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# The Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

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## The case for reform

The *Rehabilitation of Offenders Act 1974* gives people with spent convictions, cautions, reprimands and final warnings the right not to disclose them when applying for most jobs. Most convictions become spent after five years because most lead to fines and community orders. These periods are halved for juveniles.

Prison sentences of up to six months become spent after seven years and sentences of up to two and a half years become spent after ten. Prison sentences of more than two and a half years never become spent. Detention and training orders for 12-14 year olds become spent one year after they expire. Detention and training orders for 15-17 year olds become spent after three and a half years or five years, depending on the length of the sentence. Conditional discharges and bind overs become spent after one year, or when the orders expire (whichever are longer). Convictions for triable-either-way and indictable offences extend rehabilitation periods – the time it takes earlier unspent convictions to become spent. Simple cautions, reprimands and final warnings become spent instantly.

Millions of people have benefited from the Act. Society has benefited by enabling

people to get into employment without adverse consequences for employers. The reality is that most people with criminal records seek employment for the same reasons as the rest of us: to earn a living, to get on and to make a contribution. Few have sinister motives in seeking employment.

The Act has been a success even though it takes a long time for convictions to become spent. Its provisions are less generous than the rules that apply in other European countries. Those countries typically apply rehabilitation periods to sentences which are longer than two and a half years and their rehabilitation periods are much shorter – often half the length of ours or less.

The Act, however, is being undermined by the increase in sentence lengths which has occurred since the Act was implemented. Many offenders who would have received sentences of two and a half years or less in 1974 are receiving sentences of between three and four years today. This means that many offenders who would previously have been helped by the Act now find that their offences will never become spent. The list of exemptions from the Act has also increased by half since it was introduced.

Coupled with this increase has been a growth in unlawful Criminal Records Bureau (CRB) checks. Legally, CRB standard and enhanced disclosure checks can only be carried out on posts exempt from the Act. However, research shows that around 11% of checks (ie, more than 300,000 a year) are on posts that are not exempt.<sup>1</sup> This means that people who have a right not to disclose their spent convictions are finding that they show up in checks anyway. The introduction of the vetting and barring scheme is likely to see an escalation in the number of unlawful checks being made each year.

All this matters, for many employers insist that applicants must have a 'clear' CRB disclosure result before they will employ them. Many other employers will refuse to employ people on the basis of

very old and insignificant offences that show up in disclosures. In a 2001 report, the National Institute for Economic and Social Research (NIESR) noted that only a small minority of employers knowingly employ ex-offenders.<sup>2</sup> NIESR found that rejection of ex-offenders 'is largely based on prejudice rather than real risk'. It found that relevance, namely the link between the offence committed and the job, is weak. Criminal records 'appear to be used as a general indicator of undesirability'.

Ex-offenders are not applying for positions subject to checks because they fear this discrimination but they also do not apply out of shame and embarrassment. People who are essentially law-abiding find it very difficult to disclose information they regard as personal, private and confidential.

Reform of the Act, along the lines proposed by a 2002 Home Office review<sup>3</sup> and subsequently accepted by the government, would enable many more people to benefit from it. Under the proposals, as amended, custodial sentences of under four years would become spent two years after the end of sentence (one year for juveniles) and custodial sentences of four years or more would become spent four years after the end of sentence (two years for juveniles). Detention and training orders would become spent one year after the orders expire and hospital orders would become spent four years after they expire. Bind over and absolute discharge orders would become spent immediately, and conditional discharges would become spent once they are completed. Fines and community sentences would become spent after one year (six months for juveniles).

<sup>1</sup> Suff R (2005) 'Checking out the activities of the Criminal Records Bureau' *IRS Employment Review* 483, pp. 42-48

<sup>2</sup> Metcalf et al (2001) *Barriers to Employment for Offenders and Ex-offenders* London: HMSO

<sup>3</sup> Home Office (2002) *Breaking the Circle: A report on the review of the Rehabilitation of Offenders* London: Home Office

## Guide to the Act

The Act covers Great Britain only. No other country is bound by this legislation, although the Act applies to convictions abroad for offences which would be offences here.

