

<b>Title:</b> LASPO Lords Committee Stage Amendments <b>IA No:</b> <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b> Home Office, Criminal Records Bureau, UK Border Agency ("UKBA")	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 01/01/2011		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Primary legislation		
<b>Contact for enquiries:</b> Jillian Kay jillian.kay@justice.gsi.gov.uk			

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> RPC Opinion Status
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£m	£m	£m	Yes/No
			In/Out/zero net cost

**What is the problem under consideration? Why is government intervention necessary?**

Despite the ambition and determination of those working within the justice system, too many people re-offend and too much money is spent with the consequences of high levels of re-offending. Government intervention is required to ensure punishments are robust and demanding and to reduce the level of re-offending. The sentencing framework requires simplification as it is complex, expensive and time-consuming to interpret and administer and is also difficult for the public to understand.

**What are the policy objectives and the intended effects?**

Our central objectives are to ensure offenders face robust and demanding punishments and to make the public safer by breaking the cycle of crime. The intended effects of this policy are to ensure that offenders are rehabilitated effectively. The sentencing framework will seek to achieve a better balance across the purposes of sentencing to support these objectives, maintain fairness and trust in the system and improve value for money. The particular provision in this Impact Assessment goes towards effective rehabilitation and reintegration of offenders into society.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

The policy options which have been considered in this Impact Assessment are:

- Option 0: do-nothing
- Bring forward a government amendment to the Legal Aid, Sentencing and Punishment of Offenders Bill on reform of the Rehabilitation of Offenders Act 1974 ("ROA")

**Will the policy be reviewed? It will/will not be reviewed. If applicable, set review date: Month/Year**

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>		<b>Non-traded:</b>

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

Signed by the responsible Minister:


 Date: 2 February 2012

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Reform of the ROA – increase scope, reduce rehabilitation periods and simplify the Act

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	Unknown	Unknown	Unknown

**Description and scale of key monetised costs by ‘main affected groups’**

**Other key non-monetised costs by ‘main affected groups’**  
 There will be no costs to the CRB as a result of the amendments to the ROA. Some juvenile offenders may be subject to longer rehabilitation periods as the provisions of the ROA are simplified and made consistent. When a decision is taken by UKBA in relation to a person subject to immigration control, that person will not benefit from the protection of the ROA. Information available to UKBA in their decision making will therefore include spent cautions and convictions.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	Unknown	Unknown	Unknown

**Description and scale of key monetised benefits by ‘main affected groups’**

**Other key non-monetised benefits by ‘main affected groups’**  
 Ex-offenders who have been sentenced to 4 years or less in custody would benefit from having their conviction considered spent in a reduced time period. This may reduce the barriers to employment that ex-offenders face, thereby increasing employment among this group. There may also be social benefits in terms of reduced re-offending – though the exact magnitude of these benefits is unclear.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>
Offenders are most at risk of re-offending within the first 24 months of release from custody. Data suggests that over longer time periods, ex-offenders who have not re-offended in a previous time period are very unlikely to re-offend in future. However, there is a small risk that this policy exposes some employers or individuals to a greater risk of harm through their re-offending. However, this risk is mitigated by the Exceptions Order so that where there is particular opportunity for harm previous cautions or convictions are never considered spent.	

## BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>	<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
Costs:	No	NA
Benefits:		
Net:		

# Evidence Base

## Introduction:

1. The Ministry of Justice (MoJ) published a consultation document entitled 'Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders' (Breaking the Cycle) on 7 December 2010. It set out proposals to reform how offenders are punished, sentenced and rehabilitated. The Government published its response to the consultation exercise in June 2011. The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Bill was also published in June 2011, a cumulative impact assessment on the sentencing components of the LASPO bill was published on the 14th November 2011 on introduction of the Bill to the Lords to reflect changes to the Bill made during the passage through the House of Commons.
2. This Impact Assessment accompanies a government amendment that is being tabled in the House of Lords Committee Stage of the LASPO bill on reform of the Rehabilitation of Offenders Act.
3. The Government aims to reform how offenders are punished, sentenced and rehabilitated in a way that delivers value for money and is consistent with the Spending Review obligations of the Ministry of Justice (MoJ).

