

Consultation on Proposals to Reform Rehabilitation Periods in Northern Ireland

Consultation Report and Summary of Responses

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Department of
Justice

An Roinn Dlí agus Cirt
Máinnystrie O tha Laa

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Background

1. This document provides a summary of the responses to the Department of Justice's consultation on proposals to reform rehabilitation periods in Northern Ireland.
2. The purpose of the consultation was to seek a range of views on the current rehabilitation periods and to assess the public's appetite to reform rehabilitation periods in Northern Ireland to reflect changes in sentencing practices and developments in other jurisdictions.
3. The consultation also sought views on proposals to reduce the length of time that it will take for some convictions to become spent, and to allow more sentences to be included in the Rehabilitation of Offenders scheme in Northern Ireland.
4. The Rehabilitation of Offenders (Northern Ireland) Order 1978 ("the 1978 Order") contains provisions to help former offenders to 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.
5. The 1978 Order allows for some convictions to become spent after a designated period of rehabilitation has ended. This means that those convictions do not have to be declared after a certain period of time has elapsed, facilitating ex-offenders in applying for work and further promoting their reintegration into society.
6. Since then, changes in sentencing practice have meant that longer sentences are now being imposed than when rehabilitation periods were first established. In addition, the bar on custodial sentences of over 30 months being treated as spent in Northern Ireland may be counter-productive.
7. 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

The Consultation Process

8. On 8 January 2021 the Justice Minister, Naomi Long, launched a public consultation entitled '*Rehabilitation of Offenders - A consultation on proposals to reform rehabilitation periods in Northern Ireland*'.
9. A press release was issued to raise public awareness of the consultation launch and emails were sent to key stakeholders advising of the launch of the consultation. The press release and stakeholder emails included a link to the consultation on Citizen Space and details of other ways to respond.

10. The consultation ran for 9 weeks and closed on Friday 12 March 2021. In all, 77 responses were received.
11. All of the responses to the consultation were considered to help the Department reach a final decision on the policy proposals for the reform and updating of the Rehabilitation of Offenders (Northern Ireland) Order 1978.
12. This report provides a summary of the responses to the consultation questions. The Department of Justice is grateful to all of those who took the time to respond.

Overview of responses

13. All of the consultation questions provided a tick box response and an option for respondents to provide comments if they so wished.
14. A total of 77 responses were received:
 - 41 responses were received from organisations;
 - 36 responses were received from members of the public;
 - 61 respondents chose to complete the consultation using the online platform Citizen Space;
 - 11 respondents submitted written responses, these have been included in this document's answers; and
 - 5 respondents submitted written submissions which addressed issues outside the remit of this consultation.
15. The Department has taken note of all comments received and reflected on those responses as part of its consideration of the next steps.

Summary of Responses

16. The following summary of responses is based on the responses provided by the 72 respondents who completed the consultation questions.

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

- *69 respondents (96%) answered 'Yes' to this question*
- *3 respondents (4%) answered 'No' to this question*

17. The majority of respondents (96%) supported a review of the rehabilitation periods for custodial sentences in Northern Ireland.
18. The importance of securing employment was specifically referred to by many respondents. They noted: how significant a factor employment was in reducing reoffending and giving people hope for the future; and that the more former offenders who can find employment the less reoffending.
19. One respondent said that employment is one of the most important desistance factors in the reduction of general reoffending and, as a society, we should aspire to reduce as many obstacles to employment as possible. He noted that the evidence demonstrates that having a job is the single biggest contributor to reducing reoffending.
20. Another respondent detailed their experience of people returning to custody expressing concern over how they had been excluded from employment opportunities due to their criminal record.
21. One respondent asked: “how is it fair to further punish offenders and their families for the rest of their lives by restricting employment choices after they have served the sentence imposed by the court?”
22. A respondent who had served a three year custodial sentence had been refused employment on a number of occasions because of their conviction. On one occasion they had been offered a job where a large number of candidates had been considered but the job offer was withdrawn once their conviction was revealed.
23. The cost to society was also cited by some respondents as a reason to reform rehabilitation periods; if ex-offenders are unable to find employment because of their unspent convictions they will have to be supported financially by the welfare system, or may return to crime to provide an income to support their families.
24. Another respondent said that barriers to employment impact on the ability to run a home which increases pressures on accommodation and hostels, and results in people living on the street. Accommodation is a basic need, the first step for people to feel secure - only when a person feels safe and secure, will they begin to focus on other areas of their life to problem solve.
25. There was a consensus amongst respondents that long rehabilitation periods can cause disillusionment and despondency, and some ex-offenders could not see the point in applying for a job given their custodial sentence. This particularly applied to those who had served longer sentences.

