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Legal Aid, Sentencing and Punishment of Offenders Act 2012

2012 CHAPTER 10

PART 3

SENTENCING AND PUNISHMENT OF OFFENDERS

CHAPTER 8

REHABILITATION OF OFFENDERS

VALID FROM 29/05/2013

139 Establishment or alteration of rehabilitation periods

- (1) The Rehabilitation of Offenders Act 1974 is amended as follows.
- (2) In section 5(1)(b) and (d) (sentences excluded from rehabilitation) for “thirty months” substitute “ forty eight months ”.
- (3) In the opening words of section 5(1A) (references to provisions of the Armed Forces Act 2006) for “subsection (1)(d)” substitute “ this section ”.
- (4) For section 5(2) to (11) (rehabilitation periods) substitute—
 - “(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:

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Sentence	End of rehabilitation period for adult offenders	End of rehabilitation period for offenders under 18 at date of conviction
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
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

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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 order is to have effect	The day provided for by or under the order as the last day on which the order is to have effect
<p>(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.</p>		
<p>(4) There is no rehabilitation period for—</p> <ul style="list-style-type: none"> (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), <p>and, in such cases, references in this Act to any rehabilitation period are to be read as if the period of time were nil.</p>		
<p>(5) See also—</p> <ul style="list-style-type: none"> (a) section 8AA (protection afforded to spent alternatives to prosecution), and (b) Schedule 2 (protection for spent cautions). 		
<p>(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).</p>		
<p>(7) For the purposes of this section—</p> <ul style="list-style-type: none"> (a) consecutive terms of imprisonment or other custodial sentences are to be treated as a single term, 		

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- (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,
- (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

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(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).”

(5) In section 6 (subsequent convictions to extend the rehabilitation period applicable to a conviction)—

- (a) in subsection (5) (exception to rule for certain orders imposing disqualifications etc) for “in accordance with section 5(8) above” substitute “by virtue of paragraph (g) of the definition of “relevant order” in section 5(8) above”, and
- (b) omit subsection (6) (other exceptions to the rule).

(6) After section 8A (protection afforded to spent cautions) insert—

“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).

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- (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—
 - “(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.”
- (7) In paragraph 1 of Schedule 2 (protection for spent cautions)—
- (a) in sub-paragraph (1)(a) (when conditional cautions to be regarded as spent cautions) for “, at the end of the relevant period for the caution;” substitute “—
 - (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”, and
 - (b) omit sub-paragraphs (2) and (3) (meaning of “the relevant period for the caution”).

140 No rehabilitation for certain immigration or nationality purposes

Before section 57 of the UK Borders Act 2007 (and after the italic cross-heading before that section) insert—

“56A No rehabilitation for certain immigration or nationality purposes

- (1) Section 4(1), (2) and (3) of the Rehabilitation of Offenders Act 1974 (effect of rehabilitation) do not apply—
- (a) in relation to any proceedings in respect of a relevant immigration decision or a relevant nationality decision, or
 - (b) otherwise for the purposes of, or in connection with, any such decision.
- (2) In this section—

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“immigration officer” means a person appointed by the Secretary of State as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971,

“relevant immigration decision” means any decision, or proposed decision, of the Secretary of State or an immigration officer under or by virtue of the Immigration Acts, or rules made under section 3 of the Immigration Act 1971 (immigration rules), in relation to the entitlement of a person to enter or remain in the United Kingdom (including, in particular, the removal of a person from the United Kingdom, whether by deportation or otherwise),

“relevant nationality decision” means any decision, or proposed decision, of the Secretary of State under or by virtue of—

- (a) the British Nationality Act 1981,
- (b) the British Nationality (Hong Kong) Act 1990, or
- (c) the Hong Kong (War Wives and Widows) Act 1996,

in relation to the good character of a person.

- (3) The references in subsection (2) to the Immigration Acts and to the Acts listed in the definition of “relevant nationality decision” include references to any provision made under section 2(2) of the European Communities Act 1972, or of EU law, which relates to the subject matter of the Act concerned.”

141 Transitional and consequential provision

- (1) Section 139 applies in relation to convictions or (as the case may be) cautions before the commencement date (as well as in relation to convictions or cautions on or after that date).
- (2) The Rehabilitation of Offenders Act 1974 (“the 1974 Act”) applies in relation to convictions or cautions before the commencement date as if the amendments and repeals made by section 139 had always had effect.
- (3) Where by virtue of subsection (2)—
 - (a) a person would, before the commencement date, have been treated for the purposes of the 1974 Act as a rehabilitated person in respect of a conviction, or
 - (b) a conviction would, before that date, have been treated for the purposes of that Act as spent,the person or conviction concerned is (subject to any order made by virtue of section 4(4) or 7(4) of that Act) to be so treated on and after that date.
- (4) Where by virtue of subsection (2)—
 - (a) a person would, before the commencement date, have been treated as mentioned in paragraph 3(1) of Schedule 2 to the 1974 Act in respect of a caution, or
 - (b) a caution would, before that date, have been treated for the purposes of that Act as spent,the person or caution concerned is (subject to any order made by virtue of paragraph 4 or 6(1) and (4) of that Schedule to that Act) to be so treated on and after that date.
- (5) But—
 - (a) no person who, immediately before the commencement date—

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- (i) is treated as a rehabilitated person for the purposes of the 1974 Act in respect of a conviction, or
 - (ii) is treated as mentioned in paragraph 3(1) of Schedule 2 to that Act in respect of a caution, and
 - (b) no conviction or caution which, immediately before the commencement date, is treated for the purposes of that Act as spent, is to cease to be so treated merely because of section 139.
- (6) Section 139 does not apply in relation to alternatives to prosecution given before the commencement date.
- (7) Section 140 applies in relation to convictions before the commencement date (as well as in relation to convictions on or after that date).
- (8) Section 140 applies as mentioned in subsection (7) above whether or not, immediately before the commencement date—
- (a) the person concerned is treated as a rehabilitated person for the purposes of the 1974 Act in respect of the conviction, or
 - (b) the conviction is treated for the purposes of that Act as spent.
- (9) But section 140 does not affect—
- (a) any proceedings begun, but not completed, before the commencement date,
 - (b) any applications for immigration or nationality decisions made, but not finally determined, before the commencement date, or
 - (c) the validity of any proceedings, or any relevant immigration or nationality decision (within the meaning of section 56A of the UK Borders Act 2007) which is made, before the commencement date.
- (10) Schedule 25 (consequential provision) has effect.
- (11) Any reference in this section to section 139 is to be read as including a reference to Schedule 25.
- (12) In this section “the commencement date” means such day as may be specified by order of the Secretary of State made by statutory instrument; and different days may be specified for different purposes.

Subordinate Legislation Made

- P1** S. 141(12) power exercised: 1.10.2012 specified as "the commencement date" for the purposes of s. 141(7)-(9) by [S.I. 2012/2412, art. 3](#)

Commencement Information

- II** S. 141 partly in force; s. 141 not in force at Royal Assent, see s. 151(1); s. 141(7)-(9)(12) in force at 1.10.2012 by [S.I. 2012/2412, art. 2\(f\)](#)

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