent convictions are now filtered out.<sup>9</sup>

Professions which are covered by the exceptions include: the medical and legal professions; work in law enforcement and the prison service; teaching, healthcare or social service occupations which involve contact with children or vulnerable adults; and high level positions in the financial and insurance sectors.<sup>10</sup> In addition, the individual can be asked about the offences when applying for certain licences, including those relating to firearms or gambling.<sup>11</sup>

### **Rehabilitation Periods**

The length of the rehabilitation period an individual must serve is dependent on whether the offender was cautioned or convicted, and on the sentence they received.<sup>12</sup> In some cases, a conviction cannot become spent under the 1974 Act. For example, any custodial sentence over four years, sentences of life imprisonment or sentences for public protection can never become spent (for a full list of sentences which are exempt from the Act and therefore cannot be spent, see the [Ministry of Justice guidance](#)).<sup>13</sup>

For those cautions or convictions which can become spent, the offender must first complete a rehabilitation period. In some cases, the rehabilitation period will start from the date of conviction or the date the penalty was imposed.<sup>14</sup> In other cases, rehabilitation periods are made up of the total sentence imposed by the court (including any licence period), plus an additional period, known as a 'buffer period'.<sup>15</sup> For example, an adult who received a custodial sentence of six months would be required to complete a buffer period of 24 months, beginning on the date which the sentence (including any licence period) is complete, for their conviction to become spent.<sup>16</sup> For those who are under 18 years of age when convicted, the buffer periods are halved. However, in cases where such an offender receives a custodial sentence of six months or less, the buffer period is 18 months.<sup>17</sup>

### **Previous Reform of Rehabilitation Periods**

The Rehabilitation of Offenders Act 1974 was amended by section 139 of the [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) with effect from 10 March 2014.<sup>18</sup> The section set out new and reduced rehabilitation periods for both custodial and non-custodial sentences,<sup>19</sup> and increased the scope of the 1974 Act to cover sentences of up to 48 months.<sup>20</sup> It also continued the convention of the 1974 Act by halving the periods for those under 18 years of age at the date of their conviction (except in cases where they receive a custodial sentence of six months or less, where the buffer period is 18 months).<sup>21</sup> The 2012 Act retrospectively covered those who had already been convicted or cautioned, but ensured that no convictions which were already spent would become unspent as a result of the changes.<sup>22</sup>

### **Proposed Changes to Rehabilitation Periods**

The Bill proposed by Lord Ramsbotham would change the length of some rehabilitation periods by amending section 5 of the Rehabilitation of Offenders Act 1974. The current and proposed rehabilitation periods for various sentences are set out below:

**Table One: Current Rehabilitation Periods<sup>23</sup>**

<b>Sentence</b>	<b>End of Rehabilitation Period for Adult Offenders</b>	<b>End of Rehabilitation Period for Offenders Under 18 at Date of Conviction</b>
A custodial sentence of 30–48 months	7 years (beginning with the day on which the sentence, including any licence period, is completed).	42 months (beginning with the day on which the sentence, including any licence period, is completed).
A custodial sentence of more than 6 months and up to, or consisting of, 30 months	48 months (beginning with the day on which the sentence, including any licence period, is completed).	24 months (beginning with the day on which the sentence, including any licence period, is completed).
A custodial sentence of 6 months or less	24 months (beginning with the day on which the sentence, including any licence period, is completed).	18 months (beginning with the day on which the sentence, including any licence period, is completed).
Removal from Her Majesty's service	12 months (beginning with the date of the conviction in respect of which the sentence is imposed).	6 months (beginning with the date of the conviction in respect of which the sentence is imposed).
A sentence of service detention	12 months (beginning with the day on which the sentence is completed).	6 months (beginning with the day on which the sentence is completed).
A fine	12 months (beginning with the date of the conviction).	6 months (beginning with the date of the conviction).
A compensation order	The date on which the payment is made in full.	The date on which the payment is made in full.
A community or youth rehabilitation order	12 months (beginning with the day provided for by or under the order as the last day on which the order is to have effect).	6 months (beginning with the day provided for by or under the order as the last day on which the order is to have effect).
A relevant order	The day provided for by or under the order as the last day on which the order is to have effect.	The day provided for by or under the order as the last day on which the order is to have effect.

