



BRIEFING PAPER

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The Rehabilitation of Offenders Act 1974

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Summary

Rehabilitation periods and spent convictions

The *Rehabilitation of Offenders Act 1974* aims to give those with convictions or cautions the chance – in certain circumstances – to wipe the slate clean and start afresh.

Under the Act, eligible convictions or cautions become “spent” after a specified period of time known as the “rehabilitation period”, the length of which varies depending on how the individual concerned was dealt with.

Prison sentences of over 4 years are excluded from the scope of the Act and can therefore never become spent. The rehabilitation periods for other types of sentence vary according to whether the person was cautioned or convicted and, if the latter, the type of sentence imposed. Rehabilitation periods are generally shorter for those aged under 18 when they were convicted.

Once the conviction or caution becomes spent, the person is regarded as rehabilitated and (for most purposes) is treated as if they had never committed the offence.

However, there are a number of exceptions to this general approach. For example, for some types of employment a person can be required to disclose details of both unspent and spent convictions or cautions.

Proposals for changes to rehabilitation periods

In a White Paper, [A Smarter Approach to Sentencing](#), published in September 2020, the Government set out plans to amend the current law. The Government intends to legislate to reduce the rehabilitation periods that apply before a conviction becomes spent. The changes proposed would also allow for some convictions resulting in a custodial sentence of more than 4 years to become spent. Convictions for serious sexual, violence and terrorist offences would be excluded from this change.

The charity [Unlock](#) has welcomed the proposals made but has criticised the reforms as being too limited to achieve the Government’s goal of reducing barriers to employment.

Earlier changes

The 1974 Act was amended previously by section 139 of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*, which was brought into force on 10 March 2014 and made two key changes. The first change was to extend the scope of the Act to cover custodial sentences of up to 48 months (previously prison sentences over 30 months never became spent), and the second was to change the length of some of the rehabilitation periods (in most cases by reducing them).

This briefing applies to England and Wales.

1. The purpose of the Act

The *Rehabilitation of Offenders Act 1974* aims to give those with convictions or cautions the chance – in certain circumstances – to wipe the slate clean and start afresh.

The Government in 2020 set out what it believed to be the rationale for the 1974 Act:

- Enabling individuals who have desisted from crime to move on with their lives, work and fully participate in society whilst acknowledging that it is reasonable for employers and some other organisations to know about certain types of convictions (particularly those that are serious or recent).
- Removing barriers to employment. Employment is a significant factor in encouraging rehabilitation, and it is in everyone's interest that we successfully rehabilitate offenders. This means that after a certain period of time most convictions should become spent and no longer need to be disclosed.¹

What is a spent conviction or caution?

Under the Act, eligible convictions or cautions become “spent” after a specified period of time known as the “rehabilitation period”, the length of which varies depending on the nature of the conviction or caution imposed. Once the conviction or caution becomes spent, the offender is regarded as rehabilitated and (for most purposes) is treated as if they had never committed the offence.

However, there are a number of exceptions to this general approach. For example, for some types of employment a person can be required to disclose details of both unspent and spent convictions or cautions.

¹ Ministry of Justice, [A Smarter Approach to Sentencing](#), September 2020, para 256

2. Rehabilitation periods

Prison sentences of over 48 months are currently excluded from the scope of the Act and can therefore never become spent. The rehabilitation periods for other types of sentence vary according to whether the person was cautioned or convicted and, if the latter, the type of sentence imposed. Rehabilitation periods will generally be shorter for offenders aged under 18 when they were convicted.

When will a conviction or caution become spent?

The table in Box 1 summarises the rehabilitation periods for some of the most common types of sentence/disposal.

Box 1: Rehabilitation periods for certain types of sentence/disposal under the 1974 Act (as amended by the 2012 Act)

Sentence/disposal	Rehabilitation period if aged 18 or over when convicted/disposal administered	Rehabilitation period if aged under 18 when convicted/disposal administered
A custodial sentence of over 48 months	Never spent	
A custodial sentence of over 30 months but not exceeding 48 months	7 years from the date on which the sentence (including any licence period) is completed	42 months from the date on which the sentence (including any licence period) is completed
A custodial sentence of over 6 months but not exceeding 30 months	48 months from the date on which the sentence (including any licence period) is completed	24 months from the date on which the sentence (including any licence period) is completed
A custodial sentence of up to 6 months	24 months from the date on which the sentence (including any licence period) is completed	18 months from the date on which the sentence (including any licence period) is completed
Fine	12 months from the date of the conviction in respect of which the fine was imposed	6 months from the date of the conviction in respect of which the fine was imposed
Community order	12 months from the last day on which the order has effect	6 months from the last day on which the order has effect
Simple caution, youth caution	Spent immediately	
Compensation order	On the discharge of the order (i.e. when it is paid in full)	

Further information regarding rehabilitation periods can be found in the Ministry of Justice's [Guidance on the Rehabilitation of Offenders Act 1974 and The Exceptions Order 1975](#), November 2020.

