



# Rehabilitation of Offenders Act 1974

## 1974 CHAPTER 53

An Act to rehabilitate offenders who have not been reconvicted of any serious offence for periods of years, to penalise the unauthorised disclosure of their previous convictions, to amend the law of defamation, and for purposes connected therewith. [31st July 1974]

### Modifications etc. (not altering text)

- C1** Act modified (1.7.1992) by Road Traffic Offenders Act 1988 (c. 53, SIF 107:1), **ss. 58, 77(7)**, as substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), **s. 34**; S.I. 1992/1286, **art. 2, Sch.** Act modified (1.4.2009) by Road Traffic Offenders Act 1988 (c. 53), s. 58A(1) (as inserted by Road Safety Act 2006 (c. 49), ss. 9(2), 61(1), **Sch. 2 para. 17**; S.I. 2008/3164, **art. 4(b)**) Act modified (1.4.2009) by Road Traffic Offenders Act 1988 (c. 53), s. 77A(9) (as inserted by Road Safety Act 2006 (c. 49), ss. 9(2), 61(1), **Sch. 2 para. 27**; S.I. 2008/3164, **art. 4(b)**)
- C2** Act (except section 1(2)) modified by Repatriation of Prisoners Act 1984 (c. 47, SIF 39:1), s. 3, **Sch. para. 6(a)**
- C3** Act excluded by Financial Services Act 1986 (c. 60, SIF 69), **s. 189(1)** Act excluded (15.12.2011) by Terrorism Prevention and Investigation Measures Act 2011 (c. 23), ss. 25, 31(2), **Sch. 6 para. 10(2)** (with Sch. 8)
- C4** By Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(1), **Sch. 12 para. 23**; S.I. 1991/2208, **art. 2(1), Sch. 1** it is provided (14.10.1991) that in relation to any time before the commencement of s. 70 of that 1991 Act (which came into force on 1.10.1992 by S.I. 1992/333, **art. 2(2), Sch. 2**) references in any enactment amended by that 1991 Act, to youth courts shall be construed as references to juvenile courts.
- C5** Act amended (1.10.1996) by 1996 c. 46, **s. 13(5)(6)**; S.I. 1996/2474, **art. 2**
- C6** Act modified (S.) (14.5.2013) by The Children's Hearings (Scotland) Act 2011 (Rehabilitation of Offenders) (Transitory Provisions) Order 2013 (S.S.I. 2013/146), **arts. 1(1), 2(1)**
- C7** Act excluded by 2000 c. 11, **Sch. 8 para. 20D** (as inserted (31.10.2013) by Protection of Freedoms Act 2012 (c. 9), s. 120, **Sch. 1 para. 1(4)** (with s. 97); S.I. 2013/1814, **art. 2(i)**)
- C8** Act excluded by S.I. 2009/1922, **art. 2(6)** (as inserted (31.10.2013) by The Police and Criminal Evidence Act 1984 (Armed Forces) (Amendment) Order 2013 (S.I. 2013/2554), **arts. 1(1), 2(3)**)
- C9** Act excluded by 2008 c. 28, **s. 18E(4)** (as substituted (31.10.2013) by Protection of Freedoms Act 2012 (c. 9), s. 120, **Sch. 1 para. 4** (with s. 97); S.I. 2013/1814, **art. 2(k)**)
- C10** Act excluded by 1984 c. 60, **s. 65B(2)** (as inserted (E.W.) (31.10.2013) by Protection of Freedoms Act 2012 (c. 9), **ss. 18(5), 120** (with s. 97); S.I. 2013/1814, **art. 2(d)**)

*Status: Point in time view as at 21/12/2019.*

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**C11** Act excluded (12.2.2019 for specified purposes) by [Counter-Terrorism and Border Security Act 2019 \(c. 3\), Sch. 3 para. 45\(2\)](#) (with s. 25(9))

#### Commencement Information

**I1** Act wholly in force at 1.7.1975 see s. 11(2)

## 1 Rehabilitated persons and spent convictions.

(1) Subject to <sup>[F1]</sup>subsection (2)]<sup>[F1]</sup> subsections (2), (5) and (6)] below, where an individual has been convicted, whether before or after the commencement of this Act, of any offence or offences, and the following conditions are satisfied, that is to say—

- (a) he did not have imposed on him in respect of that conviction a sentence which is excluded from rehabilitation under this Act; and
- (b) he has not had imposed on him in respect of a subsequent conviction during the rehabilitation period applicable to the first-mentioned conviction in accordance with section 6 below a sentence which is excluded from rehabilitation under this Act;

then, after the end of the rehabilitation period so applicable (including, where appropriate, any extension under section 6(4) below of the period originally applicable to the first-mentioned conviction) or, where that rehabilitation period ended before the commencement of this Act, after the commencement of this Act, that individual shall for the purposes of this Act be treated as a rehabilitated person in respect of the first-mentioned conviction and that conviction shall for those purposes be treated as spent.

(2) A person shall not become a rehabilitated person for the purposes of this Act in respect of a conviction unless he has served or otherwise undergone or complied with any sentence imposed on him in respect of that conviction; but the following shall not, by virtue of this subsection, prevent a person from becoming a rehabilitated person for those purposes—

- (a) failure to pay a fine or other sum adjudged to be paid by or imposed on a conviction, or breach of a condition of a recognizance or of a bond of caution to keep the peace or be of good behaviour;
- (b) breach of any condition or requirement applicable in relation to a sentence which renders the person to whom it applies liable to be dealt with for the offence for which the sentence was imposed, or, where the sentence was a suspended sentence of imprisonment, liable to be dealt with in respect of that sentence (whether or not, in any case, he is in fact so dealt with);
- (c) failure to comply with any requirement of a suspended sentence supervision order.

<sup>[F2]</sup>(2A) Where in respect of a conviction a person has been sentenced to imprisonment with an order under s. 47(1) of the <sup>M1</sup> Criminal Law Act 1977, he is to be treated for the purposes of subsection (2) above as having served the sentence as soon as he completes service of so much of the sentence as was by that order required to be served in prison.]

<sup>[F3]</sup>(2B) In subsection (2)(a) above the reference to a fine or other sum adjudged to be paid by or imposed on a conviction does not include a reference to an amount payable under a confiscation order made under Part 2 or 3 of the Proceeds of Crime Act 2002.]

(3) In this Act “sentence” includes any order made by a court in dealing with a person in respect of his conviction of any offence or offences, other than—

<sup>[F4]</sup>(za) a surcharge imposed under section 161A of the Criminal Justice Act 2003;]

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- (a) an order for committal or any other order made in default of payment of any fine or other sum adjudged to be paid by or imposed on a conviction, or for want of sufficient distress to satisfy any such fine or other sum;
  - (b) an order dealing with a person in respect of a suspended sentence of imprisonment.
  - [<sup>F5</sup>(c) an order under section 21A of the Prosecution of Offences Act 1985 (criminal courts charge).]
- [<sup>F6</sup>(3A) In subsection (3)(a), the reference to want of sufficient distress to satisfy a fine or other sum includes a reference to circumstances where—
- (a) there is power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 to recover the fine or other sum from a person, but
  - (b) it appears, after an attempt has been made to exercise the power, that the person's goods are insufficient to pay the amount outstanding (as defined by paragraph 50(3) of that Schedule).]
- (4) In this Act, references to a conviction, however expressed, include references—
- (a) to a conviction by or before a court outside [<sup>F7</sup>England and Wales][<sup>F8</sup>Scotland]; and
  - (b) to any finding (other than a finding linked with a finding of insanity [<sup>F9</sup>or, as the case may be, a finding that a person is not criminally responsible under section 51A of the Criminal Procedure (Scotland) Act 1995 (c.46)]) in any criminal proceedings <sup>F10</sup>. . . that a person has committed an offence or done the act or made the omission charged;
- and notwithstanding anything in [<sup>F11</sup>section 247 of the Criminal Procedure (Scotland) Act 1995 (c.46)] or [<sup>F12</sup>section 14 of the Powers of Criminal Courts (Sentencing) Act 2000][<sup>F13</sup>or section 187 of the Armed Forces Act 2006] a conviction in respect of which an order is made [<sup>F14</sup>discharging the person concerned] absolutely or conditionally shall be treated as a conviction for the purposes of this Act and the person in question may become a rehabilitated person in respect of that conviction and the conviction a spent conviction for those purposes accordingly.
- [<sup>F15</sup>(5) This Act does not apply to any disregarded conviction or caution within the meaning of Chapter 4 of Part 5 of the Protection of Freedoms Act 2012.
- (6) Accordingly, references in this Act to a conviction or caution do not include references to any such disregarded conviction or caution.]

#### Textual Amendments

- F1** Words in s. 1(1) substituted (E.W.) (1.10.2012) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 9 para. 134\(2\)](#) (with s. 97); S.I. 2012/2234, art. 3(o)
- F2** S. 1(2A) inserted (E.W.) by [Criminal Law Act 1977 \(c. 45\), s. 65\(7\), Sch. 9 para. 11](#)
- F3** S. 1(2B) inserted (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\), ss. 456, 458\(1\), Sch. 11 para. 7; S.I. 2003/333, art. 2, Sch.](#) (as amended by S.I. 2003/531); S.S.I. 2003/210, [art. 2, Sch.](#) (subject to arts. 3-7)
- F4** S. 1(3)(za) inserted (1.4.2007) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), ss. 58\(1\), 60, Sch. 10 para. 9; S.I. 2007/602, art. 2\(c\)](#)
- F5** S. 1(3)(c) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\), s. 95\(1\), Sch. 12 para. 1; S.I. 2015/778, art. 3, Sch. 1 para. 78](#)
- F6** S. 1(3A) inserted (6.4.2014) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\), s. 148, Sch. 13 para. 38](#) (with s. 89); S.I. 2014/768, art. 2(1)(b)

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- F7** Words in s. 1(4)(a) substituted (E.W.) (10.3.2014) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 25 para. 2](#) (with s. 141(1)-(6)); S.I. 2014/423, art. 2(c) (with art. 3)
- F8** Word in s. 1(4)(a) substituted (S.) (10.3.2014) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 25 para. 13](#) (with s. 141(1)-(6)); S.I. 2014/423, art. 2(c) (with art. 3)
- F9** Words in s. 1(4)(b) inserted (S.) (with application in accordance with art. 3 of the commencing S.S.I.) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\), s. 206\(1\), sch. 7 para. 8; S.S.I. 2012/160, art. 3, sch.](#)
- F10** Words in s. 1(4)(b) repealed (E.W.) (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\), s. 108, Sch. 15; S.I. 1991/828, art. 3\(2\)](#)
- F11** Words in s. 1(4) substituted (S.) (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\), ss. 24\(1\), 206; S.S.I. 2011/178, art. 2\(1\), Sch.](#)
- F12** Words in s. 1(4) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), [Sch. 9 para. 47](#)
- F13** Words in s. 1(4) inserted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by [Armed Forces Act 2006 \(c. 52\), ss. 378, 383, Sch. 16 para. 63; S.I. 2009/812, art. 3; S.I. 2009/1167, art. 4](#) (and see savings (having effect from 24.4.2009 for specified purposes and 31.10.2009 otherwise) in S.I. 2009/1059, arts 1(2)(3), 205, [Sch. 1 para. 14](#))
- F14** Words in s. 1(4) substituted (E.W.) (1.10.1992) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\), s. 100, Sch. 11 para. 20\(a\)\(c\); S.I. 1992/333, art. 2\(2\), Sch. 2.](#)
- F15** S. 1(5)(6) inserted (E.W.) (1.10.2012) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 9 para. 134\(3\)](#) (with s. 97); S.I. 2012/2234, art. 3(o)

#### Modifications etc. (not altering text)

- C12** S. 1(2)(a) amended by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\), s. 170, Sch. 8 para. 16, Sch. 15 para. 47](#)
- C13** S. 1(2)(a) amended by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\), ss. 45\(2\), 47\(4\)\(a\)](#)  
S. 1(2)(a) restricted (3.2.1995) by 1994 c. 37, [ss. 65\(2\), 69\(2\)](#)
- C14** S. 1(2) excluded by [Drug Trafficking Offences Act 1986 \(c. 22, SIF 39:1\), s. 39\(3\)](#)

#### Marginal Citations

- M1** 1977 c. 45.

## 2 Rehabilitation of persons dealt with in service disciplinary proceedings.

- (1)<sup>F16</sup> . . . For the purposes of this Act any finding that a person is guilty of an offence in respect of any act or omission which was the subject of service disciplinary proceedings shall be treated as a conviction and any punishment awarded [<sup>F17</sup>or order made by virtue of Schedule 5A to the<sup>M2</sup>Army Act 1955 or to the<sup>M3</sup>Air Force Act 1955 or Schedule 4A to the<sup>M4</sup>Naval Discipline Act 1957] in respect of any such finding shall be treated as a sentence.

<sup>F18</sup>(2) . . . . .

<sup>F18</sup>(3) . . . . .

<sup>F18</sup>(4) . . . . .

- (5) In this Act, “service disciplinary proceedings” means any of the following—

- [<sup>F19</sup>(za) any proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006 (except proceedings before a civilian court within the meaning of that Act);]
- (a) any proceedings under the<sup>M5</sup>Army Act 1955, the<sup>M6</sup>Air Force Act 1955, or the<sup>M7</sup>Naval Discipline Act 1957 whether before a court-martial or before any

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other court or person authorised thereunder to award a punishment in respect of any offence);

(b) any proceedings under any Act previously in force corresponding to any of the Acts mentioned in paragraph (a) above;

[<sup>F20</sup>(bb) any proceedings before a Standing Civilian Court established under the <sup>M8</sup>Armed Forces Act 1976;]

(c) any proceedings under any corresponding enactment or law applying to a force, other than a home force, to which section 4 of the <sup>M9</sup>Visiting Forces (British Commonwealth) Act 1933 applies or applied at the time of the proceedings, being proceedings in respect of a member of a home force who is or was at that time attached to the first-mentioned force under that section;

whether in any event those proceedings take place in [<sup>F21</sup>England and Wales][<sup>F22</sup>Scotland] or elsewhere.

[<sup>F23</sup>(6) Section 376(1) to (3) of the Armed Forces Act 2006 (“conviction” and “sentence” in relation to summary hearings and the SAC) apply for the purposes of this Act as they apply for the purposes of that Act.]