**Table Two: Changes Proposed by Lord Ramsbotham's Bill<sup>24</sup>**

<b>Sentence</b>	<b>End of Rehabilitation Period for Adult Offenders</b>	<b>End of Rehabilitation Period for Offenders Under 18 at Date of Conviction</b>
A custodial sentence of more than 4 years	4 years (beginning with the day on which the sentence, including any licence period, is completed).	4 years (beginning with the day on which the sentence, including any licence period, is completed).
A custodial sentence of more than 2 years and up to, or consisting of, 4 years	2 years (beginning with the day on which the sentence, including any licence period, is completed).	2 years (beginning with the day on which the sentence, including any licence period, is completed).
A custodial sentence of up to, or consisting of 2 years	1 year (beginning with the day on which the sentence, including any licence period, is completed).	6 months (beginning with the day on which the sentence, including any licence period, is completed).
Removal from Her Majesty's service	1 year (beginning with the date of the conviction in respect of which the sentence is imposed).	6 months (beginning with the date of the conviction in respect of which the sentence is imposed).
A sentence of service detention	1 year (beginning with the day on which the sentence is completed).	6 months (beginning with the day on which the sentence is completed).
A compensation order	1 year (beginning with the date on which the order was passed or the date on which the payment is made full, whichever is sooner).	1 year (beginning with the date on which the order was passed or the date on which the payment is made full, whichever is sooner).
A community or youth rehabilitation order	Under the order, as the last day on which the order is to have effect.	Under the order, as the last day on which the order is to have effect.

### **Previous Private Member's Bills**

Similar private member's bills have been introduced in previous sessions. In the 2010–12 session, Lord Dholakia introduced the Rehabilitation of Offenders (Amendment) Bill [HL], which aimed to make changes to the length of rehabilitation periods which are completed before cautions and convictions become 'spent' under the Rehabilitation of Offenders Act 1974. The Bill passed all stages in the House of Lords, but failed to secure a first reading in the House of Commons.<sup>25</sup>

In the 2015–16 session, a Bill under the same name and with similar intentions was introduced by Lord Ramsbotham. However, the Bill failed to secure a second reading. Lord Ramsbotham introduced the Bill again in the 2016–17 session, and it received second reading, but did not progress any further.

During the second reading of the 2016–17 Bill on 27 January 2017, Lord Ramsbotham outlined criticism of the Rehabilitation of Offenders Act 1974, commented on previous plans for reform and set out the changes he hoped his Bill would lead to, arguing:

I believe that it should be that no one released from prison should face a lifetime of disclosure, without the prospect of review.<sup>26</sup>

Baroness Chakrabarti (Labour) indicated support for the Bill, describing the Rehabilitation of Offenders Act 1974 as "completely outdated" and the rehabilitation periods it enforces as "overlong and not based on any real evidence".<sup>27</sup>

Responding for the Government, Lord Keen of Elie, HM Advocate General for Scotland and Ministry of Justice Spokesperson for the Lords, referred to amendments made to the Rehabilitation of Offenders Act 1974 by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, stating:

The present Government believe that these reforms are proportionate and that we have struck the correct balance between protecting the public and helping ex-offenders to put their criminal pasts behind them.<sup>28</sup>

Speaking on the Bill proposed by Lord Ramsbotham, Lord Keen also stated:

In summary, the Government understand the noble Lord's concerns and we are, of course, committed to helping ex-offenders who wish to make a fresh start and put their criminal history behind them. We are desperately anxious to ensure that people do not simply leave the prison gate one day and return another. Despite this, we do not support the noble Lord's Bill, given the reasons I have already outlined.<sup>29</sup>

