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Rehabilitation of Offenders Act 1974

This leaflet updates the information published in summer 2001 by Nacro about the *Rehabilitation of Offenders Act 1974*. It is written primarily for people who work with ex-offenders. Those ex-offenders wanting detailed information about the Act may want to read this leaflet. Alternatively, they may prefer to read the Home Office's brief guide to the Act, *Wiping the Slate Clean*, or Nacro's own *Simple Guide to the Rehabilitation of Offenders Act 1974* (see back page).

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The Rehabilitation of Offenders Act 1974 enables criminal convictions to become 'spent' or ignored after a 'rehabilitation period'.

After this period, with certain exceptions (see inside), an ex-offender is not normally obliged to mention their conviction when applying for a job, obtaining insurance or when involved in criminal or civil proceedings.

The Act is more likely to help people with few and/or minor convictions because further convictions usually extend rehabilitation periods (see inside). People with many convictions, especially serious convictions, may not benefit from the Act unless the convictions are very old.

Rehabilitation periods

The length of the rehabilitation period depends on the sentence given – not the offence committed. For a custodial sentence, the rehabilitation period is decided by the original sentence, not the time served. Custodial sentences of more than two-and-a-half years can never become spent.

The following sentences become spent after fixed periods from the date of conviction:

Sentence ¹	Rehabilitation period	Rehabilitation period
	People aged 17 or under when convicted	People aged 18 or over when convicted
Prison sentences ² of 6 months or less	3½ years	7 years
Prison sentences ² of more than 6 months to 2½ years	5 years	10 years
Borstal (abolished in 1983)	7 years	7 years
Detention centres (abolished in 1988)	3 years	3 years
Fines ³ , compensation, probation ⁴ , community service ⁵ , combination ⁶ , action plan, drug treatment and testing, and reparation orders	2½ years	5 years
Absolute discharge	6 months	6 months

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Note: the Act may change

There are now proposals to include custodial sentences of more than 2½ years into the Act, and to replace the notion of 'rehabilitation periods' with much shorter 'disclosure periods'. Legislation may follow in the future.

Rehabilitation periods continued

The *Crime and Disorder Act 1998* introduced a new custodial sentence for young people with different rehabilitation periods:

Sentence	Rehabilitation period	
	People aged 12, 13 or 14 when convicted	People aged 15, 16 or 17 when convicted
Detention and training order of 6 months or less	1 year after the order expires	3½ years
Detention and training order of more than 6 months	1 year after the order expires	5 years

With some sentences the rehabilitation period varies:

Sentence	Rehabilitation period
Probation ⁷ , supervision, care order ⁸ , conditional discharge and bind-over	1 year or until the order expires (whichever is longer)
Secure training (abolished in 2000) and attendance centre orders	1 year after the order expires
Hospital order (with or without a restriction order)	5 years or 2 years after the order expires (whichever is longer)
Referral order	once the order expires

Footnotes

- 1 Cautions, reprimands and final warnings are not sentences with rehabilitation periods. However, the Government is intending to include them within the Act and give them a rehabilitation period of nil, which means that they will become spent instantly. In the meantime, those people with only a caution on their criminal record can answer 'no' if asked whether they have a criminal record, because this is usually understood to mean convictions.
- 2 Including suspended sentences, youth custody (abolished in 1988) and detention in a young offender institution (abolished for those under 18 years old in 2000 and for those aged 18-20 in 2001).
- 3 Even if subsequently imprisoned for fine default.
- 4 For people convicted on or after 3 February 1995. Probation orders are now called community rehabilitation orders.
- 5 Community service orders are now called community punishment orders.
- 6 Combination orders are now called community punishment and rehabilitation orders.
- 7 For people convicted before 3 February 1995.
- 8 Care orders in criminal proceedings were abolished by the *Children Act 1989* and effectively replaced by a supervision order with residence requirement.

Disqualifications

The rehabilitation period for a disqualification is the length of the disqualification. If a person is disqualified at the same time as receiving another penalty, such as a fine, the longer rehabilitation period applies.

For example

If a motorist is banned from driving for seven years and fined – which takes five years to become spent – the rehabilitation period would be seven years, not five years.

Endorsements

An endorsement cannot affect the rehabilitation period of a motoring conviction.

For example

If a motorist is fined for drink-driving and has their licence endorsed, the rehabilitation period would be five years (the length applying to the fine) rather than 11 years (the length of time before a driver convicted of drink-driving is entitled to a clean driving licence).

Further convictions

If a rehabilitation period is still running and the offender commits a 'summary' offence, a minor offence that can only

Criminal records

be tried in a magistrates' court, the minor offence will not affect the rehabilitation period for the other offence; each offence will expire separately.

For example

If someone received a two-year probation order and was fined for a minor offence one year later, the probation order would become spent before the fine. Therefore once the probation order is spent, only the fine would need to be disclosed until it became spent.

However, if the further offence is a serious one that could be tried in the crown court, then neither conviction (even if the first one is for a minor offence) will become spent until both rehabilitation periods are over.

For example

If someone received a two-year probation order, then one year later was fined for a serious offence, both convictions would have to be disclosed until the fine became spent.

If the further conviction leads to a prison sentence of more than two-and-a-half years, neither conviction will ever become spent. However, if 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.

For example

If someone received a three-year sentence and later received a fine, the conviction for the prison sentence will always have to be disclosed, but the fine would only have to be disclosed for five years.

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

Concurrent and consecutive sentences

If an offender 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

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.

