

**CHAPTER 32
SECTION 2****THE REHABILITATION OF
OFFENDERS ACT 1974****1. REHABILITATED PERSONS AND THE EFFECT OF REHABILITATION**

The Rehabilitation of Offenders Act 1974 ("the Act") came into force in Great Britain on 1st July 1975.

Under section 1(1) of the Act, where a person has been convicted of any offence or offences, after the applicable rehabilitation period they are treated as a "rehabilitated person" and the conviction is treated as "spent" or ignored.

In order to benefit from section 1(1), a person must not have had imposed on them in respect of the conviction a sentence which is excluded from rehabilitation under the Act. Further, a person will not benefit from section 1(1) if they have imposed on them in respect of a subsequent conviction, during the rehabilitation period relating to the first conviction, a sentence which is excluded from rehabilitation

Section 5(1) of the Act sets out the sentences which are excluded from rehabilitation. These include a sentence of imprisonment for life and a sentence in excess of thirty months' imprisonment (the full list is given in the table in paragraph 2 of this IDI). A sentence not listed in section 5(1) of the Act is subject to rehabilitation.

Subject to various exceptions laid down in the Act and in Orders made under the Act the effect of rehabilitation, by virtue of section 4 of the Act, is that:

- (a) a person who becomes a rehabilitated person in respect of a conviction must be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction;
- (b) in court proceedings, evidence to prove a rehabilitated person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which was the subject of a spent conviction is inadmissible. In addition, in court proceedings a person must not be asked (and, if asked, is not obliged to answer) any question relating to his past which cannot be answered without referring to a spent conviction;
- (c) otherwise than in court proceedings, where a question seeking information with respect to a person's previous convictions, offences, conduct or circumstances is put to them, the question must be treated as not relating to spent convictions and the person questioned is entitled to answer accordingly. Furthermore, the person must not be subjected to any liability for failing to disclose a spent conviction in their answer;
- (d) any obligation imposed on a person by law or by an agreement or arrangement to disclose information cannot extend to requiring the disclosure of a spent conviction; and

- (e) a spent conviction or any failure to disclose a spent conviction is not a proper ground for dismissing or excluding a person from employment or for otherwise prejudicing him in any way in employment.

Reference to spent convictions should *never* be made in entry clearance officers', immigration officers' and caseworkers explanatory statements (see also **Chapter 9, Section 7**).

Note: the Act does not extend to **Northern Ireland**. However, the corresponding legislation there is the Rehabilitation of Offenders (Northern Ireland) Order 1978, which prescribes the same rehabilitation periods as in the 1974 Act.

2. REHABILITATION PERIODS

The rehabilitation period is reckoned from the date of conviction in respect of which the sentence was imposed. For a custodial sentence, the rehabilitation period is decided by the original sentence, not the time served. Section 5(2) of the Act sets out the rehabilitation periods for specific sentences. Some of these are as follows:

SENTENCE	REHABILITATION PERIOD
Imprisonment for life	Excluded from rehabilitation
Custody for life	
Imprisonment for public protection under section 225 of the Criminal Justice Act 2003, detention for public protection under section 226 of that Act or an extended sentence under section 227 or 228 of that Act	
Imprisonment, youth custody, detention in a young offender institution or corrective training for a term exceeding thirty months	
Preventive detention	
Detention during Her Majesty's Pleasure or for life under section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000 or under section 205(2) or (3) of the Criminal Procedure (Scotland) Act 1975, or for a term exceeding thirty months passed under section 91 of the said Act of 2000 or under section 206 of the said Act of 1975.	

Imprisonment, detention in a young offender institution, youth custody or corrective training for a term exceeding six months but not exceeding thirty months	Ten years	Subject to reduction by half for persons under eighteen. Lesser periods apply for sentences that may be imposed only on young offenders.
Imprisonment, detention in a young offender institution or youth custody for a term not exceeding six months	Seven years	
A fine or certain other sentences	Five years	
An order of conditional discharge, or where a person was bound over to keep the peace or be of good behaviour	One year or where the order ceased to have effect, whichever is the longer.	
An order of absolute discharge	Six months	

The sentences listed above are examples. For the full list the Act should be referred to.

2.1. **Rehabilitation period where a hospital order is made following a conviction**

Where, in respect of a conviction, a hospital order under Part III of the Mental Health Act 1983, Part V of the Mental Health (Scotland) Act 1984 or Part III of the Mental Health (Northern Ireland) Order 1986 (with or without an order restricting discharge) was made, the rehabilitation period is:

- * **five years** from the date of conviction; or
 - * **two years** from the date on which the hospital order ceases to have effect,
- whichever is the longer.

2.2. **Effect of further conviction(s) during the rehabilitation period**

By virtue of section 6(4) of the Act, where, during the rehabilitation period applicable to a conviction, a person is convicted of a further offence and given a sentence which attracts a further period of rehabilitation, the rehabilitation period which would otherwise end earlier is extended so as to end at the same time as the other rehabilitation period.