26. One respondent said that if the rehabilitation process is too long it becomes a huge barrier to resettlement; and that the current rehabilitation periods and disclosure periods are very long which can act as a barrier to resettlement within communities. The respondent also said that long periods of rehabilitation and disclosure can effectively brand individuals as criminals for life.
27. Some respondents mentioned that long rehabilitation periods affect the chances of securing employer and also have an impact on, and create barriers to, accessing insurance and financial services. One respondent who had served a custodial sentence said there have been many occasions when they been refused insurance, and this still happens decades after their conviction.
28. One respondent said that society acknowledges that a person removed from society should be assisted on their return towards becoming a socially functioning adult. Work and family are the two central foundations for that; the re-establishment of both these important factors is significantly affected by the current rehabilitation periods.
29. A respondent commented that many criminal offences are committed by those with mental health, addiction issues and/or learning difficulties; noting that Northern Ireland has a particular problem with mental health problems partly as a result of the civil conflict. It is inequitable that these people, who are already disadvantaged, are disadvantaged further by the obstacles placed in the way of education, training, volunteering and employment.
30. Some respondents were concerned that the current legislation governing the rehabilitation of offenders should not be looked at as a safeguarding measure to keep the public safe. They considered that The Rehabilitation of Offenders (Northern Ireland) Order 1978 (“the 1978 Order”) was intended to give people a chance to be rehabilitated and to start afresh and was not intended to be used as a public protection mechanism.
31. Another respondent said that positive change towards allowing convictions to become spent sooner is not at odds with public protection as the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 (“the 1979 Order”) and the Enhanced AccessNI regime ensures that serious crimes cannot be 'hidden' by those seeking to work in regulated activity.
32. Around 26 respondents supported a review of the rehabilitation periods to bring Northern Ireland into line with the rest of the UK. Some thought that individuals in Northern Ireland were being discriminated against because of having to disclose convictions for longer and that, for consistency and fairness, we should align with the rest of the UK.

33. A number of respondents thought that the differing rehabilitation periods created confusion for ex-offenders regarding whether their convictions were spent or unspent if they relocated to another jurisdiction. This could mean the accidental under or over disclosing of convictions, for education, employment or insurance purposes, which could have serious consequences for the individual concerned.
34. Some responses from organisations representing young people detailed the dramatic impact long disclosure periods can have on a young person in the early stages of their lives, as they seek to pursue employment pathways, and how this is of particular concern in Northern Ireland where the age of criminal responsibility is 10 years.
35. One respondent said that juvenile justice reform is required and that 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.
36. The respondent suggested that consideration should be given to this dichotomy and the feasibility of adopting an approach whereby juvenile convictions might be sealed (save for particular exceptions) and only opened on judicial direction.
37. Another respondent said that their experience with young people demonstrated that the fear felt by young people moving through the processes of the criminal justice system, and the realisation of damage they have done to relationships with family, friends and their own future lives, is sufficient to ensure they stay on the "straight and narrow".
38. High rehabilitation periods can have the opposite effect and being able to secure employment is essential to anyone with a criminal conviction turning their lives around. Punishment for crimes is required but should not be at the expense of the ability to rehabilitate.
39. There were three respondents who did not support a review of rehabilitation periods. One respondent said there were happy with how the current system worked as the primary aim is keeping the public safe.
40. Another respondent said that while they understood the pressure on Northern Ireland from other neighbouring jurisdictions, imprisonment is mostly given for a reason and the trend of reducing and in effect watering down the unspent periods in the long term will not be helpful; there are other ways to help people get back to normal life without removing the only protection the society at large has.

41. Some respondents commented that the consultation should include a review of all sentences currently under the scope of the current legislation and that community orders and fines have relatively long disclosure periods, coupled with a lack of protection from discrimination. This mean that, for example, a person who has been fined can find it very difficult to find even basic work.
42. One responding organisation said that, rather than limit this consultation to periods of rehabilitation and fines, consideration might have been given to other issues, for example:
- 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; and
 - self-disclosure.
43. That organisation also stated that it was mindful that the majority of cases disposed of by criminal courts result in non-custodial outcomes.

Question 2 - Do you think rehabilitation periods should be reduced or increased?

- ***Reduced*** - 70 respondents (97%) thought that rehabilitation periods should be reduced.
 - ***Not answered*** - 2 respondents (3%) did not answer this question.
44. The majority of respondents (97%) supported a reduction of the rehabilitation periods for mostly the same reasons that are detailed in the response to Question 1.
45. One organisation commented that the concept of the current legislation, that some people are inherently incapable of rehabilitation and must always disclose custodial sentences of 30 months or more, is flawed and that evidence suggests that a person's risk of reoffending is the same, or even less, than a person without a conviction after 7 to 10 years.

