

 **Restorative Practices Forum (NI)**

 Response to the DOJ Consultation on proposals to Reform Rehabilitation Periods in NI March 2021

**The Restorative Practices Forum NI (RPFNI)** is an independent umbrella body for groups and individuals working to promote restorative practice. It has been active for over 25 years.

RPFNI welcomes the opportunity to respond to this consultation as Reform of the rehabilitation periods sit within a restorative continuum.

**Background**

The aim of the Restorative Practice Forum is to promote restorative justice philosophy and restorative practice across all aspects of society.

RPFNI involves wide representation from over 30 groups within the voluntary, community, justice, statutory and public sectors. It includes, educationalists, academics, social workers, and the judiciary as well as independent restorative practitioners. The forum has education and events sub committees. It has links with Restorative Practices Ireland.

The Forum has organised several successful conferences to promote restorative practice, including most recently in November 2019 - “Building a Vision for the Future of Restorative Practices”. In addition, to mark international Restorative Justice week in November 2020, the forum hosted virtual events in relation to restorative approaches in education and following sexual abuse. These were attended by approximately 220 people.

RPFNI has adopted the European Forum for Restorative Justice definition of restorative justice as “an inclusive approach of addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired and justice achieved”.

The Restorative Practices Forum have also responded to other recent DOJ consultations on Sentencing, Adult Restorative Justice and the Secure Centre for Young people.It is important that these consultations and issues also inform Reform of Rehabilitation Periods in NI.

**General Comments**

The RPFNI would make the following generic comments in respect of this consultation.In addition, the Forum notes that it supports the submission by NIACRO who we recognise as experts in this area of employment and criminal record disclosure.

1. RPFNI believe that a progressive/restorative approach, in relation to the impact of criminal records on employment and other aspects of life is critical to prevent reoffending and by association, the creation of further victims.

2. Employment is a very restorative/rehabilitative aspect of citizenship and strong communities. The original legislation aimed “ to restore the offender to a position in society to that of one no less favourable that of one who had not offended”.

3. RPFNI supports safe recruitment.

4. The purpose of the Rehabilitation of Offenders legislation is to protect people with criminal records from unjust discrimination. Whilst public protection and managing reoffending are important, they are not the purpose of this legislation. Other processes and legislation exist for these purposes.

5. The reviews of the legislation in other parts of the UK have confirmed the purpose of this legislation as the concept of spent conviction to support rehabilitation and not as an aspect of ongoing punishment or public protection.

6. The current legislation (1978/1979) is limited and outdated given that sentencing is more complex now, including longer sentences and, sentences served jointly in prison/ community. In addition, the legislation is not fair / consistent in respect of disclosure periods, for example for fines and Probation Orders.

6. The reviewed legislation and disclosure periods must be simple to understand for the public, employers and those who have a criminal record.

7. That any sentence of over 30 months requires lifetime disclosure, regardless of the offence / circumstances is, in our view and form a restorative perspective, unjust. RPFNI note that there is no mechanism for an individual to apply for their conviction to become ‘spent’, irrespective of the passage of time or personal circumstances. It is important that this apparent incompatibility with Article 8 (Right to Private and Family Life) of the European Convention on Human Rights is currently being tested in the NI courts by the Northern Ireland Human Rights Commission.

8. Much offending is committed by those who have suffered considerable trauma, disadvantage and poverty. The current legislation supports further disadvantage to those who have already been sentenced, rather than aiding their restoration into the community through easy access to employment. Many cease offending by aged 30, yet the impact of a criminal record may negatively effect them for the rest of their life.

***Q1. Do you think that the rehabilitation periods for custodial sentences in Northern Ireland should be reviewed?***

**YES**

Not only custodial but rehabilitation periods for all sentences currently under the scope of the legislation must be reviewed. The rehabilitation periods are outdated and unfair with different processes for safeguarding/ public protection now in place.

We are aware that many people struggle with access to training, housing, insurance and other financial services because of discrimination suffered in respect of criminal record disclosure.

***Q2. If you answered ‘yes’ to Question 1 do you think the rehabilitation periods should be reduced or increased?***

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The current disclosure periods are a major barrier/discrimination to finding employment.

Any increase in rehabilitation periods would have a detrimental effect and further reduce opportunities for people to find employment, potentially leading to further reoffending.

Any changes in rehabilitation periods should be evidenced. The concept held in the current legislation that some people are inherently incapable of rehabilitation and must always disclose custodial sentences of 30 months is not restorative. Evidence suggests someone’s risk of reoffending is the same, or even less than, a person without a conviction after 7 - 10 years[[1]](#footnote-1)

***Q3. 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?***

The concept of a ‘buffer period’ being added to the end of a sentence needs further, careful, consideration. RPFNI would have benefitted from DOJ sponsored events to facilitate discussion about these important issues.

 Evidence confirms that the riskiest time for reoffending is the first few months after release beyond which, the likelihood of reoffending decreases. If someone successfully completes their licence period remaining crime free, it would seem counter intuitive that they only begin their rehabilitation period at this point, perhaps in contrast to someone with the same sentence who had been recalled after release to serve the remainder of their sentence in custody.

 It is very important that any disclosure periods should be straightforward and easily understood.

***Q4. Finally, in respect of sentences that can become spent, do you support a review of the custody bands under which rehabilitation periods are specified?***

YES

 RPFNI support an approach that does not unduly disadvantage those who have a criminal record. Many victims who have taken part in restorative practice state that one of the things they want is for the person who has harmed them to make a useful contribution in society and not to offend again. Employment is critical in this respect.

The review needs to look at rehabilitation periods for all sentences available to the courts beyond custodial periods, including evidence of impact.

The reviewed legislation needs to adhere to principles of fair process, equality, human rights, evidence of effectiveness, restorative practice, simplicity, clarity and public confidence.

***Q5. 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

 RPFNI believe that this approach is unjust. It is not restorative and may contribute to unemployment and reoffending. It is not supported by evidence and it must be questioned whether lifelong disclosure is necessary or proportionate in all cases. In the most serious offences other processes exist to support safeguarding and public protection.

***Q6. If you answered ‘yes’ to Question 5, please select one of the following options:***

(Second Option) - 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)

RPFNI note that the use of language for terrorist offences in England & Wales is notably different to that in a Northern Ireland context.

The seriousness of the offence should be measured by the sentence imposed and not the offence type.

The Restorative Practice Forum NI appreciate the opportunity to respond to this consultation.

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Chair

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1. (TIME FOR POLICY REDEMPTION? A REVIEW OF THE EVIDENCE ON DISCLOSURE OF CRIMINAL RECORDS Beth Weaver SCCJR and the University of Strathclyde March 2018) [↑](#footnote-ref-1)