



REHABILITATION OF OFFENDERS ACT 2001 (EXCEPTIONS) ORDER 2018

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Statutory Document No. 2018/0327



Rehabilitation of Offenders Act 2001

REHABILITATION OF OFFENDERS ACT 2001 (EXCEPTIONS) ORDER 2018

Approved by Tynwald:

Coming into Operation:

The Department of Home Affairs makes the following Order under sections 8(7) and 10(1) of the Rehabilitation of Offenders Act 2001.

1 Title

This Order is the Rehabilitation of Offenders Act 2001 (Exceptions) Order 2018.

2 Commencement

If approved by Tynwald¹, this Order comes into operation on 01 February 2019.

3 Interpretation

(1) In this Order –

“**the Act**” means the Rehabilitation of Offenders Act 2001;

“**child**” or “**children**” means a person or persons under the age of 18 years;

“**continuing education**” has the meaning given by section 32(2) of the Education Act 2001;

“**dealer in securities**” means a person dealing in securities within the meaning given by section 4 of the Insider Dealing Act 1998;

“**health care professional**” has the meaning given by section 3 of the Health Care Professionals Act 2014;

“**health services**” means services provided under the National Health Service Act 2001 and similar services provided otherwise than under the National Health Service;

“**independent school**” has the meaning given by section 59 of the Education Act 2001;

¹ Tynwald approval is required under section 10(2) of the Rehabilitation of Offenders Act 2001.

- “**firearms dealer**” has the meaning given by section 32 of the Firearms Act 1947;
- “**judicial appointment**” means an appointment to any office by virtue of which the holder has power (whether alone or with others) under any enactment or rule of law to determine any question affecting the rights, privileges, obligations or liabilities of any person;
- “**proprietor**” in relation to a school, has the meaning given by section 59 of the Education Act 2001;
- “**school**” has the meaning given by section 59 of the Education Act 2001;
- “**security staff register**” means the register maintained by the Department of Home Affairs under the Employment of Security (On-Licensed Premises) Regulations 2002²;
- “**social care services**” means the services which the Department of Health and Social Care provides, or secures the provision of, in discharging its functions under the Social Services Act 2011;
- “**teacher**” includes a warden of a community centre, leader of a youth club or similar institution, and a youth worker;
- “**veterinary surgeon**” has the meaning given by section 1(1) of the Veterinary Surgeons Act 2005;
- “**vulnerable adult**” has the meaning given by section 5 of the Safeguarding Act 2018; and
- “**work**” includes —
- (a) work of any kind, whether paid or unpaid, and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract; and
 - (b) an office established by or by virtue of an enactment.
- (2) Where, by virtue of this Order, the operation of any provision of the Act is excluded in relation to spent convictions, the exclusion is taken to extend to spent convictions for offences of every description.

4 Exceptions to section 3(1) of the Act

Section 3(1) of the Act does not apply in circumstances where —

- (a) the High Court has directed in a particular case that the spent conviction should be broadcast or published;
- (b) the Chief Constable with the approval of the Department of Home Affairs has approved that a particular spent conviction should be broadcast or published; or
- (c) the Isle of Man Financial Services Authority is acting within its powers under —

² SD 84/02, as amended by SD 0021/2013 and SD 2015/0176

- (i) the Financial Services Act 2008;
- (ii) the Collective Investment Schemes Act 2008;
- (iii) the Insurance Act 2008; or
- (iv) the Retirement Benefits Schemes Act 2000,

and it is required to publish or broadcast a spent conviction to fulfil its statutory obligations.

