

ILPA information sheet

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Rehabilitation of Offenders

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The Rehabilitation of Offenders Act 1974 (“the 1974 Act”) sets out, for the purposes of UK law, if and when a person’s conviction for an offence shall become spent. This information sheet provides more information about this, particularly its relevance to immigration and nationality applications.

On 15 February 2012, the Legal Aid, Sentencing and Punishment of Offenders Bill was amended by Government amendments, which will change the way in which the 1974 Act works in immigration and nationality cases. This information sheet provides information about this.

Rehabilitation of Offenders – general information

The 1974 Act sets out what it means for a conviction to become spent. Generally, if a conviction is spent, the person is (under UK law) to be treated as if he or she had not been convicted; and if asked about any conviction, he or she is not obliged (under UK law) to disclose any spent conviction. There are exceptions (see below).

The 1974 Act sets out when a conviction becomes spent. Generally, the period of time it takes for a conviction to become spent depends on the sentence that is imposed. The Government amendments will change the periods of time it takes for a conviction to become spent. Some convictions can never become spent. The table below provides examples only. If the person was a child at the date of conviction, the period of time is normally reduced by half.

Sentence imposed	Time it currently takes for conviction to become spent	Time it will take for conviction to become spent under the Government amendments
A police caution	Spent immediately	Spent immediately
A fine	Up to five years from the date of conviction	12 months from the date of conviction
Up to six months imprisonment	Seven years from the date of conviction	24 months from completion of the sentence
Up to 30 months imprisonment	Ten years from the date of conviction	48 months from completion of the sentence
Up to 48 months imprisonment	Cannot become spent	Seven years from completion of the sentence
More than 48 months imprisonment	Cannot become spent	Cannot become spent

If a person is convicted of another offence before the earlier offence has become spent, this can affect the time it takes for the earlier offence to become spent. Depending on the nature of the new offence, the earlier offence may not become spent until the new offence is also spent. The 1974 Act applies to convictions in the UK and to convictions outside the UK.

Rehabilitation of Offenders – exceptions

There are various exceptions to the 1974 Act. Where an exception applies, a person may be required to disclose a conviction even though it has become spent. Some examples are set out here, (but these are only examples):

- a witness in court proceedings
- someone seeking to become a medical practitioner or take a judicial appointment, or applying for a licence to operate a casino or sell firearms
- someone seeking to undertake work (not necessarily paid) with children or persons considered to be ‘vulnerable adults’

Immigration and nationality exceptions

Currently, there are no immigration and nationality exceptions to the 1974 Act. As the Government’s impact assessment of their amendments to the 1974 Act states, the UK Border Agency “*currently uses only information relation to an applicant’s unspent convictions in their immigration and nationality decision-making process.*” The Government amendments will change this. The impact assessment explains that the amendments will “*exempt UKBA from [the 1974 Act] enabling them to operate wholly outside the Act and take into account information relation to an applicant’s spent and unspent convictions.*” The impact assessment is available at:

<http://www.justice.gov.uk/downloads/publications/bills-acts/legal-aid-sentencing/laspo-rehab-of-offenders-act-eia.pdf>

The following immigration and nationality matters will become exceptions to the way the 1974 Act generally works, and disclosure of spent convictions could be required and spent convictions could be relied upon by the UK Border Agency in relation to these matters (which in effect cover all decisions upon a person’s immigration status):

- applications for permission (leave) to enter or remain in the UK (including settlement applications)
- applications for British citizenship or any other form of British nationality
- decisions to remove or deport a person from the UK

The Government amendments will have a retrospective effect. They will not affect applications already made before the Bill’s provisions are brought into force. However, someone whose conviction is now spent, but who makes one of the above applications after the Bill’s provisions are brought into force, could be required to disclose the spent conviction. ILPA produced a briefing for the House of Lords debate on the Government amendments. However, these immigration and nationality exceptions were not discussed in the debates. The ILPA briefing is available at:

<http://www.ilpa.org.uk/data/resources/14162/12.02.07-Briefing-on-Rehabilitation-of-Offenders.pdf>

Failure to disclose

Failing to disclose relevant information in an application for permission to enter or remain in the UK may be treated as deception. If so, the general grounds for refusal may apply; and if they do the application must be refused. This can also lead to a requirement that a later application made within a period of ten years must be refused. More information is provided by the March 2011 ‘General Grounds for Refusal’ information sheet at <http://tinyurl.com/72uog4n>