## Commentary

### *Criticism of the 1974 Act*

The Rehabilitation of Offenders Act 1974 has been criticised by some commentators for not doing enough to rehabilitate offenders, with criticisms focusing in particular on the length of rehabilitation periods and that sentences of over 48 months (30 months before the 2012 reforms) can never become spent.<sup>30</sup>

In 2002, the then Labour Government published a report entitled [Breaking the Circle](#), which argued that the scheme for rehabilitation under the Act "is no longer considered to be wholly effective" and was not "achieving the right balance between resettlement and protection".<sup>31</sup> The report recommended reducing rehabilitation periods and bringing all prison sentences within the scope of the Act.<sup>32</sup> However, no action was taken at the time in response to the report.<sup>33</sup>

A second report entitled [Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders](#) was published under the Coalition Government in 2010. The report set out plans to reform the Rehabilitation of Offenders Act, stating:

The Act is 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. The reasons cited are that the rehabilitation periods are too long and do not reflect the point at which reoffending tails off following a conviction; the threshold at which a sentence never becomes spent (30 months) is too low given that sentencing lengths are much longer today; and the Exceptions Order exempts an ever growing number of occupations from the Act. Finally, the Act is criticised as being overly complex and confusing, meaning that people may not realise that the Act applies to them.<sup>34</sup>

The report also stated that proposals such as broadening the scope of the Act so it covered all offenders who receive a determinate sentence and reducing rehabilitation periods were under consideration, but the Government's response to the consultation contained no mention of the 1974 Act.<sup>35</sup> However, the Government later tabled amendments to the Legal Aid, Sentencing and

Punishment of Offenders Bill of session 2010–12, which amended the length of rehabilitation periods and increased the scope of the Bill to cover custodial sentences of 48 months.<sup>36</sup>

Despite the reforms made by the 2012 Act, criticism of the 1974 Act has continued. Writing in response to the 2012 reforms, Christopher Stacey, the co-director of the charity [Unlock](#), stated that “despite all of the positives, the reforms are not perfect”.<sup>37</sup> In particular, he argued that individuals who had received a sentence of more than four years should have a way for their convictions to be spent at some point, as placing individuals outside of the scope of the Act “sends out the message that they are inherently ‘unreformable’ or ‘irreclaimable’ and acts as a disincentive to any attempt at reform on their part”.<sup>38</sup> In addition, Christopher Stacey contended that the number of exceptions to the legislation was an issue which had not been addressed by the reforms. He noted that the number of exceptions was growing, meaning that “people with old convictions are consigned to an increasingly narrow range of employment and educational opportunities”.<sup>39</sup> To support his view, he referred to the number of standard and enhanced criminal record checks undertaken in recent years, stating that in 2002 there were 1.3 million each year, compared to 4.3 million in 2011.<sup>40</sup>

Criticism of the current system can also be found in a report by the Standing Committee for Youth Justice, [Growing Up, Moving On: The International Treatment of Childhood Criminal Records](#), which examined how criminal records acquired when the individual is under 18 years of age are treated in 16 jurisdictions. It argued that a criminal record acquired by a child in England and Wales “can affect that person for longer, and more profoundly, than in any other jurisdiction under consideration”.<sup>41</sup> As a result, the report called on the Government to “consider changes to law and policy governing the treatment of childhood criminal records as soon as possible”.<sup>42</sup>

In addition, the [Lammy Review](#) into the treatment of, and outcomes for, black, asian and minority ethnic (BAME) individuals in the criminal justice system, argued that the current criminal records regime does not help offenders “start new lives”.<sup>43</sup> Instead, the report claimed that it “does precisely the opposite”, citing evidence that, over the last five years, 22,000 BAME children have had their names added to the Police National Database, meaning that their past conviction(s) could show up on a criminal records check when applying for a job in the future.<sup>44</sup>

