

# Spent or Unspent?

## Introduction

This document should be considered a guide to the position in England and Wales only.

Further information and guidance is available from the Ministry Of Justice, specifically from the website:

<https://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974>

## What is the Rehabilitation of Offenders Act 1974?

The Rehabilitation of Offenders Act 1974 ("1974 Act") primarily exists to support the rehabilitation into employment of reformed offenders who have stayed on the right side of the law.

Under the 1974 Act, following a specified period of time which varies according to the disposal administered or sentence passed, cautions and convictions (except those resulting in prison sentences of over four years and all public protection sentences\*) may become spent. As a result, the offender is regarded as rehabilitated.

For most purposes the 1974 Act treats a rehabilitated person as if he or she had never committed, or been charged with charged or prosecuted for or convicted of or sentenced for the offence and, as such, they are not required to declare their spent caution(s) or conviction(s), for example, when applying for most jobs or insurance, some educational courses and housing applications.

## How long will it take before my caution or conviction becomes spent?

The rehabilitation period (the length of time before a caution or conviction becomes spent) is determined by the type of disposal administered or the length of the sentence imposed.

Rehabilitation periods that run beyond the end of a sentence are made up of the total sentence length plus an additional period that runs from the end of the sentence, which we have called the 'buffer period'.

Other rehabilitation periods start from the date of conviction or the date the penalty was imposed.

**Important Note:** This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

The 'buffer periods' are halved for those who are under 18 at the date of conviction (save for custodial sentences of six months or less where the 'buffer period' is 18 months).

**The rehabilitation periods for sentences with additional "buffer periods" which run from the end date of the sentence are shown in the table below:**

Sentence/disposal	Buffer period for adults (18 and over at the time of conviction or the time the disposal is administered).  This applies from the <u>end date of the sentence (including the licence period)</u> .	Buffer period for young people (under 18 at the time of conviction or the time the disposal is administered).  This applies from the <u>end date of the sentence (including the licence period)</u> .
Custodial sentence* of over 4 years, or a public protection sentence	Never spent	Never spent
Custodial sentence of over 30 months (2 ½ years) and up to and including 48 months (4 years)	7 years	3½ years
Custodial sentence of over 6 months and up to and including 30 months (2 ½ years)	4 years	2 years
Custodial sentence of 6 months or less	2 years	18 months
Community order or youth rehabilitation order**	1 year	6 months

\*Custodial sentence includes a sentence of imprisonment (both an immediate custodial sentence and a suspended sentence), a sentence of detention in a young offender institution, a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000, a detention and training order, a sentence of youth custody, a sentence of corrective training and a sentence of Borstal training.

\*\*In relation to any community or youth rehabilitation order which has no specified end date, the rehabilitation period is 2 years from the date of conviction.

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**The following table sets out the rehabilitation period for sentences which do not have “buffer periods” and for which the rehabilitation period runs from the date of conviction:**

Sentence/disposal	Rehabilitation period for adults (18 and over at the time of conviction or the time the disposal is administered).	Rehabilitation period for young people (under 18 at the time of conviction or the time the disposal is administered).
Fine	1 year	6 months
Conditional discharge,	Period of the order	Period of the order
Absolute discharge	None	None
Conditional caution and youth conditional caution	3 months or when the caution ceases to have effect if earlier	3 months
Simple caution, youth caution	Spent immediately	Spent immediately
Compensation order*	On the discharge of the order (i.e. when it is paid in full)	On the discharge of the order (i.e. when it is paid in full)
Binding over order	Period of the order	Period of the order
Attendance centre order	Period of the order	Period of the order
Hospital order (with or without a restriction order)	Period of the order	Period of the order
Referral order	Not available for adults	Period of the order
Reparation order	Not available for adults	None

*Examples:*

*A 2-year custodial sentence given to an adult may become spent after 6 years: the rehabilitation period is the period of the sentence plus a further ‘buffer period’ of 4 years, giving a total of 6 years.*

*A 2-year custodial sentence suspended for 2 years is spent after 6 years; the rehabilitation period is the period of the custodial sentence plus a further buffer period of 4 years giving a total of 6 years. (A suspended sentence is a sentence of imprisonment and the rehabilitation period is therefore determined by the custodial sentence, regardless of the period for which it is suspended).*

*A 6-month sentence of detention given to a young person may become spent after 2 years: the rehabilitation period is the period of the sentence plus a further ‘buffer period’ of 18 months, giving a total of 2 years.*

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*A 1-year community order given to an adult may become spent after 2 years: the rehabilitation period is the length of the order plus a further 'buffer period' of 1 year, giving a total of 2 years.*

*A 1-year youth rehabilitation order given to a young person may become spent after 18 months: the rehabilitation period is the length of the order plus a further 'buffer period' of 6 months, giving a total of 18 months.*

*An adult who is given a fine will have to declare this conviction for 1 year from the date of conviction before it is considered spent.*

**\*Compensation Orders** – it is important that individuals obtain proof of payment from the court and keep this document to prove that the compensation order has been paid in full.