46. One respondent stated that, under the current system, many former prisoners will say that their real punishment only begins upon the completion of their sentence when they try to reintegrate into society and have doors slammed at every turn.
47. Another described how a conviction from 22 years ago was still affecting their life, their ability to gain employment and their ability to have a relationship.
48. One respondent detailed how they had been convicted and served their sentence but the long rehabilitation period which deprived them of hope for the future led to drug addiction. They reflected that, had they been resident in England or Wales, their conviction would have been spent long ago.
49. Another respondent said that reducing the period of rehabilitation would lead to better outcomes regarding crime reduction. International research on desistance from crime suggests that crime reduction is strongly related to social and civic reintegration. That is, desistance is most likely when individuals are able to find meaningful employment, form strong family bonds, and become
50. One response proposed that the Department should examine the impact of current rehabilitation periods and criminal records on young people, to identify where the barriers exist in relation to progressing in education, training and employment and beyond.
51. A respondent commented that many younger people carry out criminal acts as a result of background, poor mental health or other outside influences. From their experience, the fear felt moving through the processes of the criminal justice system and realisation of damage they have done to relationships with family, friends and their own future lives is sufficient to ensure they stay on the "straight and narrow".
52. That respondent considered that high rehabilitation periods can have the opposite effect. Being able to secure employment is essential to anyone with a criminal conviction turning their lives around. Punishment for crimes is required but should not be at the expense of the ability to rehabilitate.
53. One respondent said that we know that unemployment is a critical factor in contributing to reoffending, therefore it is crucial to shorten the length of time for convictions to be disclosed to help create any real change and protect people with criminal records from unjust discrimination.
54. Another respondent considered that any increase in rehabilitation periods would have a detrimental effect and further reduce opportunities for people to find employment, potentially leading to further reoffending.

55. For one respondent, reducing the period of rehabilitation would lead to better outcomes regarding crime reduction; and international research on desistance from crime suggests that crime reduction is strongly related to social and civic reintegration.
56. That is, desistance is most likely when individuals are able to find meaningful employment, form strong family bonds, and become involved in their communities through volunteer work, education, and support networks.
57. Research suggests that a primary obstacle to desistance involves not the individual actor but rather the system of justice itself. Individuals feel they are “set up to fail” and that “the system” does not want them to succeed, but rather is designed to keep them entrapped in a cycle of recidivism.

Question 3: 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** - 47 respondents (65%) supported the introduction of a two-part rehabilitation period.
 - **No** - 15 respondents (21%) did not support the introduction of a two-part rehabilitation period.
 - **Not answered** – 10 respondents (14%) did not answer this question.
58. Approximately two thirds (65%) of respondents supported the introduction of a two-part rehabilitation period.
 59. These respondents were supportive of a two-part rehabilitation period for a number of reasons:
 - the buffer period provides an opportunity and time for individuals to prove or redeem themselves;
 - it separates those want to get on with their lives from those who do not want to change; and
 - allows an account to be taken of individual circumstances.
 60. Some respondents supported the idea of a buffer system but thought that the 'clock' for the buffer period should start at the date of release from custody and not the end of the sentence because most sentences given are determinate custodial sentences, which means half of the sentence is served in custody and the remaining half is served in the community.

61. If a person successfully completes their licence period remaining crime free, it would seem counter-intuitive that they only begin their rehabilitation period at this point, in contrast to someone with the same sentence who had been recalled after release to serve the remainder of their sentence in custody.
62. Another respondent thought that the buffer period approach had some measure of proportionality within it, and in England and Wales it did allow for more substantial reductions in spending periods. However, they noted that a buffer period is more complex.
63. Some respondents also had some concerns regarding a two-part rehabilitation period and the serious implications if convictions were incorrectly disclosed. For one organisation the most common single enquiry which their organisation received was from people trying to work out when their conviction was actually spent.
64. To resolve the potential of incorrect disclosure, the Department of Justice would need to provide clear and concise guidance for individuals, employers and organisations.
65. Some respondents had concerns about how this system would operate in practice given there was no evidence to show the value of 'buffer' periods.
66. The reasons provided by respondents who did not support a buffer period were that it would be complicated and would create confusion for offenders, employers and insurers.
67. For some respondents it was seen as an additional 'add on' which, in effect, increases the sentence imposed. It was akin to having a second sentence imposed and was not different enough from the current system to provide any benefits.
68. There were 10 respondents who did not answer the question but did provide comments. From the information provided by one of the respondents in this category it was evident that they were supportive of the introduction of a two-part rehabilitation period.
69. The remaining respondents were more cautious about the benefits of a buffer period and thought that there was no clear reasoning for supporting this system and further careful consideration was needed. Some thought it could create confusion for individuals and employers on understanding when a conviction was spent.
70. Other comments included giving consideration to allowing rehabilitation periods to start at the date of release from custody and that there are issues with buffer periods in other jurisdictions.

