



# Rehabilitation of Offenders Act 1974

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## Background

The Rehabilitation of Offenders Act 1974 (ROA) exists to allow people with convictions to be reintegrated back into society by having the right to legally ignore their conviction(s) after a period of time. The Act allows convictions, cautions, reprimands and final warnings in respect of a certain offence to be considered 'spent' after a specified period of time known as the rehabilitation period which is decided by the sentence or disposal received.

Once 'spent', the person is considered rehabilitated and the Act treats the person as if they had never committed an offence. As a result, the conviction or caution in question does not need to be disclosed by the person when applying for most jobs, educational courses, insurance, housing applications or other purposes, unless the role applied for is 'exempt' from the Act (see 'Exceptions to the Act').

If a role is covered by the Act, it is unlawful for an employer to refuse to employ a person (or dismiss an existing employee) because the individual has a 'spent' caution or conviction.

It is also unlawful for an organisation to knowingly carry out (or enable someone else to obtain) a standard or enhanced Disclosure and Barring Service check (DBS check) on a person for a role which is covered by the Act.

If a role is covered by the Act, the employer is only legally entitled to carry out a [basic DBS check](#) which will reveal only 'unspent' convictions and/or conditional cautions.

A basic DBS check should not be confused with the standard DBS check which is legally required only for positions 'exempt' from the Act such as approved financial posts by the Financial Conduct Authority (FCA), accountants, lawyers, barristers and Security Industry Association (SIA) licences. For further information on criminal record checks, please visit the [Nacro website](#).

## Reforms to the Act

The provisions of the ROA were amended by [Section 139 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(LASPO\)](#). The changes were implemented on 10 March 2014.

Nacro and other organisations campaigned hard for reform of the Act through Nacro's 'Change the Record' campaign. The reforms sought to establish the right balance between enabling people with convictions to successfully resettle back into society while at the same time maintaining public safety. As there are more than 11 million individuals in the UK with a criminal record, many people should have benefitted from the reforms – Nacro welcomed the changes, but did not believe that they went far enough

## Will I benefit from the reforms?

The changes are retrospective, which means that they apply to all convictions including those that occurred before the implementation of the changes on 10 March 2014. The changes are applicable in England and Wales only. The amended legislation ensures that convictions that were considered 'spent' before the implementation of the changes could not become 'unspent' once the changes came into effect.

People given prison sentences of over four years or public protection sentences will never benefit from the Act at all, but many people with convictions including those who receive a custodial sentence of less than four years should benefit from it at some point, despite the growing list of "exempt" posts, occupations and activities which are subject to DBS checks or security vetting checks.

## Rehabilitation periods

Under the [ROA](#), the time it takes for an offence to become 'spent' depends entirely on the sentence given – not on the offence committed. For custodial and community sentences, the rehabilitation period will start from the end of the total sentence imposed by the court (including the licence period) – not from the time served in custody (i.e. the day of release). The rehabilitation period includes an additional 'buffer period' that runs from the end of the sentence. This 'buffer period' is determined by the length of total sentence imposed.

The 'buffer periods are halved for those aged under 18 at the date of conviction, except for custodial sentences of six months or less where the 'buffer period' will be 18 months.

The rehabilitation periods for custodial sentences (including suspended prison sentences) and community sentences are shown in Table A below.

**Table A: Rehabilitation periods for custodial sentences and community sentences**

Sentence/disposal	'buffer period' for adults (aged 18 and over when convicted) from end of sentence including licence period	'buffer period' for young people (aged under 18 when convicted) from end of sentence including licence period
Community order or youth rehabilitation order*	1 year	6 months
Imprisonment or detention in a young offender institution for 6 months or less	2 years	18 months
Imprisonment or detention in a young offender institution for over 6 months and up to and including 30 months (2½ years)	4 years	2 years
Imprisonment or detention in a young offender institution for over 30 months (2½ years) and up to 48 months (4 years)	7 years	3½ years
Imprisonment or detention in a young offender institution for over 48 months (4 years) or a public protection sentence	Never 'spent'	Never 'spent'

\*A community order or youth rehabilitation order which has no specified end date has a default rehabilitation period of two years from the date of conviction or from the time the disposal is administered. The rehabilitation period is not halved if the person was under 18 when convicted. However, the changes made to the ROA by LASPO provide for all community orders to have an end date and no account is taken of any subsequent variation of the date originally provided for on the order.

