



# Rehabilitation of Offenders Act 1974

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## Background

The Rehabilitation of Offenders Act 1974 exists to allow people with convictions to be reintegrated back into society by having the right to legally ignore their conviction(s) after a period of time. The Act allows convictions, cautions, reprimands and final warnings in respect of a certain offence to be considered 'spent' after a specified period of time known as the 'rehabilitation period' which is decided by the sentence or disposal received.

Once 'spent', the person is considered rehabilitated and the Act treats the person as if they had never committed an offence. As a result, the conviction or caution in question does not need to be disclosed by the person when applying for most jobs, educational courses, insurance, housing applications or other purposes, unless the role applied for is 'exempt' from the Act (see 'Exceptions to the Act').

If a role is covered by the Act, it is unlawful for an employer to refuse to employ a person (or dismiss an existing employee) because the individual has a 'spent' caution or conviction.

It is also unlawful for an organisation to knowingly carry out (or enable someone else to obtain) a Disclosure and Barring Service (DBS) check on a person for a role which is covered by the Act.

If a role is covered by the Act, the employer is only legally entitled to carry out a basic criminal check known as a Basic Disclosure (provided by [Disclosure Scotland](#)) which will reveal only 'unspent' convictions.

A Basic Disclosure should not be confused with a Standard Disclosure (Standard DBS check) which is legally required only for positions 'exempt' from the Act such as approved financial posts by the Financial Conduct Authority, accountants, lawyers, barristers and other legal positions. For further information on criminal record checks, please visit the [Nacro website](#).

## Reforms to the Act

The provisions of the Rehabilitation of Offenders Act 1974 were amended by [Section 139 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(LASPO\)](#). The changes were implemented on 10 March 2014.

Nacro and other organisations campaigned hard for reform of the Act through Nacro's 'Change the Record' campaign. The reforms aim to establish the right balance between enabling people with convictions to successfully resettle back into society while at the same time maintaining public safety. As there are more than 10 million in the UK with a criminal record, many people stand to benefit from the reforms – Nacro welcomes the changes, but we believe that the changes do not go far enough.

## Will I benefit from the reforms?

The changes are retrospective, which means that they apply to all convictions including those that occurred before the implementation of the changes on 10 March 2014. The changes are applicable to England and Wales only. The amended legislation ensures that convictions that were considered 'spent' before the implementation of the changes could not become 'unspent' once the changes came into effect.

People given prison sentences of over four years or public protection sentences will never benefit from the Act at all, but many people with convictions including those who receive a custodial sentence of less than four years will benefit from it at some point, despite the growing list of "exempt" posts, occupations and activities which are subject to DBS checks or security vetting checks.

## Rehabilitation periods

Under the [Rehabilitation of Offenders Act 1974](#), the time it takes for an offence to become 'spent' depends entirely on the sentence given – not on the offence committed. For custodial and community sentences, the rehabilitation period will start from the end of the total sentence imposed by the court (including the licence period) – not from the time served in custody (i.e. the day of release). The rehabilitation period includes an additional 'buffer period' that runs from the end of the sentence. This 'buffer period' is determined by the length of total sentence imposed.

The 'buffer period's are halved for those aged under 18 at the date of conviction, except for custodial sentences of six months or less where the 'buffer period' will be 18 months.

The rehabilitation periods for custodial sentences (including suspended prison sentences) and community sentences are shown in Table A below.

**Table A: Rehabilitation periods for custodial sentences and community sentences**

Sentence/disposal	'buffer period' for adults (aged 18 and over when convicted) from end of sentence including licence period	'buffer period' for young people (aged under 18 when convicted) from end of sentence including licence period
Community order or youth rehabilitation order*	1 year	6 months
Imprisonment or detention in a young offender institution for 6 months or less	2 years	18 months
Imprisonment or detention in a young offender institution for over 6 months and up to and including 30 months (2½ years)	4 years	2 years
Imprisonment or detention in a young offender institution for over 30 months (2½ years) and up to 48 months (4 years)	7 years	3½ years
Imprisonment or detention in a young offender institution for over 48 months (4 years) or a public protection sentence	Never 'spent'	Never 'spent'

\*A community order or youth rehabilitation order which has no specified end date has a default rehabilitation period of two years from the date of conviction or from the time the disposal is administered. The rehabilitation period is not halved if the person was under 18 when convicted. However, the changes made to the Rehabilitation of Offenders Act 1974 by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 provide for all community orders to have an end date and no account is taken of any subsequent variation of the date originally provided for on the order.