These rehabilitation periods were amended by section 139 of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* which came into force on 10 March 2014. The new rehabilitation periods apply retrospectively to cover those who have already been convicted or cautioned, although no convictions that are already spent will become unspent as a result of the changes.

The rehabilitation period for any unspent convictions may be affected if the individual concerned receives another caution or conviction during the rehabilitation period for the first offence, depending on the severity of the later offence:

If you already have an unspent conviction and you get a further caution or conviction before the earlier conviction has become spent, one of the following will apply:

- a. If your later outcome is a caution (either a simple caution or a conditional caution), neither rehabilitation period will be affected. The conviction for the earlier offence will become spent at the time originally fixed, and the caution for the later offence will become spent after the normal period (immediately for a simple caution or three months for a conditional caution).
- b. If your later outcome is a conviction, then *neither* conviction will become spent until the rehabilitation periods for *both* offences are over. This applies to summary offences (offences that can only be tried in a magistrates' court) as well as either way offences (triable in either the magistrates' court or the Crown Court) and indictable only offences (offences that can only be tried in the Crown Court). Please note that there are very limited exceptions to this under section 6(5) of the 1974 Act.
- c. If your later outcome is a conviction that results in a custodial sentence of more than four years, or a public protection sentence of any length, then neither the second nor the first conviction will ever become spent.²

Once a conviction becomes spent, it remains spent, even if a person is convicted of other offences later.

² Ministry of Justice, [Guidance on the Rehabilitation of Offenders Act 1974](#), November 2020

3. Disclosing spent cautions and convictions

A person whose conviction or caution becomes spent is referred to in the 1974 Act as a “rehabilitated person”. Under section 4 of the Act, the general rule (subject to a number of exceptions) is that a rehabilitated person is treated for all legal purposes as if they had never committed the offence that led to the spent conviction or caution.³

Ministry of Justice guidance states:

Once a caution or conviction has become spent under the 1974 Act, a person does not have to reveal it or admit its existence in most circumstances. Unless an exception applies (see below), then spent cautions and convictions need not be disclosed when filling in a form, or at a job interview. An employer cannot refuse to employ someone (or dismiss someone) because he or she has a spent caution or conviction unless an exception applies.⁴

The exceptions to this general rule are set out in the *Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023*, which lists a number of jobs, professions and other activities known as “excepted positions”. Excepted positions cover (for example) regulated activity with children or vulnerable adults or roles in certain licensed occupations or positions of trust (e.g. police officers, solicitors).⁵

If a person wishes to undertake an excepted position, then they can be required to disclose full details of their criminal record, including details of any spent convictions or cautions (other than protected cautions and convictions). These details are confirmed by way of a criminal records check conducted by the Disclosure and Barring Service (formerly the Criminal Records Bureau). For full details of criminal records checks, please see the Library briefing [The retention and disclosure of criminal records](#).

³ Please note, however, that convictions and cautions are not deleted from police records when they become spent; they remain on the Police National Computer until the individual’s 100th birthday and can be disclosed as part of a criminal records check if one of the exceptions to the 1974 Act applies. Please see [Library Briefing 6441, The retention and disclosure of criminal records](#) for details.

⁴ Ministry of Justice, [Guidance on the Rehabilitation of Offenders Act 1974](#), November 2020

⁵ For a full list of excepted positions under the 1975 Order, please see Disclosure and Barring Service, [Eligibility guidance for standard DBS checks](#), September 2018

4. Reform of the 1974 Act

The 1974 Act has been criticised for many years on the grounds that it does not do enough to rehabilitate offenders. Criticism has focused, in particular, on the length of the rehabilitation periods set out in the Act and the exclusion of prison sentences of over a certain length from its scope.

4.1 Labour Government consultation 2002/2003

In 2002, the Labour Government published a consultation that proposed a number of changes to the Act, including reduced rehabilitation periods and bringing all prison sentences (including those over 30 months) within its scope.⁶ In its response to the consultation, published in 2003, the Government said that it planned to publish a draft bill for pre-legislative scrutiny.⁷ However, no draft bill emerged. In response to a parliamentary question in April 2009, the then Justice minister Maria Eagle said that although the Government remained committed to reform, it had reviewed the position in the light of the Bichard report into the Soham murders⁸ and the subsequent introduction of the *Safeguarding Vulnerable Groups Act 2006* and as a result could not set any timescale for changing the law.⁹

4.2 Coalition Government consultation 2010/2011

In 2010, the coalition Government revisited the issue in its consultation paper [Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders](#). The paper set out the Government's aim to "put more offenders on the right path" by enabling them to "become law-abiding citizens and contribute to society" by finding a job and a home.¹⁰ As part of this, the Government said it would review the operation of the 1974 Act:

114. 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

⁶ Home Office, [Breaking the Circle: a report of the review of the Rehabilitation of Offenders Act](#), July 2002

⁷ 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, p10

⁸ *Bichard Inquiry Report*, HC 653 2003-04, 22 June 2004

⁹ [HC Deb 2 April 2009 cc1465-66W](#)

¹⁰ Ministry of Justice, [Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders](#), December 2010, Cm 7972, p32

criticised as being overly complex and confusing, meaning that people may not realise that the Act applies to them.

