

Summary guidance for the self-disclosure of previous convictions & alternatives to prosecution in Scotland under the Rehabilitation of Offenders Act 1974

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Summary guidance for the self-disclosure of previous convictions & alternatives to prosecution in Scotland under the Rehabilitation of Offenders Act 1974 (“the 1974 Act”)¹

Disclosure Periods: Custodial sentences

Disclosure periods for custodial sentences		
Sentence length	18 or over on date of conviction	Under 18 on date of conviction
Up to (and including) 12 months	Length of sentence plus 2 years	Length of sentence plus 1 year
Over 12 months & up to (and including) 30 months	Length of sentence plus 4 years	Length of sentence plus 2 years
Over 30 months & up to (and including) 48 months	Length of sentence plus 6 years	Length of sentence plus 3 years
Over 48 months	<p>This is an excluded sentence and the conviction will not become spent after a specific amount of time</p> <p>A review mechanism will be available in due course for relevant sentences over 48 months</p>	<p>This is an excluded sentence and the conviction will not become spent after a specific amount of time</p> <p>A review mechanism will be available in due course for relevant sentences over 48 months</p>

1. What are the types of convictions which always have to be disclosed?

Certain convictions are not capable of becoming spent. This is where an “excluded sentence” is imposed in respect of that conviction. Excluded sentences are listed in section 5(1) of the 1974 Act.

2. What happens if I get another conviction for which an “excluded sentence” is imposed before my first conviction becomes spent?

Excluded sentences have no effect on the disclosure periods for previous or subsequent convictions. This means the disclosure period for the first conviction will not change.

Example

An individual over 18 is convicted of an offence and fined £500 (conviction 1). The disclosure period for this sentence is 12 months from the date of conviction. Six

¹ This Guidance will apply when Part 2 of the Management of Offenders (Scotland) Act 2019 is commenced.

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months later the person is convicted of supplying class A drugs and given a 5 year custodial sentence (conviction 2) in solemn proceedings. This is an excluded sentence under section 5(1) of the 1974 Act.

The disclosure period applicable to conviction 1 remains 12 months and will not be affected by conviction 2.

3. What happens if I was given an excluded sentence and was convicted again?

As stated above, excluded sentences have no effect on the disclosure periods for previous or subsequent sentences. This means the disclosure period for the subsequent conviction will be determined by the actual sentence given for that conviction.

Example

A person over 18 is convicted of an offence and sentenced to five years imprisonment. This is an excluded sentence. Six months after being released from prison they are convicted of a second offence and fined £500. The disclosure period applicable to the second offence is 12 months from the date of conviction and is unaffected by the first conviction.

Section 5 Rules

Consecutive and concurrent sentences

Section 5(2F): For the purposes of this section:

- (a) consecutive terms of;
 - (i) imprisonment or other custodial sentences, or
 - (ii) detention under section 209 of the Armed Forces Act 2006 are to be treated as a single term,

- (b) terms of imprisonment, or of detention, which are:
 - (i) wholly or partly concurrent, and
 - (ii) imposed in respect of offences of which a person was convicted in the same proceedings are to be treated as a single term.

Therefore, if an individual receives more than one sentence for different offences at the same time, the total disclosure period will depend on whether the sentences run consecutively (one after the other) or concurrently (at the same time).

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

Example

A four month and six month prison sentence running consecutively will count as a ten month sentence (carrying a "buffer period" of 2 years, if over 18 at date of

2

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conviction, from the end of the sentence) giving a total disclosure period of two years and ten months before the convictions may become spent.

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

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, if over 18 from date of conviction, from the end of the sentence) giving a total disclosure period of two years and 6 months before both convictions may become spent).

Suspended sentences

Section 5(2F)(c): No account is to be taken of any subsequent variation, made by a court in dealing with a person in respect of a suspended sentence of imprisonment, of the term originally imposed.