### **Examples of ‘spent’ periods for custodial sentences:**

- John receives a three-month custodial sentence as an adult (he is aged 18 or over when convicted). His sentence may become ‘spent’ after two years and three months: the rehabilitation period is the total sentence of three months (including the licence period) and the additional ‘buffer period’ of two years as he received a total sentence of six months or less.
- Susan receives a six-month custodial sentence as a young person (she is aged under 18 when convicted). Her sentence may become ‘spent’ after two years: the rehabilitation period is the total sentence of six months (including the licence period) and the additional ‘buffer period’ of 18 months as she received a total sentence of six months or less when convicted as a young person.
- Michael receives an 18-month custodial sentence as an adult (he is aged 18 or over when convicted). His sentence may become ‘spent’ after five and a half years (66 months): the rehabilitation period is the total sentence of 18 months (including the licence period) and the additional ‘buffer period’ of four years (48 months) as he received a total sentence which was over six months but not more than 30 months (two and a half years).
- Linda receives a three-year custodial sentence as a young person (she is under 18 when convicted). Her sentence may become ‘spent’ after six and a half years (78 months): the rehabilitation period is the total sentence (including the licence period) of three years (36 months) and the additional ‘buffer period’ of three and a half years (42 months) as she received a total sentence which was over two and a half years (30 months) but not more than four years (48 months) when convicted as a young person.
- Albert receives a five-year custodial sentence: his sentence is never ‘spent’, regardless of whether he was an adult or under 18 when convicted as he received a total custodial sentence of more than four years.

### **Examples of ‘spent’ periods for community sentences:**

- Michelle receives a one-year youth rehabilitation order (she is under 18 when convicted). Her sentence may become ‘spent’ after 18 months: the rehabilitation period is the total length of the order (one year or 12 months) plus the additional ‘buffer period’ of six months.
- Sean receives a two-year community order (he is aged 18 or over when convicted). His sentence may become ‘spent’ after three years (36 months): the rehabilitation period is the total length of the order (two years or 24 months) plus the additional ‘buffer period’ of one year (12 months).

For the majority of other sentences or disposals, including cautions or fines, the rehabilitation periods will still start from the date of conviction.

Table B below contains the rehabilitation period for sentences which do not have 'buffer period's and for which the rehabilitation period starts from the date of conviction.

**Table B: Rehabilitation periods which start from the date of conviction with no 'buffer period'**

Sentence/disposal	Rehabilitation period for adults (aged 18 or over at the time of conviction, or at the time the disposal is administered)	Rehabilitation period for young people (aged under 18 at the time of conviction, or at the time the disposal is administered)
Simple caution/youth caution*	'Spent' immediately	'Spent' immediately
Conditional caution/youth conditional caution	3 months or when caution ceases to have effect if earlier	3 months or when caution ceases to have effect if earlier
Absolute discharge	'Spent' immediately	'Spent' immediately
Bind over	At the end of the order	At the end of the order
Conditional discharge order	At the end of the order	At the end of the order
Fine**	1 year	6 months
Compensation order***	When paid in full	When paid in full
Attendance centre order	At the end of the order	At the end of the order
Care order	When order ceases to have effect	When order ceases to have effect
Confiscation order	When order ceases to have effect	When order ceases to have effect
Forfeiture order	When order ceases to have effect	When order ceases to have effect
Hospital order	When order ceases to have effect	When order ceases to have effect
Referral order	At the end of the order	At the end of the order

Relevant order****	When order ceases to have effect	When order ceases to have effect
Reparation order	'Spent' immediately	'Spent' immediately
Disqualifications	When order ceases to have effect	When order ceases to have effect
Endorsements	5 years	2½ years

\*Youth caution replaces the disposals: reprimands and final warnings, which were abolished in April 2013.

