

## Response ID ANON-7F9H-FBG7-4

Submitted to **Rehabilitation of Offenders - Proposals to reform rehabilitation periods in Northern Ireland**  
Submitted on **2021-03-05 10:07:11**

### Foreword

### Purpose of the Consultation

### Rehabilitation periods in Northern Ireland

### Current rehabilitation periods in other jurisdictions

### Proposals for further reform in England and Wales

### Summary - Tables of rehabilitation periods in the United Kingdom

### Safeguards and Exceptions

### Consultation Responses - Your Details

#### What is your organisation?

**Organisation:**

The Law Society of Northern Ireland

#### What is your name?

**Name:**

Ann McMahon

#### What is your email address?

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### Consultation Questions

#### Question 1 Do you think that the rehabilitation periods for custodial sentences in Northern Ireland should be reviewed?

Yes

**Q1:**

The Law Society of Northern Ireland (The Society) would agree that it is opportune that The Department of Justice review rehabilitation periods for custodial sentences in this jurisdiction as they have remained essentially unchanged since first introduced in 1978 by the Rehabilitation of Offenders (Northern Ireland) Order 1978 (the 1978 Order). Changes in sentencing practice in the intervening period may mean that in some instances longer sentences are being imposed than when rehabilitation periods were first introduced. In addition, it may be the case that the current bar on custodial sentences of over 30 months being treated as spent may be counter productive to the overall concept of rehabilitation.

An entire overhaul of the infrastructure of rehabilitation is required and the Society feels that an opportunity may have been lost at this point in time to carry out an overview. Rather than limit this consultation to periods of rehabilitation and fines, consideration might have been given to other issues eg the interplay with juvenile convictions and diversions and the future implications for young offenders; article 8 rights; disposals resulting in antecedents such as cautions and/or a warning and advice and court directed disposals including absolute and conditional discharges, community service, probation orders; mandatory disclosure of multiple convictions; self-disclosure. The benefit of reviewing this area as a whole would result in guidance for judiciary and for solicitors to fully advise clients on the consequences of convictions and offer a consist approach across the UK. The Society is mindful that the majority of cases disposed of by criminal courts results in non-custodial outcomes.

Juvenile justice reform is required. The focus has been to divert juveniles from court with alternative disposals. Juvenile offenders are offered many opportunities to reform when they enter the justice system, however when they reach the age of majority their past offending becomes a significant issue for them as their convictions are relevant when they try to put the past behind them. The Society would suggest consideration be given to this dichotomy and the feasibility of adopting an approach whereby juvenile convictions might be sealed (save for the exceptions) and only opened on judicial direction.

#### Question 2 If you answered 'yes' to Question 1 do you think the rehabilitation periods should be reduced or increased?

I think that rehabilitation periods should be reduced.

**Question 2:**

The Society believes that any revision of the current rehabilitation periods should involve consideration of the adoption of the newly proposed periods for England and Wales. This jurisdiction had mirrored the provisions applicable in England and Wales under the Rehabilitation of Offenders Act 1974 until a change was introduced in (in England and Wales) 2012. Currently England and Wales are also focusing on rehabilitation periods and the Ministry of Justice has announced proposals for further reform as contained in the White Paper 'A Smarter Approach to Sentencing'. A similar approach should be adopted in this jurisdiction so that this element of the justice system may be up to date and consistent with current practices. To do otherwise would be inconsistent with the concept of reducing reoffending through the rehabilitation of offenders by re-integration into society.

**Question 3 If you think that rehabilitation periods should be reduced, do you support the introduction of a two-part rehabilitation period, made up of the length of the sentence imposed by the court plus an additional "buffer" period?**

Yes, I support the introduction of a new two-part rehabilitation period.

**Question 3:**

The Society would encourage such an approach to rehabilitation.

In addition, thought should be given to extending assistance to offenders during rehabilitation periods to focus on reforming behaviour with the provision of adequate supports, as these are not always available. The Department should make such provision especially during the license period for offenders. The Society feel that to look at rehabilitation in isolation to resources is futile. Additional resources to support rehabilitation must be made available by the Department.

**Question 4 In respect of sentences that can become spent, do you support a review of the custody bands under which rehabilitation periods are specified?**

Yes, I support a review of custody bands.

**Q4:**

The Society would support a review of custody bands, given that it has taken a considerable period of time for attention to be given to this area of justice. Further, it would be appropriate for this jurisdiction to adopt the proposals currently being considered in England and Wales.

Clarity is required through legislation on the position of non-custodial disposals and antecedents including absolute and conditional discharges, community service, probation orders, fixed penalty notices, binding over orders, restraining orders as these are not covered in the 1978 Order.

**Question 5 Currently, convictions resulting in a custodial sentence of over 30 months (2½ years) in Northern Ireland can never become spent. Do you think this should be reviewed?**

Yes, I think that custodial sentences of over 30 months should be reviewed.

**Q5:**

As stated earlier it is opportune for a complete overhaul of this area of justice. Emphasis is on rehabilitation. Comprehensive support and help for offenders must be developed to a greater extent. Thus, to successfully reintegrate an offender into society in every sense, must include consideration of when a custodial sentence becomes spent.

The Society repeats that any revision of the current rehabilitation periods should involve consideration of the adoption of the newly proposed periods for England and Wales.

**Question 6 If you answered 'yes' to Question 5, please select one of the following options:**

I think that the limit of 30 months should be changed to include determinate custodial sentences of over 30 months with no upper limit (meaning that all determinate custodial sentences of over 30 months could become spent, (excluding serious sexual, violent or terrorist offences).

**Q6:**

The Society believes that it is important that to retain the provision of 'excepted employments or professions' whereby applicants must declare convictions, even when (under legislation) they are technically spent. These exceptions are contained in the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 and cover situations whereby a particular conviction could have a strong bearing on an individual's suitability for particular employment.

Article 2 rights must be observed if there is a suggestion that an offender cannot be rehabilitated. The potential of re/employment of an offender is consistent with rehabilitation.

In a situation where someone has more than one conviction they must disclose this under the law and this raises the issue of proportionality as discussed by (the late) Lord Kerr in his dissenting judgement in Gallagher Judicial Review [2019] UKSC 3. In that case the potential for widespread disproportionate outcomes – a "killer blow" was fully explored by Lord Kerr. The issue of disclosure requires attention urgently by the Department. Lord Kerr in the Gallagher case suggested a Code for the Independent Reviewer (IR) as currently they deal with each application on a case by case basis. A code or set of regulations with a statutory basis would be an appropriate framework for the IR to adhere to.

Finally, the Society submits that it is disappointed at the restrictive nature of this consultation and that it did not embrace an opportunity to look at rehabilitation in a wider context. The issue of juvenile convictions requires attention and the feasibility of sealing non-excepted records which would allow juvenile offenders to go

forward and lead more productive lives. Perhaps a consultation on the issue of juvenile justice might be considered by the Department?

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