### **Examples of ‘spent’ periods for custodial sentences:**

- John receives a three-month custodial sentence as an adult (he is aged 18 or over when convicted). His sentence may become ‘spent’ after two years and three months: the rehabilitation period is the total sentence of three months (including the licence period) and the additional ‘buffer period’ of two years as he received a total sentence of six months or less.
- Susan receives a six-month custodial sentence as a young person (she is aged under 18 when convicted). Her sentence may become ‘spent’ after two years: the rehabilitation period is the total sentence of six months (including the licence period) and the additional ‘buffer period’ of 18 months as she received a total sentence of six months or less when convicted as a young person.
- Michael receives an 18-month custodial sentence as an adult (he is aged 18 or over when convicted). His sentence may become ‘spent’ after five and a half years (66 months): the rehabilitation period is the total sentence of 18 months (including the licence period) and the additional ‘buffer period’ of four years (48 months) as he received a total sentence which was over six months but not more than 30 months (two and a half years).
- Linda receives a three-year custodial sentence as a young person (she is under 18 when convicted). Her sentence may become ‘spent’ after six and a half years (78 months): the rehabilitation period is the total sentence (including the licence period) of three years (36 months) and the additional ‘buffer period’ of three and a half years (42 months) as she received a total sentence which was over two and a half years (30 months) but not more than four years (48 months) when convicted as a young person.
- Albert receives a five-year custodial sentence: his sentence is never ‘spent’, regardless of whether he was an adult or under 18 when convicted as he received a total custodial sentence of more than four years.

### **Examples of ‘spent’ periods for community sentences:**

- Michelle receives a one-year youth rehabilitation order (she is under 18 when convicted). Her sentence may become ‘spent’ after 18 months: the rehabilitation period is the total length of the order (one year or 12 months) plus the additional ‘buffer period’ of six months.
- Sean receives a two-year community order (he is aged 18 or over when convicted). His sentence may become ‘spent’ after three years (36 months): the rehabilitation period is the total length of the order (two years or 24 months) plus the additional ‘buffer period’ of one year (12 months).

For the majority of other sentences or disposals, including cautions or fines, the rehabilitation periods will still start from the date of conviction.

Table B below contains the rehabilitation period for sentences which do not have ‘buffer period’s and for which the rehabilitation period starts from the date of conviction.

**Table B: Rehabilitation periods which start from the date of conviction with no ‘buffer period’**

Sentence/disposal	Rehabilitation period for adults (aged 18 or over at the time of conviction, or at the time the disposal is administered)	Rehabilitation period for young people (aged under 18 at the time of conviction, or at the time the disposal is administered)
Simple caution/youth caution*	‘Spent’ immediately	‘Spent’ immediately
Conditional caution/youth conditional caution	3 months or when caution ceases to have effect if earlier	3 months or when caution ceases to have effect if earlier
Absolute discharge	‘Spent’ immediately	‘Spent’ immediately
Bind over	At the end of the order	At the end of the order
Conditional discharge order	At the end of the order	At the end of the order
Fine**	1 year	6 months
Compensation order***	When paid in full	When paid in full
Attendance centre order	At the end of the order	At the end of the order
Care order	When order ceases to have effect	When order ceases to have effect
Confiscation order	When order ceases to have effect	When order ceases to have effect
Forfeiture order	When order ceases to have effect	When order ceases to have effect
Hospital order	When order ceases to have effect	When order ceases to have effect
Referral order	At the end of the order	At the end of the order

Relevant order****	When order ceases to have effect	When order ceases to have effect
Reparation order	'Spent' immediately	'Spent' immediately
Disqualifications	When order ceases to have effect	When order ceases to have effect
Endorsements	5 years	2½ years

\*Youth caution replaces the disposals: reprimands and final warnings, which were abolished in April 2013.

