

Impact of changes to the criminal records system, October 2023

Introduction

Unlock is delighted that, as of 28 October 2023, the changes to spending periods made in the Police, Crime, Sentencing and Courts (PCSC) Act 2022 have been brought into force. We know from our helpline that many people have been waiting anxiously for these changes. Thousands of people will now be able to move on with their lives without the stigma or discrimination associated with having to disclose old cautions or convictions.

Reduced spending periods for many sentences will have a huge beneficial impact. Having to disclose a caution or conviction long after completion of a sentence is a barrier to people getting a job, finding somewhere to live, getting onto a higher education course or even finding insurance.

In passing these reforms, the government and parliament followed the evidence that shows how disclosure of an offence committed long ago, and often minor, can be an unnecessary barrier to successful rehabilitation. This not only impacts the individual but also wider society.

However, Unlock believes more can be done. Along with Transform Justice, as part of the [#FairChecks](#) campaign, we are calling for fundamental reform of the legislative framework governing criminal record disclosure. Notwithstanding the welcome PCSC changes, the current system remains complex, unfair and ineffective in many respects, as detailed in this briefing. We are calling on all political parties to support a review and commit to further progressive reform.

What is PCSC?

The Police, Crime, Sentencing and Court Act (PCSC) 2022 received Royal Assent at the end of April 2022. Amongst a raft of measures it introduced are changes to rehabilitation periods for people with a criminal record, which are only now coming into force¹. Many thousands of people will benefit from the opportunity to put a criminal record behind them and move on with their lives.

The changes which took effect on 28 October 2023 concern spending periods – the time during which an individual is required to disclose their cautions or conviction(s) in a whole host of

¹ [Police, Crime, Sentencing and Courts Act 2020, Part 11](#)

situations². For example, unspent convictions and cautions show up on a Basic check with the Disclosure and Barring Service (DBS) which can be requested by any organisation. Once a conviction is spent, an individual has a legal right not to disclose it (unless subject to an elevated level of DBS check, for example when applying for nursing or teaching jobs). Given the stigma attached to having a criminal record, and the tendency of employers and others to treat a criminal record check as a 'pass-fail' exercise in determining an individual's suitability for a job, shorter spending periods will reduce barriers to rehabilitation such as lack of employment.

The new provisions reduce the rehabilitation periods for the majority of sentences or court disposals. More detail on the changes can be found in a table on our [website](#) and in an appendix to this briefing. Many people will now see their record become spent sooner, including those who are subject to community or youth rehabilitation orders. These now become spent immediately upon their conclusion rather than after an additional period.

The government's stated aim is to 'reduce the time periods after which some criminal sentences become spent, helping offenders to move on with their lives'³. The cost of reoffending to society, £16.7bn by their own estimate, was cited as part of the rationale for these reforms⁴. However, as well as being cost effective, these changes will have a positive impact on individuals and the government has recognised this. People with a criminal record should have the chance of a fresh start after serving their sentence. These changes recognise that an opportunity for an individual to rehabilitate effectively often involves systemic change to remove or reduce unnecessary barriers to a fresh start.

Unfortunately, the most significant change to spending periods in the PCSC Act brings with it some added complexity. For the first time, many prison sentences of over four years can become spent, which is a welcome development. However, also for the first time, the nature of the offence will be a factor in determining spending periods. The government refers to sentences of over four years which will never be spent as those which relate to 'serious violent, sexual and terrorist offences'. The full list of offences, which can be found [here](#), is extensive and means that fewer people will benefit from the reforms for the longest sentences.

The criminal records disclosure system is complex and remains so following the implementation of the changes. Last year, the Unlock helpline received over 8,000 contacts and our website had over a million views, demonstrating the need for advice and specialist support in understanding

² The spending period is the length of the sentence plus a number of years during which greater levels of disclosure are required; sometimes only the period after the sentence is referred to as the spending period. Government communications sometimes refer to the period after the sentence is completed as the "buffer period".

³ [Overarching Police, Crime, Sentencing and Courts Act 2022 factsheet - GOV.UK \(www.gov.uk\)](#).

⁴ [Rehabilitation: Police, Crime, Sentencing and Courts Act 2022 factsheet - GOV.UK \(www.gov.uk\)](#).

and navigating the system. This is why Unlock are calling for fundamental reform of the legislation governing criminal record disclosure.

How many people could be affected?⁵

Although more comprehensive reform is needed, it is important to recognise the huge impact that these changes to criminal record disclosure could have on the life chances of thousands of people. To give a sense of the scale of the impact, consider these sentencing outcomes:

- 68,994 community orders were issued in 2022; these convictions could now all become spent upon completion of the order, rather than a year later as was previously the case;
- 32,039 prison sentences of up to six months were given in 2022; these sentences now have spending periods half as long as before (down to one year after the sentence completion);
- 8,176 prison sentences of between six months and a year were given in 2022; the spending period for these is a quarter as long as previously (down to one year after the sentence completion).