#### Textual Amendments

- F16** Words in s. 2(1) repealed (1.10.1996) by 1996 c. 46, s. 35(2), **Sch. 7 Pt. III**; S.I. 1996/2474, art. 2, **Sch.**
- F17** Words inserted by **Armed Forces Act 1976 (c. 52)**, **Sch. 9 para. 20(1)**
- F18** S. 2(2)-(4) repealed (1.10.1996) by 1996 c. 46, ss. 13(2), 35(2), **Sch. 7 Pt. III**; S.I. 1996/2474, art. 2, **Sch.**
- F19** S. 2(5)(za) inserted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by **Armed Forces Act 2006 (c. 52)**, ss. 378, 383, **Sch. 16 para. 64(a)**; S.I. 2009/812, art. 3; S.I. 2009/1167, art. 4 (and see savings (having effect from 24.4.2009 for specified purposes and 31.10.2009 otherwise) in S.I. 2009/1059, arts 1(2)(3), 205, **Sch. 1 para. 14**)
- F20** S. 2(5)(bb) inserted by **Armed Forces Act 1976 (c. 52)**, **Sch. 9 para. 20(3)**
- F21** Words in s. 2(5) substituted (E.W.) (10.3.2014) by **Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10)**, s. 151(1), **Sch. 25 para. 3** (with s. 141(1)-(6)); S.I. 2014/423, art. 2(c) (with art. 3)
- F22** Word in s. 2(5) substituted (S.) (10.3.2014) by **Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10)**, s. 151(1), **Sch. 25 para. 14** (with s. 141(1)-(6)); S.I. 2014/423, art. 2(c) (with art. 3)
- F23** S. 2(6) inserted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by **Armed Forces Act 2006 (c. 52)**, ss. 378, 383, **Sch. 16 para. 64(b)**; S.I. 2009/812, art. 3; S.I. 2009/1167, art. 4 (and see savings (having effect from 24.4.2009 for specified purposes and 31.10.2009 otherwise) in S.I. 2009/1059, arts 1(2)(3), 205, **Sch. 1 para. 14**)

#### Modifications etc. (not altering text)

- C15** S. 2 modified by **Armed Forces Act 1976 (c. 52)**, s. 17(1); extended by **Armed Forces Act 1976 (c. 52)**, s. 17(2)

#### Marginal Citations

- M2** 1955 c. 18.  
**M3** 1955 c. 19.  
**M4** 1957 c. 53.  
**M5** 1955 c. 18.  
**M6** 1955 c. 19.  
**M7** 1957 c. 53.  
**M8** 1976 c. 52.

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M9 1933 c. 6.

### 3 Special provision with respect to certain disposals by children's hearings under the Social Work (Scotland) Act 1968.

Where a ground for the referral of a child's case to a children's hearing under the [F<sup>24</sup>Children (Scotland) Act 1995 is that mentioned in section 52(2)(i)] of that Act (commission by the child of an offence) and that ground has either been accepted by the child and, where necessary, by his parent or been established [F<sup>25</sup>(or deemed established) to the satisfaction of the sheriff under section 68 or 85 of that Act, the acceptance, establishment (or deemed establishment)] of that ground shall be treated for the purposes of this Act (but not otherwise) as a conviction, and any disposal of the case thereafter by a children's hearing shall be treated for those purposes as a sentence; and references in this Act to a person's being charged with or prosecuted for an offence shall be construed accordingly.

#### Textual Amendments

**F24** Words in s. 3 substituted (S.) (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 23(2)(a)**; S.I. 1996/3201, **art. 3(7)**

**F25** Words in s. 3 substituted (S.) (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 23(2)(b)**; S.I. 1996/3201, **art. 3(7)**

### 4 Effect of rehabilitation.

- (1) Subject to sections 7 and 8 below, a person who has become a rehabilitated person for the purposes of this Act in respect of a conviction shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction; and, notwithstanding the provisions of any other enactment or rule of law to the contrary, but subject as aforesaid—
  - (a) no evidence shall be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in [F<sup>26</sup>England and Wales][F<sup>27</sup>Scotland] to prove that any such person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which was the subject of a spent conviction; 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 conviction or spent convictions or any circumstances ancillary thereto.
- (2) Subject to the provisions of any order made under subsection (4) below, where a question seeking information with respect to a person's previous convictions, 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 convictions or to any circumstances ancillary to spent convictions, and the answer thereto 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

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conviction or any circumstances ancillary to a spent conviction in his answer to the question.

- (3) Subject to the provisions of any order made under subsection (4) below,—
- (a) 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 conviction or any circumstances ancillary to a spent conviction (whether the conviction is his own or another's); and
  - (b) a conviction which has become spent or any circumstances ancillary thereto, or any failure to disclose a spent conviction 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.
- (4) The Secretary of State may by order—
- (a) make such provision as seems to him appropriate for excluding or modifying the application of either or both of paragraphs (a) and (b) of subsection (2) above in relation to questions put in such circumstances as may be specified in the order;
  - (b) provide for such exceptions from the provisions of subsection (3) above as seem to him appropriate, in such cases or classes of case, and in relation to convictions of such a description, as may be specified in the order.
- (5) For the purposes of this section and section 7 below any of the following are circumstances ancillary to a conviction, that is to say—
- (a) the offence or offences which were the subject of that conviction;
  - (b) the conduct constituting that offence or those offences; and
  - (c) any process or proceedings preliminary to that conviction, any sentence imposed in respect of that conviction, any proceedings (whether by way of appeal or otherwise) for reviewing that conviction or any such sentence, and anything done in pursuance of or undergone in compliance with any such sentence.
- (6) For the purposes of this section and section 7 below “proceedings before a judicial authority” includes, in addition to proceedings before any of the ordinary courts of law, proceedings before any tribunal, body or person having power—
- (a) by virtue of any enactment, law, custom or practice;
  - (b) under the rules governing any association, institution, profession, occupation or employment; or
  - (c) under any provision of an agreement providing for arbitration with respect to questions arising thereunder;
- to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question.

#### Textual Amendments

- F26** Words in s. 4(1)(a) substituted (E.W.) (10.3.2014) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 25 para. 5](#) (with s. 141(1)-(6)); S.I. 2014/423, art. 2(c) (with art. 3)
- F27** Word in s. 4(1)(a) substituted (S.) (10.3.2014) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 25 para. 15](#) (with s. 141(1)-(6)); S.I. 2014/423, art. 2(c) (with art. 3)

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- C16** S. 4 excluded in part by S.I. 1975/1023 (as amended: (E.W.) (18.12.2008) by S.I. 2008/3259; (E.W.) (7.7.2009) by S.I. 2009/1818; (E.W.) (31.3.2010) by S.I. 2010/1153)
- C17** S. 4 excluded (1.1.2007) by Gambling Act 2005 (c. 19), ss. 125, 358(1) (with ss. 352, 354); S.I. 2006/3272, art. 2, Sch. 1 (with Sch. 4)
- C18** S. 4(1) excluded by Financial Services Act 1986 (c. 60, SIF 69), s. 189(2), and by Banking Act 1987 (c. 22, SIF 10), s. 95(2)  
S. 4(1) excluded (25.10.1993) by 1993 c. 39, s. 19(1); S.I. 1993/2632, art. 2.
- C19** S. 4(1)(2)(3) excluded by 2007 c. 30, s. 56A (as inserted (1.10.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), ss. 140, 151(1) (with s. 141(7)-(9)); S.I. 2012/2412, art. 2(e))
- C20** S. 4(1) excluded (S.) (14.2.2013) by The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (S.S.I. 2013/50), arts. 1(1), 3, sch. 1, sch. 2 Pt. 1
- C21** S. 4(2) modified by Financial Services Act 1986 (c. 60, SIF 69), s. 189(3), and by Banking Act 1987 (c. 22, SIF 10), s. 95(3)  
S. 4(2) amended (25.10.1993) by 1993 c. 39, s. 19(2); S.I. 1993/2632, art. 2.
- C22** S. 4(2)(a)(b) excluded (S.) (14.2.2013) by The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (S.S.I. 2013/50), arts. 1(1), 4, sch. 3 (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 250(5), (S.) (17.2.2018) by The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2018 (S.S.I. 2018/51), arts. 1, 2(2), (S.) (24.3.2022) by The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2022 (S.S.I. 2022/110), arts. 1(2), 2(2)(a)(b), and (S.) (12.5.2022) by The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Homes for Ukraine Sponsorship Scheme) (Scotland) Amendment Order 2022 (S.S.I. 2022/164), arts. 1(2), 2(2))
- C23** S. 4(3)(b) excluded by Financial Services Act 1986 (c. 60, SIF 69), s. 189(4), Banking Act 1987 (c. 22, SIF 10), s. 95(4), and excluded (S.) by Debtors (Scotland) Act 1987 (c. 18, SIF 45:2), s. 80(3), Sch. 7 para. 5
- C24** S. 4(3)(b) restricted (S.) (14.2.2013) by The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (S.S.I. 2013/50), arts. 1(1), 5, sch. 2 Pt. 1, sch. 4 (as amended (S.) (17.2.2018) by The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2018 (S.S.I. 2018/51), arts. 1, 2(3))
- C25** S. 4(4): functions transferred (28.2.2003) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2003 (S.I. 2003/415), art. 2, Sch. (with art. 5)

## 5 Rehabilitation periods for particular sentences. **E+W**

- (1) The sentences excluded from rehabilitation under this Act are—
- a sentence of imprisonment for life;
  - a sentence of imprisonment [<sup>F28</sup>youth custody][<sup>F29</sup>detention in a young offender institution] or corrective training for a term exceeding [<sup>F30</sup>forty eight months];
  - a sentence of preventive detention; <sup>F31</sup> . . .
  - a sentence of detention during Her Majesty's pleasure or for life [<sup>F32</sup>under section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000][<sup>F33</sup>or under section 209 or 218 of the Armed Forces Act 2006,][<sup>F34</sup>or under section 205(2) or (3) of the Criminal Procedure (Scotland) Act 1975,][<sup>F35</sup>or a sentence of detention for a term exceeding [<sup>F30</sup>forty eight months] passed under section 91 of the said Act of 2000][<sup>F36</sup>(young offenders convicted of grave crimes) [<sup>F37</sup>or section 209 of the said Act of 2006] or



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under section 206 of the said Act of 1975 (detention of children convicted on indictment)<sup>F38</sup> . . . <sup>F39</sup> and

- (e) a sentence of custody for life]; <sup>F40</sup> and]
- <sup>F41</sup>(f) a sentence of imprisonment for public protection under section 225 of the Criminal Justice Act 2003, a sentence of detention for public protection under section 226 of that Act or an extended sentence under section <sup>F42</sup> 226A, 226B,] 227 or 228 of that Act <sup>F43</sup> (including any sentence within this paragraph passed as a result of any of sections 219 to 222 of the Armed Forces Act 2006)]

and any other sentence is a sentence subject to rehabilitation under this Act.

<sup>F44</sup>(1A) In <sup>F45</sup>this section]—

- (a) references to section 209 of the Armed Forces Act 2006 include references to section 71A(4) of the Army Act 1955 or Air Force Act 1955 or section 43A(4) of the Naval Discipline Act 1957;
- (b) the reference to section 218 of the Armed Forces Act 2006 includes a reference to section 71A(3) of the Army Act 1955 or Air Force Act 1955 or section 43A(3) of the Naval Discipline Act 1957.]

<sup>F46</sup>(2) For the purposes of this Act and subject to subsections (3) and (4), the rehabilitation period for a sentence is the period—

- (a) beginning with the date of the conviction in respect of which the sentence is imposed, and
- (b) ending at the time listed in the following Table in relation to that sentence:

<i>Sentence</i>	<i>End of rehabilitation period for adult offenders</i>	<i>End of rehabilitation period for offenders under 18 at date of conviction</i>
A custodial sentence of more than 30 months and up to, or consisting of, 48 months	The end of the period of 7 years beginning with the day on which the sentence (including any licence period) is completed	The end of the period of 42 months beginning with the day on which the sentence (including any licence period) is completed
A custodial sentence of more than 6 months and up to, or consisting of, 30 months	The end of the period of 48 months beginning with the day on which the sentence (including any licence period) is completed	The end of the period of 24 months beginning with the day on which the sentence (including any licence period) is completed

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A custodial sentence of 6 months or less	The end of the period of 24 months beginning with the day on which the sentence (including any licence period) is completed	The end of the period of 18 months beginning with the day on which the sentence (including any licence period) is completed
Removal from Her Majesty's service	The end of the period of 12 months beginning with the date of the conviction in respect of which the sentence is imposed	The end of the period of 6 months beginning with the date of the conviction in respect of which the sentence is imposed
A sentence of service detention	The end of the period of 12 months beginning with the day on which the sentence is completed	The end of the period of 6 months beginning with the day on which the sentence is completed
A fine	The end of the period of 12 months beginning with the date of the conviction in respect of which the sentence is imposed	The end of the period of 6 months beginning with the date of the conviction in respect of which the sentence is imposed
A compensation order	The date on which the payment is made in full	The date on which the payment is made in full
A community or youth rehabilitation order	The end of the period of 12 months beginning with the day provided for by or under the order as the last day on which the order is to have effect	The end of the period of 6 months beginning with the day provided for by or under the order as the last day on which the order is to have effect
A relevant order	The day provided for by or under the order as the last day on which the	The day provided for by or under the order as the last day on which the

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order is to have effect      order is to have effect

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- (3) Where no provision is made by or under a community or youth rehabilitation order or a relevant order for the last day on which the order is to have effect, the rehabilitation period for the order is to be the period of 24 months beginning with the date of conviction.
- (4) There is no rehabilitation period for—
- (a) an order discharging a person absolutely for an offence, or
  - (b) any other sentence in respect of a conviction where the sentence is not dealt with in the Table or under subsection (3),
- and, in such cases, references in this Act to any rehabilitation period are to be read as if the period of time were nil.
- (5) See also—
- (a) section 8AA (protection afforded to spent alternatives to prosecution), and
  - (b) Schedule 2 (protection for spent cautions).
- (6) The Secretary of State may by order amend column 2 or 3 of the Table or the number of months for the time being specified in subsection (3).
- (7) For the purposes of this section—
- (a) consecutive terms of imprisonment or other custodial sentences are to be treated as a single term,
  - (b) terms of imprisonment or other custodial sentences which are wholly or partly concurrent (that is terms of imprisonment or other custodial sentences imposed in respect of offences of which a person was convicted in the same proceedings) are to be treated as a single term,
  - (c) no account is to be taken of any subsequent variation, made by a court dealing with a person in respect of a suspended sentence of imprisonment, of the term originally imposed,
  - (d) no account is to be taken of any subsequent variation of the day originally provided for by or under an order as the last day on which the order is to have effect,
  - (e) no account is to be taken of any detention or supervision ordered by a court under section 104(3) of the Powers of Criminal Courts (Sentencing) Act 2000,
  - (f) a sentence imposed by a court outside England and Wales is to be treated as the sentence mentioned in this section to which it most closely corresponds.
- (8) In this section—
- “community or youth rehabilitation order” means—
- (a) a community order under section 177 of the Criminal Justice Act 2003,
  - (b) a service community order or overseas community order under the Armed Forces Act 2006,
  - (c) a youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2008, or
  - (d) any order of a kind superseded (whether directly or indirectly) by an order mentioned in paragraph (a), (b) or (c),
- “custodial sentence” means—
- (a) a sentence of imprisonment,