\*\*The rehabilitation period for a fine applies even if the person is subsequently imprisoned for default of the fine. Fines arising from fixed penalty notices and penalty notices for disorder (PND) are not covered by the Act as they do not form part of an individual's criminal record so they do not have a rehabilitation period.

\*\*\*It is important that individuals obtain proof of payment of the compensation order from the court and keep this document to prove it has been paid in full. This evidence of payment may be required before a basic disclosure can be issued by the Disclosure and Barring Service.

\*\*\*\*A relevant order (e.g. restraining order or sexual harm prevention order (SHPO)) which has no specified end date has a default rehabilitation period of two years from the date of conviction or from the time the disposal is administered.

## Examples of rehabilitation periods

- Daniel receives a fine as an adult (he is aged 18 or over when convicted). His sentence may become 'spent' one year after the date of conviction.
- Sharon receives a two-year conditional discharge order. Her sentence may become 'spent' after two years from date of the order being imposed in a court, regardless of whether she was an adult or young person at the time of sentence.
- Marcus receives a three-month conditional caution which will become 'spent' after three months from the date of issue, regardless of whether he was an adult or young person at the time. As long as he complies with the conditions attached to the caution it will still become 'spent' at the end of the three-month period; even if he receives another conditional caution or conviction during the rehabilitation period – it would not be extended. However, if Marcus does not comply with the conditions attached to the conditional caution and is subsequently prosecuted; the conditional caution will cease to have effect. Any subsequent conviction will then attract the relevant rehabilitation period for the sentence imposed by the court.

### **This is best shown in the following examples:**

- Marcus receives a conditional caution for common assault and two months later he receives a fine for shoplifting. He complies with the conditions of the conditional caution which is therefore 'spent' after three months. The fine will be considered 'spent' separately after one year as he was over 18 when convicted.
- Marcus receives a conditional caution but fails to comply with the conditions and he is prosecuted for the original offence as a result. He receives a fine which may be considered 'spent' after one year as he was over 18 when convicted.

### **The implications of the changes**

As a result of the changes to the Rehabilitation of Offenders Act 1974, certain disposals such as conditional discharge orders, which are traditionally viewed as less serious disposals than fines, community orders or relevant orders now have the potential to have a greater impact on an individual's ability to access education, obtain gainful employment or insurance as they can be disclosed on a Basic Disclosure for a longer period of time depending on the length of the order imposed. Nacro has highlighted this issue to the Ministry of Justice.

We have also raised our concerns to the Ministry of Justice that an endorsement imposed by a court has a rehabilitation period of up to five years according to the [MOJ's ROA guidance](#).

Endorsements therefore have a longer rehabilitation period than all non-custodial sentences and also custodial sentences (including suspended sentences) of less than one year.

The MOJ's guidance also states that penalty points and driving disqualifications imposed by a court may become 'spent' when they cease to have effect.

### **Rehabilitation periods for motoring offences – an example from the Ministry of Justice**

An adult is convicted of a road traffic offence and the court imposes a fine (rehabilitation period: one year), an endorsement (rehabilitation period: five years), penalty points (rehabilitation period: three years) and a driving disqualification for one year (rehabilitation period: one year). The rehabilitation period for this conviction will be five years because the endorsement carries the longest rehabilitation period. If the offender was aged under 18 and received the above sentence, the conviction may become 'spent' after three years because the longest rehabilitation period applicable would then be three years for the penalty points (the endorsement would become 'spent' after two and a half years).