71. One respondent noted that the recent Scottish reforms have created a pathway for an individual to have themselves declared as 'rehabilitated'; and thought that although this has not yet been implemented perhaps this is something that reforms in Northern Ireland should create a pathway for.

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** - 67 respondents (93%) supported a review of custody bands.
 - **No** – 5 respondents (7%) did not support a review of custody bands.
72. The majority of respondents (93%) supported a review of the current custody bands.
73. Some respondents commented that the original custody bands were out of date. They were developed in an era when sentences were substantially shorter and that this was enough to justify re-evaluation of the tiers keeping modern sentencing standards in mind. The rationale and lack of explanation for the custody bands as they currently exist was also questioned.
74. Around 15 respondents thought that the custody bands in Northern Ireland should mirror those in England and Wales or the rest of the UK, and that individuals here were at a disadvantage compared to their counterparts in other jurisdictions.
75. One respondent commented that a review should include a robust piece of evidence gathering to ensure that there is a sound reasoning for each custody band being attributed to a particular period of rehabilitation.
76. A few respondents did provide proposals for new custody bands with spending periods increasing more gradually rather than in large increments. The proposals were that the first tier could include sentences of up to 12 months rather than the current limit of 6 months.
77. For mid length sentences suggestions were made to change the next tier to 1 to 2 years. There were differences of opinion regarding the highest tier with suggestions of 2 to 4 years or 2 to 3 years.
78. One respondent said that the current custody bands are quite wide and thought that tighter bands would be more appropriate as there is quite a range and sentences below 12 months but over 6 months are treated the same as a 30 months prison sentence, which does not seem logical.

79. Another respondent commented that an account needs to be taken of actual time served and not sentence imposed, also a sentence of 2 weeks has the same weight as a 6 months sentence. Clarity was also needed for a 6 months sentence, as to what band should this come under; 6 months or less, or 6 to 30 months in the current banding system?
80. One respondent said that it was logical to adjust bands to allow for less serious crimes to be dealt with in shorter disclosure periods whilst ensuring that most serious offences would never become spent.
81. Another respondent thought that it that it was important for business and industry as well as wider society that low risk individuals are not held back from employment due to the custody band they fall under.
82. Five respondents did not support a review of the custody bands, believing that imprisonment is mostly given for a reason and the trend of reducing and watering down the unspent periods in the long term will not be helpful. They considered that the current custody bands give the offender time to prove him or herself in the community and give them light at the end of the tunnel and a goal to work towards.

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*** – 68 respondents (94%) supported a review of the current limit of 30 months.
 - ***No*** – 4 respondents (6%) did not support a review of the current limit of 30 months.
83. The majority of respondents (94%) supported a review of the current bar on custodial sentences of 30 months or more never becoming spent.
84. Some respondents thought that people should be given the opportunity to move on with their lives and that lifelong disclosure for sentences of 30 months or more does not assist with rehabilitation; it has an adverse effect, creating a poverty of hope, leaving many people feeling that they can never be rehabilitated in the eyes of the law, and is in effect a life sentence.
85. Respondents were also concerned that lifelong disclosure for custodial sentences implies that individuals with such sentences are incapable of being rehabilitated, irrespective of the circumstances in which the conviction took place.

86. They noted that in the case of someone who has committed an offence at a young age and never reoffends they will have to declare their unspent conviction for the rest of their lives.
87. Respondents also questioned whether lifelong disclosure is necessary or proportionate in all cases and that such a broad and intrusive measure is not supported by evidence. Some considered it is unjust and incompatible with Article 8 (Right to Private and Family Life) of the European Convention on Human Rights.
88. A number of respondents were of the view that the current approach is not restorative and may contribute to unemployment and reoffending; saying that everyone should have the chance to make a positive contribution to society and this is best served by those who can secure sustainable employment that an enduring criminal record would otherwise hinder.
89. Some respondents did not believe that there should be a blanket barrier to rehabilitation based on the length of a sentence, rather an approach should be developed that allows for individual circumstances to be taken into account.
90. One respondent reported that individuals who have spent long periods in prison tend to have the lower rates of recidivism than those doing very short sentences.
91. The idea of unspent convictions appears to be based not on risk/rehabilitation, but rather on ideas of retributivism (such individuals do not 'deserve' to ever be free of their convictions by the serious nature of their offences). Retributivists would argue that any additional (collateral) consequences above such dramatic punishments, including a lifetime of stigma and exclusion, are antithetical to the notion of justice.
92. As such, the notion of the unspent conviction appears to be motivated not by any particular penal philosophy outside of a populist punitiveness: it makes us feel good that people who have done terrible things suffer stigma for the rest of their lives. It does not make us safer and it does not make society just, however, and those are the primary duties of a criminal justice system.
93. Many respondents were supportive of Northern Ireland aligning with the rest of the UK and in particular England and Wales, where sentences of up to 48 months can become spent, whilst acknowledging there are exclusions to this rule to ensure safeguarding.
94. Some respondents noted that whilst they supported a change to the 30 months limit for disclosure there remains a need for safeguards and processes to be in place to protect the public from those who have committed serious offences.