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- (b) a sentence of detention in a young offender institution,
- (c) a sentence of Borstal training,
- (d) a sentence of youth custody,
- (e) a sentence of corrective training,
- (f) a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 or section 209 of the Armed Forces Act 2006,
- (g) a detention and training order under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000 or an order under section 211 of the Armed Forces Act 2006,
- (h) any sentence of a kind superseded (whether directly or indirectly) by a sentence mentioned in paragraph (f) or (g),
  - “earlier statutory order” means—
    - (a) an order under section 54 of the Children and Young Persons Act 1933 committing the person convicted to custody in a remand home,
    - (b) an approved school order under section 57 of that Act, or
    - (c) any order of a kind superseded (whether directly or indirectly) by an order mentioned in any of paragraphs (c) to (e) of the definition of “relevant order” or in paragraph (a) or (b) above,
  - “relevant order” means—
    - (a) an order discharging a person conditionally for an offence,
    - (b) an order binding a person over to keep the peace or be of good behaviour,
    - (c) an order under section 1(2A) of the Street Offences Act 1959,
    - (d) a hospital order under Part 3 of the Mental Health Act 1983 (with or without a restriction order),
    - (e) a referral order under section 16 of the Powers of Criminal Courts (Sentencing) Act 2000,
    - (f) an earlier statutory order, or
    - (g) any order which imposes a disqualification, disability, prohibition or other penalty and is not otherwise dealt with in the Table or under subsection (3),

but does not include a reparation order under section 73 of the Powers of Criminal Courts (Sentencing) Act 2000,

“removal from Her Majesty's service” means a sentence of dismissal with disgrace from Her Majesty's service, a sentence of dismissal from Her Majesty's service or a sentence of cashiering or discharge with ignominy,

“sentence of imprisonment” includes a sentence of penal servitude (and “term of imprisonment” is to be read accordingly),

“sentence of service detention” means—

- (a) a sentence of service detention (within the meaning given by section 374 of the Armed Forces Act 2006), or a sentence of detention corresponding to such a sentence, in respect of a conviction in service disciplinary proceedings, or
- (b) any sentence of a kind superseded (whether directly or indirectly) by a sentence mentioned in paragraph (a).]

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### Extent Information

- E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only.

### Textual Amendments

- F28** Words inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 77, [Sch. 14 para. 36\(a\)](#)
- F29** Words inserted (E.W.) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 123, [Sch. 8 paras. 9, 16](#)
- F30** Words in s. 5(1)(b)(d) substituted (E.W.) (10.3.2014) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 139\(2\)](#), 151(1) (with s. 141(1)-(6)); S.I. 2014/423, [art. 2\(a\)](#) (with [art. 3](#))
- F31** Word repealed by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 16](#)
- F32** Words in s. 5(1)(d) inserted (25.8.2000) by 2000 c. 6, [ss. 165\(1\)](#), 168(1), [Sch. 9 para. 48\(2\)\(a\)](#)
- F33** Words in s. 5(1)(d) inserted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by [Armed Forces Act 2006 \(c. 52\)](#), [ss. 378](#), 383, [Sch. 16 para. 65\(2\)\(a\)\(i\)](#); S.I. 2009/812, [art. 3](#); S.I. 2009/1167, [art. 4](#) (and see savings (having effect from 24.4.2009 for specified purposes and 31.10.2009 otherwise) in S.I. 2009/1059, [arts 1\(2\)\(3\)](#), 205, [Sch. 1 para. 14](#))
- F34** Words inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 24\(a\)\(i\)](#)
- F35** Words in s. 5(1)(d) substituted (25.8.2000) by 2000 c. 6, [ss. 165\(1\)](#), 168(1), [Sch. 9 para. 48\(2\)\(b\)](#)
- F36** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 24\(a\)\(ii\)](#)
- F37** Words in s. 5(1)(d) inserted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by [Armed Forces Act 2006 \(c. 52\)](#), [ss. 378](#), 383, [Sch. 16 para. 65\(2\)\(a\)\(ii\)](#); S.I. 2009/812, [art. 3](#); S.I. 2009/1167, [art. 4](#) (and see savings (having effect from 24.4.2009 for specified purposes and 31.10.2009 otherwise) in S.I. 2009/1059, [arts 1\(2\)\(3\)](#), 205, [Sch. 1 para. 14](#))
- F38** Words in s. 5(1)(d) omitted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by virtue of [Armed Forces Act 2006 \(c. 52\)](#), [ss. 378](#), 383, [Sch. 16 para. 65\(2\)\(a\)\(iii\)](#); S.I. 2009/812, [art. 3](#); S.I. 2009/1167, [art. 4](#) (and see savings (having effect from 24.4.2009 for specified purposes and 31.10.2009 otherwise) in S.I. 2009/1059, [arts 1\(2\)\(3\)](#), 205, [Sch. 1 para. 14](#))
- F39** S. 5(1)(e) inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 14 para. 36\(b\)](#)
- F40** Word at the end of s. 5(1)(e) inserted (4.4.2005) by [Criminal Justice Act 2003 \(c. 53\)](#), [ss. 304](#), 336(3), [Sch. 32 para. 18\(2\)\(a\)](#); S.I. 2005/950, [art. 2\(1\)](#), [Sch. 1 para. 42\(11\)](#) (subject to [art. 2\(2\)](#), [Sch. 2](#)) (as amended by: S.I. 2007/391; S.I. 2009/616; S.I. 2009/3111)
- F41** S. 5(1)(f) inserted (4.4.2005) by [Criminal Justice Act 2003 \(c. 53\)](#), [ss. 304](#), 336(3), [Sch. 32 para. 18\(2\)\(b\)](#); S.I. 2005/950, [art. 2\(1\)](#), [Sch. 1 para. 42\(11\)](#) (subject to [art. 2\(2\)](#), [Sch. 2](#)) (as amended by: S.I. 2007/391; S.I. 2009/616; S.I. 2009/3111)
- F42** Words in s. 5(1)(f) inserted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 21 para. 2](#); S.I. 2012/2906, [art. 2\(s\)](#)
- F43** Words in s. 5(1)(f) inserted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by [Armed Forces Act 2006 \(c. 52\)](#), [ss. 378](#), 383, [Sch. 16 para. 65\(2\)\(b\)](#); S.I. 2009/812, [art. 3](#); S.I. 2009/1167, [art. 4](#) (and see savings (having effect from 24.4.2009 for specified purposes and 31.10.2009 otherwise) in S.I. 2009/1059, [arts 1\(2\)\(3\)](#), 205, [Sch. 1 para. 14](#))
- F44** S. 5(1A) substituted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by [Armed Forces Act 2006 \(c. 52\)](#), [ss. 378](#), 383, [Sch. 16 para. 65\(3\)](#); S.I. 2009/812, [art. 3](#); S.I. 2009/1167, [art. 4](#) (and see savings (having effect from 24.4.2009 for specified purposes and 31.10.2009 otherwise) in S.I. 2009/1059, [arts 1\(2\)\(3\)](#), 205, [Sch. 1 para. 14](#))
- F45** Words in s. 5(1A) substituted (E.W.) (10.3.2014) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 139\(3\)](#), 151(1) (with s. 141(1)-(6)); S.I. 2014/423, [art. 2\(a\)](#) (with [art. 3](#))
- F46** S. 5(2)-(8) substituted (E.W.) for s. 5(2)-(11) (10.3.2014) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 139\(4\)](#), 151(1) (with s. 141(1)-(6)); S.I. 2014/423, [art. 2\(a\)](#) (with [art. 3](#))

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## 5 Rehabilitation periods for particular sentences. **S**

- (1) The sentences excluded from rehabilitation under this Act are—
- (a) a sentence of imprisonment for life;
  - (b) a sentence of imprisonment [<sup>F104</sup>youth custody] or corrective training for a term exceeding thirty months;
  - (c) a sentence of preventive detention; <sup>F105</sup> . . .
  - (d) a sentence of detention during Her Majesty's pleasure or for life [<sup>F106</sup>under section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000][<sup>F33</sup>or under section 209 or 218 of the Armed Forces Act 2006,][<sup>F107</sup>or under section 205(2) or (3) of the Criminal Procedure (Scotland) Act 1975,][or a sentence of detention for a term exceeding thirty months passed under section 91 of the said Act of 2000][<sup>F108</sup>(young offenders convicted of grave crimes) [<sup>F37</sup>or section 209 of the said Act of 2006] or under section 206 of the said Act of 1975 (detention of children convicted on indictment)]<sup>F38</sup> . . . [<sup>F109</sup>and
  - (e) a sentence of custody for life]; [<sup>F40</sup>and]
  - [<sup>F41</sup>(f) a sentence of imprisonment for public protection under section 225 of the Criminal Justice Act 2003, a sentence of detention for public protection under section 226 of that Act or an extended sentence under section [<sup>F42</sup> 226A, 226B,] 227 or 228 of that Act]

and any other sentence is a sentence subject to rehabilitation under this Act.

[<sup>F44</sup>(1A) In subsection (1)(d)—

- (a) references to section 209 of the Armed Forces Act 2006 include references to section 71A(4) of the Army Act 1955 or Air Force Act 1955 or section 43A(4) of the Naval Discipline Act 1957;
- (b) the reference to section 218 of the Armed Forces Act 2006 includes a reference to section 71A(3) of the Army Act 1955 or Air Force Act 1955 or section 43A(3) of the Naval Discipline Act 1957.]

(2) For the purposes of this Act—

- (a) the rehabilitation period applicable to a sentence specified in the first column of Table A below is the period specified in the second column of that Table in relation to that sentence, or, where the sentence was imposed on a person who was under [<sup>F110</sup> eighteen years of age] at the date of his conviction, half that period; and
- (b) the rehabilitation period applicable to a sentence specified in the first column of Table B below is the period specified in the second column of that Table in relation to that sentence;

reckoned in either case from the date of the conviction in respect of which the sentence was imposed.

TABLE A

Rehabilitation periods subject to reduction by half for persons [<sup>F111</sup>under 18]

<i>Sentence</i>	<i>Rehabilitation period</i>
A sentence of imprisonment [ <sup>F112</sup> or youth custody] or corrective training	Ten years

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for a term exceeding six months but not exceeding thirty months.	
A sentence of cashiering, discharge with ignominy or dismissal with disgrace from Her Majesty’s service.	Ten years
A sentence of imprisonment [ <sup>F112</sup> or youth custody] for a term not exceeding six months.	Seven years
A sentence of dismissal from Her Majesty’s service.	Seven years
[ <sup>F113</sup> Any sentence of service detention within the meaning of the Armed Forces Act 2006, or any sentence of detention corresponding to such a sentence,] in respect of a conviction in service disciplinary proceedings.	Five years
A fine or any other sentence subject to rehabilitation under this Act, not being a sentence to which Table B below or any of subsections (3) [ <sup>F114</sup> to (8)] below applies.	Five years

TABLE B

Rehabilitation periods for certain sentences confined to young offenders

<i>Sentence</i>	<i>Rehabilitation period</i>
A sentence of Borstal training.	Seven years
[ <sup>F115</sup> A custodial order under Schedule 5A to the <sup>M18</sup> Army Act 1955 or the <sup>M19</sup> Air Force Act 1955, or under Schedule 4A to the <sup>M20</sup> Naval Discipline Act 1957, where the maximum period of detention specified in the order is more than six months.]	[ <sup>F115</sup> Seven years]
[ <sup>F116</sup> A custodial order under section 71AA of the Army Act 1955 or the Air Force Act 1955, or under section 43AA of the Naval Discipline Act 1957, where the maximum period of detention specified in the order is more than six months.]	[ <sup>F116</sup> Seven years.]
A sentence of detention for a term exceeding six months but not	Five years

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exceeding thirty months passed under [F117] section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 [F118] or under section 209 of the Armed Forces Act 2006 [F119] or under section 206 of the Criminal Procedure (Scotland) Act 1975].

A sentence of detention for a term not exceeding six months passed under [F120] any provision mentioned in the fourth entry in this Table]. Three years

An order for detention in a detention centre made under [F121] section 4 of the Criminal Justice Act 1982,] section 4 of the  
M21

Criminal Justice Act 1961  
F122

. . . .

[F115] A custodial order under any of the Schedules to the said Acts of 1955 and 1957 mentioned above, where the maximum period of detention specified in the order is six months or less.] [F115] Three years]

[F123] A custodial order under section 71AA of the said Acts of 1955, or section 43AA or the said Act of 1957, where the maximum period of detention specified in the order is six months or less.] [F123] Three years.]

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[F124] (2A) Table B applies in relation to a sentence under section 71A(4) of the Army Act 1955 or Air Force Act 1955 or section 43A(4) of the Naval Discipline Act 1957 as it applies in relation to one under section 209 of the Armed Forces Act 2006.]

(3) The rehabilitation period applicable—

- (a) to an order discharging a person absolutely for an offence; and
- (b) to the discharge by a children's hearing under section [F125] 69(1)(b) and (12) of the Children (Scotland) Act 1995] of the referral of a child's case;

shall be six months from the date of conviction.

(4) Where in respect of a conviction a person was conditionally discharged, bound over to keep the peace or be of good behaviour, [F126] . . . the rehabilitation period applicable to the sentence shall be one year from the date of conviction or a period beginning with that date and ending when the order for conditional discharge [F126] . . . or (as the case may be) the recognizance or bond of caution to keep the peace or be of good behaviour ceases or ceased to have effect, whichever is the longer.