## Endorsements

The examples below demonstrate how receiving an endorsement can disproportionately affect when a person's criminal record becomes 'spent':

### Scenario 1

Emma receives a two-year conditional discharge order for shoplifting on 10 March 2018. Her sentence may become 'spent' two years from the date of the order imposed in a court. However, Emma receives a driving conviction for speeding on 9 March 2020 – just one day before her conviction would have become 'spent'. She receives a fine, three penalty points and an endorsement. As the endorsement has a rehabilitation period of five years (she is over 18 when convicted), none of Emma's convictions will now become 'spent' until 9 March 2025.

### Scenario 2

Emma receives a fine for shoplifting on 10 March 2018. Her sentence may become 'spent' after one year from the date of conviction on 10 March 2019. Emma subsequently receives a fixed penalty notice (FPN) for speeding (via a speeding camera) on 6 March 2019. Emma did not attend court for this offence, and in most instances the driving offence would not be disclosed on a basic DBS certificate as it is a non-recordable offence.

However, Emma is still legally required to disclose both offences when applying for employment or insurance purposes until they both become 'spent' (see further convictions), as the MoJ's guidance states: "An endorsement for a road traffic offence listed in Schedule 2 to the Road Traffic Offenders Act 1988, imposed either by the court or by means of a fixed penalty notice (FPN) is a sentence for the purposes of the 1974 Act and may become 'spent' after five years (or two and half years where the offender is under 18). Road traffic legislation specifically provides for an FPN in these circumstances to be treated as a conviction and dealt with as such under the 1974 Act."

As a result of this anomaly, Emma is legally required to disclose both the shoplifting and driving offences until 6 March 2024 when they become 'spent'. Those affected by this rule can contact the Resettlement Advice Service for advice and support or seek independent legal advice.

## Historic sentences and disposals

Table C below contains details of sentences or disposals that have either been discontinued or replaced by other disposals already mentioned in (Table A and Table B).

Please also contact our Resettlement Advice Service on: **0300 123 1999** or email us at [helpline@nacro.org.uk](mailto:helpline@nacro.org.uk) if you have any queries in relation to these sentences or disposals. You may also wish to seek independent legal advice.

Table C: Historic sentences and disposals

Sentence/disposal	Rehabilitation period
Action plan order	Replaced by youth rehabilitation order
Approved school order*	Replaced by community order/youth rehabilitation order
Borstal training sentence	Equivalent to custodial sentence (see Table A)
Combination order	Replaced by community order/youth rehabilitation order
Community punishment order	Replaced by community order/youth rehabilitation order
Community punishment and rehabilitation order	Replaced by community order/youth rehabilitation order
Community service order	Replaced by community order/youth rehabilitation order
Curfew order	Replaced by community order/youth rehabilitation order
Detention and training order (6 months or less)	Equivalent to custodial sentence (see Table A)
Detention and training order (more than 6 months)	Equivalent to custodial sentence (see Table A)
Drug treatment and testing order	Replaced by community order/youth rehabilitation order
Final warning	Replaced by youth caution ('spent' immediately)

Probation order	Replaced by community order
Reprimand	Replaced by youth caution ('spent' immediately)
Secure training order	Replaced by detention and training order and is equivalent to custodial sentence
Supervision order	Replaced by youth rehabilitation order
Suspended prison sentence	Equivalent to custodial sentence (see Table A)
Youth custody order (6 months or less)	Equivalent to custodial sentence (see Table A)
Youth custody order (more than 6 months)	Equivalent to custodial sentence (see Table A)

## Immigration and nationality decisions

The Home Office is responsible for making decisions on immigration and nationality issues. Such decisions include allowing an applicant to remain or enter the UK, granting citizenship or considering deportation.

The amendments to the ROA made by LASPO now exclude UK Visas and Immigration from the Act, meaning that they are entitled to access an applicant's full list of convictions, cautions, reprimands or final warnings both 'spent' and 'unspent'.

The Home Office can now rely on an applicant's full criminal record history to make final immigration and nationality decisions.

Further information about the effect of a conviction or caution on a person's immigration or nationality application can be found in the Home Office's [Good character requirement guidance](#).

