

CRIMINAL JUSTICE AND IMMIGRATION ACT 2008

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Schedule 9: Alternatives to prosecution for offenders under 18

New section 66H of the 1998 Act: Interpretation

Section 49 and Schedule 10: Protection for spent cautions under the Rehabilitation of Offenders Act 1974

362. [Section 49](#) introduces Schedule 10 which amends the 1974 Act so as to provide protection of spent cautions.
363. The 1974 Act supports the rehabilitation into society of reformed offenders. Under the Act, following a certain period of time (which varies according to the severity of the sentence passed), all convictions (except those resulting in prison sentences of over 30 months) are regarded as “spent”. As a result the offender is regarded as rehabilitated. For most purposes the Act treats a rehabilitated person as if he or she had never committed an offence and, as such, they are not obliged to declare them, for example, when applying for a job. There are certain exceptions, including where an ex-offender is applying for certain positions or jobs, such as those involving work with vulnerable adults or children.
364. The 1974 Act currently applies only to convictions. Schedule 10 amends the 1974 Act so as to apply its provisions, with appropriate modifications, to adult and youth conditional cautions, other cautions (for example, “simple” cautions issued by the police), reprimands and warnings given to children and young people, and cautions given in a jurisdiction outside England and Wales (see the definition of a caution in new section 8A(2) of the 1974 Act inserted by [paragraph 3](#) of Schedule 10).
365. [Paragraph 4](#) of Schedule 10 inserts new section 9A into the 1974 Act; this makes provision in respect of the unauthorised disclosure of spent cautions (mirroring the provisions in section 9 of the 1974 Act relating to the unauthorised disclosure of spent convictions). New section 9A makes it an offence for a relevant person (that is, someone who in the course of his official duties has access to caution information) to disclose caution information otherwise than in the course of his or her duties or for any person to obtain caution information through fraud, dishonesty or bribery. New section 9A(5) enables the Secretary of State, by order (subject to the affirmative resolution procedure), to exempt specified classes of disclosure from the ambit of the offence. A similar order-making power is contained in section 9(5) of the 1974 Act, although the power has not been exercised.

366. [Paragraph 6](#) of Schedule 10 inserts a new Schedule 2 into the 1974 Act. Paragraph 1 of new Schedule 2 sets out the rehabilitation period for spent cautions. In the case of “simple” police cautions, reprimands and warnings, and cautions given in a jurisdiction outside England and Wales, the caution becomes spent at the time it is given. In the case of adult and youth conditional cautions the caution becomes spent after three months. This rehabilitation period for a conditional caution is extended where the offender is subsequently prosecuted and convicted for the offence in respect of which the conditional caution was given. In such cases the rehabilitation period for the caution is extended so that it is the same as the rehabilitation period for the offence.
367. Paragraph 3 of new Schedule 2 to the 1974 Act sets out the protection afforded to persons relating to their spent cautions and the ancillary circumstances in relation to such cautions (this term is defined in paragraph 2 of new Schedule 2 and includes the offence in respect of which the caution was given and any proceedings in relation to that offence). As a result of the protections afforded, no one may ask a question in civil proceedings that might lead to the disclosure of a spent caution and any person with a spent caution applying for a job can truthfully answer “no” if asked if he or she has ever been cautioned. Failure to disclose a spent caution may not be taken as grounds for dismissing a person from employment. Under new paragraph 4 of Schedule 2 the Secretary of State may, by order (subject to the affirmative resolution procedure), specify exceptions to the protections afforded under paragraph 3. It is expected that such exceptions will be similar to those specified in the [Rehabilitation of Offenders Act 1974 \(Exceptions\) Order 1975 \(SI 1975/1023\)](#), as amended, which, amongst other things, sets out kinds of employment, such as working with children and vulnerable adults, where spent cautions must still be disclosed.
368. Paragraph 5 of new Schedule 2 to the 1974 Act ensures that the protections afforded by paragraph 3 do not affect the operation of the caution itself (for example, if the conditions attached to a conditional cautions apply for a period longer than 3 months) or the operation of any enactment, for example section 65 of the Crime and Disorder Act 1998 which prevents the police from giving a child or young person more than 2 warnings and/or reprimands.
369. Paragraph 6 of new Schedule 2 to the 1974 Act applies, with modifications, section 7 of the 1974 Act which places limitations on the effect of rehabilitation under the Act.