In total, then, 40,215 sentences imposed in 2022 could now become spent a year after they finish. Previously, the shortest spending period for a prison sentence was two years after completion of sentence, which only applied to sentences of six months or less.

Prison sentences of between a year and two and a half years retain the same spending period – four years after the completion of the sentence – as before the PCSC reforms.

What will the impact of this be for people with criminal records?

Unlock has long been campaigning for a reduction in spending periods and we know that many people each year will benefit from their cautions or convictions being spent sooner. The government recognises both the key role employment plays in successful rehabilitation and the barrier a criminal record can pose to getting a job. Almost 75% of companies ask about criminal records on application forms and admit to excluding applicants who ‘tick the box’⁶. Unlock welcomes government recognition of the importance to rehabilitation of improving access to employment⁷.

Besides employment, an unspent criminal record can have a negative impact on people in accessing housing, insurance, education and visas for international travel. These aspects of life

⁵ The statistics used in the following section are taken from [Criminal Justice System statistics quarterly: December 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022).

⁶ [Why-we-need-reform-of-the-criminal-records-system.-Unlock-briefing-February-2023.pdf](https://www.unlock.org.uk/wp-content/uploads/2023/02/Why-we-need-reform-of-the-criminal-records-system.-Unlock-briefing-February-2023.pdf)

⁷ [Rehabilitation: Police, Crime, Sentencing and Courts Act 2022 factsheet - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/rehabilitation-police-crime-sentencing-and-courts-act-2022-factsheet)

for people with a criminal record were not referenced in the government's rationale for the changes but should nonetheless become easier.

Shorter spending periods will also have a wider positive effect for people who experience the 'chilling effect' of a criminal conviction. This describes the way in which people with a criminal record can be demotivated to seek opportunities for fear of experiencing prejudice and discrimination. General and specific examples of discrimination and social stigma contribute to a sense that having an unspent criminal record is an insurmountable barrier. The PCSC changes will go some way to addressing this.

Are there any examples of how the measures will help people?

The following are two case studies from people who have contacted Unlock previously for advice and support. They demonstrate the ongoing impact that unspent convictions have on people and the positive impact that the changes to spending periods will have on their lives.

JC received a four-and-a-half-year prison sentence in 1997 for handling stolen property. He had been in touch with Unlock in 2014 when previous amendments were made to rehabilitation periods but as his sentence was over four years it remained impossible for his conviction to become spent, meaning it would continue to show up on even Basic DBS checks. However, the new provisions mean that this will now be spent as seven years have passed since the end of the sentence period (i.e. four-and-a half-year sentence and a further seven-year spending period).

PJ was convicted of drug trafficking in 1989 and received a nine-year prison sentence. Despite this conviction being over three decades ago, it remains unspent and would appear on a Basic DBS check. This is PJ's only conviction and she has changed significantly in the time since. However, this conviction continues to have a profound impact on her life. When she has disclosed her conviction on a job application form or at interview she frequently hears no more from the employer, and she has had job offers revoked after disclosing her conviction. When she has secured employment, career progression has been slow. The cost of her car insurance is three times more than it would be if she didn't have a conviction and she is unable to get a policy for house and contents insurance from any high street insurer, being forced to use a broker instead. Following the reforms, PJ's conviction will become spent.

Beyond PCSC, what further reform is needed?

The inclusion for the first time of the offence type or category as a factor in determining a spending period is problematic, and the list of offences excluded from the reforms is extremely

long⁸. This increases the chance of mistakes being made by individuals – either over-disclosing and sharing information that they are not obliged to, or failing to disclose something they ought to. Employers and service providers are also more at risk of misunderstanding the disclosure rules which in some cases now include offence type as well as sentence type or length.

The long list of excepted offences means that many sentences of over four years' imprisonment will remain unable to be spent. More than a third of such custodial sentences will remain unspent as they are likely to fall under the excepted offences⁹. This risks undermining the principle of rehabilitation. The data suggests that 3,070 sentences given in 2022 that were in excess of four years would remain unspent indefinitely, a figure which may be an underestimate due to the problems of mapping the list of excepted offences onto the publicly available data¹⁰.