[F127] (4A) Where in respect of a conviction [F128] [F129] a probation order [F130] [F129] or [F131] a community order under section 177 of the Criminal Justice Act 2003 [F131] or a service community



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order or overseas community order under the Armed Forces Act 2006] was made], the rehabilitation period applicable to the sentence shall be—

- (a) in the case of a person aged eighteen years or over at the date of his conviction, five years from the date of conviction;
- (b) in the case of a person aged under the age of eighteen years at the date of his conviction, two and a half years from the date of conviction or a period beginning with the date of conviction and ending when the [F132]order in question] ceases or ceased to have effect, whichever is the longer.]

[F133(4B) Where in respect of a conviction a referral order (within the meaning of [F134]the Powers of Criminal Courts (Sentencing) Act 2000]) is made in respect of the person convicted, the rehabilitation period applicable to the sentence shall be—

- (a) if a youth offender contract takes effect under [F135]section 23] of that Act between him and a youth offender panel, the period beginning with the date of conviction and ending on the date when (in accordance with [F136]section 24] of that Act) the contract ceases to have effect;
- (b) if no such contract so takes effect, the period beginning with the date of conviction and having the same length as the period for which such a contract would (ignoring any order under paragraph 11 or 12 of Schedule 1 to that Act) have had effect had one so taken effect.

(4C) Where in respect of a conviction an order is made in respect of the person convicted under paragraph 11 or 12 of Schedule 1 to [F137]the Powers of Criminal Courts (Sentencing) Act 2000] (extension of period for which youth offender contract has effect), the rehabilitation period applicable to the sentence shall be—

- (a) if a youth offender contract takes effect under [F138]section 23] of that Act between the offender and a youth offender panel, the period beginning with the date of conviction and ending on the date when (in accordance with [F139]section 24] of that Act) the contract ceases to have effect;
- (b) if no such contract so takes effect, the period beginning with the date of conviction and having the same length as the period for which, in accordance with the order, such a contract would have had effect had one so taken effect.]

[F140(4D) The rehabilitation period applicable to an order under section 1(2A) of the Street Offences Act 1959 shall be six months from the date of conviction for the offence in respect of which the order is made.]

(5) Where in respect of a conviction any of the following sentences was imposed, that is to say—

- (a) an order under section 57 of the M22Children and Young Persons Act 1933 or section 61 of the M23Children and Young Persons (Scotland) Act 1937 committing the person convicted to the care of a fit person;
- (b) a supervision order under any provision of either of those Acts or of the M24Children and Young Persons Act 1963;

[F141(c) an order under section 413 of the Criminal Procedure (Scotland) Act 1975 committing a child for the purpose of his undergoing residential training:]

(d) an approved school order under section 61 of the said Act of 1937;

[F142(da) a youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2008;]

(e) a care order or a supervision order under [F143]section 63(1) of the Powers of Criminal Courts (Sentencing) Act 2000]; or

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- (f) a supervision requirement under any provision of the <sup>F144</sup>Children (Scotland) Act 1995;]
- <sup>F145</sup>(g) a community supervision order under Schedule 5A to the <sup>M25</sup> Army Act 1955 or the <sup>M26</sup> Air Force Act 1955, or under Schedule 4A to the <sup>M27</sup> Naval Discipline Act 1957;
- <sup>F146</sup>(h) .....]

the rehabilitation period applicable to the sentence shall be one year from the date of conviction or a period beginning with that date and ending when the order or requirement ceases or ceased to have effect, whichever is the longer.

- (6) Where in respect of a conviction any of the following orders was made, that is to say—
  - (a) an order under section 54 of the said Act of 1933 committing the person convicted to custody in a remand home;
  - (b) an approved school order under section 57 of the said Act of 1933; or
  - (c) an attendance centre order under <sup>F147</sup>section 60 of the Powers of Criminal Courts (Sentencing) Act 2000]; <sup>F148</sup>or
  - (d) a secure training order under section 1 of the Criminal Justice and Public Order Act 1994;]

the rehabilitation period applicable to the sentence shall be a period beginning with the date of conviction and ending one year after the date on which the order ceases or ceased to have effect.

- <sup>F149</sup>(6A) Where in respect of a conviction a detention and training order was made under <sup>F150</sup>section 100 of the Powers of Criminal Courts (Sentencing) Act 2000]<sup>F151</sup>, or an order under section 211 of the Armed Forces Act 2006 was made], the rehabilitation period applicable to the sentence shall be—
  - (a) in the case of a person aged fifteen years or over at the date of his conviction, five years if the order was, and three and a half years if the order was not, for a term exceeding six months;
  - (b) in the case of a person aged under fifteen years at the date of his conviction, a period beginning with that date and ending one year after the date on which the order ceases to have effect.

- (7) Where in respect of a conviction a hospital order under <sup>F152</sup>Part III of the Mental Health Act 1983] or under <sup>F153</sup>Part VI of the Criminal Procedure (Scotland) Act 1995] was made, the rehabilitation period applicable to the sentence shall be the period of five years from the date of conviction or a period beginning with that date and ending two years after the date on which the hospital order ceases or ceased to have effect, whichever is the longer.

- (8) Where in respect of a conviction an order was made imposing on the person convicted any disqualification, disability, prohibition or other penalty, the rehabilitation period applicable to the sentence shall be a period beginning with the date of conviction and ending on the date on which the disqualification, disability, prohibition or penalty (as the case may be) ceases or ceased to have effect.

- (9) For the purposes of this section—
  - (a) “sentence of imprisonment” includes a sentence of detention <sup>F154</sup>under section 207 or 415 of the Criminal Procedure (Scotland) Act 1975] and a sentence of penal servitude, and “term of imprisonment” shall be construed accordingly;

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- (b) consecutive terms of imprisonment or of detention under <sup>F155</sup>section 91 of the Powers of Criminal Courts (Sentencing) Act 2000<sup>F156</sup> or section 209 of the Armed Forces Act 2006] or <sup>F157</sup>section 206 of the said Act of 1975], and terms which are wholly or partly concurrent (being terms of imprisonment or detention imposed in respect of offences of which a person was convicted in the same proceedings) shall be treated as a single term;
  - (c) no account shall be taken of any subsequent variation, made by a court in dealing with a person in respect of a suspended sentence of imprisonment, of the term originally imposed; and
  - (d) a sentence imposed by a court outside Great Britain shall be treated as a sentence of that one of the descriptions mentioned in this section which most nearly corresponds to the sentence imposed.
- (10) References in this section to the period during which a probation order, or a care order or supervision order under <sup>F158</sup>the Powers of Criminal Courts (Sentencing) Act 2000], or a supervision requirement under the <sup>F159</sup>Children (Scotland) Act 1995], is or was in force include references to any period during which any order or requirement to which this subsection applies, being an order or requirement made or imposed directly or indirectly in substitution for the first-mentioned order or requirement, is or was in force.

This subsection applies—

- (a) to any such order or requirement as is mentioned above in this subsection;
- (b) to any order having effect under section 25(2) of <sup>F160</sup>the Children and Young Persons Act 1969] as if it were a training school order in Northern Ireland; and
- (c) to any supervision order made under section 72(2) of the said Act of 1968 and having effect as a supervision order under the Children and Young Persons Act (Northern Ireland) 1950.

<sup>F161</sup>(10A) . . . . .

- (11) The Secretary of State may by order—
- (a) substitute different periods or terms for any of the periods or terms mentioned in subsections (1) to (8) above; and
  - (b) substitute a different age for the age mentioned in subsection (2)(a) above.

#### Extent Information

**E3** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only.

#### Textual Amendments

- F33** Words in s. 5(1)(d) inserted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383, [Sch. 16 para. 65\(2\)\(a\)\(i\)](#); S.I. 2009/812, [art. 3](#); S.I. 2009/1167, [art. 4](#) (and see savings (having effect from 24.4.2009 for specified purposes and 31.10.2009 otherwise) in S.I. 2009/1059, [arts 1\(2\)\(3\)](#), 205, [Sch. 1 para. 14](#))
- F37** Words in s. 5(1)(d) inserted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383, [Sch. 16 para. 65\(2\)\(a\)\(ii\)](#); S.I. 2009/812, [art. 3](#); S.I. 2009/1167, [art. 4](#) (and see savings (having effect from 24.4.2009 for specified purposes and 31.10.2009 otherwise) in S.I. 2009/1059, [arts 1\(2\)\(3\)](#), 205, [Sch. 1 para. 14](#))
- F38** Words in s. 5(1)(d) omitted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by virtue of [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383, [Sch. 16 para. 65\(2\)\(a\)\(iii\)](#); S.I. 2009/812, [art. 3](#);

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- S.I. 2009/1167, **art. 4** (and see savings (having effect from 24.4.2009 for specified purposes and 31.10.2009 otherwise) in S.I. 2009/1059, arts 1(2)(3), 205, **Sch. 1 para. 14**)
- F40** Word at the end of s. 5(1)(e) inserted (4.4.2005) by Criminal Justice Act 2003 (c. 53), ss. 304, 336(3), **Sch. 32 para. 18(2)(a)**; S.I. 2005/950, art. 2(1), **Sch. 1 para. 42(11)** (subject to art. 2(2), Sch. 2) (as amended by: S.I. 2007/391; S.I. 2009/616; S.I. 2009/3111)
- F41** S. 5(1)(f) inserted (4.4.2005) by Criminal Justice Act 2003 (c. 53), ss. 304, 336(3), **Sch. 32 para. 18(2)(b)**; S.I. 2005/950, art. 2(1), **Sch. 1 para. 42(11)** (subject to art. 2(2), Sch. 2) (as amended by: S.I. 2007/391; S.I. 2009/616; S.I. 2009/3111)
- F42** Words in s. 5(1)(f) inserted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 21 para. 2**; S.I. 2012/2906, art. 2(s)
- F44** S. 5(1A) substituted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 65(3)**; S.I. 2009/812, **art. 3**; S.I. 2009/1167, **art. 4** (and see savings (having effect from 24.4.2009 for specified purposes and 31.10.2009 otherwise) in S.I. 2009/1059, arts 1(2)(3), 205, **Sch. 1 para. 14**)
- F104** Words inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 77, **Sch. 14 para. 36(a)**
- F105** Word repealed by Criminal Justice Act 1982 (c. 48, SIF 39:1), **Sch. 16**
- F106** Words in s. 5(1)(d) inserted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 48(2)(a)**
- F107** Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 24(a)(i)**
- F108** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 24(a)(ii)**
- F109** S. 5(1)(e) inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **Sch. 14 para. 36(b)**
- F110** Words in s. 5(2)(a) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 68, 101(1), **Sch. 8 para. 5(a)**, **Sch. 12 para. 22(2)**; S.I. 1992/333, art. 2(2), **Sch. 2**.
- F111** Words in s. 5(2) in the heading to Table A substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 68, 101(1), **Sch. 8 para. 5(b)**, **Sch. 12 para. 22(2)**; S.I. 1992/333, art. 2(2), **Sch. 2**.
- F112** Words inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 77, **Sch. 14 para. 37(a)**
- F113** S. 5(2): words in Table A substituted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 65(4)(a)**; S.I. 2009/812, **art. 3**; S.I. 2009/1167, **art. 4** (and see savings (having effect from 24.4.2009 for specified purposes and 31.10.2009 otherwise) in S.I. 2009/1059, arts 1(2)(3), 205, **Sch. 1 para. 14**)
- F114** Words in Table A in s. 5(2) substituted (26.6.2000) by 1999 c. 23, s. 67(1), **Sch. 4 para. 6(2)** (with **Sch. 7 paras. 3(3), 5(2)**); S.I. 2000/1587, **art. 2(b)**
- F115** Entry inserted by Armed Forces Act 1976 (c. 52), **Sch. 9 para. 21(1)**
- F116** Entry made by Armed Forces Act 1981 (c. 55, SIF 7:1), **Sch. 4 para. 2(2)(a)**
- F117** Words in Table B in s. 5(2) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 48(3)**
- F118** S. 5(2): words in Table B inserted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 65(4)(b)(i)**; S.I. 2009/812, **art. 3**; S.I. 2009/1167, **art. 4** (and see savings (having effect from 24.4.2009 for specified purposes and 31.10.2009 otherwise) in S.I. 2009/1059, arts 1(2)(3), 205, **Sch. 1 para. 14**)
- F119** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 24(b)(i)**
- F120** S. 5(2): words in Table B inserted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 65(4)(b)(ii)**; S.I. 2009/812, **art. 3**; S.I. 2009/1167, **art. 4** (and see savings (having effect from 24.4.2009 for specified purposes and 31.10.2009 otherwise) in S.I. 2009/1059, arts 1(2)(3), 205, **Sch. 1 para. 14**)
- F121** Words inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **Sch. 14 para. 37(b)**
- F122** Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 24(b)(ii)**, **Sch. 8**
- F123** Entry made by Armed Forces Act 1981 (c. 55, SIF 7:1), **Sch. 4 para. 2(2)(b)**
- F124** S. 5(2A) inserted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 65(5)**; S.I. 2009/812, **art. 3**; S.I. 2009/1167, **art. 4** (and see savings (having effect from 24.4.2009 for specified purposes and 31.10.2009 otherwise) in S.I. 2009/1059, arts 1(2)(3), 205, **Sch. 1 para. 14**)
- F125** Words in s. 5(3)(b) substituted (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 23(3)(a)**; S.I. 1996/3201, **art. 3(7)**