5 Exceptions to section 4 of the Act

- (1) None of the provisions of section 4 of the Act apply in relation to —
- (a) any question asked by or on behalf of a person, in the course of the duties of the person's office or employment in order to assess the suitability —
 - (i) of the person to whom the question relates for admission to any of the professions specified in Part 1 of Schedule 1;
 - (ii) of the person to whom the question relates for any office or employment specified in Part 2 of Schedule 1;
 - (iii) of the person to whom the question relates or of any other person to pursue any occupation specified in Part 3 of Schedule 1 or to pursue it subject to a particular condition or restriction; or
 - (iv) of the person to whom the question relates or of any other person to hold a licence, certificate, permit or authorisation of a kind specified in Schedule 2 or to hold it subject to a particular condition or restriction,

where the person questioned is informed at the time the question is asked that, by virtue of this Order, spent convictions are to be disclosed.

- (b) any question asked by or on behalf of any person ("A"), in the course of the duties of A's office or employment, in order to assess the suitability of another person ("B") for any office or employment specified in paragraph 17 of Part 2 of Schedule 1 ("paragraph 17") or the suitability of B to be concerned, otherwise than in the course of the duties of B's office or employment, with any provision mentioned in paragraph 15, if —
 - (i) the question relates to B and the provision would normally enable B to have access to the persons referred to in paragraph 17 or
 - (ii) the question relates to a person who lives in the same household as B and the relevant provision would normally take place in that household,

where the person questioned is informed at the time the question is asked that, by virtue of this Order, spent convictions are to be disclosed; or

- (c) any question asked by or on behalf of any person, in the course of the person's duties as a person employed in the service of the Isle of Man Government. This is in order to assess, for the purpose of safeguarding national security, the suitability of the person to whom the question relates, or of any other person for any office or employment where the person questioned is informed at the time the question is asked that, by virtue of this Order, spent convictions are to be disclosed for the purpose of safeguarding national security.
- (2) Section 4(1) of the Act does not apply in relation to any proceedings specified in Schedule 3.
- (3) Section 4(2) of the Act does not apply in respect of any question put by or on behalf of the Department of Home Affairs seeking information about an applicant for inclusion in the security staff register.
- (4) Section 4(3) of the Act does not apply in relation to —
 - (a) the dismissal or exclusion of any person from a profession specified in Part 1 of Schedule 1 to this Order;
 - (b) any office, employment or occupation specified in Part 2 or 3 of Schedule 1;
 - (c) any action taken for the purpose of safeguarding national security; or
 - (d) any employment that requires the employee to be registered in the security staff register.

6 Exceptions to section 5(1) of the Act

Section 5(1) of the Act does not apply if —

- (a) the High Court directs that a particular spent conviction should be disclosed; or
- (b) disclosure is required by the Isle of Man Financial Services Authority —
 - (i) to satisfy a disclosure to a regulatory authority or other authority as permitted under paragraph 2(5) of Schedule 5 to the Financial Services Act 2008;
 - (ii) to satisfy a disclosure to a recognised regulator or other person or authority as permitted under paragraph 2(2) of Schedule 6 to the Insurance Act 2008; or
 - (iii) for judicial procedure in respect of any of the Authority's functions.

7 Exceptions to section 8(1) of the Act

Section 8(1) of the Act does not apply in any one of the following circumstances—

- (a) where a Probation Officer is acting in the capacity of a family court welfare worker, and requires to be informed of spent convictions in order to protect children and vulnerable persons;
- (b) where a Probation Officer is preparing reports for a Court; or
- (c) where the Isle of Man Financial Services Authority is acting within its powers under the Financial Services Act 2008, the Collective Investment Schemes Act 2008, the Insurance Act 2008 or the Retirement Benefits Schemes Act 2000, and publishing or broadcasting specified information (as that term is defined in section 8(6) of the Act) is a requirement to fulfil its statutory obligations under any one of those Acts.

8 Revocations

The Rehabilitation of Offenders Act 2001 (Exceptions) Order 2001³ is revoked.

MADE 04 DECEMBER 2018

W M MALARKEY
Minister for Home Affairs

³ SD 281/01

SCHEDULE 1

[Articles 5(1) and 5(4)]

**EXCEPTED PROFESSIONS, OFFICES, EMPLOYMENTS, WORK AND
OCCUPATIONS****PART 1****PROFESSIONS**

1. Health care professional.
2. Advocate.
3. Accountant.
4. Veterinary surgeon.
5. Pharmaceutical chemist.
6. Teacher.
7. Any profession to which the Health Professions Order 2002⁴ applies.