**Table D: Impact of the ROA on nationality applications**

Sentence	Impact on nationality applications
4 years or more imprisonment	Application would be refused regardless of when the conviction occurred.
Between 12 months and 4 years imprisonment	Application would be refused unless 15 years have passed since the end of the sentence.
Up to 12 months imprisonment	Applications would be refused unless 10 years have passed since the end of the sentence..
A non-custodial offence	Applications would be refused if the conviction/caution occurred in the last 3 years

## Military convictions

The Rehabilitation of Offenders Act 1974 also applies to service personnel convicted of a criminal offence, whether in civilian life or in the services. All the main offences against military law in England and Wales are set out in the [Section 42 of the Armed Forces Act 2006](#). The offences covered by the Rehabilitation of Offenders Act 1974 fall into two main categories: (1) criminal conduct offences under [Section 42 of the Armed Forces Act](#) for which the corresponding offences under the law of England and Wales are recordable under regulation 3 of the [National Police Records \(Recordable Offences\) Regulations 2000](#) and (2) a number of service offences which are recordable on the Police National Computer (PNC) and disclosed as convictions on criminal record checks:

- Misconduct towards a superior officer (section 11(1))
- Using force against a sentry (section 14)
- Damage to or loss of public or service property (section 24 (1))
- Obstructing or failing to assist a service policeman (section 27)
- Resistance to arrest etc. (section 28) but only in relation to a conviction under section 28(1) (b) or (c) using violence or threatening behaviour)
- Offences in relation to service custody (section 29)
- Allowing the escape, or unlawful release of prisoners etc. (section 30 but only where the conviction is under section 30(4)(a))
- Attempts to commit any offences specified above (section 39)
- Encouraging or assisting the commission of any offence above, apart from an attempt (section 40)

A distinction is made between offences that can be dealt with by a commanding officer in a summary hearing and those that can only be heard by court martial.

The full definition of [offences against military law in the United Kingdom is here](#).

## What is a summary hearing?

Most minor offences by members of the armed forces against service law are dealt with by the commanding officer through a summary hearing. It is an internal disciplinary proceeding which also handles minor criminal conduct offences that have equivalent offences in civilian law as listed in section 42 of the Armed Forces Act 2006.

A serviceman or servicewoman's commanding officer has jurisdiction to deal with a person under his/her command who is subject to service law (i.e. not a civilian) if the accused is of, or below, the rank of Commander in the Navy, Lieutenant-Colonel in the Army or Wing Commander in the RAF.

A person charged with an offence which could be dealt with by a summary hearing before a commanding officer has the right to choose trial by court martial instead.

If a commanding officer dealing with an offence summarily finds the accused guilty, he can impose punishments including loss of seniority (for an officer), or reduction in rank (for a warrant officer or non-commissioned officer).

For lower ranks, he can impose a term of detention in a unit guardhouse or at the Military Corrective Training Centre in Colchester of up to 28 days, or 90 days in more serious cases, or a requirement to carry out extra work or drill or loss of entitlement to leave. Alternatively, he can impose a fine of up to 28 days' pay, or another minor punishment. The commanding officer operates in the role of prosecutor, jury and judge.

Table E below shows the rehabilitation periods for military convictions after the changes made on 10 March 2014. Military sentences such as reduction in rank or forfeiture of seniority are not disclosed on criminal records checks despite the fact they are considered more serious military sentences than fines or service compensation orders as they have no equivalent civilian penalty.

If you are member of the armed forces and you are affected by a military conviction that has been disclosed on a criminal record check, you may also wish to seek independent legal advice. This guidance on rehabilitation periods for military convictions may be subject to periodic change.