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- F126** Words in s. 5(4) repealed (3.2.1995) by 1994 c. 33, s. 168(1)(3), **Sch. 9 para. 11(1)(b)(2) Sch. 11**; S.I. 1995/127, art. 2(1), **Sch.**, Appendices A, C
- F127** S. 5(4A) inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 11(1)(c)(2)**; S.I. 1995/127, art. 2(1), **Sch.**, Appendix A
- F128** Words in s. 5(4A) substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 49(a)**; S.I. 2001/919, **art. 2(f)(ii)**
- F129** Words in s. 5(4A) repealed (S.) (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206, **sch. 2 para. 32(2)**; S.S.I. 2010/413, **art. 2(1)**, **Sch.**
- F130** Words in s. 5(4A) inserted (4.4.2005) by Criminal Justice Act 2003 (c. 53), ss. 304, 336(3), **Sch. 32 para. 18(3)**; S.I. 2005/950, art. 2(1), **Sch. 1 para. 42(11)** (subject to art. 2(2), **Sch. 2**) (as amended by: S.I. 2007/391; S.I. 2009/616; S.I. 2009/3111)
- F131** Words in s. 5(4A) inserted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 65(6)**; S.I. 2009/812, **art. 3**; S.I. 2009/1167, **art. 4** (and see savings (having effect from 24.4.2009 for specified purposes and 31.10.2009 otherwise) in S.I. 2009/1059, arts 1(2)(3), 205, **Sch. 1 para. 14**)
- F132** Words in s. 5(4A)(b) substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 49(b)**; S.I. 2001/919, **art. 2(f)(ii)**
- F133** S. 5(4B)(4C) inserted (26.6.2000) by 1999 c. 23, s. 67(1), **Sch. 4 para. 6(3)** (with **Sch. 7** paras. 3(3), 5(2)); S.I. 2000/1587, **art. 2(b)**
- F134** Words in s. 5(4B) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 48(4)(a)**
- F135** Words in s. 5(4B)(a) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 48(4)(b)**
- F136** Words in s. 5(4B)(a) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 48(4)(c)**
- F137** Words in s. 5(4C) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 48(5)(a)**
- F138** Words in s. 5(4C)(a) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 48(5)(b)**
- F139** Words in s. 5(4C)(a) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 48(5)(c)**
- F140** S. 5(4D) inserted (1.4.2010) by Policing and Crime Act 2009 (c. 26), **ss. 18(2)**, 116(1); S.I. 2010/507, **art. 5(e)** (with art. 6)
- F141** S. 5(5)(c) substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 24(c)**
- F142** S. 5(5)(da) inserted (30.11.2009) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 6, 153, **Sch. 4 para. 21** (with **Sch. 27** paras. 1, 5); S.I. 2009/3074, **art. 2(p)(iii)**
- F143** Words in s. 5(5)(e) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 48(6)**
- F144** Words in s. 5(5)(f) substituted (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 23(3)(b)**; S.I. 1996/3201, **art. 3(7)**
- F145** S. 5(5)(g)(h) added by Armed Forces Act 1976 (c. 52), **Sch. 9 para. 21(2)**
- F146** S. 5(5)(h) repealed (1.1.1992) by Armed Forces Act 1991 (c. 62, SIF 7:1), s. 26(2), **Sch. 3**; S.I. 1991/2719, art. 2, **Sch.**
- F147** Words in s. 5(6)(c) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 48(7)**
- F148** S. 5(6)(d) and word inserted (1.3.1998) by 1994 c. 33, s. 168(2), **Sch. 10 para. 30**; S.I. 1998/277, **art. 3(2)**
- F149** S. 5(6A) inserted (1.4.2000) by 1998 c. 37, s. 119, **Sch. 8 para. 35**; S.I. 1999/3426, **art. 3(b)**
- F150** Words in s. 5(6A) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 48(8)**
- F151** Words in s. 5(6A) inserted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 65(7)**; S.I. 2009/812, **art. 3**; S.I. 2009/1167, **art. 4** (and see savings (having effect from 24.4.2009 for specified purposes and 31.10.2009 otherwise) in S.I. 2009/1059, arts 1(2)(3), 205, **Sch. 1 para. 14**)
- F152** Words substituted by Mental Health Act 1983 (c. 20, SIF 85), **Sch. 4 para. 39**
- F153** Words in s. 5(7) substituted (S.) (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 2, **Sch. 1 para. 6**
- F154** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 24(d)(i)**
- F155** Words in s. 5(9)(b) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 48(9)**
- F156** Words in s. 5(9)(b) inserted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 65(8)**; S.I. 2009/812, **art. 3**; S.I. 2009/1167, **art.**

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4 (and see savings (having effect from 24.4.2009 for specified purposes and 31.10.2009 otherwise) in S.I. 2009/1059, arts 1(2)(3), 205, **Sch. 1 para. 14**)

**F157** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 24(d)(ii)**

**F158** Words in s. 5(10) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 48(10)**

**F159** Words in s. 5(10) substituted (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 23(3)(c)**; S.I. 1996/3201, **art. 3(7)**

**F160** Words in s. 5(10) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 48(10)(b)**

**F161** S. 5(10A) repealed (S.) (1.4.1997) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 23(3)(d), **Sch. 5**; S.I. 1996/3201, **art. 3(7)**

#### **Modifications etc. (not altering text)**

**C35** S. 5 modified (S.) by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 124, Sch. 8 para. 16, **Sch. 9 para. 8**

#### **Marginal Citations**

**M18** 1955 c. 18.

**M19** 1955 c. 19.

**M20** 1957 c. 53.

**M21** 1961 c. 39.

**M22** 1933 c. 12.

**M23** 1937 c. 37.

**M24** 1963 c. 37.

**M25** 1955 c. 18.

**M26** 1955 c. 19.

**M27** 1957 c. 53.

## **6 The rehabilitation period applicable to a conviction.**

- (1) Where only one sentence is imposed in respect of a conviction (not being a sentence excluded from rehabilitation under this Act) the rehabilitation period applicable to the conviction is, subject to the following provisions of this section, the period applicable to the sentence in accordance with section 5 above.
- (2) Where more than one sentence is imposed in respect of a conviction (whether or not in the same proceedings) and none of the sentences imposed is excluded from rehabilitation under this Act, then, subject to the following provisions of this section, if the periods applicable to those sentences in accordance with section 5 above differ, the rehabilitation period applicable to the conviction shall be the longer or the longest (as the case may be) of those periods.
- (3) Without prejudice to subsection (2) above, where in respect of a conviction a person was conditionally discharged [<sup>F47</sup>or [<sup>F48</sup>a probation order was made]] and after the end of the rehabilitation period applicable to the conviction in accordance with subsection (1) or (2) above he is dealt with, in consequence of a breach of conditional discharge [<sup>F49</sup>[<sup>F50</sup>or a breach of the order]], for the offence for which the order for conditional discharge [<sup>F47</sup>or probation order] was made was made, then, if the rehabilitation period applicable to the conviction in accordance with subsection (2) above (taking into account any sentence imposed when he is so dealt with) ends later than the rehabilitation period previously applicable to the conviction, he shall be treated for the purposes of this Act as not having become a rehabilitated person in respect of that conviction, and the conviction shall for those purposes be treated as not having become spent, in relation to any period falling before the end of the new rehabilitation period.

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[<sup>F51</sup>(3A) Without prejudice to subsection (2), where—

- (a) an order is made under section 1(2A) of the Street Offences Act 1959 in respect of a conviction,
- (b) after the end of the rehabilitation period applicable to the conviction the offender is dealt with again for the offence for which that order was made, and
- (c) the rehabilitation period applicable to the conviction in accordance with subsection (2) (taking into account any sentence imposed when so dealing with the offender) ends later than the rehabilitation period previously applicable to the conviction,

the offender shall be treated for the purposes of this Act as not having become a rehabilitated person in respect of that conviction, and that conviction shall for those purposes be treated as not having become spent, in relation to any period falling before the end of the new rehabilitation period.]

(4) Subject to subsection (5) below, where during the rehabilitation period applicable to a conviction—

- (a) the person convicted is convicted of a further offence; and
- (b) no sentence excluded from rehabilitation under this Act is imposed on him in respect of the later conviction;

if the rehabilitation period applicable in accordance with this section to either of the convictions would end earlier than the period so applicable in relation to the other, the rehabilitation period which would (apart from this subsection) end the earlier shall be extended so as to end at the same time as the other rehabilitation period.

(5) Where the rehabilitation period applicable to a conviction is the rehabilitation period applicable [<sup>F52</sup>in accordance with section 5(8) above [<sup>F52</sup>by virtue of paragraph (g) of the definition of “relevant order” in section 5(8) above]] to an order imposing on a person any disqualification, disability, prohibition or other penalty, the rehabilitation period applicable to another conviction shall not by virtue of subsection (4) above be extended by reference to that period; but if any other sentence is imposed in respect of the first-mentioned conviction for which a rehabilitation period is prescribed by any other provision of section 5 above, the rehabilitation period applicable to another conviction shall, where appropriate, be extended under subsection (4) above by reference to the rehabilitation period applicable in accordance with that section to that sentence or, where more than one such sentence is imposed, by reference to the longer or longest of the periods so applicable to those sentences, as if the period in question were the rehabilitation period applicable to the first-mentioned conviction.

[<sup>F53</sup>(6) <sup>F54</sup> . . . for the purposes of subsection (4)(a) above there shall be disregarded—

- (a) any conviction in England and Wales of [<sup>F55</sup>a summary offence or of a scheduled offence (within the meaning of [<sup>F56</sup>section 22 of the Magistrates’ Courts Act 1980]) tried summarily in pursuance of subsection (2) of that section (summary trial where value involved is small);]
- (b) any conviction in Scotland of an offence which is not excluded from the jurisdiction of inferior courts of summary jurisdiction by virtue of section 4 of the <sup>M10</sup> Summary Jurisdiction (Scotland) Act 1954 (certain crimes not to be tried in inferior courts of summary jurisdiction); and

[<sup>F57</sup>(bb) any conviction in service disciplinary proceedings for an offence listed in [<sup>F58</sup>Schedule 1];]

- (c) any conviction by or before a court outside Great Britain of an offence in respect of conduct which, if it had taken place in any part of Great Britain,

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would not have constituted an offence under the law in force in that part of Great Britain.]

<sup>F59</sup>(7) .....

#### Textual Amendments

- F47** Words in s. 6(3) repealed (S.) (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), ss. 14(2), 206(1), [sch. 2 para. 32\(3\)](#); S.S.I. 2010/413, [art. 2\(1\)](#), Sch. (with art. 3(1))
- F48** Words in s. 6(3) substituted (1.4.2001) by 2000 c. 43, s. 74, [Sch. 7 Pt. II para. 50\(a\)](#); S.I. 2001/919, [art. 2\(f\)\(ii\)](#)
- F49** Words in s. 6(3) repealed (S.) (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), ss. 14(2), 206(1), [sch. 2 para. 32\(3\)](#); S.S.I. 2010/413, [art. 2\(1\)](#), Sch. (with art. 3(1))
- F50** Words in s. 6(3) substituted (1.4.2001) by 2000 c. 43, s. 74, [Sch. 7 Pt. II para. 50\(b\)](#); S.I. 2001/919, [art. 2\(f\)\(ii\)](#)
- F51** S. 6(3A) inserted (1.4.2010) by [Policing and Crime Act 2009](#) (c. 26), ss. 18(3), 116(1); S.I. 2010/507, [art. 5\(e\)](#) (with art. 6)
- F52** Words in s. 6(5) substituted (E.W.) (10.3.2014) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) (c. 10), ss. 139(5)(a), 151(1) (with s. 141(1)-(6)); S.I. 2014/423, art. 2(a) (with art. 3)
- F53** S. 6(6) omitted (E.W.) (10.3.2014) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) (c. 10), ss. 139(5)(b), 151(1) (with s. 141(1)-(6)); S.I. 2014/423, art. 2(a)
- F54** Words in s. 6(6) repealed (1.10.1996) by 1996 c. 46, ss. 13(3)(a), 35(2), [Sch. 7 Pt. III](#); S.I. 1996/2474, art. 2, [Sch.](#)
- F55** Words substituted by [Criminal Law Act 1977](#) (c. 45), s. 65(7), [Sch. 12](#)
- F56** Words substituted by [Magistrates' Courts Act 1980](#) (c. 43, SIF 82), [Sch. 7 para. 134](#)
- F57** S. 6(6)(bb) inserted (1.10.1996) by 1996 c. 46, s. 13(3)(b); S.I. 1996/2474, [art. 2](#)
- F58** Words in s. 6(6) substituted (E.W.) (19.12.2008) by [Criminal Justice and Immigration Act 2008](#) (c. 4), ss. 49, 153(7), [Sch. 10 para. 2](#) (with Sch. 27 para. 19); S.I. 2008/3260, [art. 2\(1\)\(d\)](#); and those same words substituted (S.) (1.11.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), ss. 203, 206(1), [Sch. 7 para. 9](#); S.S.I. 2011/354, [art. 2\(1\)](#), Sch.
- F59** S. 6(7) repealed (1.10.1996) by 1996 c. 46, s. 35(2), [Sch. 7 Pt. III](#); S.I. 1996/2474, art. 2, [Sch.](#)

#### Marginal Citations

**M10** 1954 c. 48.

## 7 Limitations on rehabilitation under this Act, etc. **E+W**

- (1) Nothing in section 4(1) above shall affect—
- (a) any right of Her Majesty, by virtue of Her Royal prerogative or otherwise, to grant a free pardon, to quash any conviction or sentence, or to commute any sentence;
  - (b) the enforcement by any process or proceedings of any fine or other sum adjudged to be paid by or imposed on a spent conviction;
  - (c) the issue of any process for the purpose of proceedings in respect of any breach of a condition or requirement applicable to a sentence imposed in respect of a spent conviction; or
  - (d) the operation of any enactment by virtue of which, in consequence of any conviction, a person is subject, otherwise than by way of sentence, to any disqualification, disability, prohibition or other penalty the period of which extends beyond the rehabilitation period applicable in accordance with section 6 above to the conviction.



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- (2) Nothing in section 4(1) above shall affect the determination of any issue, or prevent the admission or requirement of any evidence, relating to a person's previous convictions or to circumstances ancillary thereto—
- (a) in any criminal proceedings before a court in <sup>F60</sup>England and Wales] (including any appeal or reference in a criminal matter);
  - (b) in any service disciplinary proceedings or in any proceedings on appeal from any service disciplinary proceedings;
  - <sup>F61</sup>(bb) in any proceedings under Part 2 of the Sexual Offences Act 2003, or on appeal from any such proceedings;]
  - <sup>F62</sup><sup>F63</sup>(c) in any proceedings relating to adoption, the marriage of any minor, <sup>F64</sup>or the formation of a civil partnership by any minor,] the exercise of the inherent jurisdiction of the High Court with respect to minors or the provision by any person of accommodation, care or schooling for minors;
  - <sup>F63</sup>(d) in any proceedings relating to the variation or discharge of a youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2008, or on appeal from any such proceedings;]
  - (cc) in any proceedings brought under the Children Act 1989;]
  - (e) in any proceedings before a children's hearing under the <sup>M11</sup>Social Work (Scotland) Act 1968 or on appeal from any such hearing; or
  - (f) in any proceedings in which he is a party or a witness, provided that, on the occasion when the issue or the admission or requirement of the evidence falls to be determined, he consents to the determination of the issue or, as the case may be, the admission or requirement of the evidence notwithstanding the provisions of section 4(1).
  - <sup>F65</sup>(g) .....<sup>F66</sup> or
  - (h) in any proceedings brought under Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc).]
- <sup>F67</sup>     <sup>F68</sup>     .....
- (3) If at any stage in any proceedings before a judicial authority in <sup>F69</sup>England and Wales] (not being proceedings to which, by virtue of any of paragraphs (a) to (e) of subsection (2) above or of any order for the time being in force under subsection (4) below, section 4(1) above has no application, or proceedings to which section 8 below applies) the authority is satisfied, in the light of any considerations which appear to it to be relevant (including any evidence which has been or may thereafter be put before it), that justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions or to circumstances ancillary thereto, that authority may admit or, as the case may be, require the evidence in question notwithstanding the provisions of subsection (1) of section 4 above, and may determine any issue to which the evidence relates in disregard, so far as necessary, of those provisions.
- (4) The Secretary of State may by order exclude the application of section 4(1) above in relation to any proceedings specified in the order (other than proceedings to which section 8 below applies) to such extent and for such purposes as may be so specified.
- (5) No order made by a court with respect to any person otherwise than on a conviction shall be included in any list or statement of that person's previous convictions given or made to any court which is considering how to deal with him in respect of any offence.