Question 6 – The 68 respondents (94%) who were supportive of a review of the bar on custodial sentences of over 30 months never becoming spent, were asked to select one of the following 3 options:

Option 1 - *Do you think that the limit of 30 months should be changed to include custodial sentences of up to **48 months**?*

○ 18 respondents (26%) selected this option.

95. Respondents who selected this option commented that it would bring Northern Ireland into line with the rest of the UK and would widen the talent pool for employers and businesses – the more people who find work the less reoffending.
96. 10 respondents did not provide any comments.

Option 2 - *Do you 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)?*

○ 49 respondents (68%) selected this option.

97. One respondent thought that the removal of an upper limit was forward thinking and future-proof and provided Northern Ireland with an opportunity to showcase positive reform of rehabilitation practises.
98. Some respondents commented that for people who commit offences and are sent to prison the punishment is the loss of their freedom and any further restrictions extends and exacerbates this punishment and is neither equitable nor just.
99. Another respondent wanted to draw attention to the fact that lifelong disclosure and the discrimination that people face as a result is extremely harmful. It doesn't only relate to employment but can also create difficulties in accessing services such as insurance and financial products which are ongoing throughout life and ultimately far beyond any past offending.
100. Some respondents questioned how can a person become rehabilitated if the system is based on the belief that they can never become a rehabilitated citizen? We need to incentivise rehabilitation and punish those who need punishment but also reward and recognise where individuals have overcome great personal barriers.

101. Others commented that the seriousness of the offence would be expected to be measured by the sentence imposed. Each case should be assessed on an individual basis and any decision should take into account a variety of information; age at the time of offence; circumstances of the offence; how the individual has progressed; feedback from custody; risk of reoffending; probationary period on release; and conduct whilst on licence.
102. One respondent thought that a court review mechanism would be a fairer way for deciding on whether or not a conviction can become spent. After a determined period of time, a person with a serious conviction could present evidence of their rehabilitation and an independent decision could be made as to whether or not they could be deemed as being rehabilitated and the conviction be considered spent.
103. In California State they have this mechanism which allows courts to issue 'certificates of rehabilitation' and studies have shown that people with these certificates have a similar chance of finding employment as someone without a conviction.
104. Other respondents were in favour of a review mechanism similar to the Independent Criminal Records Filtering Review Scheme, where individuals could apply for convictions to become spent after a predetermined timeframe and would take into consideration their personal circumstances. Such a system would create the opportunity for someone whose convictions which would otherwise never become spent to challenge this as well as reducing rehabilitation periods.
105. Another option proposed by a respondent is to create a legal framework for a "life" rehabilitation period to be individually appealed as was done in Scotland. The respondent goes on to say that whilst the appeal mechanism itself has yet to be created, the provision has been written into law to create the option to use it in future without future legislation. This approach does not commit to pursuing this policy, merely creates the option to do so easily.
106. One respondent thought that a hybrid of the first two positions is the most beneficial; moving the threshold upwards and also allowing for certain longer sentences to become spent. However, if they were to choose then they believe that the second option is slightly more preferable.
107. Another respondent thought that moving the threshold upwards would correct for sentence inflation, but nothing more and that a model where longer sentences can become spent, and with an adjustable list of exemptions, is a more substantial reform and creates a better mechanism for granular reform moving forward.

