

SCHEDULES

SCHEDULE 10

Section 49

PROTECTION FOR SPENT CAUTIONS UNDER REHABILITATION OF OFFENDERS ACT 1974

- 1 The Rehabilitation of Offenders Act 1974 (c. 53) is amended as follows.
- 2 In section 6(6) for “the Schedule” substitute “Schedule 1”.
- 3 After section 8 (defamation actions) there is inserted—

“8A Protection afforded to spent cautions

(1) Schedule 2 to this Act (protection for spent cautions) shall have effect.

(2) In this Act “caution” means—

- (a) a conditional caution, that is to say, a caution given under section 22 of the Criminal Justice Act 2003 (c. 44) (conditional cautions for adults) or under section 66A of the Crime and Disorder Act 1998 (c. 37) (conditional cautions for children and young persons);
- (b) any other caution given to a person in England and Wales in respect of an offence which, at the time the caution is given, that person has admitted;
- (c) a reprimand or warning given under section 65 of the Crime and Disorder Act 1998 (reprimands and warnings for persons aged under 18);
- (d) anything corresponding to a caution, reprimand or warning falling within paragraphs (a) to (c) (however described) which is given to a person in respect of an offence under the law of a country outside England and Wales.”

- 4 After section 9 (unauthorised disclosure of spent convictions) insert—

“9A Unauthorised disclosure of spent cautions

(1) In this section—

- (a) “official record” means a record which—
 - (i) contains information about persons given a caution for any offence or offences; and
 - (ii) is kept for the purposes of its functions by any court, police force, Government department or other public authority in England and Wales;
- (b) “caution information” means information imputing that a named or otherwise identifiable living person (“the named person”) has committed, been charged with or prosecuted or cautioned for any offence which is the subject of a spent caution; and
- (c) “relevant person” means any person who, in the course of his official duties (anywhere in the United Kingdom), has or at any time has

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had custody of or access to any official record or the information contained in it.

- (2) Subject to the terms of any order made under subsection (5), a relevant person shall be guilty of an offence if, knowing or having reasonable cause to suspect that any caution information he has obtained in the course of his official duties is caution information, he discloses it, otherwise than in the course of those duties, to another person.
- (3) In any proceedings for an offence under subsection (2) it shall be a defence for the defendant to show that the disclosure was made—
 - (a) to the named person or to another person at the express request of the named person;
 - (b) to a person whom he reasonably believed to be the named person or to another person at the express request of a person whom he reasonably believed to be the named person.
- (4) Any person who obtains any caution information from any official record by means of any fraud, dishonesty or bribe shall be guilty of an offence.
- (5) The Secretary of State may by order make such provision as appears to him to be appropriate for excepting the disclosure of caution information derived from an official record from the provisions of subsection (2) in such cases or classes of case as may be specified in the order.
- (6) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (7) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding 51 weeks, or to both.
- (8) Proceedings for an offence under subsection (2) shall not be instituted except by or on behalf of the Director of Public Prosecutions.”

5 The Schedule (service disciplinary proceedings) is re-numbered as Schedule 1.

6 After that Schedule insert—

“SCHEDULE 2

PROTECTION FOR SPENT CAUTIONS

Preliminary

- 1 (1) For the purposes of this Schedule a caution shall be regarded as a spent caution—
 - (a) in the case of a conditional caution (as defined in section 8A(2)(a)), at the end of the relevant period for the caution;
 - (b) in any other case, at the time the caution is given.
- (2) In sub-paragraph (1)(a) “the relevant period for the caution” means (subject to sub-paragraph (3)) the period of three months from the date on which the conditional caution was given.

