

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 3: Sentencing and punishment of offenders

Chapter 8: Rehabilitation of Offenders

Section 139: Establishment or alteration of rehabilitation periods

759. **Section 139** extends the scope of the Rehabilitation of Offenders Act 1974 so that custodial sentences of up to and including 4 years may become spent. It also inserts new *subsection (2)* into section 5 of the ROA to amend the times at which different sentences may become spent. The table in section 5(2) provides for the following -
- a. Custodial sentences of over 30 months and up to and including 4 years become spent 7 years after the end of the sentence (which would include any licence period). In respect of those under 18 at the date of conviction, those sentences become spent 3 and a half years after the end of the sentence (including any licence period).
 - b. Custodial sentences of over 6 months and up to and including 30 months are capable of being spent 4 years after the end of the sentence (including any licence period). In respect of those who are under 18 at the date of conviction, those sentences become spent 2 years after the end of the sentence (including any licence period).
 - c. Custodial sentences of up to and including 6 months are capable of being spent 2 years after the end of the sentence (including any licence period). In respect of those under 18 at the date of conviction, those sentences become spent 18 months after the end of the sentence.
 - d. Removal from Her Majesty's service becomes spent 12 months after the date of conviction. For those under 18 at the date of conviction the period will be 6 months.
 - e. Sentences of service detention become spent 12 months after the day on which the sentence is completed. For those under 18 at the date of conviction the period will be 6 months.
 - f. Fines become spent 1 year after the date of conviction. In respect of those under 18 at the date of conviction, they will become spent 6 months after the date of conviction.
 - g. Compensation orders become spent when they are paid in full.

These notes refer to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) which received Royal Assent on 1 May 2012

- h. Community orders become spent 1 year after the date provided as the end date of the order. In respect of those under 18 at the date of conviction, the equivalent order will become spent 6 months after the end of the date of the order.
 - i. Relevant orders become spent on the day provided for in the order as the end date of the order.
760. **Section 139** also inserts new *subsections (3) to (7)* into section 5 of the ROA. *Subsection (3)* provides for a rehabilitation period of 24 months from the date of conviction in relation to any community or youth rehabilitation order which otherwise has no specified end date. *Subsection (4)* allows an absolute discharge, or other sentence not otherwise dealt with in the provisions, to be spent immediately. *Subsection (6)* provides an order making power for the Secretary of State to amend the rehabilitation periods set out in section 5(2) and (3), subject to affirmative procedure. *Subsection (7)* retains the position in relation to consecutive and concurrent terms of imprisonment so that they are treated as a single term for the purpose of calculating rehabilitation periods. *Subsection (8)* defines various terms, relating to the sentences that may be subject to rehabilitation according to section 5 of the ROA. These include references to the armed forces and youth equivalents.
761. **Section 139** also amends section 6 of the ROA which makes provision for when an offender commits a further offence. All rehabilitation periods applicable remain for the duration of the longest rehabilitation period.
762. **Section 139** inserts a new section 8AA into the ROA to deal with spent alternatives to prosecution (a Scottish disposal). The amendment mirrors the law in Scotland so that alternatives to prosecution will be treated in the same way by the law of England and Wales as they are in Scotland.
763. Paragraph 1 of Schedule 2 to the ROA is amended in relation to cautions and conditional cautions so that they become spent immediately on being administered (cautions) and up to a maximum of 3 months after being administered (conditional cautions).

Section 140: No rehabilitation for certain immigration or nationality purposes

764. **Section 140** relates to immigration and nationality proceedings. It amends the UK Borders Act 2007 to exclude immigration or nationality decision making, including initial decisions and any subsequent proceedings, from the operation of the ROA.

Section 141: Transitional and consequential provision

765. **Section 141** contains the transitional and consequential provisions relating to these amendments. These apply the changes to the ROA retrospectively so that existing convictions will become spent according to the new rehabilitation periods. Anyone treated as rehabilitated for the purpose of the Act before commencement of these provisions will continue to be treated as such. However, the exemption for immigration and nationality decisions will not apply to any proceedings begun but not completed, or applications made but not finally determined, before the commencement of the provisions.