## Background:

4. The Rehabilitation of Offenders Act 1974 ("ROA") seeks to find a balance between public protection and the resettlement of offenders. The ROA enables ex-offenders, who have not committed further proven offences, not to disclose their previous cautions and convictions after certain periods of time have passed. After these specified time periods ("rehabilitation periods"), all cautions and convictions (except those resulting in prison sentences of over 30 months) are regarded as 'spent'. Once a caution or conviction is spent it no longer has to be revealed or admitted in most circumstances. These rehabilitation periods are:
  - For custodial sentences of up to and including 6 months, the conviction will not become spent until 7 years after the offender was convicted;
  - For custodial sentences of between 6 and up to and including 30 months, the conviction will not become spent until 10 years after the offender was convicted;
  - For fines and community orders, the conviction will not become spent until 5 years after the offender was convicted;
  - For conditional discharges, the conviction will not become spent for the period of the order, or a minimum of 12 months (whichever is longer) after the offender was convicted; and
  - For absolute discharges, the conviction will not become spent until 6 months after the offender was convicted.
5. For those individuals aged under 18 when convicted, the relevant rehabilitation periods are half of those specified above.
6. The law was extended in 2008 to cover simple cautions, reprimands and warnings (which become spent immediately) and conditional cautions (which become spent after 3 months).
7. Once a caution or conviction has become spent under the Act, the ex-offender does not have to reveal it or admit its existence in most circumstances. There are some exceptions, but unless the individual is told that one of these applies and are asked for more details of all their cautions or convictions, spent cautions and convictions need not be disclosed when filling in a form, or at a job interview. An employer cannot refuse to employ someone (or dismiss someone) because he or she has a spent caution or conviction unless an exception applies.
8. The exceptions where an ex-offender may have to declare spent cautions and convictions are listed on the Rehabilitation of Offenders Act 1974 (Exceptions) Order. These exceptions include, but are not limited to:

- Those working with children and other vulnerable groups, such as teachers and social workers;
  - Those working in professions associated with the justice system, such as solicitor, police, court clerk, probation officer, prison officer and traffic warden;
  - Doctors, dentists, chemists, nurses or Paramedics;
  - Accountants;
  - Veterinarians;
  - Managers of unit trusts;
  - Anyone applying to work as an officer of the Crown;
  - Employees of the RSPCA or SSPCA whose duties extend to the humane killing of animals;
  - Any employment or other work normally carried out in bail hostels or probation hostels;
  - Certain officials and employees from government and public authorities with access to sensitive or personal information or official databases about children or vulnerable adults;
  - Any office or employment concerned with providing health services which would normally enable access to recipients of those health services;
  - Officers and other persons who execute various court orders;
  - Anyone who as part of their occupation occupies premises where explosives are kept under a police certificate;
  - Contractors who carry out various kinds of work in tribunal and court buildings;
  - Certain company directorships, such as those for banks, building societies and insurance companies; and
  - Certain civil service positions are excluded from the act, such as employment with the Civil Aviation Authority and the UK Atomic Energy Authority
9. Aside from these professions, the law also exempts organisations if the question is asked:
- by or on behalf of the Football Association, the Football League or Premier League to assess someone's suitability to work as, or supervise or manage, a steward at football matches;
  - by the Financial Services Authority and certain other bodies involved in finance, when asked to assess the suitability of a person to hold a particular status in the financial and monetary sectors; and
  - to assess a person's suitability to adopt children, or a particular child, or a question about anyone over the age of 18 living with such a person
10. There are also a number of proceedings before a "judicial authority" (widely defined) that are excluded from the Act, and where spent cautions and convictions can be disclosed. These include applications for adoption or fostering, and for firearms certificates. Applicants to university courses are required to declare their criminal records on their UCAS forms. Students applying to do law, medicine, teaching, nursing and social work (or similar trades) may be barred if they have a conviction, even if it is spent.

The Exceptions Order can be amended through secondary legislation by way of an affirmative order.

**Organisations in scope of these proposals:**

11. The main groups affected by these proposals are:
- The Criminal Records Bureau ("CRB") - the CRB is a body that administers criminal records checks on behalf of applicants (usually employers or voluntary organisations);
  - UK Border Agency ("UKBA") –the organisation that protects the UK border and to which individuals can make applications relating to immigration, asylum and nationality;
  - Criminal Injuries Compensation Authority ("CICA")- CICA is the government body responsible for administering the Criminal Injuries Compensation Scheme ("CICS") in England, Scotland and Wales.;
  - Ex-offenders;
  - Employers;
  - Voluntary organisations; and
  - Members of the public