115. We are taking a fundamental look at the objectives of the Rehabilitation of Offenders Act, and how it could be reformed. The sorts of proposals we are considering include:

- 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.¹¹

4.3 Changes made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012

The Government's response to the consultation, published in June 2011, did not contain any mention of the 1974 Act. However, during the Lords committee stage of the Bill that became the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*, the Government tabled a new clause to the Bill to reform the 1974 Act in two key ways. The first key change was to extend the scope of the Act to cover custodial sentences of up to 48 months (from 36 months), and the second was to change the length of some of the rehabilitation periods (in most cases by reducing them).

The new clause was enacted as [section 139 of the 2012 Act](#). The Act received Royal Assent on 1 May 2012. The Government had initially indicated that section 139 would be commenced in spring 2013;¹² however there were delays in implementation. Section 139 was brought into force on 10 March 2014.¹³

4.4 Further changes proposed in 2020

In a White Paper, [A Smarter Approach to Sentencing](#), published in September 2020, the Government set out plans to legislate to reduce the rehabilitation periods that apply before a conviction becomes spent.

The White Paper explains the Government's motivation for proposing this change:

A key element in reducing reoffending is access to employment and having unspent convictions on a criminal record can act as a barrier to employment. In order to support these aims, we are proposing a change in the law to reduce the number of people who have previously offended and are required to disclose their convictions as part of basic checks for employment.¹⁴

¹¹ Ibid, p34

¹² [HL Deb 18 July 2012 cGC100](#)

¹³ Ministry of Justice, press release, [Reforms to help reduce reoffending come into force](#), 10 March 2014

¹⁴ Ministry of Justice, [A Smarter Approach to Sentencing](#), September 2020, para 257

The proposed changes would also include allowing for some convictions resulting in a custodial sentence of more than 4 years to become spent. Convictions for serious sexual, violence and terrorist offences would be excluded.¹⁵

As with the current periods, the Government has proposed that “children’s rehabilitation periods should continue to be half those of adults”.¹⁶

Box 2: Proposal for New Rehabilitation Periods

Sentence	Adults	Under 18s
A custodial sentence of over 4 years (excluding serious sexual, violent or terrorist offences)	7 years	3.5 years
A custodial sentence of more than 1 year and up to 4 years	4 years	2 years
A custodial sentence of 1 year or less	1 year	6 months
Youth Rehabilitation Order	N/A	The last day on which the order has effect
Community Order	The last day on which the order has effect	N/A

Reaction to the proposals

The charity [Unlock](#) “provides a voice and support for people who are facing stigma and obstacles because of their criminal record”. It has welcomed the Government’s proposals for generally reduced disclosure periods but concludes that the proposed changes are “fundamentally limited” and has called for the Government to “deliver a more ambitious package of reforms”.

In December 2020 the charity published a response to the White Paper: [The cycle repeats itself: Better, but still not smarter, disclosure of criminal records](#). It concludes that the proposals are too limited to achieve the Ministry of Justice’s goal of reducing the barrier to finding work created by the need to disclose a criminal record. It states:

The MoJ have repeated the mistakes of previous governments by assuming that long periods of disclosure need to exist, instead of drawing on evidence to find a smarter approach.¹⁷

Unlock’s response to the White Paper makes a number of recommendations for additional changes which it says, together with

¹⁵ Ministry of Justice, [A Smarter Approach to Sentencing](#), September 2020, para 259

¹⁶ Ministry of Justice, [A Smarter Approach to Sentencing](#), September 2020, para 266

¹⁷ Unlock, [The cycle repeats itself: Better, but still not smarter, disclosure of criminal records](#), December 2020

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the proposals in the White Paper, would be a “much more significant step forward for criminal record disclosure”:

- Abolish lifelong disclosure
- Universal reductions in disclosure periods, informed by evidence
- Young people to disclose based on their age at the time of the offence
- Disclosure periods to begin at release, not after licence
- Proactive use of non-criminal disposal measures, with long term commitment.¹⁸

¹⁸ Unlock, [The cycle repeats itself: Better, but still not smarter, disclosure of criminal records](#), December 2020

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