

Rehabilitation of Offenders Act 1974

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

A rehabilitation period is a set length of time from the date of conviction. After this period, with certain exceptions, an ex-offender is not normally obliged to mention the conviction when applying for a job or 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 of the way further convictions extend the rehabilitation period. People with many convictions, especially serious convictions, may not benefit from the Act unless the last convictions are very old.

The 1997 Police Act contains provisions which if implemented will lead to major changes to the system of criminal record checks. However, the present Government is currently reviewing the Act and deciding how, when and to what extent to implement it. If it implements these provisions in their entirety, they may result in amendments to the Rehabilitation of Offenders Act at some future date.

Rehabilitation Periods

The length of the rehabilitation period depends on the sentence given - not the offence committed. For a custodial sentence, the length of time actually served is irrelevant: the rehabilitation period is decided by the original sentence. Custodial sentences of more than 2 1/2 years can never become spent.

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

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

<1> Including suspended sentences, youth custody (abolished in 1988) and detention in a young offender institution.

<2> Even if subsequently imprisoned for fine default.

<3> For people convicted on or after 3 February 1995 (from which date the rehabilitation period for a probation order was changed under the terms of the Criminal Justice and Public Order Act 1994).

With some sentences the rehabilitation period varies:

Sentence	Rehabilitation Period
Probation ^{<1>} , supervision, care order, conditional discharge or bind-over	1 year or until the order expires (whichever is longer)
Attendance centre orders	1 year after the order expires
Hospital orders (with or without a restriction order)	5 years or 2 years after the order expires (whichever is longer)

<1> For people convicted before 3 February 1995

Disqualifications

If a person is disqualified (for example, from driving or from being a company director) at the same time as receiving another penalty, 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.)

Penalty Points

An endorsement is not a 'disability, prohibition or other penalty' within the meaning of the Act, and therefore it cannot affect the rehabilitation period of a motoring conviction. So, for example, if a motorist is fined for drink driving and has his or her licence endorsed, the rehabilitation period would be five years (the length applicable 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 person concerned commits a minor offence (a 'summary' offence that can only be tried in a magistrates' court), the minor offence will not affect the rehabilitation period still running. The rehabilitation period for each offence will expire separately. (For example, if someone had received a two year probation order, then one year later was fined for a minor offence, the probation order would become spent before the fine. Therefore once the probation order was spent, only the fine would need to be disclosed until it became spent.)

However, if the further offence is 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 the rehabilitation periods for both offences are over. (For example, if someone had 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 2 1/2 years, neither conviction will ever become spent.

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

Criminal Records

A person's offence will still remain on record even after it has become spent - it will not be deleted. Records of 'reportable' offences (i.e. offences which can be tried in the Crown Court, whether or not they are) should be deleted after 20 years, unless there are further convictions or evidence of mental illness, indecency, drug trafficking or homicide. Records of 'non-reportable' offences should be deleted after 10 years.

Criminal records are generally kept confidential. Broadly, vetting is limited to protecting vulnerable people; to ensuring the probity of the administration of justice; and to matters of national security. This means, for example, that private employers will not usually have access to criminal records. Applicants for taxi, heavy goods vehicle and passenger service vehicle licences should also be vetted.

Cautions

Cautions, reprimands and final warnings are not criminal convictions and so are not dealt with by the Act. So if people with cautions, reprimands or final warnings only are asked whether they have any 'criminal convictions' they can answer 'no'. Sometimes people are asked if they have a 'criminal record'. This is a less precise term, but it is usually understood to mean convictions. So people who are asked if they have a 'criminal record' may also answer 'no' if they have no convictions.

However, cautions, reprimands and final warnings are not covered by the Act. Therefore, people who are specifically asked if they have cautions, reprimands or final warnings should disclose them until they are deleted from police records. Records of cautions should be deleted after five years if there are no convictions on the record. (In practice, some police forces may retain records of cautions for much longer than this or indefinitely.)

Benefits Of The Act 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. Under the terms of the Act, a spent conviction shall not be proper grounds for not employing - or for sacking - someone. (If on the other hand, 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. If, however, an employee can prove that they have been dismissed for a spent conviction and they have been in employment for two years 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 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 (NB anyone who has spent convictions can always consent to evidence being given about them);
- if the proceedings involve a matter excepted from the Act

The rule on civil proceedings applies not only to ordinary courts, but also 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. The Lord Chief Justice and the Home Office have, however, 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 bribe. The Data Protection Act 1984, as amended by the Criminal Justice and Public Order Act 1994, 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 spent convictions, if he or she can prove that the allegation was made with malice.

Exceptions To The Act

There are some situations in which people will be expected to declare their convictions, even if they are spent. Some of the principal ones are:

Appointment to any post providing accommodation, care, leisure and recreational facilities, schooling, social services, supervision or training to people aged under 18. Such posts include teachers, school caretakers, youth and social workers, child minders.

Employment involving providing social services to elderly people, mentally or physically disabled people, alcohol or drug misusers or the chronically sick.

Appointment to any office or employment involving the administration of justice, including police officers, probation officers, traffic wardens.

Admission to certain professions which have legal protection (including lawyers, doctors, dentists, nurses, chemists, and accountants).

Appointment to jobs where national security may be at risk (for example, certain posts in the civil service, defence contractors).

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, seek advice.

Going Abroad

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