\*\*The rehabilitation period for a fine applies even if the person is subsequently imprisoned for default of the fine. Fines arising from fixed penalty notices and penalty notices for disorder (PND) are not covered by the Act as they do not form part of an individual's criminal record so they do not have a rehabilitation period.

\*\*\*It is important that individuals obtain proof of payment of the compensation order from the court and keep this document to prove it has been paid in full. This evidence of payment may be required before a basic disclosure can be issued by Disclosure Scotland.

\*\*\*\*A relevant order (e.g. restraining order or sexual offences prevention order (SOPO)) which has no specified end date has a default rehabilitation period of two years from the date of conviction or from the time the disposal is administered.

## Examples of rehabilitation periods

- Daniel receives a fine as an adult (he is aged 18 or over when convicted). His sentence may become 'spent' one year after the date of conviction.
- Sharon receives a two-year conditional discharge order. Her sentence may become 'spent' after two years from date of the order being imposed in a court, regardless of whether she was an adult or young person at the time of sentence.
- Marcus receives a three-month conditional caution which will become 'spent' after three months from the date of issue, regardless of whether he was an adult or young person at the time. As long as he complies with the conditions attached to the caution it will still become 'spent' at the end of the three-month period; even if he receives another conditional caution or conviction during the rehabilitation period – it would not be extended. However, if Marcus does not comply with the conditions attached to the conditional caution and is subsequently prosecuted; the conditional caution will cease to have effect. Any subsequent conviction will then attract the relevant rehabilitation period for the sentence imposed by the court.

### **This is best shown in the following examples:**

- Marcus receives a conditional caution for common assault and two months later he receives a fine for shoplifting. He complies with the conditions of the conditional caution which is therefore 'spent' after three months. The fine will be considered 'spent' separately after one year as he was over 18 when convicted.
- Marcus receives a conditional caution but fails to comply with the conditions and he is prosecuted for the original offence as a result. He receives a fine which may be considered 'spent' after one year as he was over 18 when convicted.

### **The implications of the changes**

As a result of the changes to the Rehabilitation of Offenders Act 1974, certain disposals such as conditional discharge orders, which are traditionally viewed as less serious disposals than fines, community orders or relevant orders now have the potential to have a greater impact on an individual's ability to access education, obtain gainful employment or insurance as they can be disclosed on a Basic Disclosure for a longer period of time depending on the length of the order imposed. Nacro has highlighted this issue to the Ministry of Justice.

We have also raised our concerns to the Ministry of Justice that an endorsement imposed by a court has a rehabilitation period of up to five years according to the [Ministry of Justice's guidance](#).

Endorsements therefore have a longer rehabilitation period than all non-custodial sentences and also custodial sentences (including suspended sentences) of less than one year.

The Ministry of Justice's guidance also states that penalty points and driving disqualifications imposed by a court may become 'spent' when they cease to have effect.

### **Rehabilitation periods for motoring offences – an example from the Ministry of Justice**

An adult is convicted of a road traffic offence and the court imposes a fine (rehabilitation period: one year), an endorsement (rehabilitation period: five years), penalty points (rehabilitation period: three years) and a driving disqualification for one year (rehabilitation period: one year). The rehabilitation period for this conviction will be five years because the endorsement carries the longest rehabilitation period. If the offender was aged under 18 and received the above sentence, the conviction may become 'spent' after three years because the longest rehabilitation period applicable would then be three years for the penalty points (the endorsement would become 'spent' after two and a half years).

## Endorsements

The examples below demonstrate how receiving an endorsement can disproportionately affect when a person's criminal record becomes 'spent':

### Scenario 1

Emma receives a two-year conditional discharge order for shoplifting on 10 March 2014. Her sentence may become 'spent' two years from the date of the order imposed in a court. However, Emma receives a driving conviction for speeding on 9 March 2016 – just one day before her conviction would have become 'spent'. She receives a fine, three penalty points and an endorsement. As the endorsement has a rehabilitation period of five years (she is over 18 when convicted), none of Emma's convictions will now become 'spent' until 9 March 2021.