Example

A 2 year custodial sentence suspended for 2 years will have the same disclosure period as a 2 year custodial sentence that has not been suspended, (i.e. 6 years from date of conviction or 4 years from date of conviction if under 18 at date of conviction).

Sentences imposed outwith Scotland

Section 5(2F)(d): A sentence imposed by a court outwith Scotland is to be treated as the sentence mentioned:

- (i) in section 5,
- (ii) in Table A or Table B, or
- (iii) in any of sections 5C to 5J,

to which it most closely corresponds.

This is the closest equivalent rule. This means sentences outwith Scotland must be treated as the closest equivalent Scottish sentence in order to determine the appropriate disclosure period.

4. What happens if a person gets a custodial sentence over 48 months?

At the moment a conviction cannot become spent if a custodial sentence of more than 48 months is imposed. This is because the sentence is an excluded sentence.

However, the Management of Offenders (Scotland) Act 2019 (“the 2019 Act”) enables the Scottish Ministers to make regulations which will allow a person to apply for a review of their conviction if a “relevant sentence” was imposed in respect of that conviction (see below for the meaning of “relevant sentence”). The reviewer will

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determine whether or not the conviction should become spent (and therefore whether the person is a “protected person” in respect of that conviction).

A “relevant sentence” is;

- a) a sentence of imprisonment or corrective training for a term exceeding 48 months, or
- b) a sentence of detention for a term exceeding 48 months under section 207 (detention of young offenders) or 208 (detention of children convicted on indictment) of the Criminal Procedure (Scotland) Act 1995.

These regulations have not yet been made meaning it is not yet possible to apply for such a review.

Separate guidance will be published in due course when the review mechanism has been developed and the necessary regulations have been approved by the Scottish Parliament.

Disclosure Periods: Non-custodial sentences

Disclosure periods for non-custodial sentences		
Disposal	18 or over on date of conviction	Under 18 on date of conviction
Absolute discharge	Zero	Zero
Admonishment	Zero	Zero
Bond of caution	6 months, or length of caution period, whichever is the longer	3 months, or length of caution period, whichever is the longer
A fine or compensation order	1 year	6 months
Community Payback Order, Drug Treatment & Testing Order and Restriction of Liberty Order	12 months or length of order, whichever is the longer	6 months or length of order, whichever is the longer
Adjournment/Deferral after conviction	Until relevant sentence ² given	Until relevant sentence given
An order under section 61 of the Children and Young Persons (Scotland) Act 1937	N/A	12 months
Ancillary Orders ³	Length of order	Length of order

² A “relevant sentence” is any sentence other than an adjournment or deferral, (or, where applicable, a further adjournment or deferral) imposed on the person in respect of the conviction.

³ Examples of ‘ancillary orders’ are, non-harassment order, supervision and treatment orders, football banning order, antisocial behaviour order, exclusion from

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An endorsement made by a court in relation to an offence mentioned in schedule 2 of the Road Traffic Offenders Act 1988	5 years	2½ years
Any other sentence not mentioned in Table A or B or sections 5(2D), 5C to 5J	1 year	6 months
Mental Health Orders		
Hospital Direction	Not a sentence under the 1974 Act (not included in disclosure certificate)	All have same disclosure periods as someone 18 or over at date of conviction
Guardianship Order	Zero ⁴	
Assessment/Treatment Order	Until final disposal given	
Interim Compulsion Order	Until final disposal given	
Compulsion Order (CO)	Length of order. After 12 months an application can be made to the MHTS ⁵ under section 164A of the MH 2003 Act ⁶ for disclosure of the CO to end	
Compulsion Order with Restriction Order (CORO)	Length of order. If the restriction order ends and the CO remains, an application can be made to the MHTS for disclosure of the CO to end 12 months after the restriction order ends	

licensed premises order, confiscation order, serious crime prevention order and an order disqualifying someone from driving.

⁴ Section 5J(1)(c) of the 1974 Act.

⁵ The Mental Health Tribunal for Scotland.

⁶ The Mental Health (Care and Treatment) (Scotland) Act 2003.