*Status: Point in time view as at 21/12/2019.*

*Changes to legislation: Rehabilitation of Offenders Act 1974 is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Extent Information

- E2** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only.

### Textual Amendments

- F60** Words in s. 7(2)(a) substituted (E.W.) (10.3.2014) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 25 para. 6\(2\)](#) (with s. 141(1)-(6)); S.I. 2014/423, art. 2(c) (with art. 3)
- F61** S. 7(2)(bb) substituted (E.W.) (1.5.2004) by [Sexual Offences Act 2003 \(c. 42\)](#), ss. 139, 141, [Sch. 6 para. 19](#); S.I. 2004/874, [art. 2](#)
- F62** S. 7(2)(c)(cc) substituted (E.W.) (14.10.1991) for s. 7(2)(c) by [Children Act 1991 \(c. 41, SIF 20\)](#), s. 108, [Sch. 13 para. 35\(2\)](#); S.I. 1991/828, [art. 3\(2\)](#)
- F63** S. 7(2)(d) substituted (30.11.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 6(2), 153(7), [Sch. 4 para. 22](#); S.I. 2009/3074, [art. 2\(p\)\(iii\)](#)
- F64** Words in s. 7(2)(c) inserted (5.12.2005) by [Civil Partnership Act 2004](#), ss. 261(1), 263(10)(b), {Sch. 27 para. 53}; S.I. 2005/3175, [art. 2\(2\)](#)
- F65** S. 7(2)(g) added by [Banking Act 1979 \(c. 37, SIF 10\)](#), s. 43(4) and repealed by [Banking Act 1987 \(c. 22, SIF 10\)](#), s. 108(2), [Sch. 7 Pt. I](#)
- F66** S. 7(2)(h) and word added (6.4.2010) by [Coroners and Justice Act 2009 \(c. 25\)](#), ss. 158(1), 182(5) (with s. 180); S.I. 2010/816, [art. 2](#), Sch. para. 11
- F67** Words in s. 7(2) repealed (S.) (1.11.1996) by 1995 c. 36, s. 105(4)(5), Sch. 4 para. 23(4)(c), [Sch. 5](#); S.I. 1996/2203, [art. 3\(3\)](#), [Sch.](#)
- F68** Words in s. 7(2) repealed (S.) (25.9.1991) by [Age of Legal Capacity \(Scotland\) Act 1991 \(c. 50, SIF 49:8\)](#), ss. 10(2), 11(2), [Sch. 2](#)
- F69** Words in s. 7(3) substituted (E.W.) (10.3.2014) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 25 para. 6\(3\)](#) (with s. 141(1)-(6)); S.I. 2014/423, art. 2(c) (with art. 3)

### Modifications etc. (not altering text)

- C26** S. 7(4): functions transferred (28.2.2003) by [The Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2003 \(S.I. 2003/415\)](#), art. 2, [Sch.](#) (with art. 5)

### Marginal Citations

- M11** 1968 c. 49.

## 7 Limitations on rehabilitation under this Act, etc. **S**

(1) Nothing in section 4(1) above shall affect—

- (a) any right of Her Majesty, by virtue of Her Royal prerogative or otherwise, to grant a free pardon, to quash any conviction or sentence, or to commute any sentence;
- (b) the enforcement by any process or proceedings of any fine or other sum adjudged to be paid by or imposed on a spent conviction;
- (c) the issue of any process for the purpose of proceedings in respect of any breach of a condition or requirement applicable to a sentence imposed in respect of a spent conviction; or
- (d) the operation of any enactment by virtue of which, in consequence of any conviction, a person is subject, otherwise than by way of sentence, to any disqualification, disability, prohibition or other penalty the period of which extends beyond the rehabilitation period applicable in accordance with section 6 above to the conviction.

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- (2) Nothing in section 4(1) above shall affect the determination of any issue, or prevent the admission or requirement of any evidence, relating to a person's previous convictions or to circumstances ancillary thereto—
- (a) in any criminal proceedings before a court in [<sup>F162</sup>Scotland] (including any appeal or reference in a criminal matter);
  - (b) in any service disciplinary proceedings or in any proceedings on appeal from any service disciplinary proceedings;
  - [<sup>F163</sup>(bb) in any proceedings on an application for [<sup>F164</sup>an order under section 2, 2A or 20] of the Crime and Disorder Act 1998 or in any appeal against the making of such an order;]
  - [<sup>F165</sup>(bc) in any proceedings on an application under section 2, 4 or 5 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) or in any appeal under section 6 of that Act;]
  - [<sup>F166</sup>(c) in any proceedings relating to parental responsibilities or parental rights (within the meaning of section 1(3) and section 2(4) respectively of the Children (Scotland) Act 1995), guardianship, adoption or the provision by any person of accommodation, care or schooling for children under the age of 18 years;
  - (cc) in any proceedings under Part II of the Children (Scotland) Act 1995;]
  - [<sup>F63</sup>(d) in any proceedings relating to the variation or discharge of a youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2008, or on appeal from any such proceedings;]
  - <sup>F167</sup>(e) .....
  - (f) in any proceedings in which he is a party or a witness, provided that, on the occasion when the issue or the admission or requirement of the evidence falls to be determined, he consents to the determination of the issue or, as the case may be, the admission or requirement of the evidence notwithstanding the provisions of section 4(1).
  - <sup>F168</sup>(g) ..... [<sup>F66</sup> or
  - (h) in any proceedings brought under Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc).]
  - <sup>F67</sup> .....
  - <sup>F68</sup> .....
- (3) If at any stage in any proceedings before a judicial authority in [<sup>F169</sup>Scotland] (not being proceedings to which, by virtue of any of paragraphs (a) to (e) of subsection (2) above or of any order for the time being in force under subsection (4) below, section 4(1) above has no application, or proceedings to which section 8 below applies) the authority is satisfied, in the light of any considerations which appear to it to be relevant (including any evidence which has been or may thereafter be put before it), that justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions or to circumstances ancillary thereto, that authority may admit or, as the case may be, require the evidence in question notwithstanding the provisions of subsection (1) of section 4 above, and may determine any issue to which the evidence relates in disregard, so far as necessary, of those provisions.
- (4) The Secretary of State may by order exclude the application of section 4(1) above in relation to any proceedings specified in the order (other than proceedings to which section 8 below applies) to such extent and for such purposes as may be so specified.

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- (5) No order made by a court with respect to any person otherwise than on a conviction shall be included in any list or statement of that person's previous convictions given or made to any court which is considering how to deal with him in respect of any offence.

#### Extent Information

- E4** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only.

#### Textual Amendments

- F63** S. 7(2)(d) substituted (30.11.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 6(2), 153(7), [Sch. 4 para. 22](#); [S.I. 2009/3074](#), [art. 2\(p\)\(iii\)](#)
- F66** S. 7(2)(h) and word added (6.4.2010) by [Coroners and Justice Act 2009 \(c. 25\)](#), [ss. 158\(1\)](#), 182(5) (with [s. 180](#)); [S.I. 2010/816](#), [art. 2](#), [Sch. para. 11](#)
- F67** Words in s. 7(2) repealed (S.) (1.11.1996) by [1995 c. 36](#), s. 105(4)(5), [Sch. 4 para. 23\(4\)\(c\)](#), [Sch. 5](#); [S.I. 1996/2203](#), [art. 3\(3\)](#), [Sch.](#)
- F68** Words in s. 7(2) repealed (S.) (25.9.1991) by [Age of Legal Capacity \(Scotland\) Act 1991 \(c. 50\)](#), [SIF 49:8](#), [ss. 10\(2\)](#), [11\(2\)](#), [Sch. 2](#)
- F162** Word in s. 7(2)(a) substituted (S.) (10.3.2014) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 25 para. 16\(2\)](#) (with [s. 141\(1\)-\(6\)](#)); [S.I. 2014/423](#), [art. 2\(c\)](#) (with [art. 3](#))
- F163** S. 7(2)(bb) inserted (1.12.1998) by [1998 c. 37](#), s. 119, [Sch. 8 para. 36](#); [S.I. 1998/2327](#), [art. 4\(1\)\(k\)](#)
- F164** Words in s. 7(2)(bb) substituted (2.12.2002) by [Police Reform Act 2002 \(c. 30\)](#), s. 107, [Sch. 7 para. 4](#); [S.I. 2002/2750](#), [art. 2\(b\)\(ii\)](#)
- F165** S. 7(2)(bc) inserted (S.) (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 104](#), 206(1); [S.S.I. 2010/413](#), [art. 2\(1\)](#), [Sch.](#)
- F166** S. 7(2)(c)(cc) substituted (S.) (1.11.1996) for s. 7(2)(c) by [1995 c. 36](#), s. 105(4), [Sch. 4 para. 23\(4\)\(a\)](#); [S.I. 1996/2203](#), [art. 3\(3\)](#), [Sch.](#)
- F167** S. 7(2)(e) repealed (S.) (1.4.1997) by [1995 c. 36](#), s. 105(4)(5), [Sch. 4 para. 23\(4\)\(b\)](#), [Sch. 5](#); [S.I. 1996/3201](#), [art. 3\(7\)](#)
- F168** S. 7(2)(g) added by [Banking Act 1979 \(c. 37\)](#), [SIF 10](#), s. 43(4) and repealed by [Banking Act 1987 \(c. 22\)](#), [SIF 10](#), s. 108(2), [Sch. 7 Pt. I](#)
- F169** Word in s. 7(3) substituted (S.) (10.3.2014) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 25 para. 16\(3\)](#) (with [s. 141\(1\)-\(6\)](#)); [S.I. 2014/423](#), [art. 2\(c\)](#) (with [art. 3](#))

#### Modifications etc. (not altering text)

- C36** S. 7(4): functions transferred (28.2.2003) by [The Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2003 \(S.I. 2003/415\)](#), [art. 2](#), [Sch.](#) (with [art. 5](#))

## 8 Defamation actions.

- (1) This section applies to any action for libel or slander begun after the commencement of this Act by a rehabilitated person and founded upon the publication of any matter imputing that the plaintiff has committed or been charged with or prosecuted for or convicted of or sentenced for an offence which was the subject of a spent conviction.
- (2) Nothing in section 4(1) above shall affect an action to which this section applies where the publication complained of took place before the conviction in question became spent, and the following provisions of this section shall not apply in any such case.

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- (3) Subject to subsections (5) and (6) below, nothing in section 4(1) above shall prevent the defendant in an action to which this section applies from relying on any defence [F70 of justification or fair comment or] [F70 under section 2 or 3 of the Defamation Act 2013 which is available to him or any defence] of absolute or qualified privilege which is available to him, or restrict the matters he may establish in support of any such defence.
- (4) Without prejudice to the generality of subsection (3) above, where in any such action malice is alleged against a defendant who is relying on a defence of qualified privilege, nothing in section 4(1) above shall restrict the matters he may establish in rebuttal of the allegation.
- (5) A defendant in any such action shall not by virtue of subsection (3) above be entitled to rely upon [F71 the defence of justification] [F71 a defence under section 2 of the Defamation Act 2013] if the publication is proved to have been made with malice.
- (6) Subject to subsection (7) below a defendant in any such action shall not, by virtue of subsection (3) above, be entitled to rely on any matter or adduce or require any evidence for the purpose of establishing (whether under [F72 section 14 of the Defamation Act 1996] or otherwise) the defence that the matter published constituted a fair and accurate report of judicial proceedings if it is proved that the publication contained a reference to evidence which was ruled to be inadmissible in the proceedings by virtue of section 4(1) above.
- (7) Subsection (3) above shall apply without the qualifications imposed by subsection (6) above in relation to—
- (a) any report of judicial proceedings contained in any bona fide series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law, and
  - (b) any report or account of judicial proceedings published for bona fide educational, scientific or professional purposes, or given in the course of any lecture, class or discussion given or held for any of those purposes.
- [F73 (8) In the application of this section to Scotland—
- (a) for the reference in subsection (1) to libel and slander there shall be substituted a reference to defamation;
  - (b) for references to the plaintiff and the defendant there shall be substituted respectively references to the pursuer and the defender; and
  - (c) for references to the defence of justification there shall be substituted references to the defence of veritas.]

#### Textual Amendments

- F70** Words in s. 8(3) substituted (E.W.) (1.1.2014) by [Defamation Act 2013 \(c. 26\)](#), **ss. 16(2)**, 17(4); S.I. 2013/3027, **art. 2**
- F71** Words in s. 8(5) substituted (E.W.) (1.1.2014) by [Defamation Act 2013 \(c. 26\)](#), **ss. 16(3)**, 17(4); S.I. 2013/3027, **art. 2**
- F72** Words in s. 8(6) substituted (1.4.1999) by [1996 c. 31](#), **ss. 14(4)**, 19(3) (with s. 20(2)); S.I. 1999/817, **art. 2(a)**
- F73** S. 8(8) omitted (E.W.) (10.3.2014) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 25 para. 7** (with s. 141(1)-(6)); S.I. 2014/423, **art. 2(c)** (with art. 3)

*Status: Point in time view as at 21/12/2019.*

*Changes to legislation: Rehabilitation of Offenders Act 1974 is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## [<sup>F74</sup>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;
  - <sup>F75</sup>(c) . . . . .
  - (d) anything corresponding to a caution <sup>F76</sup>... falling within [<sup>F77</sup> paragraph (a) or (b)] (however described) which is given to a person in respect of an offence under the law of a country outside England and Wales [<sup>F78</sup> and which is not an alternative to prosecution (within the meaning of section 8AA)].