**Table E: Rehabilitation periods for military convictions**

Sentence/disposal	Rehabilitation period
Imprisonment	See custodial sentences
Removal from Her Majesty's Service (which includes cashiering, discharge with ignominy, dismissal with disgrace or simple dismissal)	12 months from the date of conviction*
Service detention	12 months from the date on which the sentence is completed*
Service supervision and punishment order	'Spent' immediately
Forfeiture of seniority	'Spent' immediately
Reduction in rank or disrating	'Spent' immediately
Fine	12 months from the date of conviction*
Severe reprimand	'Spent' immediately
Reprimand	'Spent' immediately
Service compensation order	Once paid in full
Stoppage of leave	'Spent' immediately
Restriction of privileges	'Spent' immediately
Admonition	'Spent' immediately

\*The rehabilitation periods are halved if the person is under 18 at the time of conviction or the date the sentence is imposed.

## Sentences not covered by the Rehabilitation of Offenders Act

The Ministry of Justice advises that the following sentences are ‘exempt’ from the Act and can therefore never become ‘spent’, regardless of the actual length of the sentence or the time served in custody:

- Sentence of imprisonment for life
- Sentence of imprisonment, youth custody, detention in a young offender institution or corrective training of over four years
- Sentence of preventive detention
- Sentence of detention at Her Majesty’s Pleasure
- Sentence of custody for life
- Public protection sentences\* (imprisonment for public protection, detention for public protection, extended sentences of imprisonment or detention for public protection and extended determinate sentences for dangerous offenders)

\*A public protection sentence (the provisions for which are set out in [Part 12 of the Criminal Justice Act 2003](#) and [Part 8 of the Armed Forces Act 2006](#)) means a sentence of imprisonment or detention, as detailed above, imposed for specified sexual and violent offences.

## Further convictions

The changes made to the ROA by LASPO were initially intended to simplify the effect of further convictions so that in most instances if a person is convicted of an offence within the rehabilitation period of the first offence, the rehabilitation period of the earlier ‘unspent’ conviction are affected and dragged forward so that neither offence will become ‘spent’ until they both are. This is commonly known as the ‘drag on effect’.

As a result of the ‘drag on effect’, the rehabilitation period for the further conviction and the rehabilitation period for all other ‘unspent’ convictions will in most instances end at the same time – when the longest rehabilitation period ends. Until this point, all the convictions will be considered ‘unspent’ and will therefore need to be disclosed.

### Scenario 1

Harvey, age 24, was convicted of drugs offences on 20/09/16 and received a 12-month community order. This conviction would become ‘spent’ on 20/09/18.

On 01/02/18 he is convicted of theft and received a six-month custodial sentence. This conviction would become ‘spent’ on 01/08/20.

Because he was convicted of a further offence while within the rehabilitation period of the first offence, both offences will remain ‘unspent’ until the later date of 01/08/20.

## Scenario 2

Sandra, age 29, was convicted of fraud on 15/04/16 and received a five-month custodial sentence. This conviction would become 'spent' on 15/09/18.

On 01/10/18 she was convicted of common assault for which she was given a fine of £200. This conviction would become 'spent' on 01/10/19.

Although she has been convicted of a further offence, the first conviction had reached the end of the rehabilitation period before she received the second conviction.

In this case only the later conviction would be disclosed on a basic DBS certificate issued before 01/10/19.

## Further convictions - the relevant order rule

### What is a relevant order?

The LASPO reforms to the ROA stipulate that a relevant order is a conditional discharge order, referral order, bind over, hospital order, an order made against a person found guilty of loitering or soliciting for purposes of prostitution under section 1(2A) of the Street Offences Act 1959, an earlier statutory order or any order which imposes a disqualification, disability, prohibition or other penalty that is not otherwise dealt with under LASPO.

The MoJ has not provided a definitive list of relevant orders, but Nacro believes that the majority of [ancillary orders](#) (e.g. compensation orders, driving disqualifications, forfeiture orders, confiscation orders, football banning orders, and company director disqualification orders) are considered to be relevant orders.

Important note: A sexual harm prevention order (SHPO) is a relevant order, but being subject to sex offender notification requirements (i.e. being on the sex offenders register) is not treated as a relevant order.