PART 2**OFFICES AND EMPLOYMENTS**

1. Judicial appointments.
2. The Attorney General and any employment in the Attorney General's Chambers.
3. Any appointment as member, chief executive, head of division or senior manager of the Isle of Man Financial Services Authority.
4. Any appointment as member, chief executive, deputy chief executive or director of the Isle of Man Gambling Supervision Commission.
5. Any appointment as director of, or to the Board or staff of, the Financial Intelligence Unit.
6. Constables (including special constables), to undergo training with a view to becoming constables and naval, military and air force police.
7. Persons employed for the purposes of, or to assist constables or special constables of a police force established under any enactment.
8. Any employment relating to children or vulnerable adults (or both).

⁴ SD 160/02 as amended by SD 770/04



9. A traffic warden appointed under section 33 of the Road Traffic Regulation Act 1985.
10. A probation officer appointed under section 27 of the Criminal Justice Act 1963.
11. The employment of any person on the security staff register as a guard or doorkeeper.
12. Any office or employment as a charity trustee, church warden or trustee or member of a parochial church council.
13. Any employment as a court security officer under Part 8A of the Criminal Justice, Police and Courts Act 2007.
14. Any office or employment relating to the administration of the Isle of Man Courts of Justice or the execution of functions or obligations on behalf of the Isle of Man Courts of Justice.
15. Any office to which a person may be appointed by the Appointments Commission.
16. Any employment by the Department of Health and Social Care in connection with the provision of social care services or by any other body in connection with the provision of social care services, being employment which is of such a kind to enable the holder of such employment to have access to any vulnerable adult in the course of the holder's normal duties, namely —
 - (a) persons suffering from any serious illness or mental disorder of any description;
 - (b) persons addicted to alcohol or drugs;
 - (c) persons who are blind, deaf or dumb;
 - (d) other persons who are substantially and permanently handicapped by illness, injury or congenital deformity.
17. Any employment which is concerned with the provision to a person aged under 18 of —
 - (a) accommodation;
 - (b) care;
 - (c) leisure and recreational facilities;
 - (d) schooling, supervision or training;
 - (e) social care services; or
 - (f) a school crossing patrol,being an office or employment of such a kind as to enable the holder of the office or employment to have access in the course of the holder's normal duties to such persons, in part on the premises where the relevant provision takes place.

PART 3

REGULATED OCCUPATIONS

1. Firearms dealer.
2. Any occupation in respect of which an application to the Gambling Supervision Commission for a licence, certificate or registration is required by or under any enactment.
3. Dealer in securities.
4. Any occupation which is concerned with the management or carrying on of a home in respect of which registration is required by the Regulation of Care Act 2013.
5. Any occupation in respect of which a person is required, by an order made under section 4 of the Dangerous Goods Act 1928, to obtain a licence or certificate as to the person's fitness to store explosives.
6. Any occupation in respect of which an application to the Isle of Man Financial Services Authority is required, by or under any enactment, for a licence, permit, authorisation, certificate or registration or any other permission, or to which a requirement to be fit and proper (as determined by the Authority) applies.
7. Any application for inclusion on the register of persons who may be employed as a guard or doorkeeper, with respect to any on-licensed premises, that is maintained further to regulations made under Section 40 of the Licensing Act 1995.
8. Any employment where an application is made for a public passenger vehicle licence to the Road Transport Licensing Committee.
9. Any employment where an application is made to the Department of Infrastructure for registration as an approved driving instructor.