Keeping records

A person's offence will still remain on the Police National Computer (PNC) even after it has become spent – it will not be deleted. Broadly, according to guidelines from the Association of Chief Police Officers (ACPO), records of 'recordable' offences (ie broadly, imprisonable offences, whether or not they led to imprisonment) should be deleted after 10 years, unless they show that the offender has three or more convictions for recordable offences, in which case the record will be kept for 20 years.

The record will be kept for life where the offender has:

- been given custodial sentences, including suspended sentences, amounting in total to six months or more
- been convicted of indecency; sexual offences; violence; possession of class A drugs; or trafficking in, importation of, or supply of any drug
- been found unfit to plead by reason of insanity, or has been sentenced under the Mental Health Acts
- been convicted of an offence involving a child or vulnerable adult where the *modus operandi* indicates

Benefits of the Act

that the person deliberately targets such people.

The ACPO guidelines also say that where there are only cautions on the record, the record will be deleted after five years. However, cautions for sexual offences may be kept for longer. Where there are reprimands and final warnings but no convictions, the record will be kept for up to seven years. But because this aspect of the guidelines differs from Home Office guidance, which says that records of reprimands and final warnings should be kept until the offender is 18 or the reprimand/final warning is more than two years old (whichever is longer), this may change at some point.

Bind-overs that result from a conviction for a recordable offence are subject to the rules above. Bind-overs which do not result from a conviction for a recordable offence will only be retained for the period of that bind-over.

The PNC is not automatically scanned for out-of-date records. If you have a record which should have been removed under the ACPO guidelines, you should conduct a 'subject access' check under the *Data Protection Act 1984* to ensure that this happens.

Also, individual chief constables are not bound by the ACPO guidelines so policy and practice will vary between police forces. Similarly policy and practice in relation to non-recordable offences, which are held by local police forces only, will also vary between forces.

Checking records

Generally, criminal records are kept confidential. Employers and others recruiting staff for posts excepted from the Act (see 'Exceptions' later in this leaflet) can seek standard or enhanced disclosure criminal record certificates from applicants. These disclosures show spent and unspent convictions on the PNC along with cautions, reprimands and final warnings. Enhanced disclosures will sometimes also show information from local police records. At present, employers seeking staff for posts not excepted from the Act cannot usually carry out criminal record checks. This will change in 2003 with the introduction of the basic disclosure, which will only show convictions not spent under the Act.

If you want more information on the new criminal record checks, contact the Resettlement *Plus* Helpline on 020 7840 6464.

Applying for jobs

Applicants with a criminal record who are asked on an application form or at an interview whether they have any previous convictions can answer 'no' if the convictions are spent and the job applied for is not excepted from the Act (see below). Under the provisions of the Act, a spent conviction shall not be proper grounds for not employing – or for sacking – someone. (However, if job applicants do not disclose unspent convictions if asked to do so, they may be found out, dismissed on the grounds of having deceived the employer – and possibly prosecuted.)

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

Applying for insurance

If the proposal form asks whether the applicant has any previous convictions, the answer can be 'no' if the

Exceptions to the Act

convictions are spent. This is the case even if the conviction is relevant to the risk which the insurers will underwrite.

For example

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

Civil proceedings

In civil proceedings, no-one should be asked questions which might lead to disclosure of spent convictions. 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, 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 excepted from the Act (see below).

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.

Criminal proceedings

Previous convictions can be cited in criminal proceedings, even if they are spent. However, the Lord Chief Justice and the Home Office have advised the courts that spent convictions should not be mentioned except in very special circumstances.

Confidential information

The Act makes it an offence for anyone with access to criminal records to disclose spent convictions unless authorised to do so. The Act makes it a more serious offence to obtain such information by means of fraud, dishonesty or bribery. The Data Protection Act 1984, as amended, also makes it an offence to procure or supply confidential computer data.

It might be possible for a person with spent convictions to sue for libel anyone making allegations about those convictions, provided that he or she can prove that the allegations were made with malice.

There are some offices and occupations in which people are expected to declare their convictions, even if they are spent. Broadly, the list of exceptions to the Act cover:

- those whose duties involve work with children and vulnerable adults
- certain professions in areas such as health, pharmacy, and the law
- senior managers in banking and financial services
- appointments to jobs where national security may be at risk.

Application forms for posts which are excepted from the Act should always make this clear, although some employers claim posts are excepted when they are not. If in doubt about whether or not a post is excepted, seek advice from the Nacro Resettlement *Plus* Helpline (see back page).

Going abroad

The Act only covers Britain. Other countries have their own rules about those they will give visas and work permits to. Embassies should have information about this.

Further information

This leaflet has been produced by the **Nacro's Resettlement Plus Helpline**, part of Nacro's Resettlement Service, which provides information and advice about how ex-offenders can find employment, housing and other services, including offering advice to employers about recruiting ex-offenders. If you want to find out more about how the Resettlement Service can help you, contact Nacro's Resettlement *Plus* Helpline on 020 7840 6464.

Further copies of this leaflet are available from Nacro Publications on **020 7840 6427**, fax 020 7735 4666. Single copies are free; multiple copies 75p each. Copies can also be faxed or emailed in PDF format.

A simple guide to the Act is also available from Nacro Publications. Single copies are free; multiple copies 10p each. Single copies can be faxed or emailed in PDF format.

Every reasonable effort has been made to check that the information in this leaflet is as accurate as possible. However, we cannot guarantee its accuracy or completeness, and any liability for it is expressly excluded and disclaimed by Nacro.

Acknowledgment

We are grateful to the Home Office Sentencing and Offences Unit for help in producing this leaflet. The Home Office also publishes a short, simple leaflet on the Act entitled *Wiping the Slate Clean*. It is free of charge and available from the Home Office, 50 Queen Anne's Gate, London SW1H 9AT.



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