

Status: Point in time view as at 06/04/2010.

Changes to legislation: Rehabilitation of Offenders Act 1974 is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

[^{F1}[^{F2}SCHEDULE 1]

SECTION 6(4): SERVICE DISCIPLINARY CONVICTIONS

Textual Amendments

- F1** Sch. inserted (1.10.1996) by 1996 c. 46, s. 13(4)(5)(6), **Sch. 4**; S.I. 1996/2474, art. 2
- F2** Sch. renumbered as Sch. 1 (E.W.) (19.12.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 49, 153(7), **Sch. 10 para. 5** (with Sch. 27 para. 19); S.I. 2008/3260, **art. 2(1)(d)**; and Sch. so renumbered (S.) (1.11.20011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 203, 206(1), Sch. 7 para. 10; S.S.I. 2011/354, **art. 2**, Sch.

- 1 Any conviction for an offence mentioned in this Schedule is a conviction referred to in section 6(6)(bb) of this Act (convictions to be disregarded for the purposes of extending a period of rehabilitation following subsequent conviction).

Provisions of the Army Act 1955 and the Air Force Act 1955

- 2 Any offence under any of the provisions of the ^{M1}Army Act 1955 or the ^{M2}Air Force Act 1955 listed in the first column of the following table:—

<i>Provision</i>	<i>Subject-matter</i>
Section 29	Offences by or in relation to sentries, persons on watch etc.
Section 29A	Failure to attend for duty, neglect of duty etc.
Section 33	Insubordinate behaviour.
Section 34	Disobedience to lawful commands.
Section 34A	Failure to provide a sample for drug testing.
Section 35	Obstruction of provost officers.
Section 36	Disobedience to standing orders.
Section 38	Absence without leave.
Section 39	Failure to report or apprehend deserters or absentees.
Section 42	Malingering.
Section 43	Drunkenness.
Section 43A	Fighting, threatening words etc.
Section 44	Damage to, and loss of, public or service property etc.
Section 44A	Damage to, and loss of, Her Majesty's aircraft or aircraft material.
Section 44B	Interference etc. with equipment, messages or signals.

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Section 45	Misapplication and waste of public or service property.
Section 46	Offences relating to issues and decorations.
Section 47	Billeting offences.
Section 48	Offences in relation to requisitioning of vehicles.
Section 50	Inaccurate certification.
Section 51	Low flying.
Section 52	Annoyance by flying.
Section 54	Permitting escape, and unlawful release of prisoners.
Section 55	Resistance to arrest.
Section 56	Escape from confinement.
Section 57	Offences in relation to courts-martial.
Section 61	Making of false statements on enlistment.
Section 62	Making of false documents.
Section 63	Offences against civilian population.
Section 69	Conduct to prejudice of military discipline or air-force discipline.

Marginal Citations

M1 [1955 c. 18.](#)

M2 [1955 c. 19.](#)

- 3 Any offence under section 68 (attempt to commit military offence) or 68A (aiding and abetting etc., and inciting, military offence) of the ^{M3}Army Act 1955 in relation to an offence under any of the provisions of that Act listed in paragraph 2.

Marginal Citations

M3 [1955 c. 18.](#)

- 4 Any offence under section 68 (attempt to commit air-force offence) or 68A (aiding and abetting etc., and inciting, air-force offence) of the ^{M4}Air Force Act 1955 in relation to an offence under any of the provisions of that Act listed in paragraph 2.

Marginal Citations

M4 [1955 c. 19.](#)

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Provisions of the Naval Discipline Act 1957

5 Any offence under any of the provisions of the ^{M5}Naval Discipline Act 1957 listed in the first column of the following table:—

<i>Provision</i>	<i>Subject-matter</i>
Section 6	Offences by or in relation to sentries, persons on watch etc.
Section 7	Failure to attend for duty, neglect of duty etc.
Section 11	Insubordinate behaviour.
Section 12	Disobedience to lawful commands.
Section 12A	Failure to provide a sample for drug testing.
Section 13	Fighting, threatening words etc.
Section 14	Obstruction of provost officers.
Section 14A	Disobedience to standing orders.
Section 17	Absence without leave etc.
Section 18	Failure to report deserters and absentees.
Section 21	Low flying.
Section 22	Annoyance by flying.
Section 25	Inaccurate certification.
Section 27	Malingering.
Section 28	Drunkenness.
Section 29	Damage to, and loss of, public or service property etc.
Section 29A	Damage to, and loss of, Her Majesty's aircraft or aircraft material.
Section 29B	Interference etc. with equipment, messages or signals.
Section 30	Misapplication and waste of public or service property.
Section 31	Offences relating to issues and decorations.
Section 32	Billeting offences.
Section 33	Offences in relation to the requisitioning of vehicles etc.
Section 33A	Permitting escape, and unlawful release of prisoners.
Section 33B	Resistance to arrest.