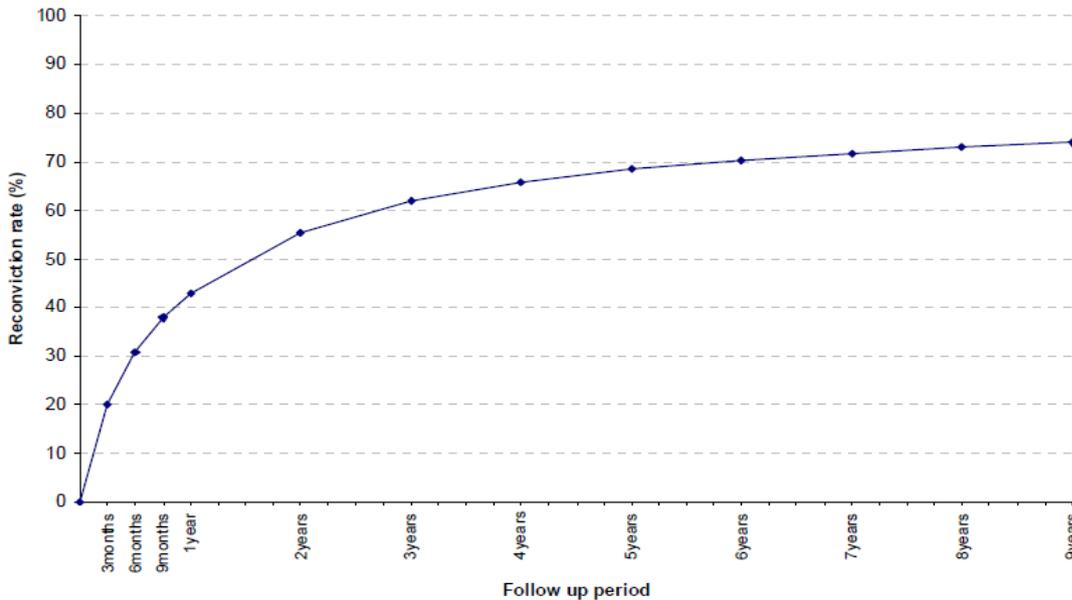
**Problem under consideration:**

- 12. The rehabilitation periods are currently very long. These time periods fail to recognise that offenders are most at risk of re-offending shortly after they are discharged from custody. As outlined in the graph below, the re-conviction rate rises very quickly after discharge but tails off so that re-conviction rates are not significantly different over longer time horizons; for example, the difference between the 1-year and 2-year reconviction rates is about 12 percentage points whereas the difference between the 8-year and 9-year reconviction rates is only 1 percentage point.
- 13. Data on reconviction rates over time based on offenders in the Ministry of Justice 2000 Reconviction Cohort show that after a three-month follow up period, 19.9% of offenders have been reconvicted compared to 43.0% in one year and 74.0% within 9 years. Over half of those offenders reconvicted within the nine year follow up period are convicted within the first year.<sup>1</sup> Reducing the length of rehabilitation periods would therefore not result in the removal of unspent convictions from a large number of ex-offenders who would subsequently re-offend.

**Figure 1: Reconviction rate for different follow up periods, 2000 reconviction cohort<sup>2</sup>**

Follow up period	Reconviction rate
3 months	19.9%
6 months	30.8%
9 months	37.9%
1 year	43.0%
2 years	55.2%
3 years	61.9%
4 years	65.8%
5 years	68.4%
6 years	70.4%
7 years	71.8%
8 years	73.0%
9 years	74.0%

**Figure 2: Reconviction rate for different follow-up periods, 2000 reconviction cohort**



Source: MoJ compendium of re-offending statistics and analysis, 2010. Analysis of 2000 reconviction cohort

<sup>1</sup> Ministry of Justice (2010). Compendium of reoffending statistics and analysis, Ministry of Justice Statistics Bulletin  
<sup>2</sup> The reconviction rate measures the percentage of adults who are discharged from custody or start a court order under probation supervision and are reconvicted at court after a certain follow-up period. The 2000 cohort used in the re-offending in England & Wales publications which consists of all offenders discharged from custody or commencing a court order under probation supervision (aged 18 and over at discharge or commencement).

14. The current rehabilitation periods also fail to consider the severity of sentencing in a logical way, so that a 7 month custodial sentence will not become spent for 10 years after the sentence is given, which is the same rehabilitation period for a 30 month custodial sentence.
15. The ROA as currently designed is often difficult to understand and can lead to being inaccurately applied so that those it intends to benefit do not do so. ROA also fails to properly penalise persistent offenders who commit offences within the existing rehabilitation period:
  - If an offender commits a summary only offence<sup>3</sup> during the rehabilitation period, this will have no impact on the duration of the rehabilitation period;
  - If an offender commits a triable either-way<sup>4</sup> and/or indictable only offence<sup>5</sup>, the rehabilitation period is extended to the longest rehabilitation period applicable.