### Textual Amendments

- F74** S. 8A inserted (E.W.) (19.12.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 49, 153(7), [Sch. 10 para. 3](#) (with [Sch. 27 para. 19](#)); S.I. 2008/3260, [art. 2\(1\)\(d\)](#)
- F75** S. 8A(2)(c) omitted (8.4.2013) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 24 para. 2\(a\)](#) (with s. 135(4)); S.I. 2013/453, [art. 4\(f\)](#)
- F76** Words in s. 8A(2)(d) omitted (8.4.2013) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 24 para. 2\(b\)\(i\)](#) (with s. 135(4)); S.I. 2013/453, [art. 4\(f\)](#)
- F77** Words in s. 8A(2)(d) substituted (8.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 24 para. 2\(b\)\(ii\)](#) (with s. 135(4)); S.I. 2013/453, [art. 4\(f\)](#)
- F78** Words in s. 8A(2)(d) inserted (E.W.) (10.3.2014) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 25 para. 8](#) (with s. 141(1)-(6)); S.I. 2014/423, [art. 2\(c\)](#) (with [art. 3](#))

## [<sup>F79</sup>8AA Protection afforded to spent alternatives to prosecution

- (1) The following provisions of this Act apply, with the modifications specified in subsection (3), to a spent alternative to prosecution as they apply to a spent caution—
  - (a) section 9A (unauthorised disclosure of spent cautions), and
  - (b) paragraphs 2 to 6 of Schedule 2 (protection relating to spent cautions and ancillary circumstances).
- (2) An alternative to prosecution becomes spent for the purposes of this Act when it becomes spent under the law of Scotland.
- (3) The modifications mentioned in subsection (1) are—
  - (a) references to cautions are to be read as references to alternatives to prosecution (and references to cautioned are to be read accordingly),
  - (b) references to the offence which was the subject of the caution are to be read as references to the offence in respect of which the alternative to prosecution was given,
  - (c) paragraphs (e) and (f) of paragraph 2(1) of Schedule 2 are to be read as if they were—

*Status: Point in time view as at 21/12/2019.*

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- “(e) anything done or undergone in pursuance of the terms of the alternative to prosecution,”
  - (d) references to cautions for an offence are to be read as references to alternatives to prosecution in respect of an offence, and
  - (e) the reference in paragraph 5 of Schedule 2 to the rehabilitation period applicable to the caution is to be read as a reference to the time at which the alternative to prosecution becomes spent.
- (4) In this section “alternative to prosecution” has the same meaning as in section 8B as that section has effect in the law of Scotland but disregarding subsection (1)(f) of that section.]

#### Textual Amendments

**F79** S. 8AA inserted (E.W.) (10.3.2014) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) (c. 10), **ss. 139(6), 151(1)** (with s. 141(1)-(6)); S.I. 2014/423, art. 2(a) (with art. 3)

#### [<sup>F80</sup>8B Protection afforded to spent alternatives to prosecution: Scotland

- (1) For the purposes of this Act, a person has been given an alternative to prosecution in respect of an offence if the person (whether before or after the commencement of this section)—
- (a) has been given a warning in respect of the offence by—
    - (i) a constable in Scotland, or
    - (ii) a procurator fiscal,
  - (b) has accepted, or is deemed to have accepted—
    - (i) a conditional offer issued in respect of the offence under section 302 of the Criminal Procedure (Scotland) Act 1995 (c.46), or
    - (ii) a compensation offer issued in respect of the offence under section 302A of that Act,
  - (c) has had a work order made against the person in respect of the offence under section 303ZA of that Act,
  - [<sup>F81</sup>(ca) has, under subsection (5) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6), given notice of intention to comply with a restoration notice given under subsection (4) of that section,]
  - (d) has been given a fixed penalty notice in respect of the offence under section 129 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),
  - (e) has accepted an offer made by a procurator fiscal in respect of the offence to undertake an activity or treatment or to receive services or do any other thing as an alternative to prosecution, or
  - (f) in respect of an offence under the law of a country or territory outside Scotland, has been given, or has accepted or is deemed to have accepted, anything corresponding to a warning, offer, order or notice falling within paragraphs (a) to (e) under the law of that country or territory.
- (2) In this Act, references to an “alternative to prosecution” are to be read in accordance with subsection (1).
- (3) Schedule 3 to this Act (protection for spent alternatives to prosecution: Scotland) has effect.]

*Status: Point in time view as at 21/12/2019.*

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### Textual Amendments

- F80** S. 8B inserted (S.) (1.11.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 109\(2\)](#), [206\(1\)](#); S.S.I. 2011/354, [art. 2\(1\)](#), Sch.
- F81** S. 8B(1)(ca) inserted (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), [ss. 40\(2\)](#), [43\(1\)](#) (with [s. 41\(1\)](#)); S.S.I. 2011/279, [art. 2\(1\)\(q\)](#)

## 9 Unauthorized disclosure of spent convictions.

(1) In this section—

“official record” means a record kept for the purposes of its functions by any court, police force, Government department, local or other public authority in Great Britain, or a record kept, in Great Britain or elsewhere, for the purposes of any of Her Majesty’s forces, being in either case a record containing information about persons convicted of offences; and

“specified information” means information imputing that a named or otherwise identifiable rehabilitated living person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which is the subject of a spent conviction.

- (2) Subject to the provisions of any order made under subsection (5) below, any person who, in the course of his official duties, has or at any time has had custody of or access to any official record or the information contained therein, shall be guilty of an offence if, knowing or having reasonable cause to suspect that any specified information he has obtained in the course of those duties is specified 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) above it shall be a defence for the [<sup>F82</sup>defendant <sup>F83</sup>...][<sup>F82</sup>accused person] to show that the disclosure was made—
- to the rehabilitated person or to another person at the express request of the rehabilitated person; or
  - to a person whom he reasonably believed to be the rehabilitated person or to another person at the express request of a person whom he reasonably believed to be the rehabilitated person.
- (4) Any person who obtains any specified 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 specified information derived from an official record from the provisions of subsection (2) above in such cases or classes of case as may be specified in the order.
- (6) Any person guilty of an offence under subsection (2) above shall be liable on summary conviction to a fine not exceeding [<sup>F84</sup>level 4 on the standard scale].
- (7) Any person guilty of an offence under subsection (4) above shall be liable on summary conviction to a fine not exceeding [<sup>F85</sup>level 5 on the standard scale] or to imprisonment for a term not exceeding six months, or to both.
- [<sup>F86</sup>(8) Proceedings for an offence under subsection (2) above shall not [<sup>F87</sup>, in England and Wales,] be instituted except by or on behalf of the Director of Public Prosecutions.]



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### Textual Amendments

- F82** Words in s. 9(3) substituted (S.) (10.3.2014) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 25 para. 17(2)** (with s. 141(1)-(6)); S.I. 2014/423, art. 2(c) (with art. 3)
- F83** Words in s. 9(3) omitted (E.W.) (10.3.2014) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 25 para. 9(2)** (with s. 141(1)-(6)); S.I. 2014/423, art. 2(c) (with art. 3)
- F84** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46** and (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289F, 289G**
- F85** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46** and (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **ss. 289F, 289G**
- F86** S. 9(8) omitted (S.) (10.3.2014) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 25 para. 17(3)** (with s. 141(1)-(6)); S.I. 2014/423, art. 2(c) (with art. 3)
- F87** Words in s. 9(8) omitted (E.W.) (10.3.2014) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 25 para. 9(3)** (with s. 141(1)-(6)); S.I. 2014/423, art. 2(c) (with art. 3)

### Modifications etc. (not altering text)

- C27** S. 9(8) explained by [Criminal Jurisdiction Act 1975 \(c. 59\)](#), s. 12

## [<sup>F88</sup>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 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.

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- (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.]

#### Textual Amendments

**F88** S. 9A inserted (E.W.) (19.12.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 49, 153(7), [Sch. 10 para. 4](#) (with [Sch. 27 para. 19](#)); [S.I. 2008/3260](#), [art. 2\(1\)\(d\)](#)

#### [<sup>F89</sup>B] **Unauthorised disclosure of spent alternatives to prosecution: Scotland**

- (1) In this section—
  - (a) “official record” means a record that—
    - (i) contains information about persons given an alternative to prosecution in respect of an offence, and
    - (ii) is kept for the purposes of its functions by a court, [<sup>F90</sup>the Police Service of Scotland or another] police force, Government department, part of the Scottish Administration or other local or public authority in Scotland,
  - (b) “relevant information” means information imputing that a named or otherwise identifiable living person has committed, been charged with, prosecuted for or given an alternative to prosecution in respect of an offence which is the subject of an alternative to prosecution which has become spent,
  - (c) “subject of the information”, in relation to relevant information, means the named or otherwise identifiable living person to whom the information relates.
- (2) Subsection (3) applies to a person who, in the course of the person's official duties (anywhere in the United Kingdom), has or has had custody of or access to an official record or the information contained in an official record.
- (3) The person commits an offence if the person—
  - (a) obtains relevant information in the course of the person's official duties,
  - (b) knows or has reasonable cause to suspect that the information is relevant information, and
  - (c) discloses the information to another person otherwise than in the course of the person's official duties.
- (4) Subsection (3) is subject to the terms of an order under subsection (6).

*Status: Point in time view as at 21/12/2019.*

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- (5) In proceedings for an offence under subsection (3), it is a defence for the accused to show that the disclosure was made—
  - (a) to the subject of the information or to a person whom the accused reasonably believed to be the subject of the information, or
  - (b) to another person at the express request of the subject of the information or of a person whom the accused reasonably believed to be the subject of the information.
- (6) The Scottish Ministers may by order provide for the disclosure of relevant information derived from an official record to be excepted from the provisions of subsection (3) in cases or classes of cases specified in the order.
- (7) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (8) A person commits an offence if the person obtains relevant information from an official record by means of fraud, dishonesty or bribery.
- (9) A person guilty of an offence under subsection (8) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding 6 months, or to both.]

#### Textual Amendments

- F89** S. 9B inserted (S.) (1.11.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 109(3)**, 206(1); S.S.I. 2011/354, **art. 2(1)**, Sch.
- F90** Words in s. 9B(1)(a)(ii) inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 7 para. 3**; S.S.I. 2013/51, **art. 2** (with transitional provisions and savings in S.S.I. 2013/121)

## 10 Orders.

- (1) Any power of the Secretary of State to make an order under any provision of this Act shall be exercisable by statutory instrument, and an order made under any provision of this Act except section 11 below may be varied or revoked by a subsequent order made under that provision.
- [<sup>F91</sup>(1A) Any power of the Secretary of State to make an order under any provision of this Act includes power—
  - (a) to make different provision for different purposes, and
  - (b) to make incidental, consequential, supplementary, transitional, transitory or saving provision.
- (1B) The power of the Secretary of State to make an order under section 5(6) includes power to make consequential provision which amends or repeals any provision of this Act or any other enactment.]
- (2) No order shall be made by the Secretary of State under any provision of this Act other than section 11 below unless a draft of it has been laid before, and approved by resolution of, each House of Parliament.

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#### Textual Amendments

**F91** S. 10(1A)(1B) inserted (E.W.) (10.3.2014) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 25 para. 10** (with s. 141(1)-(6)); S.I. 2014/423, art. 2(c) (with art. 3)

### [<sup>F92</sup>10A Order-making powers: Scottish Ministers

- (1) Any power exercisable by the Scottish Ministers to make an order under this Act includes power—
  - (a) to make different provision for different purposes,
  - (b) to make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (2) To the extent that the power to make an order under section 5(11) is exercisable by the Scottish Ministers, that power includes power exercisable by the Scottish Ministers to make consequential provision modifying any enactment (including this Act).]

#### Textual Amendments

**F92** S. 10A inserted (S.) (21.12.2019) by [Management of Offenders \(Scotland\) Act 2019 \(asp 14\)](#), **ss. 32(2)**, 63(2) (with s. 37); S.S.I. 2019/413, reg. 2(a)

## 11 Citation, commencement and extent.

- (1) This Act may be cited as the Rehabilitation of Offenders Act 1974.
- (2) This Act shall come into force on 1st July 1975 or such earlier day as the Secretary of State may by order appoint.
- (3) This Act shall not apply to Northern Ireland.

#### Modifications etc. (not altering text)

**C28** Power conferred by s. 11(2) to bring Act into operation before 1.7.1975 was not exercised

*Status: Point in time view as at 21/12/2019.*

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## [<sup>F93</sup>[<sup>F94</sup>[<sup>F95</sup>SCHEDULE 1]

### SECTION 6(4): SERVICE DISCIPLINARY CONVICTIONS

#### Textual Amendments

- F93** Sch. 1 omitted (E.W.) (10.3.2014) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 25 para. 11](#) (with s. 141(1)-(6)); S.I. 2014/423, art. 2(c) (with art. 3)
- F94** Sch. inserted (1.10.1996) by [1996 c. 46](#), s. 13(4)(5)(6), [Sch. 4](#); S.I. 1996/2474, art. 2
- F95** Sch. renumbered as Sch. 1 (E.W.) (19.12.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 49, 153(7), [Sch. 10 para. 5](#) (with Sch. 27 para. 19); S.I. 2008/3260, [art. 2\(1\)\(d\)](#); and Sch. so renumbered (S.) (1.11.20011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 203, 206(1), Sch. 7 para. 10; S.S.I. 2011/354, [art. 2](#), Sch.

- 1 Any conviction for an offence mentioned in this Schedule is a conviction referred to in section 6(6)(bb) of this Act (convictions to be disregarded for the purposes of extending a period of rehabilitation following subsequent conviction).

#### *Provisions of the Army Act 1955 and the Air Force Act 1955*

- 2 Any offence under any of the provisions of the <sup>M12</sup> Army Act 1955 or the <sup>M13</sup> Air Force Act 1955 listed in the first column of the following table:—

<i>Provision</i>	<i>Subject-matter</i>
Section 29	Offences by or in relation to sentries, persons on watch etc.
Section 29A	Failure to attend for duty, neglect of duty etc.
Section 33	Insubordinate behaviour.
Section 34	Disobedience to lawful commands.
Section 34A	Failure to provide a sample for drug testing.
Section 35	Obstruction of provost officers.
Section 36	Disobedience to standing orders.
Section 38	Absence without leave.
Section 39	Failure to report or apprehend deserters or absentees.
Section 42	Malingering.
Section 43	Drunkenness.
Section 43A	Fighting, threatening words etc.
Section 44	Damage to, and loss of, public or service property etc.
Section 44A	Damage to, and loss of, Her Majesty's aircraft or aircraft material.

