

Research Briefing

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Rehabilitation of Offenders Act 1974



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Summary

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.

This research briefing applies to England and Wales. It describes which convictions are eligible to become ‘spent’ and when eligible convictions and cautions will become spent. It discusses changes made to the 1974 Act to allow more convictions to become spent and to reduce the time convictions will remain unspent.

Spent convictions and cautions

Under the Act, eligible convictions or cautions become ‘spent’ after a specified period of time known as the ‘rehabilitation period’. The length of the rehabilitation period depends on the sentence or disposal imposed (for example a prison sentence, fine or caution) and the person’s age at the time. Rehabilitation periods are shorter for those who were children (under 18) when they were convicted or cautioned.

Some custodial sentences, such as life sentences and sentences of over four years imposed for sexual or violent offences, can never become spent.

Once a 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 some exceptions: for example, for some types of employment, including regulated activity with children or vulnerable adults, a person can be required to disclose details of both unspent and spent convictions or cautions.

Changes made to the rehabilitation periods

Changes have been made to the 1974 Act, reducing rehabilitation periods and allowing for convictions where longer prison sentences have been imposed to become spent. Most recently the Police, Crime, Sentencing and Courts Act 2022 amended the law to:

- reduce the rehabilitation periods for community sentences and for custodial (prison) sentences of 4 years and under

- allow for some convictions, resulting in a custodial sentence of more than 4 years (excluding those for serious violent, sexual, or terrorist offences) to become spent

These changes came into effect from 28 October 2023. Before this no custodial sentence of more than four years could become spent.

These changes followed measures in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which had allowed for custodial sentences of up to four years to become spent (previously custodial sentences over 30 months could never become spent), and changed the length of some rehabilitation periods (in most cases by reducing them).

There are continued calls for further reform to the criminal records system.

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

1.1 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 the rehabilitation period depends on the sentence or disposal imposed (for example a prison sentence, fine or caution) and the person’s age at the time.

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 some exceptions: for example, for some types of employment, including regulated activity with children or vulnerable adults, a person can be required to disclose details of both unspent and spent convictions or cautions.

1.2 Exclusions from rehabilitation under the Act

Some custodial sentences are excluded from the scope of the Act and can therefore never become spent. These include sentences of life imprisonment, [extended determinate sentences](#) for dangerous offenders and prison sentences of over four years for serious violent, sexual, or terrorist offences.

¹ Ministry of Justice, [A Smarter Approach to Sentencing](#), CP 292 (PDF), September 2020, para 256

2 Rehabilitation periods

2.1 When will a conviction or caution become spent?

The rehabilitation period (the length of time before a caution or conviction becomes spent) is determined by a person's sentence or disposal and their age at the time. Rehabilitation periods are shorter for those who were children (under 18) when convicted or cautioned.

A table on the Gov.UK page [Rehabilitation periods](#) summarises the current rehabilitation periods for the most common types of sentences and disposals and provides example scenarios. Further information can be found in the Ministry of Justice's [Guidance on the Rehabilitation of Offenders Act 1974 and The Exceptions Order 1975](#), 28 October 2023.

Custodial sentences

The rehabilitation period for a custodial (prison) sentence begins on the day on which the sentence is completed. The sentence includes any licence period, when someone is released into the community under supervision and must comply with certain conditions.

A custodial sentence of more than four years can become spent as long as it was not imposed for a serious violent, sexual, or terrorist offence, (as listed in [schedule 18 of the Sentencing Act 2020](#)). If the person was an adult (aged 18 or over) when convicted, the sentence will become spent seven years after the sentence is completed.

A custodial sentence of more than one year and up to four years, where the person was an adult when convicted, will become spent four years after the sentence is completed.

A custodial sentence of one year or less, where the individual was an adult when convicted, will be spent one year after the sentence is completed.

These periods are halved where the individual was under 18 when convicted.

[Suspended sentences](#), where a person does not go to prison immediately and is allowed to serve their sentence in the community so long as they comply with certain conditions, are treated as custodial sentences. The length of the sentence imposed, not the period for which it is suspended, is relevant to when the conviction will become spent.

Other sentences and disposals

[Simple cautions](#) and youth cautions become spent immediately.

[Conditional cautions](#) and youth conditional cautions become spent after three months or when the caution no longer has effect, if earlier.

[Fines](#) become spent one year after the person's conviction. This period is reduced to six months where the person was under 18 at the time of conviction.

A 'relevant order', which includes a [community](#) or [youth rehabilitation order](#), becomes spent at the end date given by the order. If no date is given, it become spent two years from the date of conviction, unless the order states 'unlimited', indefinitely' or 'until further order', in which case it will remain unspent.

[A compensation order](#) is spent on the discharge of the order (that is to say when it is paid in full).

2.2

Further convictions during the rehabilitation period

If someone receives another conviction while they have an unspent conviction, then neither conviction will become spent until the rehabilitation period with the latest date has ended. This is known as the "drag on" effect. If the later conviction is excluded from rehabilitation and so can never become spent, then neither the first nor later conviction will ever become spent.