#### **Rationale for intervention;**

16. The unemployment rate among ex-offenders is high. Results from the offending, employment and benefits data linkage project indicates that 75% of ex-prisoners have claimed out-of-work benefits at some point in the 2 years after release from prison<sup>6</sup> while 47% of ex-prisoners are still claiming out of work benefits 2 years after release<sup>7</sup>.
17. The primary purpose of the ROA is to support the effective rehabilitation of ex-offenders who have stayed on the right side of the law by supporting routes into employment, whilst maintaining an appropriate balance towards public protection. As the ROA is currently drafted it fails to achieve this balance. Several studies have highlighted the association between employment and reduced levels of re-offending, in fact, research has shown that being in employment is associated with a lower risk of re-offending<sup>8</sup>. Details of previous convictions are a strong motivating factor for employers withdrawing offers of employment – that is, ‘unspent’ criminal convictions could be an impediment to employment for ex-offenders<sup>9</sup>. There is also a perception among offenders that criminal records are a barrier to finding work – of those who did not have any paid employment in the 4 weeks before custody, 16.2% listed previous criminal records as a barrier to getting work/ looking for work<sup>10</sup>.
18. The government considers that the ROA should be reformed so that the criminal records disclosure scheme more effectively assists ex-offenders to obtain work, whilst maintaining the necessary safeguards for sensitive areas of employment and proceedings. Part of this is reaching clarity and consistency in ROA policy so that it can be better understood and applied.
19. The Exceptions Order to the ROA will continue to operate so that sensitive areas of employment and proceedings will continue to be able to rely on all conviction information (spent and unspent) when determining the suitability of individuals to carry out these particular roles. We believe that these reforms will go further to achieve the aims of the ROA and fit with the wider MoJ policy of reducing re-offending and getting ex-offenders into work.

#### **Policy objective:**

20. To achieve a more proportionate and relevant balance towards improving the employment prospects of reformed offenders who have put their criminal lives behind them, whilst maintaining public protection, part of which is through the continued operation of the Exceptions Order.

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<sup>3</sup> Summary only offences are triable at a Magistrate’s Court in England & Wales or Northern Ireland

<sup>4</sup> A triable either-way offence is triable at either a Magistrates’ Court or Crown Court in England & Wales, or Northern Ireland

<sup>5</sup> An indictable offence is triable only at a Crown Court in England & Wales or Northern Ireland

<sup>6</sup> Offending, employment and benefits – emerging findings from the data linkage project, Ministry of Justice and Department for Work & Pensions publication, 2011

<sup>7</sup> Offending, employment and benefits – emerging findings from the data linkage project, Ministry of Justice and Department for Work & Pensions publication, 2011

<sup>8</sup> Social Exclusion Unit, Reducing re-offending by ex-prisoners, 2002; M Lipsey in Thomas D Cook et al., Meta-analysis for explanation: a case-book, 1992; F Simon and C Corbett, an evaluation of prison work and training, Home Office 1996.

<sup>9</sup> CRB disclosure applicant research 2010

<sup>10</sup> Surveying Prisoner Crime Reduction Wave 1 results, 2010

## Option 0: do nothing – leave the ROA unchanged

21. The 'base case' sets out the assumptions the government has made about future trends if no action is taken and if this amendment is not implemented.
22. Under the do-nothing option, many ex-offenders would continue to face barriers to employment as they have 'unspent' convictions as laid out under the current conditions of the ROA, despite having demonstrated that they have put their criminal lives behind them, by not re-offending. Employers would continue to operate with a confusing Act that is potentially misunderstood and incorrectly applied.
23. It is difficult to estimate with any certainty what the baseline number of ex-offenders with unspent criminal convictions is. While we have annual data on those sentenced to custody and other types of disposal, the total stock of those ex-offenders with unspent criminal convictions depends ultimately on the rate, frequency and severity of re-offending. For this reason, we do not specify a baseline volume of ex-offenders in this impact assessment.
24. As the do-nothing is compared against itself, its costs and benefits are necessarily zero.