108. Some respondents voiced concerns about the list of serious offences which will be exempt and urged careful consideration as this decision will have a truly lifelong impact. They considered that this must be arrived at transparently and with proper public discussion.
109. Another respondent noted that an exemptions list will need a considerable amount of work and evidence gathering as well as a thorough public consultation process.
110. A respondent said that most crime is committed by young people, and a 3 year sentence will typically translate to 18 months spent in prison, leaving that young person facing 40 or 50 years of discrimination. The list of exempt offences needs to be set in this context and genuinely justified.
111. One respondent believes that there is a need to look at each crime and the level of each crime, rather than simply at the length of the sentence. All crimes are different, with differing circumstances, and as such each one needs to be looked at individually. The fact that a three-year sentence is automatically deemed comparable to a 15-year sentence is outdated and in need of reform.
112. This respondent also thought that in terms of looking at each crime/offence, it would be beneficial to undertake awareness raising work with magistrates and the judicial system in relation to the impact of imposing particular sentences for the long-term impact on individuals. For example, if a magistrate understood that imposing a sentence of over 30 months for a more minor offence could cause a major stumbling block for the individual's long-term rehabilitation, it may cause them to rethink their sentencing.
113. The respondent also thought that it would be very beneficial for awareness raising sessions to take place in schools, colleges, places of further education as well promotional information to be placed on social media aimed at children and young people.
114. If young people was aware of how the activities they could potentially become involved in would affect them in their work, travel, or study for the rest of their lives, it may cause them to rethink their actions.
115. Some respondents asked that it be noted that the language used in relation to excluding "serious sexual, violent or terrorist offences" mirrors the language used in the Criminal Justice Act 2003 section 224 which does not apply to Northern Ireland.
116. Some respondents said that it must also be recognised that references to terrorist offences in England & Wales are notably different to that in a Northern Ireland context.

117. Conflict related convictions need to be addressed and that much work has been carried out in this area including published guidance advising employers to disregard conflict-related convictions unless materially relevant to the post to be filled. It is estimated that over 30,000 individuals have conflict related offences, mostly young men serving long sentences subject to the same disclosure arrangements as any other offences under the Rehabilitation Order.
118. A respondent said that it should be remembered that Northern Ireland is a unique place with its own set of circumstances and challenges and, as such, should not simply defer to the systems of England & Wales.

Option 3 - *Do you think that the limit of 30 months should be reduced meaning that fewer sentences would be capable of becoming spent?*

- 1 respondent (1%) selected this option but did not record a comment.
119. The 4 respondents who did not support a review of the 30 months limit make up the remaining 5%.

Post consultation consideration

120. Having considered the responses to the consultation exercise and drawn upon conviction data and re-offending rates specific to Northern Ireland, the Department developed 4 options for consideration by the Minister. These were:

Option 1 maintain existing regime;

Option 2 introduce a version of the current E+W/Scottish arrangements (to allow all sentences of up to 4 years to become spent);

Option 3 replicate proposed future E+W model (to include sentences of over 4 years, except those for serious violent, sexual or terrorist offences); or

Option 4 develop a hybrid scheme with a fixed upper limit of up to 10 years for any kind of offence.

121. Although the focus of this reform exercise was primarily to consider rehabilitation periods for custodial sentences, the exercise also included proposals for reforms to rehabilitation periods for non-custodial sentences, which make up the majority of disposals handed down by the courts.

122. For example, changes to the rehabilitation regimes in England and Wales and Scotland that are currently in effect have reduced the rehabilitation period for a fine from 5 years to 1 year.
123. There are also changes to some youth disposals, including the rehabilitation period for a youth rehabilitation order, which was reduced to 6 months, beginning with the last day on which the order has effect.
124. While the following pages primarily relate to subsequent discussion and arrangements for custodial disposals, the Department intends to bring forward similar changes to rehabilitation periods for minor offending in Northern Ireland, in line with developments in other jurisdictions.
125. The proposed reforms to rehabilitation periods for the full range of convictions to be covered by the rehabilitation regime in Northern Ireland are set out in detail on page 24.

Presentation of options

126. The options presented to the Minister for consideration were as set out below.

Option 1 – maintain existing regime

Sentence	Rehabilitation Period *
A fine	Fixed period of 5 years
A sentence of imprisonment of 6 months or less	Fixed period of 7 years
A sentence of imprisonment of 6 – 30 months	Fixed period of 10 years
A sentence of imprisonment of over 30 months	Can never become spent and must always be declared

* Rehabilitation period runs continuously from date of conviction under this regime

Option 2 – introduce a version of the current E+W / Scottish arrangements

Sentence (E+W)	Rehabilitation Period *
A fine	1 year
A sentence of imprisonment of 6 months or less	Length of sentence imposed <u>plus</u> 2 year buffer period
A sentence of imprisonment of 6 – 30 months	Length of sentence imposed <u>plus</u> 4 year buffer period
A sentence of imprisonment of 30 – 48 months	Length of sentence imposed <u>plus</u> 7 year buffer period
A sentence of imprisonment of over 48 months	Can never become spent and must always be declared

* The rehabilitation period for this regime is made up of the sentence imposed (including any licence period) followed by the buffer period.

