

Overview note: the Rehabilitation of Offenders Act 1974 and its impact on the Inquiry's work

This note has been provided to assist in the understanding of the Chairman's direction and Counsel to the Inquiry's note dated 1 March 2017, both of which address the Rehabilitation of Offenders Act 1974 and its impact on the Inquiry's work. This overview note does not form part of either of those documents. The Chairman's direction and Counsel to the Inquiry's Note are the only authoritative documents

Introduction

1. On 1 March 2017 the Inquiry published a [direction](#) by the Chairman, together with a [note](#) by Counsel to the Inquiry. Counsel's note discusses the Rehabilitation of Offenders Act 1974 ('the Act') and the effects it may have on the Inquiry's work, in particular in relation to evidence of 'spent' convictions.
2. The effect of the Act is that certain criminal convictions will be 'spent' after a certain period of time, depending on the nature of the conviction. Once a conviction is spent, the rehabilitated person is to be treated as never having committed the offence, and as never having been convicted of the offence.
3. Counsel have identified three situations in which the Inquiry may need to consider the fact and circumstances of a person's previous convictions: (i) in order to investigate cases where there may have been a miscarriage of justice, (ii) where the Inquiry is required to identify and assess the adequacy of the justification for undercover policing operations, and (iii) when determining anonymity applications, where previous convictions may be relevant to an alleged risk of harm.

Key questions

4. The issues raised in counsel's note follow an examination of the evidence that the Inquiry has received to date. The note poses the following key questions in relation to the role of spent convictions in the Inquiry's ability to meet its terms of reference:
 - i. To what extent will the Inquiry need to consider evidence of a person's previous criminal convictions, which may be spent convictions within the meaning of the Act?
 - ii. To what extent might the Act prevent or restrict the Inquiry from receiving, considering or admitting evidence concerning spent convictions?

- iii. If the Act operates to prevent the Inquiry from conducting a fair and balanced assessment of the available evidence and discharging its terms of reference, what potential exceptions might be sought to ensure that the Inquiry is in a position to do so?

Legal questions arising from the Act

5. The Chairman has directed that the core participants shall submit position statements by 4pm on Wednesday 29 March 2017. Views are sought on a number of specific issues relating to the Act, including:
 - i. the extent to which the work of the Inquiry constitutes “*proceedings before a judicial authority*”;
 - ii. at what point an Inquiry might be said to be “*treating*” a person ‘for a purpose in law’; and
 - iii. the extent to which the Act prevents or in any way restricts the Inquiry from requesting information about spent convictions, or from relying on evidence of spent convictions for the purposes of finding facts and making recommendations. This might include information about spent convictions where it is provided voluntarily, or where the Inquiry requires that the evidence be produced in accordance with section 21 of the Inquiries Act 2005.
6. A complete list of the issues for consideration appears at paragraph 109 of counsel’s note. Core participants are invited to have regard to the need for the Inquiry to proceed on a basis which is clear and free from doubt; and one that is workable in practice given the frequency with which the Inquiry is likely to come across events involving spent convictions.
7. Depending on the Chairman’s eventual conclusions as to the interpretation of the Act, it may be considered necessary for the Secretary of State for Justice to make an order providing that certain sections of the Act shall not apply to the Inquiry.

The Rehabilitation of Offenders Act 1974: relevant sections

The Act operates so as to render certain convictions 'spent' after a period of time, depending on the nature of the conviction, has elapsed. Once a conviction is spent, the Act provides that the person convicted is to be treated as if never having been convicted of the offence, and is prohibited from being treated as ever having committing the offence. This is subject to a number of exceptions set out within the Act itself, and in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 ["the Order"].

The scope of the Act

Section 1(1) of the Act provides that the Act applies to convictions whether they occurred prior or subsequent to the commencement of the Act. As noted above, the rehabilitation period after which a conviction should be regarded as spent varies depending on the nature of the offence. These are set out in sections 5 of and Schedule 2 to the Act.

Potentially relevant prohibitions under the Act

Section 4(1) states that all persons who have become a rehabilitated person (ie. who have as conviction which is to be regarded as spent under the Act) shall 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'

Section 4(1)(a) prevents the admission of 'any evidence before a judicial authority ... to prove that any such 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'.

Section 4(1)(b) states that '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 conviction...or any circumstances ancillary thereto'.

Section 4(2) states that where a question seeking information with respect to a person's previous convictions, offences, conduct or circumstances is put to him or any person otherwise than in proceedings before a judicial authority:

- (a) the question shall be treated as not relating to spent convictions or to any circumstances ancillary to spent convictions and the answer thereto may be framed accordingly; and
- (b) the person question shall not be subjected to any liability or otherwise prejudiced in law by reason of the failure to acknowledge or disclose [the above matters].

UNDERCOVER POLICING INQUIRY

Section 4(3)(a) states that, subject to section 4(4), ‘any obligation imposed on any person by any rule of law ... shall not extend to requiring him to disclose a spent conviction or any circumstances ancillary to a spent conviction (whether the conviction is his own or another’s)’.

Section 4(5) defines ‘circumstances ancillary to a conviction’ as

- ‘(a) the offence or offences which were the subject of that conviction;
- (b) the conduct constituting that offence or those offences;
- (c) any process or proceedings preliminary to that conviction, any sentence imposed in respect of that conviction, any proceedings (...) for reviewing that conviction or any such sentence, and anything done in pursuance of or undergone in compliance with any such sentence.’

The term ‘proceedings before a judicial authority’, used in sections 4(1)(a) and 4(1)(b) (and in section 7, see below), is defined in section 4(6).

The prohibitions in section 4(1) and section 4(1)(a) and 4(1)(b) are subject to exceptions set out in section 7 (and 8, although not of application here) of the Act.

Exceptions to the prohibitions

Exceptions to the prohibitions are contained in section 4(4), 7 and 8 of the Act.

Section 4(4) allows the Secretary of State, by Order, to exclude or modify the application of sections 4(2) and 4(3) in such circumstances as may be specified in the order.