### Rehabilitation periods

Under the *Rehabilitation of Offenders Act 1974*, the time it takes for an offence to become 'spent' depends on the sentence given – not the offence committed. There is one known exception to this rule. Under the *Policing and Crime Act 2009* the rehabilitation period for loitering and soliciting is six months. See page 7 for further information about these offences.

For a custodial sentence, the rehabilitation period is decided by the total length of the sentence imposed by the court, not the time served in custody. Custodial sentences of more than two and a half years can never become spent.

The rehabilitation periods for the main sentences, orders and warnings, past and present, are set out in alphabetical order in the table below.

Sentence, order or warning	Rehabilitation period <sup>4</sup>
Absolute discharge order	6 months
Action plan order <sup>5</sup>	2½ years
Approved school order	1 year after order expires
Attendance centre order <sup>6</sup>	1 year after order expires
Bind over	1 year or until order expires, whichever is longer
Borstal training sentence <sup>7</sup>	7 years
Care order <sup>8</sup>	1 year or until the order expires, whichever is longer
Caution (conditional)	3 months
Caution (simple)	Nil (spent instantly)
Combination order <sup>9</sup>	5 years; 2½ years if under 18 when convicted
Community order	5 years; 2½ years if under 18 when convicted
Community punishment order <sup>10</sup>	5 years; 2½ years if under 18 when convicted
Community punishment and rehabilitation order <sup>11</sup>	5 years; 2½ years if under 18 when convicted
Community rehabilitation order <sup>12</sup>	5 years; 2½ years if under 18 when convicted
Community service order <sup>13</sup>	5 years; 2½ years if under 18 when convicted
Compensation order	Once the compensation order is paid in full

Conditional discharge order	1 year or until order expires, whichever is longer
Confiscation order <sup>14</sup>	5 years; 2½ years if under 18 when convicted
Curfew order <sup>15</sup>	5 years; 2½ years if under 18 when convicted
Detention and training order, 6 months or less	1 year after order expires for 12-14 year olds; 3½ years for 15-17 year olds
Detention and training order, more than 6 months	1 year after order expires for 12-14 year olds; 5 years for 15-17 year olds
Detention centre order <sup>16</sup>	3 years
Detention in a YOI, 6 months or less <sup>17</sup>	7 years; 3½ years if under 18 when convicted
Detention in a YOI, more than 6 months <sup>18</sup>	10 years; 5 years if under 18 when convicted
Disqualifications <sup>19</sup>	5 years; 2½ years if under 18 when convicted
Drug treatment and testing order <sup>20</sup>	5 years; 2½ years if under 18 when convicted
Endorsements <sup>21</sup>	5 years; 2½ years if under 18 when convicted
Final warning	Nil (spent instantly)
Fine <sup>22</sup>	5 years; 2½ years if under 18 when convicted
Forfeiture order <sup>23</sup>	5 years; 2½ years if under 18 when convicted
Hospital order, with or without a restriction order	5 years or 2 years after order expires, whichever is longer
Prison sentence, 6 months or less	7 years
Prison sentence, more than 6 months	10 years
Probation order <sup>24</sup> (before 3 February 1995)	1 year or until order expires, whichever is longer
Probation order <sup>25</sup> (on or after 3 February 1995)	5 years; 2½ years if under 18 when convicted
Referral order	Once the order expires
Reparation order	2½ years
Reprimand	Nil (spent instantly)
Secure training order <sup>26</sup>	1 year after order expires
Supervision order <sup>27</sup>	1 year or until order expires, whichever is longer
Suspended sentence, 6 months or less	7 years
Suspended sentence, more than 6 months	10 years
Youth conditional caution <sup>28</sup>	3 months
Youth custody order, 6 months or less <sup>29</sup>	7 years; 3½ years if under 18 when convicted
Youth custody order, more than 6 months <sup>30</sup>	10 years; 5 years if under 18 when convicted
Youth rehabilitation order <sup>31</sup>	1 year or until order expires, whichever is longer