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Any other sentence not mentioned in Table A or B or sections 5(2D), 5C to 5J of 1974 Act

This is essentially a “default” sentence. The purpose of this is to provide for a disclosure period for any new disposals that may be created but not yet included in the 1974 Act for whatever reason. If this was not included then any new disposal not included would not be required to be self-disclosed.

The disclosure period for this default sentence is 12 months (or 6 months if the individual was under 18 at the date of conviction).

An endorsement made by a court in relation to an offence mentioned in schedule 2 of the Road Traffic Offenders Act 1988

An endorsement for a road traffic offence listed in schedule 2 of the Road Traffic Offenders Act 1988, imposed either by the court by order 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 that endorsement as a result of a FPN in these circumstances is to be treated, for the purposes of the 1974 Act, as a conviction and as if the endorsement had been made in pursuance of an order made by the court.

Where an order for disqualification from driving is imposed by the court on conviction, that conviction may become spent when the order ceases to have effect.

Where the court imposes more than one sentence or penalty for the offence then the longest disclosure period determines when the conviction may become spent.

Example

An adult is convicted of a road traffic offence and the court imposes a fine (disclosure period 1 year), an order for endorsement (disclosure period 5 years) and an order disqualification from driving for 1 year (disclosure period 1 year).

The disclosure period for this conviction will be 5 years because the endorsement carries the longest disclosure period.

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

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

www.direct.gov.uk/en/motoring/driverlicensing/endorsementsanddisqualifications/dg_10022425

5. What happens if I have been convicted on an offence and also put on the Sex Offenders Register?

The 1974 Act is concerned with the disclosure of convictions and alternatives to prosecution (AtPs). It is not the way in which the risks posed by sex-offenders are managed in the community.

If a person commits a sexual offence they may be subject to notification requirements under Part 2 of the Sexual Offences Act 2003.

However, notification requirements do not affect when a conviction becomes spent. A person may be subject to notification requirements in connection with a conviction despite that conviction being spent.

Further details on the management of sex offenders can be found on the attached links to Police Scotland's website.

1. [Registered sex offender management](#)
2. [Multi Agency Public Protection Arrangements \(MAPPA\)](#)
3. [Community 'Outing' of RSOs](#)

Children's hearings

Section 3 of the 1974 Act provides that, where a child is referred to a children's hearing on grounds that the child committed an offence, the acceptance or establishment (or deemed establishment) of that ground is a conviction for the purposes of the 1974 Act and the disposal by the hearing is a sentence.

Two different disposals are available to a children's hearing. They are a discharge and a compulsory supervision order.

The disclosure period for both a discharge and a compulsory supervision order is zero. This means they are spent immediately.

Children's Hearings		
Disposal	18 or over on date of conviction	Under 18 on date of conviction
Discharge	N/A	Zero
Compulsory supervision order	N/A	Zero

Alternatives to Prosecution (AtP)

Alternatives to Prosecution		
Category 1 AtPs	Zero	Zero
Category 2 AtPs	3 months	3 months

AtPs are disposals which are primarily available to Scottish police and Scottish prosecutors to deal with criminal conduct other than by way of prosecution before a criminal court.

AtPs broadly fall into two categories and can be divided into “Category 1” and “Category 2” AtPs. “Category 1” AtPs are warnings given by a constable or a procurator fiscal and fixed penalty notices given under section 129 of the Antisocial Behaviour (Scotland) Act 2004.

“Category 2” AtPs are other types of non-court based disposals available to the police and prosecutors. They are;

- a conditional offer issued in respect of the offence under section 302 of the Criminal Procedure (Scotland) Act 1995,
- a compensation offer issued in respect of the offence under section 302A of the 1995 Act,
- a work order made against the person in respect of the offence under section 303ZA of the 1995 Act,
- has, under subsection (5) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6), given notice of intention to comply with a restoration notice given under subsection (4) of that section, and
- has accepted an offer made by a procurator fiscal in respect of the offence to undertake an activity or treatment or to receive services or do any other thing as an alternative to prosecution, and

Therefore, depending on the type of the AtP, the 1974 Act provides that an AtP either becomes spent immediately or within 3 months of the AtP being issued.