Sentence (Scotland)	Rehabilitation Period
A fine	1 year
A sentence of imprisonment of up to 12 months	Length of sentence imposed <u>plus</u> 2 year buffer period
A sentence of imprisonment of 12 – 30 months	Length of sentence imposed <u>plus</u> 4 year buffer period
A sentence of imprisonment of 30 – 48 months	Length of sentence imposed <u>plus</u> 6 year buffer period
A sentence of imprisonment of over 48 months	Can never become spent and must always be declared#

The Scottish have indicated that a review mechanism will be available in due course for relevant (i.e. non-serious) sentences of over 48 months

Option 3 - replicate future E+W arrangements

(as legislated for in the Police, Crime, Sentencing and Courts Bill);

Sentence	Rehabilitation Period
Fine	<u>Remains</u> at 1 year
Sentence of imprisonment of 1 year or less	Length of sentence imposed <u>plus</u> 1 year
Sentence of imprisonment of 1 - 4 years	Length of sentence imposed <u>plus</u> 4 years
Sentence of imprisonment of more than 4 years (<u>excluding serious sexual, violent or terrorist offences</u>)	Length of sentence imposed <u>plus</u> 7 years

127. The E+W exclusions are specified violent offences, specified sexual offences or specified terrorism offences, as defined in section 224 and specified in Schedule 15 to Criminal Justice Act 2003 (Schedule 15 of the Act specifies 174 offences).

128. The equivalent legislation for Northern Ireland purposes is Article 14 and Schedule 1 to the Criminal Justice (Northern Ireland) Order (see paras 131 – 134).

Option 4 – a hybrid scheme with a fixed upper limit of up to 10 years for any offence.

129. For the purposes of the options paper, the Department set the upper limit at 10 years.

130. The rationale for the Department’s position was as follows.

131. Article 14 of the Criminal Justice (Northern Ireland) Order 2008 defines a “serious offence” as one that is specified in Schedule 1 to the Order.

132. Schedule 1 then lists a number of serious violent and sexual offences which carry a penalty of 10 years or more, and which can attract a public protection sentence in the form of a discretionary life sentence, an indeterminate custodial sentence (an “ICS”), or an extended custodial sentence (an “ECS”).

133. This legislation is broadly equivalent to section 224 and Schedule 15 to the Criminal Justice Act 2003, which defines serious offences for E+W purposes.
134. Using the 10 year sentence as a ‘serious offence metric’ for establishing an upper limit, a scheme that uses the custody tiers and rehabilitation periods from the future E+W regime and a 10 year limit for offences that can become spent would look like the following:

Sentence	Rehabilitation Period
Fine	1 year
Sentence of imprisonment of 1 year or less	Length of sentence imposed <u>plus</u> 1 year
Sentence of imprisonment of 1 - 4 years	Length of sentence imposed <u>plus</u> 4 years
Sentence of imprisonment of between 4 and 10 years	Length of sentence imposed <u>plus</u> 7 years

Evaluation of options

135. In addition to setting out the four options for the Minister’s consideration, Departmental officials evaluated the positives and negatives associated with each potential solution and weighted the options for the Minister’s final determination on her preferred way forward.
136. The full detail of these considerations is not presented here but a summary of the outcomes is summarised below.
137. **Option 1** – maintaining the existing regime – does not deliver either of the Department’s stated aims of reducing existing rehabilitation periods or increasing the range of sentences that can become spent as a result of the consultation exercise.
138. Officials therefore recommended that Option 1 should be discounted for this reason.

139. **Option 2** – introduction of a version of the current E+W/Scottish arrangements (to allow all sentences of up to a maximum of 4 years to become spent) – delivers both of the Department’s stated aims of reducing existing rehabilitation periods and increasing the range of sentences that can become spent as a result of the consultation exercise and would see all three jurisdictions of the United Kingdom largely aligned.
140. This consistency of approach would only last for a limited time, as England and Wales have already introduced legislation to bring forward additional reforms to further shorten existing rehabilitation periods and allow sentences of over 4 years to become spent (excluding serious violent, sexual and terrorism offences).
141. In the certain expectation that the Department would receive further representations to bring forward further similar reforms in Northern Ireland, and to avoid allegations of discriminatory treatment between the jurisdictions, Departmental officials recommended that Option 2 should be discounted for these reasons.
142. **Option 3** – replicate future arrangements for England and Wales. This option would allow for a further streamlining of disposal tiers and shortening of rehabilitation periods for sentences of up to 4 years of imprisonment (relative to Option 2) and allow for ‘non-serious’ offences of over 4 years of imprisonment to become spent.
143. As indicated previously, for Northern Ireland purposes serious violent and sexual offences are as defined in Article 14 of and specified in Schedule 1 to the Criminal Justice (Northern Ireland) Order 2008.
144. Schedule 1 to the 2008 Order contains 120 serious offences that carry a maximum penalty of 10 years or more, which, while less than the 174 specified offences for England and Wales purposes, would still prevent a significant number of offences from being capable of becoming spent in Northern Ireland.
145. Nevertheless, this option was developed as a direct equivalent to the regime that England and Wales are currently legislating for and Departmental officials recommended that Option 3 should be offered for further consideration on that basis.
146. **Option 4** – a hybrid scheme with a fixed upper limit up to 10 years for any offence.
147. This option was not offered as a model for illustration purposes in the consultation document.