## Option 1: reform of the ROA (preferred option)

### Description:

25. This option involves increasing the scope of the Act so that sentences of up to and including 4 years in custody can become spent after a period of time; sentences of over 4 years in custody can never become spent. The rehabilitation periods would now commence when the sentence ends (including any period spent by the offender on license), rather than from the date that the offender is convicted. The rehabilitation periods would be changed as follows:
  - Custodial sentences over 0 months and up to and including 6 months, the conviction would not become spent until 2 years after the end of the sentence;
  - Custodial sentences of over 6 months and up to and including 30 months, the conviction would not become spent until 4 years after the end of the sentence;
  - Custodial sentences of over 30 months and up to and including 4 years, the conviction would not become spent until 7 years after the end of the sentence;
  - Community order, the conviction would not become spent until 1 year after the end of the order;
  - Fines, the conviction would not become spent until 1 year from the point of imposition; and
  - An absolute discharge will become spent immediately.
26. As under the current ROA, these rehabilitation periods would be halved for offenders who are under the age of 18 at the point of conviction with one exception (to ensure that the total rehabilitation period for short custodial sentences is appropriate and proportionate when compared to youth rehabilitation orders):
  - Custodial sentences over 0 months and up to and including 6 months in custody would not become spent until 18 months after the end of the sentence for offenders who are under 18 at the point of conviction.
27. These periods will apply equally to the corresponding military offences, which are included in the relevant definitions of sentences to be rehabilitated. Specifically, for sentences of service detention, the conviction would not become spent until 12 months from the date of conviction; for removal from Her Majesty's Service, the conviction would not become spent until 12 months from the date of conviction.
28. However there are three situations where the proposals will mean rehabilitation periods would increase. The cases where a period will be extended are:
29. **Youth rehabilitation orders** ("YRO's") Currently these become spent after one year or when the order ceases to be in force (whichever is later); under proposed amendments they become spent 6 months from when the order ceases to be in force. Where an order of longer than 6

- 3 month YRO: now 12 months, under LASPO 9 months;
- 1 year YRO: now 12 months, under LASPO 18 months; and
- 3 year YRO: now 36 months, under LASPO 42 months.

*NB: As stated above, the YRO will become spent 6 months after the order ceases to be in force. We have provided the examples above as illustrative comparisons of the rehabilitation period before and after these reforms, based on the length of rehabilitation period from the point of conviction.*

30. **Detention and training orders** (“DTOs”) for 12 to 14 year olds. These can be a maximum of 24 months. Currently these become spent one year after the Order ceases to have effect; under proposed amendments DTOs will be treated in the same way as other custodial sentences, so that DTOs of less than 6 months will become spent 18 months after the end of the sentence and for DTOs over 6 months it will be 2 years after the end of the sentence. Thus for example the rehabilitation period will change as follows:

- 3 month DTO: Now 15 months, under LASPO 21 months;
- 6 month DTO: Now 18 months under LASPO 24 months;
- 18 month DTO: Now 2 ½ years, under LASPO 3 ½ years; and
- 2 year DTO: Now 3 years, under LASPO 4 years.

*NB: As stated above, the DTO will become spent 18 months after the sentence (for DTOs of less than 6 months) or 2 years after the end of the sentence (for DTOs of greater than 6 months). We have provided the examples above as illustrative comparisons of the rehabilitation period before and after these reforms, based on the length of rehabilitation period from the point of conviction.*

31. **Repeat offenders:** The same rule would be applied to summary offences that is applied to triable either-way and indictable only offences when committed in an existing rehabilitation period. This will ensure consistency in the way that offenders who commit further offences within existing rehabilitation periods are treated.
32. All extended determinate sentences, regardless of length, will be excluded from the scope of ROA so that these convictions can never become spent.
33. All changes will be retrospective so that offenders who have committed offences in the past will be subject to the new rehabilitation periods.
34. The reforms to rehabilitation periods for offenders will only apply to offenders residing, and seeking to rely on the ROA in England & Wales.

### **UKBA**

35. The clause relating to UKBA will exempt them entirely from the operation of the ROA so that they can rely on all conviction information (spent and unspent) when making immigration and nationality decisions.

### **Costs**

#### **CRB:**

36. The CRB is a body that administers criminal records checks on behalf of applicants (usually employers or voluntary organisations). There will be no costs to the CRB and the service they provide as a result of these amendments.