For details see Ministry of Justice, [Guidance on the Rehabilitation of Offenders Act 1974](#), 28 October 2023, page 16, "What happens if someone receives another caution or conviction before their first conviction becomes spent?".

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

Sources of support and advice

The charity [Nacro's Criminal Record Support Service offers advice](#) and a helpline. It has published [Rehabilitation of Offenders Act 1974: A Nacro Guide](#) (PDF), October 2023.

[The charity Unlock has a Disclosure Calculator](#) to calculate when a criminal record becomes 'spent' and whether it must be disclosed. [Unlock also provides a helpline](#).

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.²

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), spent cautions and convictions need not be disclosed when filling in a form, or at a job interview. Where an exception does not apply, an employer cannot refuse to employ someone (or dismiss someone) because they have a spent caution or conviction.³

3.1

Excepted positions

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 (such as police officers and solicitors).⁴

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 cautions and convictions protected from disclosure by the [filtering rules](#)). These details are confirmed by way of a criminal records check conducted by the Home Office’s Disclosure and Barring Service (DBS; formerly the Criminal Records Bureau). For details of criminal records checks, including the filtering rules, please see the Library briefing [The retention and disclosure of criminal records](#).

² 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 the Library Briefing, [The retention and disclosure of criminal records](#) for details

³ Ministry of Justice, [Guidance on the Rehabilitation of Offenders Act 1974](#), 28 October 2023, p5

⁴ For a full list of excepted positions under the 1975 Order, please see Disclosure and Barring Service, [Eligibility guidance for standard DBS checks](#), July 2023

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 on the length of the rehabilitation periods set out in the Act and previously on the exclusion of prison sentences of over a certain length from its scope. Campaigners called for changes to remove barriers to employment and better enable people to move on with their lives.

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

In a 2010 consultation paper, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, the coalition Government said it would review the operation of the 1974 Act.⁵

The Government's response to the consultation, published in June 2011, did not contain any mention of the 1974 Act.⁶ 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.

This clause became [section 139 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#), which came into force on 10 March 2014. It extended the scope of the 1974 Act to allow custodial sentences of up to four years to become spent (raising this from three years) and changed the length of some rehabilitation periods (in most cases by reducing them).

⁵ Ministry of Justice, [Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders](#), December 2010, Cm 7972, p34

⁶ Ministry of Justice, [Breaking the Cycle: Government Response](#), June 2011, Cm 8070

4.2 Changes made by the Police, Crime, Sentencing and Courts Act 2023

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.⁷

[Section 193 of the Police, Crime, Sentencing and Courts Act 2023](#), which came into force on 28 October 2023, reduced many rehabilitation periods that apply before a conviction becomes spent and allowed for some convictions resulting in a custodial sentence of more than four years (excluding those for serious violent, sexual, or terrorist offences) to become spent.

The Government has said its recent reforms “will help ex-offenders turn their back on crime and reduce reoffending”, removing a “significant barrier to them getting a job and rebuilding their lives”.⁸

4.3 Calls for further change

The changes made to date have been welcomed by those who support and advocate for people with criminal records and have long campaigned for reduced rehabilitation periods.

For example, [the charity Unlock said the reduced periods will have a huge beneficial impact](#). It said that in making the reforms the Government and Parliament had followed evidence that shows that disclosure of an offence committed long ago, and often minor, can be an unnecessary barrier to successful rehabilitation.⁹

However, these organisations continue to call for more fundamental reform to the criminal records disclosure system. Unlock has noted that even after the changes many sentences will still be exempt from becoming spent. It argues that, in the context of lengthening sentences, the threshold of four years is a low bar and undermines the scope of rehabilitation promised by the reforms.¹⁰

The charity Nacro welcomed the changes but said a full review of the criminal records disclosure regime is a necessary next step, stating that the system “remains overly complex, often arbitrary, and difficult to navigate for individuals, employers, and all involved”.¹¹

⁷ Ministry of Justice [A Smarter Approach to Sentencing](#), CP 292, September 2020, p74

⁸ Gov.uk, press release, [Barrier to employment lifted for thousands of ex-offenders](#), 30 October 2023

⁹ Unlock, [Impact of changes to the criminal records system](#) (PDF), October 2023

¹⁰ Unlock, [Impact of changes to the criminal records system](#) (PDF), October 2023

¹¹ NACRO, [Changes to criminal records disclosure law](#), 31 October 2023

Unlock and the campaigning charity [Transform Justice](#) are part of the [Fairchecks campaign](#), which is calling for three specific reforms:

- An end to automatic disclosure of cautions. The campaign notes that for standard and enhanced Disclosure and Barring Service (DBS) checks some cautions still have to be disclosed.¹²
- An end to lifelong disclosure of short prison sentences on standard and enhanced DBS checks.
- A distinct criminal records system for childhood offences, recognising their immaturity.¹³

¹² For an explanation of what is disclosed on standard and enhanced DBS checks please see DBS, [A guide to DBS checks](#) (PDF) undated

¹³ Unlock, [Impact of changes to the criminal records system](#) (PDF), October 2023

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