## Notes

- 4 This is from the date of warning or conviction, unless otherwise stated.
- 5 This has been replaced by the youth rehabilitation order.
- 6 This has been replaced by the community order for adults and the youth rehabilitation order for juveniles.
- 7 This was abolished in 1983.
- 8 Care orders in criminal proceedings were abolished by the *Children Act 1989* and effectively replaced by a supervision order with residence requirements.
- 9 This was replaced by the community punishment and rehabilitation order, which was itself replaced by the community order for adults and the youth rehabilitation order for juveniles.
- 10 This has been replaced by the community order for adults and the youth rehabilitation order for juveniles.
- 11 This has been replaced by the community order for adults and the youth rehabilitation order for juveniles.
- 12 This has been replaced by the community order for adults and the youth rehabilitation order for juveniles.
- 13 This was replaced by the community punishment order, which was itself replaced by the community order for adults and the youth rehabilitation order for juveniles.
- 14 This is an ancillary order which is treated as a sentence in its own right.
- 15 This has been replaced by the community order for adults and the youth rehabilitation order for juveniles.
- 16 This was abolished in 1988.
- 17 This was abolished for those under 18 in 2000 and replaced by the detention and training order, but it is still available for those aged 18-20 years.
- 18 This was abolished for those under 18 in 2000 and replaced by the detention and training order, but it is still available for those aged 18-20 years.
- 19 This is an ancillary order which is treated as a sentence in its own right.
- 20 This has been replaced by the community order for adults and the youth rehabilitation order for juveniles.
- 21 This is an ancillary order which is treated as a sentence in its own right.
- 22 The rehabilitation period applies even if the offender is subsequently imprisoned for default of a fine. Fines arising from fixed penalty notices and penalty notices for disorder are not covered by the Act, so do not have a rehabilitation period. Fixed penalty notices and penalty notices for disorder do not form part of criminal records.
- 23 This is an ancillary order which is treated as a sentence in its own right.
- 24 This was replaced by the community rehabilitation order, which was itself replaced by the community order for adults and the youth rehabilitation order for juveniles.
- 25 This was replaced by the community rehabilitation order, which was itself replaced by the community order for adults and the youth rehabilitation order for juveniles.
- 26 This was abolished in 2000 and replaced by the detention and training order.
- 27 This has been replaced by the youth rehabilitation order.
- 28 To be piloted in six areas around the country from mid 2010.
- 29 This was abolished in 1988.
- 30 This was abolished in 1988.
- 31 This replaces a number of orders for offences committed after 30 November 2009.

## Further convictions

If an offender is convicted of a second offence, a 'summary' offence, before their first conviction becomes spent, the second conviction will not affect the rehabilitation period for the first offence; each offence will expire separately. Summary offences, which can only be tried in a magistrates' court, include most motoring offences (but not drink or dangerous driving), criminal damage of £5,000 or less, drunkenness, indecent exposure, kerb-crawling and social security offences.

If the further offence is a triable-either-way or indictable offence – one that could be tried in the crown court – then neither offence will become spent until both of them do. This applies even if the first conviction was for a summary offence. Offences like theft, no matter how small the amount, and serious criminal damage are triable-either-way offences.

If the further conviction leads to a prison sentence of more than two and a half years, neither conviction will ever become spent. If, however, the first conviction leads to a prison sentence of more than two and a half years, later convictions with fixed rehabilitation periods will become spent separately.

If the first offence was for loitering or soliciting and the offender is dealt with again for the same offence, the rehabilitation period for the first offence will be extended by the second offence, even if the rehabilitation period for the first had expired.