Please note: Anything corresponding to a warning, offer, order or notice given as a result of an offence committed under the law of a country or territory outside Scotland will be treated in the same manner as an equivalent AtP given in Scotland.

Example

A person commits a minor offence and given a warning by a police constable. This is spent immediately and the person is not required to disclose it.

Example

A person commits an offence and given a fiscal fine of £50. The person will be required to disclose this, if asked, for 3 months from the date it was given.

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Disclosure periods: Service Disciplinary Offences

The 1974 Act applies to everyone convicted of a criminal offence or a service disciplinary offence (for example absence without leave) by either a civilian court (in the cases of criminal offences) or a Service Court or the Commanding Officer (in the cases of criminal or service disciplinary offences). The same disclosure periods apply to sentences which are imposed in the service justice system as are imposed by the civilian justice system.

Example

A fine imposed by a Sheriff Court and a fine imposed by a Court Martial would each have the same disclosure period of a year beginning with the date of conviction.

There are certain service sentences that can only be imposed by the service justice system (e.g. sentence of dismissal from Her Majesty's service or service detention). There are specific disclosure periods for such sentences which are set out in sections 5B and 5I of the 1974 Act. Please see the table below.

Disclosure periods for Service Disciplinary Offences		
Disposal	18 or over on date of conviction	Under 18 on date of conviction
A sentence of cashiering, discharge with ignominy or dismissal with disgrace from Her Majesty's service	10 years	5 years
A sentence of dismissal from Her Majesty's service	7 years	3½ years
Any sentence of service detention within the meaning of the Armed Forces Act 2006, or any sentence of detention corresponding to such a sentence, in respect of a conviction in service disciplinary proceedings	5 years	2½ years
A custodial order under section 71AA of the Army Act 1955 or the Air Force Act 1955, or under section 43AA of the Naval Discipline Act 1957, where the maximum period of detention specified in the order is more than 6 months	7 years	7 years
A custodial order under schedule 5A of the Army Act 1955 or the Air Force Act	7 years	7 years

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1955, or under schedule 4A of the Naval Discipline Act 1957, where the maximum period of detention specified in the order is more than 6 months		
A sentence of detention for a term exceeding 6 months but not exceeding 30 months passed under section 71A(4) of the Army Act 1955 or Air Force Act 1955, section 43A(4) of the Naval Discipline Act 1957 or section 209 of the Armed Forces Act 2006	5 years	5 years
A sentence of detention for a term not exceeding 6 months passed under section 71A(4) of the Army Act 1955 or Air Force Act 1955, section 43A(4) of the Naval Discipline Act 1957 or section 209 of the Armed Forces Act 2006	3 years	3 years
A custodial order under any of the schedules of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 mentioned above, where the maximum period of detention specified in the order is 6 months or less	3 years	3 years
A custodial order under section 71AA of the Army Act 1955 or Air Force Act 1955, or section 43AA of the Naval Discipline Act 1957, where the maximum period of detention specified in the order is 6 months or less	3 years	3 years
A service community order, or an overseas community order, under the Armed Forces Act 2006	5 years	2½ years or the length of the order whichever is the longer
A community supervision order under schedule 5A of the Army Act 1955 or the Air	1 year or the length of the order, whichever is the longer	1 year or the length of the order, whichever is the longer

Force Act 1955 or under schedule 4A of the Naval Discipline Act 1957		
An order under section 211 of the Armed Forces Act 2006	<p>Where the person was 15 years of age or older at the date of the conviction</p> <ul style="list-style-type: none"> • 5 years if the order was for a term exceeding 6 months • 3½ years if the order was for a term of 6 months or less 	<p>Where the person was 15 years of age or older at the date of the conviction</p> <ul style="list-style-type: none"> • 5 years if the order was for a term exceeding 6 months • 3½ years if the order was for a term of 6 months or less <p>Where the person was under 15 years of age at the date of the conviction</p> <p>Length of the order plus 12 months</p>

Section 6 (the disclosure period applicable to a conviction)

A conviction becomes spent, and a person treated as a protected person in respect of that conviction, on the expiry of the disclosure period applicable to the conviction.