### When does a relevant order become 'spent'?

A relevant order is considered 'spent' on the last day provided for by the order or when the order ceases to have effect. If there is no date provided on which the order ceases to have effect – the rehabilitation period is two years.

### What is the relevant order rule?

There is an anomaly to the further conviction rule. When considering the 'drag on effect' of further convictions, relevant orders issued upon conviction are not generally taken into account.

## Scenario 2

Jack age 21 was convicted of possession of an offensive weapon on 25/01/17 and received a two-year conditional discharge order. Jack's conviction would become spent on 25/01/19.

On 10/12/18 Jack was convicted of battery and received a 12-month community order. This conviction would become spent on 10/12/20.

Although he has been convicted of a further offence while within the rehabilitation period of the first offence, the first conviction will not be subject to the 'drag on effect' because a conditional discharge is a relevant order and so it will not be taken into account.

Therefore, in this scenario, the first conviction would become 'spent' on 25/01/19; the second conviction would become 'spent' on 10/12/20.

Conversely, a relevant order could be subject to the 'drag on effect' rule but only in line with the longest rehabilitation period of any other sentence that may have been passed in the same proceedings that the relevant order was imposed.

## Scenario 2

On 01/08/09 Alex, age 18, was convicted of common assault and given a three-month suspended custodial sentence. The rehabilitation period would end on 01/11/11.

Alex was then convicted of battery on 10/06/11. He was sentenced to:

- A six-month custodial sentence (would become 'spent' 10/12/13)
- Restraining order until further order (will be 'unspent' until further notice)
- A fine of £150.00 (would become 'spent' 10/06/12)

In this case the conviction for battery will remain 'unspent' due to the restraining order until further notice having the longest rehabilitation period. Therefore, it will be disclosed on a basic DBS certificate indefinitely.

However, the earlier conviction for common assault will only have its rehabilitation period extended until 10/12/13, at which time it will become 'spent'.

This is because Alex was convicted of the second offence during the earlier rehabilitation period, but the rehabilitation period for the relevant order (i.e. the restraining order) is ignored; the conviction is instead extended according to the rehabilitation periods for the fine and the custodial sentence. In this case, the custodial sentence has the longer rehabilitation period and so the 'drag on effect' will apply until the date when the custodial sentence would have become spent – 10/12/13.

The restraining order until further order should not be used to extend a rehabilitation period of any other offence. This rule applies to all relevant orders.

### Scenario 3

Marisa, age 38, a company director was convicted on 02/08/15 of fraud. As a result, she received a six-month custodial sentence (would become 'spent' 02/02/18) and a six-year company director disqualification (would become 'spent' 02/08/21). The fraud conviction would therefore become 'spent' on 02/08/21 as the company director disqualification (which is a relevant order) has the longest rehabilitation period in the proceedings.

A few years later, Marisa was convicted of Class A drugs possession on 19/05/18 and received a 12-month community order which may become 'spent' on 19/05/20.

Although the drugs conviction overlaps with her first conviction, it will still become 'spent' on 19/05/20 as it only overlaps with the company director disqualification. As the company director disqualification is a relevant order it will not be used to extend the rehabilitation order of the second conviction.

The custodial sentence would have otherwise been 'spent' on 02/02/18 which is before Marisa was convicted of the second offence – so the 'drag on effect' does not apply in this scenario. This rule applies to all relevant orders.

### Sentences received after a sentence which is never 'spent'

Sentences that have a determinate sentence received after a sentence that is never 'spent' are not disclosed after the rehabilitation period has elapsed. The Ministry of Justice provides the following examples to illustrate this point:

#### Scenario 1

An adult is given a five-year custodial sentence (which is never 'spent') and is then given a six-month custodial sentence (which is 'spent' after two and a half years) for a subsequent offence. In this scenario the later sentence of six months is capable of becoming 'spent'.

#### Scenario 2

An adult is given a six-month custodial sentence and is then given a five-year sentence for a subsequent offence during the rehabilitation period of the first offence. In this scenario neither sentence would become 'spent'.