## Concurrent and consecutive sentences

If a person receives two or more prison sentences in the course of the same proceedings, the rehabilitation period will depend on whether they are to run concurrently or consecutively. So, for example, two six-month terms ordered to run consecutively are treated as a single term of 12 months, giving a rehabilitation period of 10 years. But two such sentences ordered to take effect concurrently are treated as one sentence of six months, giving a rehabilitation period of seven years.

Prison sentences ordered to run consecutively to sentences already being served are not affected by this rule.

## Breach of court orders

If someone is given a probation or conditional discharge order and is later brought before the courts for a breach of the order, this can affect the rehabilitation period applicable to the original conviction. If

the court imposes a further sentence when it deals with the breach, then the original conviction will run on until both rehabilitation periods have expired.

Sometimes the courts may not deal with the breach until after the rehabilitation period applying to the original conviction has already expired. If the court then imposes a further sentence in dealing with the breach, the original conviction will still not become spent until the new rehabilitation period has expired.

### Military offences

The Act also applies to convictions in the armed forces, including some service offences (see below). But if the service offence was of a kind which most people would not consider criminal (such as failing to salute an officer) the Act would only apply if the sentence was three months' detention or more.

The service offences to which the Act always applies are:

Army and Air Force	Navy
Looting	Corresponding with, supplying or serving the enemy
Offences relating to property of members of forces	Loss or waste of public and service property
Miscellaneous offences relating to property	Offences relating to issues and decorations
Making of false statements on enlistment	False statements on entry
Making of false documents	Falsification of documents
Scandalous conduct by an officer	Cruelty or scandalous conduct by an officer
Disgraceful conduct	Disgraceful conduct

Other than those listed in the table, the Act only applies to service offences if the punishment awarded was imprisonment; cashiering, discharge with ignominy or dismissal with disgrace from HM Service; dismissal from HM Service; or detention for a term of three months or more. The rehabilitation periods for the various sentences are set out in the following table.

Sentence	Rehabilitation period <sup>32</sup>
A sentence of cashiering, discharge with ignominy or dismissal with disgrace	10 years
A sentence of dismissal	7 years
A custodial order under the relevant schedules and sections of the <i>Army Act 1955</i> , the <i>Air Force Act 1955</i> and the <i>Naval Discipline Act 1957</i> where the maximum period of detention is more than six months	7 years
A sentence of detention in respect of conviction in service disciplinary proceedings	5 years
A custodial order under the relevant schedules and sections of the <i>Army Act 1955</i> , the <i>Air Force Act 1955</i> and the <i>Naval Discipline Act 1957</i> where the maximum period of detention specified is six months or less	3 years

<sup>32</sup> These periods are halved if the offender was under 18 at the time.

### Benefits of the Act

#### Applying for jobs

Many people think that once an offence is spent, it is wiped from the record. It is not. Rather, the Act gives people the right not to disclose spent offences when applying for jobs, unless those jobs (or college course places) are exempt from the Act (see below). Under the Act, a spent offence shall not be proper grounds for not employing someone or for dismissing them. (However, if applicants do not disclose unspent offences when asked to do so, they may be found out and dismissed on the grounds of having deceived the employer. In a few cases, they could be prosecuted.)

The Act does not provide any means of enforcing a person's right not to be refused employment, a place on a college course or entry into a profession on the grounds of a spent offence. However, if an employee can prove that they have been dismissed for a spent offence and they have been in employment for a year or more, they may be able to claim unfair dismissal.

#### Applying for insurance

The Act also gives applicants the right not to disclose spent offences when applying for insurance. This is the case even if the offences are relevant to the risk that the insurers will underwrite. For example,

spent motoring convictions are not required on a proposal form for motor insurance.