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Section 33C	Escape from confinement.
Section 34A	False statements on entry.
Section 35	Falsification of documents.
Section 35A	Offences against civilian population.
Section 38	Offences in relation to courts-martial.
Section 39	Conduct to the prejudice of naval discipline.

Marginal Citations

M5 1957 c. 53.

- 6 Any offence under section 40 (attempt to commit naval offence) or 41 (aiding and abetting etc., and inciting, naval offence) of the ^{M6}Naval Discipline Act 1957 in relation to an offence under any of the provisions of that Act listed in paragraph 5.

Marginal Citations

M6 1957 c. 53.

[^{F3}Provisions of the Armed Forces Act 2006

Textual Amendments

F3 Sch. 1 para. 7 and cross-heading inserted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by virtue of [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383, [Sch. 16 para. 66](#); [S.I. 2009/812](#), [art. 3](#); [S.I. 2009/1167](#), [art. 4](#) (and see savings (having effect from 24.4.2009 for specified purposes and 31.10.2009 otherwise) in [S.I. 2009/1059](#), [arts 1\(2\)\(3\)](#), 205, [Sch. 1 para. 14](#))

- 7 Any service offence within the meaning of the Armed Forces Act 2006 except one punishable in the case of an offender aged 18 or over with imprisonment for more than two years.]]

[^{F4}SCHEDULE 2

PROTECTION FOR SPENT CAUTIONS

Textual Amendments

F4 Sch. 2 inserted (E.W.) (19.12.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 49, 153(7), [Sch. 10 para. 6](#) (with [Sch. 27 para. 19](#)); [S.I. 2008/3260](#), [art. 2\(1\)\(d\)](#)

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Preliminary

- 1 (1) For the purposes of this Schedule a caution shall be regarded as a spent caution—
 - (a) in the case of a conditional caution (as defined in section 8A(2)(a)), at the end of the relevant period for the caution;
 - (b) in any other case, at the time the caution is given.
- (2) In sub-paragraph (1)(a) “the relevant period for the caution” means (subject to sub-paragraph (3)) the period of three months from the date on which the conditional caution was given.
- (3) If the person concerned is subsequently prosecuted and convicted of the offence in respect of which a conditional caution was given—
 - (a) the relevant period for the caution shall end at the same time as the rehabilitation period for the offence; and
 - (b) if the conviction occurs after the end of the period mentioned in sub-paragraph (1)(a), the caution shall be treated for the purposes of this Schedule as not having become spent in relation to any period before the end of the rehabilitation period for the offence.
- 2 (1) In this Schedule “ancillary circumstances”, in relation to a caution, means any circumstances of the following—
 - (a) the offence which was the subject of the caution or the conduct constituting that offence;
 - (b) any process preliminary to the caution (including consideration by any person of how to deal with that offence and the procedure for giving the caution);
 - (c) any proceedings for that offence which take place before the caution is given (including anything which happens after that time for the purpose of bringing the proceedings to an end);
 - (d) any judicial review proceedings relating to the caution;
 - (e) in the case of a warning under section 65 of the Crime and Disorder Act 1998 (c. 37), anything done in pursuance of or undergone in compliance with a requirement to participate in a rehabilitation programme under section 66(2) of that Act;
 - (f) in the case of a conditional caution, any conditions attached to the caution or anything done in pursuance of or undergone in compliance with those conditions.
- (2) Where the caution relates to two or more offences, references in sub-paragraph (1) to the offence which was the subject of the caution include a reference to each of the offences concerned.
- (3) In this Schedule “proceedings before a judicial authority” has the same meaning as in section 4.

