EXPLANATORY MEMORANDUM TO

The Rehabilitation of Offenders (Amendment) Order (Northern Ireland) 2022

2022 No.
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1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under Articles 6(13) of the Rehabilitation of Offenders (Northern Ireland) Order 1978 ("the 1978 Order") and is subject to draft affirmative resolution procedure.

2. Purpose

2.1. This instrument amends the Rehabilitation of Offenders Order (Northern Ireland) 1978 ("the 1978 Order") to reduce to the length of time that it will take for some convictions to become spent, and to allow more sentences to be capable of becoming spent.

3. Background

3.1. The Rehabilitation of Offenders (Northern Ireland) Order 1978 ("the 1978 Order") contains provisions to help former offenders gain employment and to live within the law. A former offender who finds employment is less likely to re-offend, thus benefiting themselves, their family and the wider community.

3.2. The 1978 Order allows for some convictions to become 'spent' after a designated period of rehabilitation has ended. This means that some convictions do not have to be declared after a certain period of time – the 'rehabilitation period' – has elapsed, facilitating ex-offenders in applying for work and further promoting their reintegration into society.

3.3. Rehabilitation periods in Northern Ireland have remained essentially unchanged since they were first introduced in 1978.

3.4. The current rehabilitation periods are a period of 5 years for a fine; 7 years for a sentence of imprisonment of up to 6 months; and 10 years for a sentence of imprisonment of over 6 months and up to, and including, 30 months. Any sentence of over 30 months cannot currently become spent.

3.5. Since the 1978 legislation was first introduced, changes in sentencing practice have meant that longer sentences are now being imposed than when rehabilitation periods were first established.

3.6. In addition, the bar on custodial sentences of over 30 months being treated as spent in Northern Ireland may be counter-productive. Overall, the terms of the current scheme may act as an unintended barrier to employment for former offenders who have not re-offended since their release.

3.7. Conscious of developments in neighbouring jurisdictions – both already implemented and under consideration, Minister Long commissioned a review of rehabilitation periods in Northern Ireland in February 2020.

3.8. A public consultation exercise was formally launched on 8 January 2021. This sought views on proposals to reform rehabilitation periods in Northern Ireland, to assist ex-offenders find employment and so reduce re-offending.

3.9. Acknowledging that the vast majority of respondents (96%) supported the proposals for reform, and having analysed the responses to the consultation exercise and drawn upon conviction data and re-offending rates specific to Northern Ireland, the Department developed a number of reform options for the Minister's consideration.

3.10. The Minister, having carefully considered all of the information provided, determined that her preferred way forward was for the development of a scheme that would reorder and reduce existing rehabilitation periods and allow for sentences of up to 10 years imprisonment to be capable of becoming spent.

3.11. The 2022 Order will amend the 1978 Order so that where low-level offending results in a court imposed order that is intended to regulate the behaviour of the person convicted, the rehabilitation period will now end when the order ceases to have effect. The 2022 Order will also reduce the rehabilitation period for a fine from 5 years to 1 year.

3.12. For custodial sentences, the 2022 Order will set the rehabilitation period for a sentence of imprisonment of up to 1 year at 1 year; for a sentence of imprisonment of over 1 year and up to and including 4 years the period is 4 years; and for a sentence of imprisonment of over 4 years and up to and including 10 years, the period is 7 years.

3.13. The rehabilitation periods for custodial sentences begin on the day on which the sentence (including any licence period) is completed and for those aged 18 or under at the time of conviction, the rehabilitation periods are halved.

3.14. To future proof the 1978 Order and to mitigate against potential judicial challenges against the lawfulness of the new 'bright line' limits to be inserted into the legislation by this instrument, the Department will consider the development of an appeal or application process for those with determinate convictions of over 10 years imprisonment.

3.15. In bringing forward these reforms, the Department and the Minister were satisfied that there would be no increased risk to public safety as a result of the changes to be introduced by the 2022 Order

3.16. There are certain jobs and professions where applicants must always declare their convictions, even where they are considered spent.

3.17. They are known as 'excepted' employments or professions and can include working or coming into contact with children or vulnerable people; working in financial institutions, the medical world and in law enforcement, amongst others, where a particular conviction could have a strong bearing on an individual's suitability for employment in that area

3.18. For Northern Ireland purposes, these exceptions are set out in the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979.

3.19. The 1979 Order, and the employments and professions specified as 'excepted' therein, are not being amended as part of this reform exercise. Consequently, all spent and unspent conviction data will continue to be disclosed for sensitive employments, such as working with children, young people and vulnerable adults

4. Consultation

4.1. The Department of Justice conducted a public consultation exercise on the proposals for reform of rehabilitation periods in Northern Ireland. The exercise was launched on 8 January 2021 and ran for 9 weeks.

4.2. The exercise closed on Friday 12 March 2021 with a total of 77 responses received. The vast majority of respondents, 96%, supported the proposals for reform.

4.3. A copy of the consultation document can be viewed at: https://www.justice-ni.gov.uk/sites/default/files/consultations/justice/rehabilitation-consultation-2021.pdf

4.4. A copy of the summary of responses and way forward document can be viewed at: https://www.justice-ni.gov.uk/publications/rehabilitation-offenders-sumary-responses.

5. Equality Impact

5.1. An equality screening exercise was carried out and the proposals for reform of rehabilitation periods were screened out as not requiring an equality impact assessment.

6. Regulatory Impact

6.1. There are no issues to be considered.

7. Financial Implications

7.1. There are no financial implications.

8. Section 24 of the Northern Ireland Act 1998

8.1. There are no s.24 considerations.

9. EU Implications

9.1. The development of an appeal/application procedure for sentences of over 10 years will protect the Department from future legal challenges that the rehabilitation of offender regimes is in breach of Article 8 of the European Convention on Human Rights (right to privacy).

9.2. There are no other EU implications.

10. Parity or Replicatory Measure

10.1. England and Wales, and Scotland, have their own rehabilitation of offenders legislation. Although there are some broad consistencies in the rehabilitation regimes across the jurisdictions for rehabilitation periods for convictions of up to four years, there are differences with how the regions deal with convictions of over four years.

10.2. In Scotland, an appeal mechanism is to be developed to allow individuals to apply to have a conviction of over four years become years become spent.

10.3. England and Wales, by comparison, with significantly higher number of offenders and different offending behaviour, is bringing forward legislation that will allow all convictions of over four years to become spent, except for convictions for offences that are specified as serious violent, sexual or terrorist offences. These offences will not be capable of becoming spent.

11. Additional Information

11.1. Not applicable