### Court proceedings

In civil proceedings, no one should be asked questions that might lead to the disclosure of spent offences. If such questions are asked, they need not be answered. This rule does not apply:

- in civil proceedings relating to children (adoption, guardianship, wardship, marriage, custody, care and control, and schooling)
- when the court is satisfied that justice cannot be done unless evidence of spent convictions is admitted (anyone who has spent convictions can always consent to evidence being given about them)
- if the proceedings involve a matter exempt from the Act (see 'Exceptions to the Act').

The rule on civil proceedings also applies to arbitration proceedings, disciplinary proceedings before an administrative tribunal, and to a club committee which has powers to affect anyone's rights, privileges, obligations or liabilities.

### Exceptions to the Act

#### Main areas which are exempt

Under the *Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975*, as amended, there are many offices and occupations exempt from the Act. Here employers and professional bodies can ask applicants to disclose both spent and unspent offences and, in addition, in England and Wales can carry out standard and enhanced disclosure criminal record checks with the CRB. In Scotland, such checks can be carried out through Disclosure Scotland; in Northern Ireland they can be carried out through Access NI.

A regularly updated list of the positions this covers can be found on the CRB website ([www.crb.homeoffice.gov.uk](http://www.crb.homeoffice.gov.uk)). They are listed as 'Disclosure Access Category Codes'. The list includes:

- any work which is defined as regulated activity relating to children or vulnerable adults (see below) within the meaning of the *Safeguarding Vulnerable Groups Act 2006*.
- certain professions, occupations, offices and employments in areas such as health, pharmacy, finance, the courts and the law

- licences to drive taxis and to work in the private security industry.

If a position is not listed in the Disclosure Access Category Codes, it is not exempt from the Act and therefore any standard or enhanced disclosure check (either with the CRB or its Scottish and Northern Irish equivalents) is unlawful. Despite this, there are many employers, especially local authorities, which run checks on positions not exempt from the Act.

### Regulated and controlled activity

Regulated activity includes anyone working closely with children or vulnerable adults on a frequent or intensive basis. Regulated activity includes:

#### Specified activities

- Teaching, training or instruction, care or supervision of children, or the same provided wholly or mainly to vulnerable adults
- Registered childminders and foster carers
- Advice or guidance for children, and advice, guidance or assistance for vulnerable adults
- Any form of healthcare treatment or therapy provided to children or vulnerable adults
- Driving a vehicle solely for the purpose of conveying children or vulnerable adults

#### Specified settings

- Working in specified settings (schools, childcare premises, children's and adult care homes, children's hospitals, children's centres, detention centres, and further education colleges)

Services aimed at the general public are not regulated activity. Detailed information on what constitutes a regulated activity is given in guidance on the Vetting and Barring Scheme on the CRB's website ([www.crb.homeoffice.gov.uk](http://www.crb.homeoffice.gov.uk)). The guidance also defines the term 'vulnerable adult'.

Controlled activity covers people in ancillary roles in health, education and social care settings, such as caretakers and caterers. It also covers people working for specified organisations with access to health or social services records, such as administrative assistants.

## Further information

This booklet has been produced by Nacro Resettlement *Plus* Helpline, which provides resettlement information and advice to prisoners, ex-offenders and the people involved with them.

Further copies of the booklet can be downloaded from the 'advice downloads' section of the RS Finder website: **[www.rsfinder.info](http://www.rsfinder.info)**.

Alternatively, the booklet itself is available from the **Resettlement *Plus* Helpline**, 159 Clapham Road, London SW9 0PU.

**Tel** 020 7840 6464 **Email** [helpline@nacro.org.uk](mailto:helpline@nacro.org.uk)

Single copies are free; multiple copies are 50p each. Please send cheques, made payable to Nacro, with orders.

A simple A4 version, which can be given out to individuals, is also available from the 'advice downloads' section of the RS Finder website. This version sets out the main features of the Act including the rehabilitation periods for the current sentences and orders.

A free A3 poster version, setting out the main features of the Act, is also available from the helpline.



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