Section 6 of the 1974 Act sets out the rules which determine the length of the disclosure period of a conviction. The disclosure period applicable to a conviction depends principally on the disclosure period applicable to the sentence imposed for that conviction.

However, the rules as to when a conviction becomes spent get more complicated when more than one sentence is imposed for a conviction or if a person is convicted in solemn proceedings of further offences before their existing convictions are spent.

6. How does disclosure work if more than one sentence is imposed in respect of a conviction?

If more than one sentence is imposed in respect of a conviction (for example, a fine and a non-harassment order are both imposed), and the sentences have different disclosure periods attributable to them, the conviction requires to be disclosed in accordance with the longer or longest of these periods.

Example

If a 25 year old person gets convicted of an offence and is fined (12 month disclosure period) and is also given a 5 year non-harassment order (5 year disclosure period) then the disclosure period for that conviction will be 5 years.

This is because the disclosure period applicable to the conviction is the same as the disclosure period applicable to the non-harassment order, which has the longer of the two disclosure periods for the two sentences.

7. What happens if someone gets convicted again before the disclosure period of a previous conviction ends?

Section 6(4) of the 1974 Act rule: Solemn proceedings

If someone gets convicted of a further offence, in solemn proceedings, before the end of the disclosure period applicable to the first conviction, then whichever of the two disclosure periods would end earlier is extended so as to end at the same time as the other disclosure period.

Example

A person aged 25 gets convicted of an offence and given a court fine. The disclosure period for that sentence is 12 months. As no other sentences are imposed the disclosure period applicable to that conviction is 12 months and the conviction would otherwise become spent after 12 months.

However, 6 months later the person is convicted of a further offence, in solemn proceedings, and given a 2 year custodial sentence. The disclosure period for that sentence will be 6 years. As no other sentences are imposed the disclosure period applicable to the conviction is 6 years.

The disclosure period for the first conviction is 12 months. The disclosure period for the second conviction is 6 years.

As the disclosure period for the second conviction is greater, the disclosure period for the first conviction is extended so that it will end at the same time as the disclosure period for the second conviction.

That is, both disclosure periods will end 6 years from the date of the second conviction for the offence which resulted in the custodial sentence. This means that both convictions may become spent 6 years following the date of conviction of the second offence (provided no further offences are committed in which the person is convicted in solemn proceedings).

However, there are 3 exceptions to this rule set out in the 1974 Act:

- 1) section 6(4A) to 6(4C)
- 2) section 6(5) to 6(5B)

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3) section 6(6)

Section 6(4A) – 6(4C) of the 1974 Act rule: Adjournment and deferral

This rule is necessary to ensure the rule to extend disclosure periods under section 6(4) will not apply to situations where a case was adjourned or deferred, the person gets a further conviction during that period, and are then given a sentence with no disclosure period for the first offence. For instance, an absolute discharge or an admonishment. In such circumstances the second conviction will not impact on when the first conviction become spent.

Example

A person is convicted of an offence and sentencing is deferred for 6 months. During this period the person is convicted in solemn proceedings of a further offence and given a fine of £1,000. The disclosure period applicable to the fine is 12 months from the date of conviction.

After the 6 months deferral for sentencing in the first conviction the person is admonished for that first conviction.

The rule in section 6(4) would mean that the disclosure period applicable to the first conviction is extended to be the same as that of the second conviction (because that is longer). However, because an admonishment was given for that first conviction the rule in section 6(4B) applies and the disclosure period applicable to the first conviction is not extended. That means that the first conviction becomes spent.