### **Support for the Bill**

A recent inquiry by the House of Commons Justice Committee examined the system governing the disclosure of criminal records for offences committed by individuals under 18 years of age. In its report, [Disclosure of Youth Criminal Records](#), the Committee concluded that “the current system undermines the laudable principles of the youth justice system and may well fall well short of the UK’s obligations under the UN Convention on the Rights of the Child”.<sup>45</sup> Setting out the inquiry’s recommendations, the report stated:

We strongly endorse the proposals for reducing rehabilitation periods for childhood offences contained in Lord Ramsbotham’s Criminal Records Bill of session 2017–19, which we believe reflect a broad consensus for the need for reform in this area. We commend the Bill to Parliament.<sup>46</sup>

Responding to the Committee’s recommendation, the Government stated:

The Committee has suggested that the rehabilitation periods set out in the Rehabilitation of Offenders Act 1974, which are not subject to challenge in *P and Others*, should be reconsidered.

The Government considers that it is important to consider the Committee's recommendations regarding different aspects of the disclosure system in the round, and will therefore consider this recommendation alongside the others.<sup>47</sup>

In addition, in response to a written question on the issue of youth criminal records, Victoria Atkins, Parliamentary Under Secretary of State for Crime, Safeguarding and Vulnerability and Minister for Women, highlighted that under the current disclosure rules, cautions and convictions received by under-18s are "already subject to disclosure for significantly reduced periods in comparison to those received as an adult".<sup>48</sup>

The Government's response to the report also argued that the current disclosure arrangements, including rehabilitation periods, are proportionate and "strike the right balance between protecting the public and the individuals' right to privacy".<sup>49</sup>

## Statistics

A briefing published by Prison Reform Trust in 2017 provided figures in regards to offending and employment. It stated:

- Only one in four people (27 percent) had a job to go to on release from prison.
- One in five employers (19 percent) said they excluded or were likely to exclude them from the recruitment process.
- However, 78 employers so far, including the entire Civil Service, have signed up to Ban the Box—removing the need to disclose convictions at the initial job application stage as a first step towards creating fairer employment opportunities for ex-offenders.
- More than four in five former prisoners surveyed said their conviction made it harder to get insurance and four-fifths said that when they did get insurance, they were charged more. The inability to obtain insurance can prevent access to many forms of employment or self-employment.<sup>50</sup>

## Further Information

- House of Commons Library, [Rehabilitation of Offenders Act 1974](#), 10 November 2015

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<sup>1</sup> Text provided by Lord Ramsbotham on request from the Library.

<sup>2</sup> Ministry of Justice, [Guidance on the Rehabilitation of Offenders Act 1974](#), 4 March 2014, p 4.

<sup>3</sup> House of Commons Justice Committee, [Disclosure of Youth Criminal Records](#), 27 October 2017, HC 416 of session 2017–19, p 43.

<sup>4</sup> Ministry of Justice, [Guidance on the Rehabilitation of Offenders Act 1974](#), 4 March 2014, p 3.

<sup>5</sup> *ibid.*

<sup>6</sup> *ibid.*

<sup>7</sup> *ibid.*, p 9. Also note that on "29 May 2013, amendments were made to the Exceptions Order so that certain old and minor cautions and spent convictions are 'protected' and are not subject to disclosure under the Exceptions Order, nor will they appear on a standard or enhanced disclosure certificate issued by the DBS. In addition employers will not be able to take these protected cautions and convictions into account when making decisions about any individual" (*ibid.*).

<sup>8</sup> *ibid.*, p 8.

<sup>9</sup> Disclosure and Barring Service, [Guidance: DBS Filtering Guide](#), 13 December 2013.