### Concurrent or 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 for an adult of five years. (total sentence plus 'buffer period' of four years).

However, two such sentences ordered to take effect concurrently are treated as one sentence of six months, giving a rehabilitation period for an adult of two and a half years (total sentence plus 'buffer period' of two years).

Prison sentences ordered to run consecutively to sentences already being served are not affected by this rule. So, for example, two six-month terms given at separate court hearings but ordered to run consecutively will be treated as separate six-month terms, each with a rehabilitation period of two years from the end of the total sentence (if the person is aged 18 or over when convicted).

## Breach of court orders

If someone is given a community order 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.

## Applying for jobs

Many people think that once an offence is 'spent', it is wiped from the record. It is not. Rather, the ROA gives people the right not to disclose 'spent' offences when applying for most jobs unless those jobs are 'exempt' from the Act. Under the Act, a 'spent' conviction or caution shall not be proper grounds for not employing someone or for dismissing them. However, if applicants do not disclose 'unspent' convictions or conditional cautions 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 generally provide sufficient 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' conviction. However, if 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. It is considered automatically unfair to dismiss someone because of a 'spent' conviction (the employee may still need to meet the qualifying period to bring a claim at an employment tribunal).

If the role is covered by the Act, and the conviction is 'unspent' but the employer has not asked for disclosure of convictions, then there is no legal obligation on the applicant or employee to disclose it.

If you have been refused employment due to an illegal check that revealed a 'spent' caution or conviction, or have been dismissed because of a 'spent' conviction from a role that is covered by the Act, or been dismissed by an employer due to a conviction that you have previously disclosed when you applied for the role, Nacro's Resettlement Advice Service offers a legal advocacy service which may be able to assist you with seeking legal recourse against the employer which has acted unlawfully or unfairly.

Please contact our Resettlement Advice Service on 0300 123 1999 or email us at [helpline@nacro.org.uk](mailto:helpline@nacro.org.uk).

For more information on disclosing criminal records, visit Nacro [website](#).

## Applying for insurance

The Act gives applicants the right not to disclose 'spent' convictions or cautions when applying for insurance; however, FPN's for motoring offences must be disclosed for insurance purposes for five years (or two and a half years if aged under 18 at the time the disposal is administered).

## Court proceedings

In civil proceedings, no one should be asked questions that might lead to the 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, 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

Under the [Rehabilitation of Offenders Act 1974 \(Exceptions\) Order 1975 \(as amended in 2013\)](#), there are a number of posts, activities and occupations which are 'exempt' from the ROA. If the position applied for is 'exempt' from the Act, the organisation can ask applicants to disclose both 'spent' and 'unspent' cautions and convictions – other than 'protected' cautions and convictions which have qualified for [filtering](#) (for further information see Nacro's [practical guidance on DBS filtering](#) for employers and applicants).

Where an 'exemption' exists, the organisation will be eligible to carry out either a standard or in some cases, an enhanced, criminal record DBS check with the DBS if the organisation is based in England or Wales. In Scotland, such checks can be carried out through Disclosure Scotland; in Northern Ireland they can be carried out through Access Northern Ireland (Access NI).

A regularly updated list of 'exempt' posts, occupations and activities can be found on the Disclosure and Barring Service [website](#). The list includes the following:

- Any work which is defined as regulated activity relating to children or vulnerable adults within the meaning of the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012);
- 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 Exceptions Order, it is not 'exempt' from the Act, and therefore any standard or enhanced disclosure check (either with the DBS or its Scottish and Northern Irish equivalents) is unlawful. Despite this, there are many employers, especially local authorities, which run checks on positions which are not 'exempt' from the Act.

If you have been subject to an illegal check the Resettlement Advice Service offers a legal advocacy service which may be able to assist you with seeking legal recourse against an employer or organisation who has acted unlawfully or unfairly.

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[www.nacro.org.uk](http://www.nacro.org.uk)

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