### **Ex-offenders:**

37. Many more ex-offenders will benefit from the proposed reforms by extending the scope of the Act to longer sentences. However, a minority of ex-offenders may face longer rehabilitation periods under the proposals:
- Those sentenced to a youth rehabilitation order currently face a rehabilitation period of 1 year or until the order expires. Under these proposals, the rehabilitation period would be 6 months from the end of the order. Some ex-offenders may have to wait up to 6 months longer to have their convictions spent;
  - Those sentenced to a detention and training order of less than 6 months currently face a rehabilitation period of 1 year from the end of their order (if they were aged 12-14 when convicted) or 3.5 years from the end of their order (if they were aged 15-17 when convicted). Under these proposals, the rehabilitation period would be 18 months from the end of the sentence. Some ex-offenders (12-14 when convicted) would have to wait up to 6 months longer to have their convictions spent; and
  - Those sentenced to a detention and training order of more than 6 months currently face a rehabilitation period of 1 year from the end of their order (if they were aged 12-14 when convicted) or 5 years from the end of their order (if they were aged 15-17 when convicted). Under these proposals, the rehabilitation period would be 2 years from the end of the sentence. Some ex-offenders (12-14 when convicted) would have to wait up to 12 months longer to have their convictions spent.
  - Those convicted of summary only offences within an existing rehabilitation period may have their existing rehabilitation period extended in line with the rehabilitation period attached to the subsequent conviction. For example, an offender towards the end of an existing rehabilitation period commits a summary only offence, resulting in a fine. The fine attracts a rehabilitation period of 12 months, which will end after the end date of the existing rehabilitation period. These amendments mean that the first offence will not now become spent until the rehabilitation period applicable to the fine has been completed. Conversely, if the rehabilitation period applicable to the summary only offence were due to be completed before the existing rehabilitation period comes to an end, under these amendments it will remain unspent until the existing rehabilitation period has been completed.
38. The first three situations above relate to relatively serious offences affecting young people. Sentences of DTOs are a type of custody for young people. These amendments therefore bring the rehabilitation periods in respect of DTOs in line with the rehabilitation period for other types of custodial sentence. Offences attracting such sentences are likely to be sufficiently serious that potential employers or providers of training courses might need or expect to be aware of them. The longer rehabilitation periods also reflect the evidence about the likelihood of re-offending.
39. The fourth bullet point above, relates to a provision that means offenders will in future have to disclose an offence that would otherwise be regarded as spent where a second, summary offence has been committed during the rehabilitation period of the first offence. This amendment brings the situation for subsequent summary offences in line with the current position where there is a subsequent either way or indictable offence. The aim is to bring consistency to what has been historically a confusing provision. It is not uncommon currently for offenders to fail to disclose offences they should have disclosed and disclose offences they need not have done because the current provisions are so complex. The government also believes it is right that offenders who have committed further offences within an existing rehabilitation period should not benefit from the protection of the ROA until they can demonstrate that they have put their criminal behaviour behind them fully, no matter how serious the subsequent offending is.

### **UKBA applicants:**

40. UKBA currently use only information relating to an applicant's unspent convictions in their immigration and nationality decision-making processes. These reforms exempt UKBA from the ROA enabling them to operate wholly outside the Act and take into account information relating to an applicant's spent and unspent convictions.. The following groups of individuals subject to an immigration or nationality decision may therefore be affected;

- a. Those seeking entry clearance or leave to enter the UK (for example as a student or to work)
  - b. Those seeking to remain in the UK on a non-permanent basis (extending or switching their current leave)
  - c. Those seeking to enter or remain in the UK indefinitely
  - d. Those seeking British citizenship
  - e. Individuals being considered for deportation
  - f. Individuals whose leave may be revoked or curtailed
41. Immigration and nationality decisions that are not in the favour of the person they are made in relation to can be for a variety of reasons; each case is assessed by UKBA against a wide range of criteria. We cannot estimate the impact that the UKBA exemption would have on the total number of immigration and nationality decisions as this depends on a number of variables. These are the proportion of these individuals who have a previous criminal conviction; how UKBA intends to assess the decisions of individuals with previous criminal convictions; and whether these individuals would have been otherwise refused for reasons not relating to previous criminal convictions.
42. The tables below outline the volumes of refusals that UKBA makes over the period 2007-2010 for applications relating to settlement; extensions of leave to remain; and Citizenship:

**Figure 2: total grants and refusals of settlement, 2007-2010**

	Total grants of settlement	Total refusals of settlement
2007	124,854	13,481
2008	148,936	9,343
2009	194,781	12,560
2010	241,192	11,134

**Figure 3: total grants and refusals of extensions of leave to remain, 2007-2010**

	Total grants of extensions of leave to remain	Total refusals of extensions of leave to remain
2007	274,022	23,557
2008	267,863	21,121
2009	250,794	46,984
2010	244,301	49,173

**Figure 4: refusals of Citizenship by reason, 2007-2010**

	2007	2008	2009	2010
Incomplete applications	929	530	447	380
Parent not a British Citizen	2,533	1,306	1,692	786
Not of good character	1,693	2,667	2,747	2,168
Delay in replying to enquiries from UKBA	2,232	819	584	767
Residence	4,137	2,219	3,651	2,409
Oath not taken in time	38	37	26	9
Insufficient knowledge of English and KOL	2,365	608	267	382
Other	796	548	488	692
<b>Total refusals</b>	<b>14,723</b>	<b>8,734</b>	<b>9,902</b>	<b>7,593</b>
British already	659	264	285	316
Withdrawn	246	88	64	65
<b>Total refused or withdrawn</b>	<b>15,628</b>	<b>9,086</b>	<b>10,251</b>	<b>7,974</b>
Rejected applications	255	41	131	200

*NB: these figures do not indicate the volume of UKBA applicants that could be affected but are provided for indicative purposes to indicate the number of grants and/ or refusals of certain types of decisions made by UKBA over the period 2007-2010*

**CICA:**

43. The government has announced its intention to reform the CICS, and is consulting on tightening the present Scheme rules regarding how a victim’s unspent convictions may be used to restrict eligibility for compensation. This consultation was launched on 30<sup>th</sup> January 2012. There may be some impact on CICA if more victims of crime have their previous convictions considered as spent, but given that the CICS system is subject to consultation and possible reform, we have not estimated the potential impact of the changes in ROA on CICS. Future Impact Assessments will, where possible, estimate the full range of costs, including CICS expenditure in any reformed system.