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Section 44B	Interference etc. with equipment, messages or signals.
Section 45	Misapplication and waste of public or service property.
Section 46	Offences relating to issues and decorations.
Section 47	Billeting offences.
Section 48	Offences in relation to requisitioning of vehicles.
Section 50	Inaccurate certification.
Section 51	Low flying.
Section 52	Annoyance by flying.
Section 54	Permitting escape, and unlawful release of prisoners.
Section 55	Resistance to arrest.
Section 56	Escape from confinement.
Section 57	Offences in relation to courts-martial.
Section 61	Making of false statements on enlistment.
Section 62	Making of false documents.
Section 63	Offences against civilian population.
Section 69	Conduct to prejudice of military discipline or air-force discipline.

**Marginal Citations**

**M12** 1955 c. 18.

**M13** 1955 c. 19.

- 3 Any offence under section 68 (attempt to commit military offence) or 68A (aiding and abetting etc. , and inciting, military offence) of the <sup>M14</sup> Army Act 1955 in relation to an offence under any of the provisions of that Act listed in paragraph 2.

**Marginal Citations**

**M14** 1955 c. 18.

- 4 Any offence under section 68 (attempt to commit air-force offence) or 68A (aiding and abetting etc. , and inciting, air-force offence) of the <sup>M15</sup> Air Force Act 1955 in relation to an offence under any of the provisions of that Act listed in paragraph 2.

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#### Marginal Citations

M15 1955 c. 19.

#### Provisions of the Naval Discipline Act 1957

5 Any offence under any of the provisions of the<sup>M16</sup> Naval Discipline Act 1957 listed in the first column of the following table:—

<i>Provision</i>	<i>Subject-matter</i>
Section 6	Offences by or in relation to sentries, persons on watch etc.
Section 7	Failure to attend for duty, neglect of duty etc.
Section 11	Insubordinate behaviour.
Section 12	Disobedience to lawful commands.
Section 12A	Failure to provide a sample for drug testing.
Section 13	Fighting, threatening words etc.
Section 14	Obstruction of provost officers.
Section 14A	Disobedience to standing orders.
Section 17	Absence without leave etc.
Section 18	Failure to report deserters and absentees.
Section 21	Low flying.
Section 22	Annoyance by flying.
Section 25	Inaccurate certification.
Section 27	Malingering.
Section 28	Drunkenness.
Section 29	Damage to, and loss of, public or service property etc.
Section 29A	Damage to, and loss of, Her Majesty's aircraft or aircraft material.
Section 29B	Interference etc. with equipment, messages or signals.
Section 30	Misapplication and waste of public or service property.
Section 31	Offences relating to issues and decorations.
Section 32	Billeting offences.

*Status: Point in time view as at 21/12/2019.*

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Section 33	Offences in relation to the requisitioning of vehicles etc.
Section 33A	Permitting escape, and unlawful release of prisoners.
Section 33B	Resistance to arrest.
Section 33C	Escape from confinement.
Section 34A	False statements on entry.
Section 35	Falsification of documents.
Section 35A	Offences against civilian population.
Section 38	Offences in relation to courts-martial.
Section 39	Conduct to the prejudice of naval discipline.

**Marginal Citations**

**M16** 1957 c. 53.

- 6 Any offence under section 40 (attempt to commit naval offence) or 41 (aiding and abetting etc. , and inciting, naval offence) of the <sup>M17</sup> Naval Discipline Act 1957 in relation to an offence under any of the provisions of that Act listed in paragraph 5.

**Marginal Citations**

**M17** 1957 c. 53.

*<sup>F96</sup>Provisions of the Armed Forces Act 2006*

**Textual Amendments**

**F96** Sch. 1 para. 7 and cross-heading inserted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by virtue of [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383, [Sch. 16 para. 66](#); [S.I. 2009/812](#), [art. 3](#); [S.I. 2009/1167](#), [art. 4](#) (and see savings (having effect from 24.4.2009 for specified purposes and 31.10.2009 otherwise) in [S.I. 2009/1059](#), [arts 1\(2\)\(3\)](#), 205, [Sch. 1 para. 14](#))

- 7 Any service offence within the meaning of the Armed Forces Act 2006 except one punishable in the case of an offender aged 18 or over with imprisonment for more than two years.]]]



*Status: Point in time view as at 21/12/2019.*

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## [<sup>F97</sup>SCHEDULE 2

### PROTECTION FOR SPENT CAUTIONS

#### Textual Amendments

**F97** Sch. 2 inserted (E.W.) (19.12.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 49, 153(7), [Sch. 10 para. 6](#) (with [Sch. 27 para. 19](#)); S.I. 2008/3260, [art. 2\(1\)\(d\)](#)

#### *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)) [<sup>F98</sup>—
    - (i) at the end of the period of three months from the date on which the caution is given, or
    - (ii) if earlier, when the caution ceases to have effect; and]
  - (b) in any other case, at the time the caution is given.

<sup>F99</sup>(2) .....

<sup>F99</sup>(3) .....

#### Textual Amendments

**F98** Sch. 2 para. 1(1)(a)(i)(ii) substituted for words (10.3.2014) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 139\(7\)\(a\)](#), 151(1) (with s. 141(1)-(6)); S.I. 2014/423, [art. 2\(a\)](#) (with [art. 3](#))

**F99** Sch. 2 para. 1(2)(3) omitted (10.3.2014) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 139\(7\)\(b\)](#), 151(1) (with s. 141(1)-(6)); S.I. 2014/423, [art. 2\(a\)](#) (with [art. 3](#))

- 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 [<sup>F100</sup>youth caution given under section 66ZA] 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 [<sup>F101</sup>66ZB(2) or (3)] 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.

*Status: Point in time view as at 21/12/2019.*

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- (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.

#### **Textual Amendments**

- F100** Words in Sch. 2 para. 2(1)(e) substituted (8.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 24 para. 3\(a\)](#) (with s. 135(4)); S.I. 2013/453, art. 4(f)
- F101** Words in Sch. 2 para. 2(1)(e) substituted (8.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 24 para. 3\(b\)](#) (with s. 135(4)); S.I. 2013/453, art. 4(f)

#### *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.
- (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.

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**Modifications etc. (not altering text)**

- C29** Sch. 2 para. 3(1) excluded (18.12.2008) by S.I. 1975/1023, art. 5, **Sch. 3** (as amended by the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2008 (S.I. 2008/3259), art. 6)
- C30** Sch. 2 para. 3(1)(5) excluded (7.7.2009) by S.I. 1975/1023, art. 6(3) (as inserted by The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2009 (S.I. 2009/1818), art. 6)
- C31** Sch. 2 para. 3(3) excluded (18.12.2008) by S.I. 1975/1023, art. 3 (as amended by the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2008 (S.I. 2008/3259), art. 4)
- C32** Sch. 2 para. 3(3) excluded (7.7.2009) by S.I. 1975/1023, art. 6(1) (as inserted by The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2009 (S.I. 2009/1818), art. 6)
- C33** Sch. 2 para. 3(3) excluded (31.3.2010) by S.I. 1975/1023, art. 3A (as inserted by The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2010 (S.I. 2010/1153), art. 3)  
Sch. 2 para. 3(3) excluded (31.3.2010) by S.I. 1975/1023, art. 6 (as substituted by The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2010 (S.I. 2010/1153), art. 4)
- C34** Sch. 2 para. 3(5) excluded (18.12.2008) by S.I. 1975/1023, art. 4 (as amended by the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2008 (S.I. 2008/3259), art. 5)

- 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 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.

*Status: Point in time view as at 21/12/2019.*

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- (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).]

## [<sup>F102</sup>SCHEDULE 3

(introduced by section 8B(3))

### PROTECTION FOR SPENT ALTERNATIVES TO PROSECUTION: SCOTLAND

#### Textual Amendments

**F102** Sch. 3 inserted (S.) (1.11.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. [109\(4\)](#), [206\(1\)](#); S.S.I. 2011/354, [art. 2\(1\)](#), Sch.

#### *Preliminary*

- 1 (1) For the purposes of this Act, an alternative to prosecution given to any person (whether before or after the commencement of this Schedule) becomes spent—
- (a) in the case of—
- (i) a warning referred to in paragraph (a) of subsection (1) of section 8B, or
- (ii) a fixed penalty notice referred to in paragraph (d) of that subsection, at the time the warning or notice is given,
- (b) in any other case, at the end of the relevant period.
- (2) The relevant period in relation to an alternative to prosecution is the period of 3 months beginning on the day on which the alternative to prosecution is given.
- (3) Sub-paragraph (1)(a) is subject to sub-paragraph (5).
- (4) Sub-paragraph (2) is subject to sub-paragraph (6).
- (5) If a person who is given a fixed penalty notice referred to in section 8B(1)(d) in respect of an offence is subsequently prosecuted and convicted of the offence, the notice—
- (a) becomes spent at the end of the rehabilitation period for the offence, and
- (b) is to be treated as not having become spent in relation to any period before the end of that rehabilitation period.
- (6) If a person who is given an alternative to prosecution (other than one to which sub-paragraph (1)(a) applies) in respect of an offence is subsequently prosecuted and convicted of the offence—
- (a) the relevant period in relation to the alternative to prosecution ends at the same time as the rehabilitation period for the offence ends, and
- (b) if the conviction occurs after the end of the period referred to in sub-paragraph (2), the alternative to prosecution is to be treated as not having become spent in relation to any period before the end of the rehabilitation period for the offence.

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- 2 (1) In this Schedule, “ ancillary circumstances ”, in relation to an alternative to prosecution, means any circumstances of the following—
- (a) the offence in respect of which the alternative to prosecution is given or the conduct constituting the offence,
  - (b) any process preliminary to the alternative to prosecution being given (including consideration by any person of how to deal with the offence and the procedure for giving the alternative to prosecution),
  - (c) any proceedings for the offence which took place before the alternative to prosecution was given (including anything that happens after that time for the purpose of bringing the proceedings to an end),
  - (d) any judicial review proceedings relating to the alternative to prosecution,
  - (e) anything done or undergone in pursuance of the terms of the alternative to prosecution.
- (2) Where an alternative to prosecution is given in respect of two or more offences, references in sub-paragraph (1) to the offence in respect of which the alternative to prosecution is given includes a reference to each of the offences.
- (3) In this Schedule, “ proceedings before a judicial authority ” has the same meaning as in section 4.

*Protection for spent alternatives to prosecution and ancillary circumstances*

- 3 (1) A person who is given an alternative to prosecution in respect of an offence is, from the time the alternative to prosecution becomes spent, to be treated for all purposes in law as a person who has not committed, been charged with or prosecuted for, or been given an alternative to prosecution in respect of, the offence.
- (2) Despite any enactment or rule of law to the contrary—
- (a) where an alternative to prosecution given to a person in respect of an offence has become spent, evidence is not admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in Scotland to prove that the person has committed, been charged with or prosecuted for, or been given an alternative to prosecution in respect of, the offence,
  - (b) a person must not, in any such proceedings, be asked any question relating to the person's past which cannot be answered without acknowledging or referring to an alternative to prosecution that has become spent or any ancillary circumstances, and
  - (c) if a person is asked such a question in any such proceedings, the person is not required to answer it.
- (3) Sub-paragraphs (1) and (2) do not apply in relation to any proceedings—
- (a) for the offence in respect of which the alternative to prosecution was given, and
  - (b) which are not part of the ancillary circumstances.
- 4 (1) This paragraph applies where a person (“A”) is asked a question, otherwise than in proceedings before a judicial authority, seeking information about—
- (a) A's or another person's previous conduct or circumstances,
  - (b) offences previously committed by A or the other person, or
  - (c) alternatives to prosecution previously given to A or the other person.

*Status: Point in time view as at 21/12/2019.*

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- (2) The question is to be treated as not relating to alternatives to prosecution that have become spent or to any ancillary circumstances and may be answered accordingly.
- (3) A is not to be subjected to any liability or otherwise prejudiced in law because of a failure to acknowledge or disclose an alternative to prosecution that has become spent or any ancillary circumstances in answering the question.
- 5 (1) An obligation imposed on a person (“A”) by a rule of law or by the provisions of an agreement or arrangement to disclose any matter to another person does not extend to requiring A to disclose an alternative to prosecution (whether one given to A or another person) that has become spent or any ancillary circumstances.
- (2) An alternative to prosecution that has become spent or any ancillary circumstances, or any failure to disclose an alternative to prosecution that has become spent or any ancillary circumstances, is not a ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing the person in any way in any occupation or employment.
- 6 The Scottish Ministers may by order—
- (a) exclude or modify the application of either or both of sub-paragraphs (2) and (3) of paragraph 4 in relation to questions put in such circumstances as may be specified in the order,
- (b) provide for exceptions from any of the provisions of paragraph 5 in such cases or classes of case, or in relation to alternatives to prosecution of such descriptions, as may be specified in the order
- 7 Paragraphs 3 to 5 do not affect—
- (a) the operation of an alternative to prosecution, or
- (b) the operation of an enactment by virtue of which, because of an alternative to prosecution, a person is subject to a disqualification, disability, prohibition or other restriction or effect for a period extending beyond the time at which the alternative to prosecution becomes spent
- 8 (1) Section 7(2), (3) and (4) apply for the purpose 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 evidence, relating to alternatives to prosecution previously given to a person and to ancillary circumstances as it applies to matters relating to a person's previous convictions and circumstances ancillary thereto.
- (3) Subsection (3) applies to evidence of alternatives to prosecution previously given to a person and ancillary circumstances as it applies to evidence of a person's previous convictions and the circumstances ancillary thereto.
- (4) For that purpose, subsection (3) has effect as if—
- (a) a 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.
- (5) Subsection (4) applies for the purpose of excluding the application of paragraph 3.
- (6) For that purpose, subsection (4) has effect as if the words “(other than proceedings to which section 8 below applies)” were omitted.

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(7) References in the provisions applied by this paragraph to section 4(1) are to be read as references to paragraph 3.]

[<sup>F103</sup>9 (1) The powers conferred on the Scottish Ministers by—

- (a) paragraph 6, and
- (b) section 7(4), as applied by paragraph 8,

may be exercised to make provision relating to reserved matters and are not subject to the restrictions imposed by section 29(2)(b) or (c) of, or Schedule 4 to, the Scotland Act 1998.

(2) In this paragraph, “reserved matters” has the same meaning as in the Scotland Act 1998.]

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**Textual Amendments**

**F103** Sch. 3 para. 9 inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), ss. 19, 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 15

**Status:**

Point in time view as at 21/12/2019.

**Changes to legislation:**

Rehabilitation of Offenders Act 1974 is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.