The Ministry of Justice factsheet gives safeguarding as the basis for exempting offences: “the exceptions balance public protection by requiring more serious and some spent convictions be disclosed when working in a sensitive position or with sensitive groups”¹¹. However, this is slightly misleading given these changes do not impact on what is revealed on elevated DBS checks used for roles with “sensitive groups”. Such checks disclose spent convictions, regardless of offence type; these changes, and the exceptions they include, will not alter that. More generally, concerning these exceptions, offence types can cover an extremely broad range of offending behaviour. There is also evidence of sentencing variations and bias that can mean people from racialised communities receive longer sentences. Sentencing disproportionality will be compounded by the different spending periods individuals have to observe¹². In the context of lengthening sentences the threshold of four years is a low bar and undermines the scope of rehabilitation promised by the reforms¹³. Unlock is also concerned about the tendency to conflate criminal records checks and disclosure with effective safeguarding, as the Ministry of Justice factsheet (quoted above) does.

Unlock believes that a fundamental review of the criminal records system is essential. Its complexity makes the system difficult to navigate for individuals and organisations, the impacts

⁸ [Sentencing Act 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2020/12/section/100)

⁹ <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022>

¹⁰ [Criminal Justice System statistics quarterly: December 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022)

¹¹ [Rehabilitation: Police, Crime, Sentencing and Courts Act 2022 factsheet - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022)

¹² Research by the Prison Reform Trust (outlined [here](#)) demonstrates the extent to which “people from black, Asian, and “Chinese or other” backgrounds are more likely to be sent to prison at the Crown Court”. Specifically, for example, research shows that following a conviction black women are 25% more likely to receive a custodial sentence than white women ([Counted Out.pdf \(prisonreformtrust.org.uk\)](#)).

¹³ Prison Reform Trust “Bromley Briefings Summer 2023” outlined where prison sentences are lengthening, for example “more than three times as many people were sentenced to 10 years or more in 2022 than in 2008”; [prison the facts 2023.pdf \(prisonreformtrust.org.uk\)](#).

of criminal records are often unfair and disproportionate, and the system retains certain idiosyncrasies. For further information about Unlock's proposals and the case for further reform see our briefing [here](#).

Unlock is part of the [#FairChecks](#) movement that is calling for fundamental reform of the criminal records system. #FairChecks has three specific asks that would reduce the unfairness of the system, two of which address what is disclosed on elevated checks forever while the third concerns childhood offences.

1. There should be no automatic disclosure of cautions. As noted above, for elevated checks, some cautions still have to be disclosed, even though cautions are only given when an offence is considered not serious enough to go to court.
2. There should be an end to lifelong disclosure of short prison sentences on elevated checks. All custodial sentences (including suspended prison sentences) have to be disclosed forever, regardless of sentence length. So a sentence of a couple of weeks will still have to be disclosed forever when applying for jobs that warrant an elevated check.
3. There should be a distinct criminal record system for childhood offences. Currently, these are broadly treated the same as those committed as an adult, albeit periods of disclosure are halved. However, in all other aspects of youth justice, children are treated completely differently from adults, taking into account their lack of maturity. For example, sentencing principles for children require a focus on their welfare as well as supporting rehabilitation. But the criminal record system means that a conviction received at the age of 15 might have to be disclosed 30 or 40 years after a sentence has been completed.

As the 50th anniversary of the Rehabilitation of Offenders Act 1974 approaches a comprehensive review with of that legislation would be timely, taking into account the changes introduced in the PCSC Act and widespread calls for change. These show there is understanding and support for the removal of unnecessary barriers to rehabilitation.

Conclusion

The commencement of these long-awaited reforms to the criminal records regime is a significant step forward. Unlock will be monitoring their impact and is hopeful that further reform will follow. More action is needed to counter the lasting disadvantage that can affect people long after they have served their sentence.

28 October 2023

Appendix 1; changes to spending periods

Community orders

Before:

Spent after **length of the order + 1 year**

Now:

Spent after **length of the order**

Youth rehabilitation orders

Before:

Spent after **length of the order + 6 months**

Now:

Spent after **length of the order**

Prison sentences - over 18s

Previously		NOW	
Sentence length	Spending period	Sentence length	Spending period
Less than or equal to 6 months	Full sentence + 2 years	One year or less	Full sentence + 1 year
More than 6 months, up to 30 months	Full sentence + 4 years		
More than 30 months, up to 4 years	Full sentence + 7 years	More than 1 year, up to 4 years	Full sentence + 4 years
More than 4 years	Never spent	More than 4 years	Full sentence + 7 years*

*Excludes a list of sentences deemed 'serious, violent or terrorist'

Prison sentences - under 18s

Previously		NOW	
Sentence length	Spending period	Sentence length	Spending period
Less than or equal to 6 months	Full sentence + 18 months	One year or less	Full sentence + 6 months
More than 6 months, up to 30 months	Full sentence + 2 years		
More than 30 months, up to 4 years	Full sentence + 3.5 years	More than 1 year, up to 4 years	Full sentence + 2 years
More than 4 years	Never spent	More than 4 years	Full sentence + 3.5 years*

*Excludes a list of sentences deemed 'serious, violent or terrorist'