### Scenario 2

Emma receives a fine for shoplifting on 10 March 2014. Her sentence may become 'spent' after one year from the date of conviction. Emma receives a fixed penalty notice for speeding (via a speeding camera) on 9 March 2016. Emma did not attend court for this offence, and so the driving offence would not be disclosed on a Basic Disclosure. The fine would become 'spent' on 10 March 2015.

In the first scenario, Emma would have to disclose her conviction for over six years longer than in the second, which would have an extremely negative impact on her ability to obtain employment and insurance.

Endorsements imposed as a result of receiving a fixed penalty notice (i.e. speeding camera offences) are not disclosed on criminal record checks, if paid on time; however, they need to be declared by the individual when applying for insurance. The changes made to the Rehabilitation of Offenders Act by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 do not include endorsements with a rehabilitation period of five years. This could have a negative impact on a large number of people, and if you are affected we suggest that you raise this with your local Member of Parliament and also with the Ministry of Justice directly. Please also notify Nacro's Resettlement Advice Service (so we can get an idea of how widespread the issue is); you may also wish to seek independent legal advice.



## Historic sentences and disposals

Table C below contains details of sentences or disposals that have either been discontinued or replaced by other disposals already mentioned in (Table A and Table B).

Please also contact our Resettlement Advice Service on: **0300 123 1999** or email us at [helpline@nacro.org.uk](mailto:helpline@nacro.org.uk) if you have any queries in relation to these sentences or disposals. You may also wish to seek independent legal advice.

**Table C: Historic sentences and disposals**

Sentence/disposal	Rehabilitation period
Action plan order	Replaced by youth rehabilitation order
Approved school order*	Replaced by community order/youth rehabilitation order
Borstal training sentence	Equivalent to custodial sentence (see Table A)
Combination order	Replaced by community order/youth rehabilitation order
Community punishment order	Replaced by community order/youth rehabilitation order
Community punishment and rehabilitation order	Replaced by community order/youth rehabilitation order
Community service order	Replaced by community order/youth rehabilitation order
Curfew order	Replaced by community order/youth rehabilitation order
Detention and training order (6 months or less)	Equivalent to custodial sentence (see Table A)
Detention and training order (more than 6 months)	Equivalent to custodial sentence (see Table A)
Drug treatment and testing order	Replaced by community order/youth rehabilitation order
Final warning	Replaced by youth caution ('spent' immediately)

Probation order	Replaced by community order
Reprimand	Replaced by youth caution ('spent' immediately)
Secure training order	Replaced by detention and training order and is equivalent to custodial sentence
Supervision order	Replaced by youth rehabilitation order
Suspended prison sentence	Equivalent to custodial sentence (see Table A)
Youth custody order (6 months or less)	Equivalent to custodial sentence (see Table A)
Youth custody order (more than 6 months)	Equivalent to custodial sentence (see Table A)

## Immigration and nationality decisions

The United Kingdom Border Agency (UKBA) is responsible for making decisions on immigration and nationality issues. Such decisions will include allowing an applicant to remain or enter the UK, granting citizenship or considering deportation.

The amendments to the Rehabilitation of Offenders Act 1974 made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 now exclude the UKBA from the Act, meaning that they are entitled to access an applicant's full list of convictions, cautions, reprimands or final warnings both 'spent' and 'unspent'.

The UKBA can now rely on an applicant's full criminal record history to make final immigration and nationality decisions.

Further information about the effect of a conviction or caution on a person's immigration or nationality application can be found in the [UKBA good character requirement guidance](#).

For applications made to the UKBA on or before 12 December 2012, 'spent' convictions were not taken into account when assessing character requirements. However, for applications made on or after 13 December 2012, the concept of a conviction or caution becoming 'spent' no longer applies when assessing the character requirements. There are three thresholds within which a person with a conviction or caution can be refused.