Section 6(5) to 6(5B) rule: Ancillary orders

The rule in section 6(4) of the 1974 Act does not apply to extend the disclosure period applicable to a conviction when the only sentence imposed for the other conviction is an ancillary order.

An ancillary order is one mentioned in section 5(2D) of the 1974 Act. This exception to the rule is set out in section 6(5).

Where, in addition to the ancillary order another sentence is imposed for a conviction, in determining whether the disclosure period applicable to another conviction is extended by the rule in section 6(4), the disclosure period applicable to the ancillary order is to be disregarded. This exception to the rule is set out in section 6(5A) and (5B).

Example

Section 6(5): A person aged 25 is convicted of an offence (conviction 1) and is given a 5 year non-harassment order (but no other sentence). This will have a disclosure period of 5 years. One year later the person is convicted again (conviction 2) and is given a fine. The disclosure period applicable to conviction 2 is 12 months. This is not extended to match the five-year disclosure period applicable to conviction 1.

Example

Section 6(5A) and (5B): In a variation to the circumstances in the example immediately above, in addition to the non-harassment order given for conviction 1 the person also received a custodial sentence of 12 months.

The disclosure period applicable to the non-harassment order is five years and the disclosure period applicable to the custodial sentence is 3 years.

This means the disclosure period applicable to conviction 1 is 5 years. However, section 6(4) applies (if the second conviction occurred in solemn proceedings) and the disclosure period for conviction 2 is extended, because of the custodial sentence given.

By virtue of section 6(5A) and (5B), the disclosure period applicable to conviction 2 is only extended until the disclosure period applicable to the custodial sentence imposed for conviction 1 has expired. The disclosure period for the non-harassment order is ignored in determining the length of the extension.

Applying this rule, the disclosure period applicable to conviction 2 will last two years instead of one year. This is because the disclosure period for the custodial sentence for conviction 1 is three years but one year has already elapsed between convictions 1 and 2, leaving 2 years remaining.

The disclosure period applicable to conviction 1 will remain five years owing to the non-harassment order.

Section 6(6) rule: Summary proceedings, service proceedings and convictions outside a Scottish court

The rule under section 6(4) of the 1974 Act does not apply if the subsequent conviction was one heard before a criminal court in summary proceedings. In such cases, each conviction becomes spent in accordance with the disclosure period for that conviction only and neither extends the other.

Example

A person aged 25 is fined for a summary offence (conviction 1). The disclosure period is 12 months. Six months later the person is fined again for a further summary offence (conviction 2). In such a case, the disclosure period for the conviction 1 will be 12 months from the date of that conviction and the disclosure period for conviction 2 will be 12 months from the date of that conviction. Therefore, disclosure of the conviction 1 will end 6 months before disclosure for conviction 2.

The rule under section 6(4) also does not apply to service disciplinary proceedings for an offence listed in schedule 1 of the 1974 Act or to any conviction by or before a court outside Scotland of an offence in respect of conduct which, if it had taken place in Scotland, would not have constituted an offence under the law in force in Scotland.

8. What happens if I get another conviction for which an “excluded sentence” is imposed before my first conviction becomes spent?

Excluded sentences have no effect on the disclosure periods for previous or subsequent conviction. This means the disclosure period for the first conviction will not change.

Example

An individual over 18 is convicted of an offence and fined £500 (conviction 1). The disclosure period for this sentence is 12 months from the date of conviction. Six months later the person is convicted of supplying class A drugs and given a 5 year custodial sentence (conviction 2) in solemn proceedings. This is an excluded sentence under section 5(1) of the 1974 Act.

The disclosure period applicable to conviction 1 remains 12 months and will not be affected by conviction 2.

9. What happens if I was given an excluded sentence and was convicted again?

As stated above, excluded sentences have no effect on the disclosure periods for previous or subsequent sentences. This means the disclosure period for the subsequent conviction will be determined by the actual sentence given for that conviction.

Example

A person is convicted of an offence and sentenced to five years imprisonment. This is an excluded sentence. Six months after being released from prison they are convicted of a second offence and fined £500. The disclosure period applicable to the second offence is 12 months and is unaffected by the first conviction.

