

Status: Point in time view as at 30/11/2020.

Changes to legislation: Rehabilitation of Offenders Act 1974, SCHEDULE 2 is up to date with all changes known to be in force on or before 07 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)

[^{F1}SCHEDULE 2

PROTECTION FOR SPENT CAUTIONS

Textual Amendments

- F1** 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)) [^{F2}—
 - (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.

^{F3}(2)

^{F4F3}(3)

Textual Amendments

- F2** 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](#))
- F3** 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](#))
- F4** By [Management of Offenders \(Scotland\) Act 2019 \(asp 14\)](#), s. 63(2), [sch. 2 para. 1\(17\)\(a\)](#); S.S.I. 2020/245, [reg. 2](#), [sch.](#) (with [reg. 3](#)) it is provided that (S.) (30.11.2020) in Sch. 2 para. 1(3)(a)(b) the word “disclosure” is substituted for “rehabilitation” in each place where it occurs [Editorial note: The purported substitution cannot be applied because the affected provision does not extend to Scotland.]

- 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 [^{F5}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 [^{F6}66ZB(2) or (3)] of that Act;

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- (f) in the case of a conditional caution, any conditions attached to the caution or anything done in pursuance of or undergone in compliance with those conditions.
- (2) Where the caution relates to two or more offences, references in sub-paragraph (1) to the offence which was the subject of the caution include a reference to each of the offences concerned.
- (3) In this Schedule “proceedings before a judicial authority” has the same meaning as in section 4.

Textual Amendments

- F5** 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)
- F6** 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

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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.

Modifications etc. (not altering text)

- C1** 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**)
- C2** 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**)
- C3** 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**)
- C4** 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**)
- C5** 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**)
- C6** 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
 - ^{F7}(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.

Textual Amendments

- F7** By Management of Offenders (Scotland) Act 2019 (asp 14), s. 63(2), **sch. 2 para. 1(17)(b)**; S.S.I. 2020/245, reg. 2, **sch.** (with reg. 3) it is provided that (S.) (30.11.2020) in Sch. 2 para. 5(b) the word “disclosure” is substituted for “rehabilitation” [Editorial note: The purported substitution cannot be applied because the affected provision does not extend to Scotland.]

- 6 (1) Section 7(2), (3) and (4) apply for the purposes of this Schedule as follows.

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- (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.
- (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).]

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