**Table D: Impact of the ROA on nationality applications**

Sentence	Impact on nationality applications
4 years or more imprisonment	Application would be refused regardless of when the conviction occurred.
Between 12 months and 4 years imprisonment	Application would be refused unless 15 years have passed since the end of the sentence.
Up to 12 months imprisonment	Applications would be refused unless 10 years have passed since the end of the sentence..
A non-custodial offence	Applications would be refused if the conviction/caution occurred in the last 3 years

## Military convictions

The Rehabilitation of Offenders Act 1974 also applies to service personnel convicted of a criminal offence, whether in civilian life or in the services. All the main offences against military law in England and Wales are set out in the [Section 42 of the Armed Forces Act 2006](#). The offences covered by the Rehabilitation of Offenders Act 1974 fall into two main categories: (1) criminal conduct offences under [Section 42 of the Armed Forces Act](#) for which the corresponding offences under the law of England and Wales are recordable under regulation 3 of the [National Police Records \(Recordable Offences\) Regulations 2000](#) and (2) a number of service offences which are recordable on the Police National Computer (PNC) and disclosed as convictions on criminal record checks:

- Misconduct towards a superior officer (section 11(1))
- Using force against a sentry (section 14)
- Damage to or loss of public or service property (section 24 (1))
- Obstructing or failing to assist a service policeman (section 27)
- Resistance to arrest etc. (section 28) but only in relation to a conviction under section 28(1) (b) or (c) using violence or threatening behaviour)
- Offences in relation to service custody (section 29)
- Allowing the escape, or unlawful release of prisoners etc. (section 30 but only where the conviction is under section 30(4)(a))
- Attempts to commit any offences specified above (section 39)
- Encouraging or assisting the commission of any offence above, apart from an attempt (section 40)

A distinction is made between offences that can be dealt with by a commanding officer in a summary hearing and those that can only be heard by court martial.

The full definition of [offences against military law in the United Kingdom is here](#).

## **What is a summary hearing?**

Most minor offences by members of the armed forces against service law are dealt with by the commanding officer through a summary hearing. It is an internal disciplinary proceeding which also handles minor criminal conduct offences that have equivalent offences in civilian law as listed in section 42 of the Armed Forces Act 2006.

A serviceman or servicewoman's commanding officer has jurisdiction to deal with a person under his/her command who is subject to service law (i.e. not a civilian) if the accused is of, or below, the rank of Commander in the Navy, Lieutenant-Colonel in the Army or Wing Commander in the RAF.

A person charged with an offence which could be dealt with by a summary hearing before a commanding officer has the right to choose trial by court martial instead.

If a commanding officer dealing with an offence summarily finds the accused guilty, he can impose punishments including loss of seniority (for an officer), or reduction in rank (for a warrant officer or non-commissioned officer).

For lower ranks, he can impose a term of detention in a unit guardhouse or at the Military Corrective Training Centre in Colchester of up to 28 days, or 90 days in more serious cases, or a requirement to carry out extra work or drill or loss of entitlement to leave. Alternatively, he can impose a fine of up to 28 days' pay, or another minor punishment. The commanding officer operates in the role of prosecutor, jury and judge.

Table E below shows the rehabilitation periods for military convictions after the changes made on 10 March 2014. Military sentences such as reduction in rank or forfeiture of seniority are not disclosed on criminal records checks despite the fact they are considered more serious military sentences than fines or service compensation orders as they have no equivalent civilian penalty.

If you are member of the armed forces and you are affected by a military conviction that has been disclosed on a criminal record check, you may also wish to seek independent legal advice. This guidance on rehabilitation periods for military convictions may be subject to periodic change.

**Table E: Rehabilitation periods for military convictions**

Sentence/disposal	Rehabilitation period
Imprisonment	See custodial sentences
Removal from Her Majesty's Service (which includes cashiering, discharge with ignominy, dismissal with disgrace or simple dismissal)	12 months from the date of conviction*
Service detention	12 months from the date on which the sentence is completed*
Service supervision and punishment order	'Spent' immediately
Forfeiture of seniority	'Spent' immediately
Reduction in rank or disrating	'Spent' immediately
Fine	12 months from the date of conviction*
Severe reprimand	'Spent' immediately
Reprimand	'Spent' immediately
Service compensation order	Once paid in full
Stoppage of leave	'Spent' immediately
Restriction of privileges	'Spent' immediately
Admonition	'Spent' immediately

\*The rehabilitation periods are halved if the person is under 18 at the time of conviction or the date the sentence is imposed.