10. What happens if I get an AtP before my first conviction becomes spent?

The rule in section 6(4) of the 1974 Act only applies to convictions meaning that an AtP given when a prior conviction is unspent will have no effect on when that prior conviction becomes spent.

11. What happens if I get a conviction before my first AtP becomes spent?

The rule in section 6(4) of the 1974 Act only applies to convictions meaning that a conviction obtained when a prior AtP is unspent will have no effect on when that prior AtP becomes spent.

12. What happens if I get another AtP before my first AtP becomes spent?

There will be no impact on the disclosure period for the first AtP. That is both disclosure periods will be in accordance with the actual AtP given.

13. What happens if I was given a life sentence or an equivalent to a life sentence?

The conviction is not capable of being spent and self-disclosure will always be necessary.

14. What happens if a person is convicted of a further offence during the period of adjournment or deferral for a previous offence?

In accordance with the rule under section 6(4A) to (4C), if a “relevant sentence⁷” is imposed for the previous conviction and if the “relevant sentence” is one where there is no disclosure period (e.g. admonishment⁸) then the rule under section 6(4) does not operate so as to extend the disclosure period applicable to the previous conviction.

Other rules may apply depending on what the decision of the court is and in what type of court the offences were prosecuted in.

If the court decides to treat the previous and subsequent offences together then the rule in section 6(2) may apply.

If the offences are prosecuted in solemn proceedings and if the “relevant sentence” is one where a disclosure period applies (e.g. fine or community payback order) then the rule in section 6(4) may apply.

However, until the “relevant sentence” is given for the previous offence the adjournment and deferral will continue to be disclosed.

If both offences are prosecuted separately in summary proceedings the disclosure period for both convictions will be based on the sentences given.

15. What happens if I breach a Community Payback Order (CPO), Drug Testing and Treatment Order (DTTO) or a Restriction of Liberty Order (RLO)?

The applicable rule is set out in section 6(3ZA) and (3ZB) of the 1974 Act.

⁷ A “relevant sentence” is any sentence other than an adjournment or deferral or, where applicable a further such adjournment or deferral.

⁸ See section 5J for the full list of sentence with no disclosure period.

This applies if a person is given a Conditional Discharge⁹, CPO, RLO or a DTTO for an offence (“offence A”) and the person breaches the order and, as a result of this breach, the person is given a further sentence for offence A after the disclosure period for the initial order has ended.

In such a case, the person is not to be treated as a protected person, and the conviction is not spent, until the disclosure period for that second sentence has expired.

To use the example of a CPO, in some circumstances where there has been a breach of the order, the court may revoke the order and deal with the person in respect of offence A as if the order had not been imposed.

In this case, the disclosure period for the conviction resulting in the CPO would end at the point of revocation. However, the effect of this rule is that the person will not be treated as a “protected person” in respect of the conviction until the expiry of the disclosure period applicable to how the person is dealt with by the court as a result of breaching the CPO and the conviction will not be treated as spent until that period has expired.

Example

A person is given a CPO with a supervision requirement of 2 years. The disclosure period for this sentence is 2 years (i.e. 12 months or the length of the order, whichever is longer). After 18 months the person breaches their CPO and is dealt with by the court. As a result, the court revokes the CPO and instead gives the individual concerned a 14 month custodial sentence.

This revised sentence has a disclosure period of 5 years and 2 months from the date of the original conviction (i.e. length of sentence plus 4 years). Therefore, as a result of the breach of the CPO and the fact the court imposed a custodial sentence of 14 months, the disclosure period for the conviction is extended by 3 years and 2 months, with the clock starting from the date of conviction.

⁹ Although a conditional discharge is not a disposal under Scots Law, the absence of a specific Scottish equivalent means that the reference is retained to ensure that the amendments do not create a gap in the regime for people in Scotland who have received this disposal elsewhere in Great Britain.



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