## **Are there any sentences which are not covered by the 1974 Act?**

**The following sentences are exempt from the 1974 Act and can never become spent:**

- a. Sentence of imprisonment for life;
- b. Sentence of imprisonment, youth custody, detention in a young offender institution or corrective training of over 4 years;
- c. Sentence of preventive detention;
- d. Sentence of detention during Her Majesty's pleasure or for life;
- e. Sentence of custody for life;
- f. 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).

## **What are the rehabilitation periods for motoring offences?**

An endorsement for a road traffic offence listed in Schedule 2 to the Road Traffic Offenders Act 1988, imposed either by the court or by means of a fixed penalty notice (FPN) is a sentence for the purposes of the 1974 Act and may become spent after 5 years (or two and half years where the offender is under 18). Road traffic legislation specifically provides for a FPN in these circumstances to be treated as a conviction and dealt with as such under the 1974 Act. Penalty points and a driving disqualification imposed by the court on conviction may become spent when they cease to have effect (penalty points have effect for three years as set out in road traffic legislation). Where the court imposes more than one sentence or penalty for the offence then the longest rehabilitation period determines when the conviction may become spent.

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A fixed penalty notice (FPN) can be used to deal with minor road traffic offences, but it is not a criminal conviction or a caution and the 1974 Act does not apply.

## Examples

*An adult is convicted of a road traffic offence, and the court imposes a fine (rehabilitation period 1 year), an endorsement (rehabilitation period 5 years), penalty points (rehabilitation period 3 years) and driving disqualification for 1 year (rehabilitation period 1 year); the rehabilitation period for this conviction will be 5 years because the endorsement carries the longest rehabilitation period.*

*If the offender was under 18 and received the above sentence, the conviction may become spent after 3 years because the longest rehabilitation period applicable would then be three years for the penalty points (the endorsement would become spent after two and half years).*

*Once the conviction becomes spent, the person is not required to declare it when applying for most jobs, or (motor) insurance*

It is the case for all convictions (not only road traffic convictions) that where more than one sentence or penalty is imposed then the conviction may only become spent once the longest rehabilitation period which applies has ended.

For more information on the rehabilitation periods for particular driving offences, please consult:

[www.direct.gov.uk/en/motoring/driverlicensing/endorsementsanddisqualifications/dg\\_10022425](http://www.direct.gov.uk/en/motoring/driverlicensing/endorsementsanddisqualifications/dg_10022425)

## **What happens if I get another caution or conviction before my first conviction becomes spent?**

If you already have an unspent conviction and you get a further caution or conviction before the earlier conviction has become spent, one of the following will apply:

- a. If your later outcome is a caution (either a simple caution or a conditional caution), neither rehabilitation period will be affected. The conviction for the earlier offence will become spent at the time originally fixed, and the caution for the later offence will become spent after the normal period (immediately for a simple caution or three months for a conditional caution).
- b. If your later outcome is a conviction, then *neither* conviction will become spent until the rehabilitation periods for *both* offences are over. This applies to summary offences (offences that can only be tried in a magistrates' court) as well as either way offences (triable in either the magistrates' court or the Crown Court) and indictable only offences (offences that can only be tried in the Crown Court). Please note that there are very limited exceptions to this under section 6(5) of the 1974 Act.

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- c. If your later outcome is a conviction that results in a custodial sentence of more than four years or a public protection sentence of any length, then neither the second nor the first conviction will ever become spent.

Once a conviction becomes spent, it remains spent, even if a person is convicted of other offences later.

### **What happens if I get another conditional caution or conviction before my first conditional caution becomes spent?**

If the later conditional caution or conviction is separate to the earlier conditional caution (i.e. not for the offence in respect of which you were cautioned), then neither rehabilitation period will be affected. The conditional caution for the earlier offence will become spent at the end of 3 months from when it is given, and the caution or conviction for the later offence will become spent after the normal period. **Important Note:** This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

*For example: A person receives a conditional caution for shoplifting. A month later he receives a conviction for a separate offence. The conditional caution will become spent in the normal way (three months from the date of issue) and, in relation to the conviction for the separate offence the rehabilitation period will apply for the sentence imposed by the court.*

However, if you fail to comply with a conditional caution, and you are 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.

*For example: A person receives a conditional caution for shoplifting. He fails to comply with the conditions and as a result is prosecuted for, and convicted of, the shoplifting offence for which he receives a fine. The conditional caution ceased to have effect when he was prosecuted and he now has a conviction with a 12 month rehabilitation period because, in this example, he was sentenced to a fine.*

### **I have been sentenced for more than one offence at the same time. Will the rehabilitation periods run concurrently or consecutively?**

If you receive more than one sentence at the same time, the total rehabilitation period will depend on whether the sentences run concurrently (at the same time) or consecutively (one after the other).

If concurrent sentences are imposed, then the longest applicable rehabilitation period will apply to all the sentences.

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*For example, a four-month and six-month prison sentence ordered to run concurrently will count as a single term of six months (carrying a “buffer period” of two years from the end of the sentence, giving a total rehabilitation period of two years and 6 months before both convictions can be considered spent).*

If consecutive sentences are imposed, then the sentences will be added together to calculate the rehabilitation period.

*For example, a four-month and six-month prison sentence running consecutively will count as a ten-month sentence (carrying a “buffer period” of four years from the end of the sentence, giving a total rehabilitation period of four years and ten months before the convictions can be considered spent).*