**Benefits**

**Ex-offenders:**

- 44. Ex-offenders who have served custodial sentences of 4 years or less and who do not go on to re-offend would benefit from having their conviction ‘spent’ and after a reduced amount of time. This should reduce the barriers to employment that many ex-offenders currently face. Research has indicated that employment is positively associated with reduced levels of re-offending<sup>11</sup>. To the extent that these reforms reduce unemployment among this group of ex-offenders, re-offending may also be reduced.
- 45. We have not quantified the number of ex-offenders who will now have a shorter rehabilitation period. Any estimate would be subject to considerable uncertainty as there are a large number of interactions to consider; these are the rate, frequency and severity of re-offending; and the outcome if the offender is convicted. Any estimate would also be difficult to quantify as it is complicated by the switch from calculating the length of the rehabilitation period from date of conviction to the date of end of the sentence.
- 46. The table below shows historic sentencing patterns. These indicate the scale of the volume of offenders who could potentially benefit from the reduction in rehabilitation period. It does not account for those offenders who re-offend before their convictions are spent. These figures have been broken down into two age categories (18+ and under 18) to reflect the different rehabilitation periods for under 18’s:

**Figure 5: sentence lengths for those adult (18+) offenders subject to immediate custody in England & Wales, 2006-2010**

Age band	Sentence length	2006	2007	2008	2009	2010	Grand Total
18+	0-6 months	55,686	54,306	55,238	54,795	56,349	276,374
	6 - 30 months	22,024	22,910	25,122	26,758	26,922	123,736
	30 months to 4 years	6,099	6,076	6,781	7,203	7,390	33,549
	Over 4 years	6,025	6,084	6,886	6,535	6,633	32,163
18+ Total		89,834	89,376	94,027	95,291	97,294	465,822

**Figure 6: sentence lengths for those juvenile (under 18) offenders subject to immediate custody in England & Wales, 2006-2010**

Age band	Sentence length	2006	2007	2008	2009	2010	Grand Total
Under 18	0-6 months	3,448	3,230	2,838	2,597	2,148	14,261
	6 - 30 months	2,330	2,226	2,170	1,972	1,721	10,419
	30 months to 4 years	266	223	298	235	209	1,231
	Over 4 years	139	151	192	136	141	759
Under 18 Total		6,183	5,830	5,498	4,940	4,219	26,670

<sup>11</sup> Social exclusion unit, reducing re-offending by ex-prisoners, 2002

**Figure 7: sentence lengths for all offenders subject to immediate custody or suspended sentence orders in military courts, 2006-2010, UK & Germany**

Sentence Length	2006	2007	2008	2009	2010	Grand total
0-6 months	289	261	326	336	216	1428
6-30 months	101	84	99	122	145	551
30 months to 4 years	1	8	4	0	4	17
4 years +	4	4	3	3	4	18
<b>Total</b>	<b>395</b>	<b>357</b>	<b>432</b>	<b>461</b>	<b>369</b>	<b>2014</b>

**Figure 8: types of disposal for adult (18+) offenders in England & Wales, 2006-2010**

Age band	Sentence type	2006	2007	2008	2009	2010	Grand Total
18+	Custodial sentence	89,834	89,376	94,027	95,291	97,294	465,822
	Suspended sentence	33,509	40,687	41,151	45,157	48,118	208,622
	Community sentence	129,339	130,417	130,128	139,948	141,575	671,407
	Fine	942,563	923,364	873,457	929,802	879,818	4,549,004
	Other	123,889	125,557	126,799	106,536	116,929	599,710
<b>18+ Total</b>		<b>1,319,134</b>	<b>1,309,401</b>	<b>1,265,562</b>	<b>1,316,734</b>	<b>1,283,734</b>	<b>6,494,565</b>

**Figure 9: types of disposal for juvenile (under 18) offenders in England & Wales, 2006-2010**

Age band	Sentence type	2006	2007	2008	2009	2010	Grand Total
Under 18	Custodial sentence	6,183	5,830	5,498	4,940	4,219	26,670
	Suspended sentence		1				1
	Community sentence	61,498	66,007	60,043	55,955	47,746	291,249
	Fine	11,599	10,453	9,047	7,955	6,503	45,557
	Other	14,526	15,096	13,787	12,694	15,398	71,501
<b>Under 18 Total</b>		<b>93,806</b>	<b>97,387</b>	<b>88,375</b>	<b>81,544</b>	<b>73,866</b>	<b>434,978</b>