148. Rather, it was developed for inclusion in the options paper as a result of consideration of the specific conviction and re-offending statistics for Northern Ireland, together with consideration of responses to the consultation that called for any reforms to be simple to understand and straightforward to operate.
149. As with Option 3, this option delivers reforms that meet both of the Department's stated aims as an outcome of the consultation – to reduce rehabilitation periods for disposals currently captured by the existing regime and to increase the range of sentences that are capable of becoming spent.
150. This would enable more ex-offenders to put their convictions behind them and increase their opportunities for gaining meaningful employment and so reduce the likelihood of their re-offending.
151. Option 4 does so in a more straightforward fashion, as the custody tiers are clearly defined and conclusive, making this regime significantly easier to navigate and understand than Option 3.
152. Departmental officials therefore recommended that Option 4 be offered for further consideration on that basis.

Options for consideration and final decision by Minister

153. Departmental officials invited to the Minister to consider **Option 3** - replicate future arrangements for England and Wales – and **Option 4** - a hybrid scheme with a fixed upper limit of up to 10 years – for development and introduction in Northern Ireland.
154. As part of her deliberations, the Minister sought additional information in relation to the prospect of certain offences becoming spent being considered problematic.
155. Officials, by way of response, drew attention to Part 6 of the consultation document – **Safeguards** – which indicated that there are certain jobs and professions where applicants must always declare their convictions, even where they are considered spent.
156. These are known as 'excepted' employments or professions and they can include working or coming into contact with children or vulnerable people. They also include 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.

157. For Northern Ireland purposes, these exceptions are set out in the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 and officials were able to confirm that the 1979 Order – and the employments and professions specified as ‘excepted’ therein – would not be amended as part of this reform exercise
158. The Minister was therefore satisfied that that there would be no increased risk to public safety as a result of the proposed reforms on the grounds that all spent and unspent conviction data would continue to be disclosed for sensitive employments, such as working with children, young people and vulnerable adults.
159. In presenting the Minister with options for consideration, officials drew attention to the fact that under **Options 2, 3** and **4**, the replacement of one ‘bright line’ upper limit with another could give rise to the possibility of a legal challenge in future as to where the upper limit was set and why, regardless of which option was selected for progression.
160. In response, officials drew attention to the proposed Scottish ‘review’ mechanism for non-serious offences of over 4 years and indicated that development of an independent review mechanism for Northern Ireland could mitigate the prospect of any such future legal challenges.
161. In doing so, officials cautioned that the development of any such scheme would require primary legislation underpinnings, which would not be possible during this mandate, and that any review mechanism would not be practical for large numbers of applications per year.
162. Officials undertook to examine the operation of the Scottish review mechanism, when implemented, to consider the possibility of introducing a similar arrangement for Northern Ireland. They indicated that were the ‘bright line’ upper limit to be set at 10 years – per **Option 4** - the number of potentially affected ex-offenders would average around 20 individuals per year.

The Way Forward

163. The Minister, having considered all of the information provided, selected **Option 4** – the hybrid scheme with a fixed upper limit of a conviction for any offence of up to 10 years imprisonment – as the model to be progressed.

Proposals for legislative amendment

164. Subject to consideration and agreement by the Committee for Justice, the Department will develop a secondary legislation instrument to amend Article 6 of the Rehabilitation of Offenders (Northern Ireland) Order 1978 to introduce the following reformed rehabilitation periods.

Sentence	Rehabilitation Period *
A compensation order	The date on which the payment is made in full
A community or youth rehabilitation order	1 year beginning with the day provided for by or under the order as the last day on which the order is to have effect
A relevant order	The day provided for by or under the order as the last day on which the order is to have effect
Fine	1 year
Sentence of imprisonment of 1 year or less	Length of sentence imposed <u>plus</u> 1 year **
Sentence of imprisonment of 1 - 4 years	Length of sentence imposed <u>plus</u> 4 years **
Sentence of imprisonment of between 4 and 10 years	Length of sentence imposed <u>plus</u> 7 years **

* The rehabilitation period for this regime is made up of the sentence imposed (including any licence period) followed by the buffer period.

** Rehabilitation periods are halved for offenders aged under 18 at date of conviction