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- (3) If the person concerned is subsequently prosecuted and convicted of the offence in respect of which a conditional caution was given—
- (a) the relevant period for the caution shall end at the same time as the rehabilitation period for the offence; and
 - (b) if the conviction occurs after the end of the period mentioned in sub-paragraph (1)(a), the caution shall be treated for the purposes of this Schedule as not having become spent in relation to any period before the end of the rehabilitation period for the offence.
- 2 (1) In this Schedule “ancillary circumstances”, in relation to a caution, means any circumstances of the following—
- (a) the offence which was the subject of the caution or the conduct constituting that offence;
 - (b) any process preliminary to the caution (including consideration by any person of how to deal with that offence and the procedure for giving the caution);
 - (c) any proceedings for that offence which take place before the caution is given (including anything which happens after that time for the purpose of bringing the proceedings to an end);
 - (d) any judicial review proceedings relating to the caution;
 - (e) in the case of a warning under section 65 of the Crime and Disorder Act 1998 (c. 37), anything done in pursuance of or undergone in compliance with a requirement to participate in a rehabilitation programme under section 66(2) of that Act;
 - (f) in the case of a conditional caution, any conditions attached to the caution or anything done in pursuance of or undergone in compliance with those conditions.
- (2) Where the caution relates to two or more offences, references in sub-paragraph (1) to the offence which was the subject of the caution include a reference to each of the offences concerned.
- (3) In this Schedule “proceedings before a judicial authority” has the same meaning as in section 4.

Protection relating to spent cautions and ancillary circumstances

- 3 (1) A person who is given a caution for an offence shall, from the time the caution is spent, be treated for all purposes in law as a person who has not committed, been charged with or prosecuted for, or been given a caution for the offence; and notwithstanding the provisions of any other enactment or rule of law to the contrary—
- (a) no evidence shall be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in England and Wales to prove that any such person has committed, been charged with or prosecuted for, or been given a caution for the offence; and
 - (b) a person shall not, in any such proceedings, be asked and, if asked, shall not be required to answer, any question relating to his past which cannot be answered without acknowledging or referring to a spent caution or any ancillary circumstances.

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- (2) Nothing in sub-paragraph (1) applies in relation to any proceedings for the offence which are not part of the ancillary circumstances relating to the caution.
 - (3) Where a question seeking information with respect to a person's previous cautions, offences, conduct or circumstances is put to him or to any other person otherwise than in proceedings before a judicial authority—
 - (a) the question shall be treated as not relating to spent cautions or to any ancillary circumstances, and the answer may be framed accordingly; and
 - (b) the person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose a spent caution or any ancillary circumstances in his answer to the question.
 - (4) Any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person shall not extend to requiring him to disclose a spent caution or any ancillary circumstances (whether the caution is his own or another's).
 - (5) A caution which has become spent or any ancillary circumstances, or any failure to disclose such a caution or any such circumstances, shall not be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him in any way in any occupation or employment.
 - (6) This paragraph has effect subject to paragraphs 4 to 6.
- 4 The Secretary of State may by order—
- (a) make provision for excluding or modifying the application of either or both of paragraphs (a) or (b) of paragraph 3(3) in relation to questions put in such circumstances as may be specified in the order;
 - (b) provide for exceptions from the provisions of sub-paragraphs (4) and (5) of paragraph 3, in such cases or classes of case, and in relation to cautions of such a description, as may be specified in the order.
- 5 Nothing in paragraph 3 affects—
- (a) the operation of the caution in question; or
 - (b) the operation of any enactment by virtue of which, in consequence of any caution, a person is subject to any disqualification, disability, prohibition or other restriction or effect, the period of which extends beyond the rehabilitation period applicable to the caution.
- 6 (1) Section 7(2), (3) and (4) apply for the purposes of this Schedule as follows.
- (2) Subsection (2) (apart from paragraphs (b) and (d)) applies to the determination of any issue, and the admission or requirement of any evidence, relating to a person's previous cautions or to ancillary

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circumstances as it applies to matters relating to a person's previous convictions and circumstances ancillary thereto.

- (3) Subsection (3) applies to evidence of a person's previous cautions and ancillary circumstances as it applies to evidence of a person's convictions and the circumstances ancillary thereto; and for this purpose subsection (3) shall have effect as if—
 - (a) any reference to subsection (2) or (4) of section 7 were a reference to that subsection as applied by this paragraph; and
 - (b) the words "or proceedings to which section 8 below applies" were omitted.
- (4) Subsection (4) applies for the purpose of excluding the application of paragraph 3(1); and for that purpose subsection (4) shall have effect as if the words "(other than proceedings to which section 8 below applies)" were omitted.
- (5) References in the provisions applied by this paragraph to section 4(1) are to be read as references to paragraph 3(1)."