SCHEDULE 2

[Article 5(1)(a)(iv)]

EXCEPTED LICENCES, CERTIFICATES, PERMITS AND AUTHORISATIONS

1. A firearms certificate issued under section 2 of the Firearms Act 1947 or a certificate to possess a regulated weapon under the Shot Guns, Air Weapons and Cross-bows Act 1994.
2. A permit referred to in section 4(6)(c) or 4(12) of the Firearms Act 1947.
3. An authorisation to hold a prohibited weapon or prohibited ammunition under section 17 of the Firearms Act 1947.
4. A licence issued in accordance with the Performances by Children Regulations 2004⁵.
5. Certificates issued by the police or a court of summary jurisdiction under an order made under section 4 of the Dangerous Goods Act 1928 as to the fitness of a person to keep explosives for private use.

⁵ SD 439/04 as amended by SD 2018/0068

SCHEDULE 3

[Article 5(2)]

EXCEPTED PROCEEDINGS

1. Proceedings in respect of person's admission to, or disciplinary proceedings against a member of, any profession specified in Part 1 of Schedule 1.
2. Disciplinary proceedings against a constable.
3. Proceedings before the Gambling Supervision Commission.
4. Proceedings under the Mental Health Act 1998 before any Mental Health Review Tribunal.
5. Proceedings under the Firearms Act 1947 in respect of —
 - (a) the registration of a person as a firearms dealer, the removal of a person's name from a register of firearms dealers or the imposition, variation or revocation of conditions of any such registration;
 - (b) the grant, renewal, variation or revocation of a firearm certificate; or
 - (c) the grant of a permit under section 4(6)(c) or 4(12) of that Act.
6. Proceedings relating to the grant, renewal or revocation of a certificate to possess a regulated weapon under the Shot Guns, Air Weapons and Cross-bows Act 1994.
7. Proceedings in respect of a licence issued in accordance with the Performance by Children Regulations 2004⁶.
8. Proceedings conducted by the Isle of Man Financial Services Authority under the Financial Services Act 2008, Collective Investment Schemes Act 2008, Insurance Act 2008 and Retirement Benefits Schemes Act 2000.
9. Proceedings in respect of a determination by the Department of Education, Sport and Culture as to the suitability of a person —
 - (a) for employment as a teacher in a school or establishment of continuing education or in determining the extent to which a person may be employed as a teacher; or
 - (b) to be the proprietor of an independent school, including proceedings before an Independent Schools Tribunal in respect of the above matters under section 44 of the Education Act 2001.
10. Proceedings in respect of an application for, or cancellation of, registration under the Regulation of Care Act 2013.

⁶ SD 439/04 as amended by 2018/0068



11. Proceedings on an application to the police or a court of summary jurisdiction for a certificate under any order made under section 4 of the Dangerous Goods Act 1928 as to the fitness of the applicant to keep explosives.
12. Proceedings by way of appeal against, or review of, any decision taken, by virtue of any of the provisions of this Order, on consideration of a spent conviction.
13. Proceedings held for the receipt of evidence affecting the determination of any question arising in any proceedings specified in this Schedule.
14. Proceedings of a tribunal appointed under the Financial Services Act 2008, the Collective Investment Schemes Act 2008, the Insurance Act 2008 or the Retirement Benefits Schemes Act 2000.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order (the “Order”) replaces the Rehabilitation of Offenders Act 2001 (Exceptions) Order 2001. The Order allows for those currently working, or those who have applied to work, in positions of trust to be vetted in line with the requirements of the UK’s Disclosure and Barring Service (DBS) who provide this service to the Island.

The operation of section 4 of the Act is excluded in relation to persons appointed to the professions, offices, employment, work and occupations listed in the updated provisions of Schedule 1 to the Order, with the update bringing the list in line with the England and Wales DBS requirements.

Schedule 2 excludes the operation of section 4 of the Act in respect of excepted licences, certificates permits and authorisations. Schedule 3 excludes the operation of section 4(1) of the Act in relation to certain excepted proceedings. The Order offers additional safeguards for those wishing to work in the excepted professions, offices, employment, work and occupations referred to in this order including those working, or seeking positions working, with children and vulnerable adults.