## Sentences not covered by the Rehabilitation of Offenders Act

The Ministry of Justice advises that the following sentences are 'exempt' from the Act and can therefore never become 'spent', regardless of the actual length of the sentence or the time served in custody:

- Sentence of imprisonment for life
- Sentence of imprisonment, youth custody, detention in a young offender institution or corrective training of over four years
- Sentence of preventive detention
- Sentence of detention at Her Majesty's Pleasure
- Sentence of custody for life
- Public protection sentences\* (imprisonment for public protection, detention for public protection, extended sentences of imprisonment or detention for public protection and extended determinate sentences for dangerous offenders)

\*A public protection sentence (the provisions for which are set out in [Part 12 of the Criminal Justice Act 2003](#) and [Part 8 of the Armed Forces Act 2006](#)) means a sentence of imprisonment or detention, as detailed above, imposed for specified sexual and violent offences.

## Further convictions

The changes made to the Rehabilitation of Offenders Act 1974 by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 aim to simplify the effect of further convictions so that if a person is convicted of an offence within the rehabilitation period of the first offence, the rehabilitation period of the earlier 'unspent' conviction will now be affected and in effect dragged forward so that neither offence will become 'spent'—until they both are.

As a result, the rehabilitation period for the further conviction and the rehabilitation period for all other 'unspent' convictions will all end at the same time – when the longest rehabilitation period ends. Until this point, all the convictions will be considered 'unspent' and will therefore need to be disclosed.

If an individual is convicted of an offence which receives a sentence of over four years (48 months), any convictions received prior to the sentence of 4 years or over, which have not reached the end of the rehabilitation period will also be considered 'unspent' and will therefore always be disclosed.

## Sentences received after a sentence which is never 'spent'

Sentences that have a determinate sentence received after a sentence that is never 'spent' are not disclosed after the rehabilitation period has elapsed. The Ministry of Justice provides the following examples to illustrate this point:

### Scenario 1

An adult is given a five-year custodial sentence (which is never 'spent') and is then given a six-month custodial sentence (which is 'spent' after two and a half years) for a subsequent offence. In this scenario the later sentence of six months is capable of becoming 'spent'.

### Scenario 2

An adult is given a six-month custodial sentence and is then given a five-year sentence for a subsequent offence during the rehabilitation period of the first offence. In this scenario neither sentence would become 'spent'.

## Concurrent and consecutive sentences

If a person receives two or more prison sentences in the course of the same proceedings, the rehabilitation period will depend on whether they are to run concurrently or consecutively. So, for example, two six-month terms ordered to run consecutively are treated as a single term of 12 months, giving a rehabilitation period for an adult of five years (total sentence plus 'buffer period' of four years).

However, two such sentences ordered to take effect concurrently are treated as one sentence of six months, giving a rehabilitation period for an adult of two and a half years (total sentence plus 'buffer period' of two years).

Prison sentences ordered to run consecutively to sentences already being served are not affected by this rule. So, for example, two six-month terms given at separate court hearings but ordered to run consecutively will be treated as separate six-month terms, each with a rehabilitation period of two years from the end of the total sentence (if the person is aged 18 or over when convicted).

## Breach of court orders

If someone is given a community order or conditional discharge order and is later brought before the courts for a breach of the order, this can affect the rehabilitation period applicable to the original conviction. If the court imposes a further sentence when it deals with the breach, then the original conviction will run on until both rehabilitation periods have expired.

Sometimes the courts may not deal with the breach until after the rehabilitation period applying to the original conviction has already expired. If the court then imposes a further sentence in dealing with the breach, the original conviction will still not become 'spent' until the new rehabilitation period has expired.

## Applying for jobs

Many people think that once an offence is 'spent', it is wiped from the record. It is not. Rather, the Rehabilitation of Offenders Act 1974 gives people the right not to disclose 'spent' offences when applying for most jobs unless those jobs are 'exempt' from the Act. Under the Act, a 'spent' conviction or caution shall not be proper grounds for not employing someone or for dismissing them. However, if applicants do not disclose 'unspent' convictions or cautions when asked to do so, they may be found out and dismissed on the grounds of having deceived the employer. In a few cases, they could be prosecuted.