**Figure 10: types of disposal for all offenders sentenced in military courts, 2006-2010, UK & Germany**

Sentence type	2006	2007	2008	2009	2010	Grand total
Custodial	343	313	380	398	321	1755
Suspended	52	44	52	63	48	259
Community service	6	3	2	2	3	16
Fine	74	84	60	97	85	400
Other	36	62	44	63	47	252
<b>Total</b>	<b>511</b>	<b>506</b>	<b>538</b>	<b>623</b>	<b>504</b>	<b>2682</b>

**UKBA:**

47. UKBA's core functions are about establishing the entitlement of foreign nationals to enter and remain in the UK. Good character of such individuals is a key issue in this decision making process. UKBA needs the wider picture of a person's behaviour to enable them to make the fundamental decision about whether to grant them permission to stay in the UK. The changes to the rehabilitation periods are such that UKBA will no longer be able to take information into account that it needs to in order to make such an assessment. Because of this, and the government's commitment to securing and protecting our borders and deporting foreign national offenders upon completion of their sentence, the government believes that this exemption is necessary.

## Social benefits:

48. Some studies have shown that employment is associated with reduced re-offending<sup>12</sup>. When an individual has an 'unspent' conviction, that conviction must be disclosed to a prospective employer. This is a key barrier to employment for ex-offenders. There is some research conducted by the CRB on the impact of disclosures on recruitment decisions which indicates that details of previous convictions were a key motivation in employers withdrawing employment offers<sup>13</sup>. Those ex-offenders who have served sentences of less than 4 years in custody and who do not go on to re-offend would benefit from having their conviction 'spent' after a reduced amount of time. To the extent that these reforms increase employment among ex-offenders, re-offending may also be reduced.
49. The social costs of re-offending include the emotional, physical and financial costs to victims as well as the financial costs to the criminal justice system. Based on previous work by the Home Office, the National Audit Office estimated that, in 2007/08, re-offending by all recent ex-prisoners cost the economy between £9.5 billion and £13 billion and that as much as three-quarters of this cost can be attributed to former short sentenced prisoners: some £7 billion to £10 billion per year<sup>14</sup>. Encouraging a greater number of ex-offenders into employment may reduce re-offending rates and potentially reduce the social costs of re-offending. Given the uncertainty surrounding the baseline volume of ex-offenders with unspent convictions and the difficulty in predicting the exact magnitude of the reduction in re-offending, we do not quantify this benefit.

## Risks and assumptions;

50. When an employer makes an employment offer, the key problem for the employer is one of asymmetric information – i.e. they cannot be sure of whether a potential candidate has a criminal record. The availability of information on a job candidate's criminal convictions mitigates this risk for those employers that can make use of criminal records checks. This proposal potentially reduces the time during which unspent convictions have to be disclosed to certain employers. This means that there is a risk to an employer of hiring someone who subsequently re-offends. This could expose some employers/individuals involved in activities where the offender works to a greater, indirect risk of harm through their re-offending.
51. This risk is minimal as the Exceptions Order ensures that there are safeguards in place so that for activities where there is a particular opportunity for harm, or where there are particularly sensitive groups involved and so the harm itself is potentially greater, an ex-offender cannot conceal their conviction. This risk is also considered minimal as for example, the probability of an ex-offender re-offending for the first time after 36 months is little different from the probability of first time re-offending after 48 months.
52. There are many studies that attempt to explain re-offending and while some research has indicated that employment is positively associated with reduced levels of re-offending, this causal link is not completely proven. While this impact assessment has not quantified any increase in the employment rate for ex-offenders arising from this proposal, there is a risk that the impact of this policy on the employment prospects of previously convicted offenders is minimal.

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<sup>12</sup> Social Exclusion Unit, Reducing re-offending by ex-prisoners, 2002

<sup>13</sup> CRB disclosure applicant research 2010. A telephone survey of 4,005 disclosure applicants was undertaken; all of the disclosure applicants had applied for at least one enhanced level CRB check within the last year and received the outcome of their application. Importantly, as this research was only undertaken on disclosure applicants who had applied for enhanced level checks, it is not representative of all disclosure applicants who apply for standard CRB checks – we therefore cannot say with any certainty what recruitment impact there is arising from disclosures of previous criminal convictions.

<sup>14</sup> NAO report, managing offenders on short custodial sentences, March 2010