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- <sup>10</sup> House of Commons Justice Committee, [Disclosure of Youth Criminal Records](#), 27 October 2017, HC 416 of session 2017–19, p 44.
- <sup>11</sup> *ibid.*
- <sup>12</sup> House of Commons Library, [The Rehabilitation of Offenders Act 1974](#), 10 November 2015, p 3.
- <sup>13</sup> Ministry of Justice, [Guidance on the Rehabilitation of Offenders Act 1974](#), 4 March 2014, p 6.
- <sup>14</sup> *ibid.*, p 4.
- <sup>15</sup> *ibid.*, p 4. See also: tables setting out the length of buffer periods under the Act, p 5.
- <sup>16</sup> *ibid.*, p 5.
- <sup>17</sup> *ibid.*, p 4.
- <sup>18</sup> House of Commons Library, [The Rehabilitation of Offenders Act 1974](#), 10 November 2015, p 5.
- <sup>19</sup> House of Commons Justice Committee, [Disclosure of Youth Criminal Records](#), 27 October 2017, HC 416 of session 2017–19, p 43. See also: table showing the changes made to rehabilitation periods in 2014, p 43.
- <sup>20</sup> Ministry of Justice, [Reforms to Help Reduce Reoffending Come Into Force](#), 10 March 2014.
- <sup>21</sup> *ibid.*
- <sup>22</sup> House of Commons Library, [The Rehabilitation of Offenders Act 1974](#), 10 November 2015, p 5.
- <sup>23</sup> Rehabilitation of Offenders Act 1974, section 5 (2).
- <sup>24</sup> [Criminal Records Bill \[HL\]](#), clause 3.
- <sup>25</sup> UK Parliament, [Bill Stages—Rehabilitation of Offenders \(Amendment\) Bill \[HL\] 2010–12](#), accessed 7 February 2018.
- <sup>26</sup> [HL Hansard, 27 January 2017, col 928](#).
- <sup>27</sup> [ibid., col 939](#).
- <sup>28</sup> [ibid., col 941](#).
- <sup>29</sup> [ibid., col 943](#).
- <sup>30</sup> House of Commons Library, [The Rehabilitation of Offenders Act 1974](#), 10 November 2015, p 7.
- <sup>31</sup> Home Office, [Breaking the Circle: A Report of the Review of the Rehabilitation of Offenders Act](#), July 2002, p 5.
- <sup>32</sup> House of Commons Library, [The Rehabilitation of Offenders Act 1974](#), 10 November 2015, p 7.
- <sup>33</sup> *ibid.*, p 7.
- <sup>34</sup> Ministry of Justice, [Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders](#), December 2010, Cm 7972, p 34.
- <sup>35</sup> House of Commons Library, [The Rehabilitation of Offenders Act 1974](#), 10 November 2015, p 8.
- <sup>36</sup> *ibid.*, p 8.
- <sup>37</sup> Christopher Stacey, [Are the Changes to the Rehabilitation of Offenders Act Enough?](#), The Record, 5 March 2014.
- <sup>38</sup> *ibid.*
- <sup>39</sup> *ibid.*
- <sup>40</sup> *ibid.*
- <sup>41</sup> Standing Committee for Youth Justice, [Growing Up, Moving On: The International Treatment of Childhood Criminal Records](#), March 2016, p 5.
- <sup>42</sup> *ibid.*, p 116.
- <sup>43</sup> Lammy Review, [The Lammy Review: Final Report](#), September 2017, p 5.
- <sup>44</sup> *ibid.*, p 5.
- <sup>45</sup> House of Commons Justice Committee, [Disclosure of Youth Criminal Records](#), 27 October 2017, HC 416 of session 2017–19, p 3.
- <sup>46</sup> *ibid.*, p 40.
- <sup>47</sup> Ministry of Justice, [Government Response to the Justice Committee’s First Report of Session 2017–19: Disclosure of Youth Criminal Records](#), January 2018, Cm 9599, p 10.
- <sup>48</sup> House of Commons, [Written Question: Criminal Records: Young People](#), 14 November 2017, 111423.
- <sup>49</sup> *ibid.*, 7.
- <sup>50</sup> Prison Reform Trust, [Prison: The Facts](#), Summer 2017, p 16.

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