The Act does not generally provide sufficient means of enforcing a person's right not to be refused employment, a place on a college course or entry into a profession on the grounds of a 'spent' conviction. However, if an employee can prove that they have been dismissed for a 'spent' conviction and they have been in employment for two years or more, they may be able to claim unfair dismissal. It is considered automatically unfair to dismiss someone because of a 'spent' conviction (the employee will still need to meet the qualifying period to bring a claim at an employment tribunal).

If the role is covered by the Act, and the conviction is 'unspent' but the employer has not asked for disclosure of convictions, then there is no legal obligation on the applicant or employee to disclose it.

If you have been refused employment due to an illegal check that revealed a 'spent' caution or conviction, or have been dismissed because of a 'spent' conviction from a role that is covered by the Act, or been dismissed by an employer due to a conviction that you have previously disclosed when you applied for the role, Nacro's Resettlement Advice Service offers a legal advocacy service which may be able to assist you with seeking legal recourse against the employer which has acted unlawfully or unfairly. Please also contact our Resettlement Advice Service on **0300 123 1999** or email us at [helpline@nacro.org.uk](mailto:helpline@nacro.org.uk).

For more information on disclosing criminal records, visit Nacro [website](#).

## Applying for insurance

The Act gives applicants the right not to disclose 'spent' convictions or cautions when applying for insurance; however, fixed penalty notices for motoring offences must be disclosed for insurance purposes for 5 years (or 2½ years if aged under 18 at the time the disposal is administered).

## Court proceedings

In civil proceedings, no one should be asked questions that might lead to the disclosure of 'spent' convictions. If such questions are asked, they need not be answered. This rule does not apply:

- In civil proceedings relating to children (adoption, guardianship, wardship, marriage, custody, care and control, and schooling).
- When the court is satisfied that justice cannot be done unless evidence of 'spent' convictions is admitted (anyone who has 'spent' convictions can always consent to evidence being given about them).
- If the proceedings involve a matter 'exempt' from the Act (see 'Exceptions to the Act').



- The rule on civil proceedings also applies to arbitration proceedings, disciplinary proceedings before an administrative tribunal, and to a club committee which has powers to affect anyone's rights, privileges, obligations or liabilities.

## Exceptions to the Act

Under the [Rehabilitation of Offenders Act 1974 \(Exceptions\) Order 1975 \(as amended in 2013\)](#), there are a number of posts, activities and occupations which are 'exempt' from the Rehabilitation of Offenders Act 1974. If the position applied for is 'exempt' from the Act, the organisation can ask applicants to disclose both 'spent' and 'unspent' cautions and convictions – other than 'protected' cautions and convictions which have qualified for [filtering](#) (for further information see Nacro practical guidance on [filtering](#) for employers and applicants).

Where an 'exemption' exists, the organisation will be eligible to carry out either a standard or in some cases an enhanced, criminal record disclosure check with the DBS if the organisation is based in England or Wales. In Scotland, such checks can be carried out through Disclosure Scotland; in Northern Ireland they can be carried out through Access Northern Ireland (Access NI).

A regularly updated [list of 'exempt' posts](#), occupations and activities can be found on the Disclosure and Barring Service website. The list includes the following:

- Any work which is defined as regulated activity relating to children or vulnerable adults within the meaning of the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012).
- Certain professions, occupations, offices and employments in areas such as health, pharmacy, finance, the courts and the law.
- Licences to drive taxis and to work in the private security industry.

If a position is not listed in the Exceptions Order, it is not 'exempt' from the Act, and therefore any standard or enhanced disclosure check (either with the DBS or its Scottish and Northern Irish equivalents) is unlawful. Despite this, there are many employers, especially local authorities, which run checks on positions which are not 'exempt' from the Act.

If you have been subject to an illegal check the Resettlement Advice Service offers a legal advocacy service which may be able to assist you with seeking legal recourse against an employer or organisation who has acted unlawfully or unfairly.

**For more information, please contact Nacro's Resettlement Advice Service on 0300 123 1999 or by email at [helpline@nacro.org.uk](mailto:helpline@nacro.org.uk)**  
[www.nacro.org.uk](http://www.nacro.org.uk)

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