



BRIEFING PAPER

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The 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.

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 will generally be shorter for offenders aged under 18 when they were convicted.

Once the conviction or caution becomes spent, the offender is regarded as rehabilitated and (for most purposes) is treated as if he 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.

Two key changes were made to the 1974 Act by section 139 of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*, which was brought into force on 10 March 2014. 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.

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 he 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.

2. Rehabilitation periods

Prison sentences of over 48 months 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 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	18 months from the date on which the sentence

	any licence period) is completed	(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 [New Guidance on the Rehabilitation of Offenders Act](#), March 2014.

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.¹

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

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 he 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), 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.³

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) work with children or vulnerable adults or roles in certain licensed occupations or positions of trust (e.g. police officers, 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 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 [Library Briefing 6441, The retention and disclosure of criminal records](#).

¹ Ministry of Justice, [New Guidance on the Rehabilitation of Offenders Act](#), March 2014

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 [Library Briefing 6441, The retention and disclosure of criminal records](#) for full details.

³ Ministry of Justice, [New Guidance on the Rehabilitation of Offenders Act](#), March 2014

⁴ For a full list of excepted positions under the 1975 Order, please see Disclosure and Barring Service, [DBS checks: eligibility guidance](#), March 2015

4. Reform of the 1974 Act

The 1974 Act was criticised for many years on the grounds that it did not do enough to rehabilitate offenders. Such criticism focused in particular, on the length of the rehabilitation periods set out in the Act and the exclusion of prison sentences of over 30 months from its scope.

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.⁵ In its response to the consultation, published in 2003, the Government said that it planned to publish a draft bill for pre-legislative scrutiny.⁶ 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 murders⁷ and the subsequent introduction of the *Safeguarding Vulnerable Groups Act 2006* and as a result could not set any timescale for changing the law.⁸

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.⁹ 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 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;

⁵ Home Office, [Breaking the Circle: a report of the review of the Rehabilitation of Offenders Act](#), July 2002

⁶ 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

⁷ *Bichard Inquiry Report*, HC 653 2003-04, 22 June 2004

⁸ [HC Deb 2 April 2009 cc1465-66W](#)

⁹ Ministry of Justice, [Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders](#), December 2010, Cm 7972, p32

- 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.¹⁰

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, 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;¹¹ however there were delays in implementation. Section 139 was brought into force on 10 March 2014.¹²

¹⁰ Ibid, p34

¹¹ [HL Deb 18 July 2012 cGC100](#)

¹² Ministry of Justice, press release, [Reforms to help reduce reoffending come into force](#), 10 March 2014

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