For the purposes of section 6(4), the following are disregarded;

- (a) any conviction in England and Wales of an offence which is either a summary offence (i.e. an offence which is not triable on indictment – see below) or a scheduled offence (i.e. an offence listed in Schedule 2 to the Magistrates' Court Act 1980);
- (b) any conviction in Scotland of an offence which is not excluded from the jurisdiction of the inferior courts of summary jurisdiction;
- (c) any conviction in service disciplinary proceedings for an offence listed in the Schedule to the Act;

- (d) any conviction by or before a court outside Great Britain of an offence in respect of conduct which, had it taken place in Great Britain, would not have constituted an offence.

2.3. **England and Wales – offences which are triable on indictment**

An offence triable on indictment is an offence which **could** be tried before a jury in a Crown Court. Such offences may in certain circumstances be tried summarily (i.e. in a Magistrates' Court), but nevertheless remain "triable on indictment".

A conviction for an offence which is not triable on indictment during the rehabilitation period for another conviction does not extend that rehabilitation period, but may carry its own rehabilitation period.

Apart from minor road traffic offences, most of the more common offences, e.g. theft, are triable on indictment. Of the offences in the Immigration Act 1971, only the offences under sections 24A, 25, 25A, 25B, 26A and 26B are triable on indictment. Of the offences in the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 offences committed under sections 2, 4 and 35 are triable on indictment.

2.4. **Convictions in Scotland**

A subsequent conviction in Scotland is capable of extending a current rehabilitation period only if it was a conviction for an offence which **could not** in any circumstances have been tried in a Sheriff Court (an inferior court of summary jurisdiction).

3. **THE ACT AND CRIMINAL PROCEEDINGS**

By virtue of section 7 of the Act, section 4(1) (summarised above at paragraph 1, points (a) and (b), of this IDI) does not prevent the admission or requirement of any evidence relating to a person's previous convictions in, among others, any criminal proceedings before a court in Great Britain. Nevertheless, the courts have been asked, in a Practice Direction by the Lord Chief Justice, to ensure that reference to any spent conviction should be made in criminal proceedings only if it is essential in the interests of justice to do so. The permission of the court will normally be required before any such reference is made.

4. **THE ACT AND IMMIGRATION CONTROL**

4.1 **Entry Clearance and Leave to Enter**

Paragraph 320(18) of the Immigration Rules lists, as a ground on which entry clearance or leave to enter should normally be refused, conviction in any country of an offence which; (i) if committed in the United Kingdom, is punishable with imprisonment for a term of 12 months or more, or (ii) if committed in another country, would be so punishable if the conduct constituting the offence had occurred in the United Kingdom. For the purposes of immigration control, the main effect of the Act is to exempt from the provisions of paragraph 320(18) all rehabilitated offenders, regardless of where they were convicted. The effect of the Act on deportation orders resulting from convictions

must also be taken into account (see "**Paragraph 320(2) Subject of a Deportation Order**" in **Chapter 9, Section 2**).

Before a person may be refused entry clearance or leave to enter on grounds of criminal record, the entry clearance officer or immigration officer must determine that the offender is not a rehabilitated person as defined in the Act. To this end the entry clearance officer or immigration officer must know:

- * The nature of the offence committed;
- * The date of conviction;
- * The nature of the sentence imposed, and whether that sentence has been served, undergone or complied with.

Where it is established that a person has been convicted of an offence which appears to fall within the scope of paragraph 320(18) and is not a rehabilitated person, refusal of entry clearance or leave should normally follow (unless the officer is satisfied that admission would be justified for strong compassionate reasons).

Where it is established that the offender has become a rehabilitated person and their conviction spent, they **may not** be refused leave to enter or entry clearance on the basis of that conviction.

Paragraph 320(19) of the Immigration Rules states that entry clearance or leave to enter should normally be refused where from information available it seems right to refuse entry on the ground that exclusion from the UK is conducive to the public good in light of the person's character, conduct or associations. Where it is established that a person is a rehabilitated person and a previous conviction spent they may not be refused entry clearance or leave to enter on non-conducive grounds on the basis of that conviction.

Entry clearance officers should refer all cases to ECO Support in UKvisas policy section. Immigration officers should refer all cases to a chief immigration officer. It may also be appropriate to seek assistance from the police, particularly where an offender has committed offences in the United Kingdom. Where difficulty arises in equating a sentence imposed by a court outside Great Britain with one of those set out in the table in paragraph 2 above, immigration officers should seek guidance from BCPI.

4.2 **Leave to Remain**

Paragraph 322(5) of the Immigration Rules states as a ground on which an application to vary leave to enter or remain should normally be refused, the undesirability of permitting the person concerned to remain in the United Kingdom in the light of their character, conduct or associations or the fact that they represent a threat to national security.

Before a person may be refused leave to remain on grounds of character, conduct or associations on the basis of a criminal conviction, the caseworker must determine that the offender is not a rehabilitated person as defined in the Act. To this end the caseworker must know:

- ❖ The nature of the offence committed;

- ❖ The date of conviction;
- ❖ The nature of the sentence imposed, and whether that sentence has been served, undergone or complied with.

Where it is established that a person is not a rehabilitated person consideration should be given to refusal of leave under paragraph 322(5) on grounds of conduct, character or associations.

Where it is established that a person has become a rehabilitated person and their conviction spent they may not be refused leave under paragraph 322(5) on grounds of conduct, character or associations solely on the basis of that conviction.