



## **The *Rehabilitation of Offenders Act 1974***

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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 30 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.

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.

The Government has recently legislated (via section 139 of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*) to reform the 1974 Act in two key ways. The first key change is to extend the scope of the Act to cover custodial sentences of up to 48 months, and the second is to change the length of some of the rehabilitation periods (in most cases by reducing them). The Act received Royal Assent on 1 May 2012 but section 139 has not yet been commenced and so is not yet in force. The Government had initially indicated that section 139 would be commenced in spring 2013; however, in February 2013 the offender rehabilitation charity Unlock said that it had been notified by the Government that section 139 would not now be commenced until November 2013.

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### **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.

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 30 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.

The table set out in Appendix 1 summarises the rehabilitation periods for some of the most common types of sentence/disposal. In each case the rehabilitation period runs from the date on which the person was convicted or cautioned (not from the date on which he or she was sentenced). Many of these retention periods will be amended once section 139 of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* comes into force: see section 4 of this note for further details.

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 (not including unspent conditional cautions), and you get a further caution or conviction before the earlier conviction has become spent, one of the following will apply:

1. If your later outcome is a caution (either a simple caution or a conditional caution), reprimand or warning, neither rehabilitation period will be affected. The caution or 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).
2. If your later outcome is a conviction for a summary offence, (one that can only be tried in a magistrates' court), neither rehabilitation period will be affected. The caution or conviction for the earlier offence will become spent at the time originally fixed, and the conviction for the later offence will become spent after the normal period.
3. If your later outcome is a conviction for an either way or an indictable offence (one which could be tried in the Crown Court) then *neither* conviction will become spent until the rehabilitation period for *both* offences are over.
4. If your later outcome is a conviction that results in a prison sentence of more than 2 ½ years then neither the second nor the first conviction will ever become spent.<sup>1</sup>

Once a caution or conviction becomes spent, it will remain spent even if the individual concerned receives a subsequent caution or conviction: a spent caution or conviction cannot be "reactivated" and made unspent by the later offence.

### **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.<sup>2</sup> Ministry of Justice guidance states:

Once a caution or conviction has become spent under the Act, the ex-offender does not have to reveal it or admit its existence in most circumstances. *There are some exceptions*, but unless you are told one of these applies and are asked for more details of all your cautions or convictions, spent cautions and convictions need not be disclosed when filling in a form. Or at an interview, for instance for a job. An employer cannot refuse to employ someone (or dismiss someone) because he or she has a spent caution or conviction unless an exception applies.<sup>3</sup>

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

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<sup>1</sup> Ministry of Justice, [Rehabilitation of Offenders Act](#), March 2011, p4

<sup>2</sup> 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 100<sup>th</sup> 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 Standard Note 6441 The retention and disclosure of criminal records](#) for full details.

<sup>3</sup> Ministry of Justice, [Rehabilitation of Offenders Act](#), March 2011, p1

children or vulnerable adults or roles in certain licensed occupations or positions of trust (e.g. police officers, solicitors).<sup>4</sup>

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. 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 Standard Note 6441 \*The retention and disclosure of criminal records\*](#).

## 4 Reform of the Act

The Act has been criticised for many years on the grounds that it does not do enough to rehabilitate offenders. Such 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 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.<sup>5</sup> In its response to the consultation, published in 2003, the Government said that it planned to publish a draft bill for pre-legislative scrutiny.<sup>6</sup> 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 murders<sup>7</sup> and the subsequent introduction of the *Safeguarding Vulnerable Groups Act 2006* and as a result could not set any timescale for changing the law.<sup>8</sup>

In 2010, the current 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.<sup>9</sup> 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.

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<sup>4</sup> For a full list of excepted positions under the 1975 Order, please see Disclosure and Barring Service, [DBS checks: eligibility guidance](#), December 2012

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

<sup>6</sup> 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

<sup>7</sup> [Bichard Inquiry Report](#), HC 653 2003-04, 22 June 2004

<sup>8</sup> [HC Deb 2 April 2009 cc1465-66W](#)

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

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.<sup>10</sup>

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 has now been enacted as [section 139 of the 2012 Act](#). The Act received Royal Assent on 1 May 2012 but section 139 has not yet been commenced and so is not yet in force. The Government had initially indicated that section 139 would be commenced in spring 2013;<sup>11</sup> however, in February 2013 the offender rehabilitation charity Unlock said that it had been notified by the Government that section 139 would not now be commenced until November 2013.<sup>12</sup>

The table set out in Appendix 2 summarises the rehabilitation periods for some of the most common types of sentence/disposal as will be in force once section 139 has been commenced. Most of the new rehabilitation periods will run from the date on which the sentence is completed, as opposed to the date on which the sentence is imposed (as is the case under the 1974 Act as currently in force). The new rehabilitation periods will 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.

For a detailed overview of the changes that will be made by the 2012 Act, please see Unlock's briefing [Is it spent now? A brief guide to the changes to the Rehabilitation of Offenders Act 1974, as enacted by the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) (December 2012).

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<sup>10</sup> Ibid, p34

<sup>11</sup> [HL Deb 18 July 2012 cGC100](#)

<sup>12</sup> Unlock website, [UNLOCKing Employment - Rehabilitation of Offenders Act 1974: Latest developments](#) [accessed 22 March 2013]

**Appendix 1: Rehabilitation periods for certain types of sentence/disposal under the 1974 Act as currently in force**

Sentence/disposal	Rehabilitation period if aged 18 or over when convicted/cautioned	Rehabilitation period if aged under 18 when convicted/cautioned
A custodial sentence of over 30 months	Never spent	
A custodial sentence of over 6 months but not exceeding 30 months	10 years	5 years
A custodial sentence of up to 6 months	7 years	3 ½ years
Fine	5 years	2 ½ years
Community order	5 years	2 ½ years
Conditional caution	3 months	
Simple caution, reprimand or final warning	Spent immediately	
Compensation order	On the discharge of the order (i.e. when it is paid in full)	

**Appendix 2: 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/cautioned	Rehabilitation period if aged under 18 when convicted/cautioned
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
Conditional caution	3 months from the date on which the caution was given, or (if earlier) when the caution ceases to have effect	
Simple caution, reprimand or final warning	Spent immediately	
Compensation order	On the discharge of the order (i.e. when it is paid in full)	