Protection relating to spent cautions and ancillary circumstances

- 3 (1) A person who is given a caution for an offence shall, from the time the caution is spent, be treated for all purposes in law as a person who has not committed, been charged with or prosecuted for, or been given a caution for the offence; and notwithstanding the provisions of any other enactment or rule of law to the contrary—

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- (a) no evidence shall be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in England and Wales to prove that any such person has committed, been charged with or prosecuted for, or been given a caution for the offence; and
 - (b) a person shall not, in any such proceedings, be asked and, if asked, shall not be required to answer, any question relating to his past which cannot be answered without acknowledging or referring to a spent caution or any ancillary circumstances.
- (2) Nothing in sub-paragraph (1) applies in relation to any proceedings for the offence which are not part of the ancillary circumstances relating to the caution.
 - (3) Where a question seeking information with respect to a person's previous cautions, offences, conduct or circumstances is put to him or to any other person otherwise than in proceedings before a judicial authority—
 - (a) the question shall be treated as not relating to spent cautions or to any ancillary circumstances, and the answer may be framed accordingly; and
 - (b) the person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose a spent caution or any ancillary circumstances in his answer to the question.
 - (4) Any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person shall not extend to requiring him to disclose a spent caution or any ancillary circumstances (whether the caution is his own or another's).
 - (5) A caution which has become spent or any ancillary circumstances, or any failure to disclose such a caution or any such circumstances, shall not be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him in any way in any occupation or employment.
 - (6) This paragraph has effect subject to paragraphs 4 to 6.

Modifications etc. (not altering text)

- C1** Sch. 2 para. 3(1) excluded (18.12.2008) by S.I. 1975/1023, art. 5, **Sch. 3** (as amended by the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2008 (S.I. 2008/3259), **art. 6**)
- C2** Sch. 2 para. 3(1)(5) excluded (7.7.2009) by S.I. 1975/1023, **art. 6(3)** (as inserted by The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2009 (S.I. 2009/1818), **art. 6**)
- C3** Sch. 2 para. 3(3) excluded (18.12.2008) by S.I. 1975/1023, **art. 3** (as amended by the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2008 (S.I. 2008/3259), **art. 4**)
- C4** Sch. 2 para. 3(3) excluded (7.7.2009) by S.I. 1975/1023, **art. 6(1)** (as inserted by The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2009 (S.I. 2009/1818), **art. 6**)
- C5** Sch. 2 para. 3(3) excluded (31.3.2010) by S.I. 1975/1023, **art. 3A** (as inserted by The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2010 (S.I. 2010/1153), **art. 3**)
 Sch. 2 para. 3(3) excluded (31.3.2010) by S.I. 1975/1023, **art. 6** (as substituted by The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2010 (S.I. 2010/1153), **art. 4**)

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C6 Sch. 2 para. 3(5) excluded (18.12.2008) by S.I. 1975/1023, art. 4 (as amended by the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2008 (S.I. 2008/3259), art. 5)

- 4 The Secretary of State may by order—
- (a) make provision for excluding or modifying the application of either or both of paragraphs (a) or (b) of paragraph 3(3) in relation to questions put in such circumstances as may be specified in the order;
 - (b) provide for exceptions from the provisions of sub-paragraphs (4) and (5) of paragraph 3, in such cases or classes of case, and in relation to cautions of such a description, as may be specified in the order.
- 5 Nothing in paragraph 3 affects—
- (a) the operation of the caution in question; or
 - (b) the operation of any enactment by virtue of which, in consequence of any caution, a person is subject to any disqualification, disability, prohibition or other restriction or effect, the period of which extends beyond the rehabilitation period applicable to the caution.
- 6 (1) Section 7(2), (3) and (4) apply for the purposes of this Schedule as follows.
- (2) Subsection (2) (apart from paragraphs (b) and (d)) applies to the determination of any issue, and the admission or requirement of any evidence, relating to a person's previous cautions or to ancillary circumstances as it applies to matters relating to a person's previous convictions and circumstances ancillary thereto.
 - (3) Subsection (3) applies to evidence of a person's previous cautions and ancillary circumstances as it applies to evidence of a person's convictions and the circumstances ancillary thereto; and for this purpose subsection (3) shall have effect as if—
 - (a) any reference to subsection (2) or (4) of section 7 were a reference to that subsection as applied by this paragraph; and
 - (b) the words “or proceedings to which section 8 below applies” were omitted.
 - (4) Subsection (4) applies for the purpose of excluding the application of paragraph 3(1); and for that purpose subsection (4) shall have effect as if the words “(other than proceedings to which section 8 below applies)” were omitted.
 - (5) References in the provisions applied by this paragraph to section 4(1) are to be read as references to paragraph 3(1).]

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VALID FROM 01/11/2011

^{F5}SCHEDULE 3

(introduced by section 8B(3))

PROTECTION FOR SPENT ALTERNATIVES TO PROSECUTION: SCOTLAND

Textual Amendments

- F5** Sch. 3 inserted (S.) (1.11.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 109(4), 206(1); S.S.I. 2011/354, art. 2(1), Sch.

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