

Disclosure periods of previous convictions & alternatives to prosecution in Scotland under the Rehabilitation of Offenders Act 1974

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Disclosure periods of previous convictions & alternatives to prosecution in Scotland under the Rehabilitation of Offenders Act 1974 (“the 1974 Act”)¹

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	This is an excluded sentence and the conviction will not become spent after a specific amount of time A review mechanism will be available in due course for relevant sentences over 48 months	This is an excluded sentence and the conviction will not become spent after a specific amount of time A review mechanism will be available in due course for relevant sentences over 48 months

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

¹ These disclosure periods will apply when Part 2 of the Management of Offenders (Scotland) Act 2019 is commenced.

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
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 CO to end	
Compulsion Order with Restriction Order (CORO)	Length of order. If the restriction order ends and	

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 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.

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act in Scotland. Anyone in doubt should seek their own legal advice.

	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	
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Children’s hearings

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 (AtP)		
Category 1 ⁷ AtPs	Zero	Zero
Category 2 AtPs	3 months	3 months

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.

⁷ 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. All others are “Category 2 AtPs”.

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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 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	7 years	7 years
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	3 years	3 years

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		
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 Force Act 1955 or under schedule 4A of the Naval Discipline Act 1957	1 year or the length of the order, whichever is the longer	1 year or the length of the order, whichever is the longer
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>

		Length of the order plus 12 months
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