



Statutory Document No 281/01

REHABILITATION OF OFFENDERS ACT 2001

THE REHABILITATION OF OFFENDERS ACT 2001 (EXCEPTIONS) ORDER 2001

Made 19th June 2001

Coming into Operation 21st June 2001

1. This Order may be cited as the Rehabilitation of Offenders Act 2001 (Exceptions) Order 2001 and shall come into operation on 21st June 2001.
2. - (1) In this Order “the Act” means the Rehabilitation of Offenders Act 2001¹.
 - (2) Where, by virtue of this Order, the operation of any of the provisions of the Act is excluded in relation to spent convictions the exclusion shall be taken to extend to spent convictions for offences of every description.
 - (3) Part IV of Schedule 1 to this Order shall have effect for the interpretation of expressions used in that Schedule.
3. None of the provisions of section 4 of the Act shall apply in relation to -
 - (a) any question asked by or on behalf of any person, in the course of the duties of his 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 I of Schedule 1 to this Order; or
 - (ii) of the person to whom the question relates for any office or employment specified in Part II of the said Schedule 1; or
 - (iii) of the person to whom the question relates or of any other person to pursue any occupation specified in Part III of the said 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 or permit of a kind specified in Schedule 2 to this Order 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, in the course of the duties of his office or employment, in order to assess the suitability of another person for any office or employment specified in paragraph 11 of Part II of the said Schedule 1 or the suitability of another person to be concerned, otherwise than in the course of the duties of his office or employment, with such provision as is mentioned in that paragraph, if-
 - (i) the question relates to that other person and the said provision would normally enable that other person to have access to the persons referred to in that paragraph; or

¹ 2001 c.6

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- (ii) the question relates to a person who lives in the same household as that other persons and the said 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;

(c) any question asked by or on behalf of any person, in the course of his duties as a person employed in the service of the Isle of Man Government, 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.

4. Section 4(3) of the Act shall not apply in relation to -

- (a) the dismissal or exclusion of any person from any profession specified in Part I of Schedule 1 to this Order;
- (b) any office, employment or occupation specified in Part II or Part III of the said Schedule 1;
- (c) any action taken for the purpose of safeguarding national security.

5. Section 4(1) of the Act shall not apply in relation to any proceedings specified in Schedule 3 to this order.

6. Section 3(1) of the Act shall 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;
- (c) the Financial Supervision Commission is acting within its powers under the Financial Supervision Act 1988¹, the Investment Business Acts 1991² to 1993³, the Banking Act 1998⁴, the Corporate Service Providers Act 2000⁵, the Building Societies Act 1986⁶; where publishing or broadcasting is a requirement to fulfil its statutory obligations.
- (d) Insurance and Pensions Authority is acting within its powers under the Insurance Act 1986⁷, the Insurance Intermediaries (General Business) Act 1996⁸ and Retirements Benefits Schemes Act 2000⁹ where publishing or broadcasting is a requirement to fulfil its statutory obligations.

7. Section 5(1) (a and b) of the Act shall not apply in circumstance where -

- (a) the High Court has directed that a particular spent conviction should be disclosed;
- (b) disclosure is required by the Insurance and Pension Authority or the Financial Supervision Commission to satisfy inter-regulatory disclosures or judicial procedure.

8. Section 8 the Act shall not apply in certain circumstances where -

- (a) a Probation Officers in their capacity as a family court welfare workers needs to have revealed to them spent convictions in order to protect young and vulnerable persons;
- (b) a Probation Officer is preparing reports for a Court;
- (c) the Financial Supervision Commission is acting within its powers under the Financial Supervision Act 1988, the Investment Business Acts 1991 to 1993, the Banking Act 1998, the Corporate Service Providers Act 2000, the Building Societies Act 1986 where publishing or broadcasting is a requirement to fulfil its statutory obligations.

¹1988 c.16 ²1991 c.18 ³1993 c.17 ⁴1998 c.4 ⁵2000 c.13 ⁶1986 c.7 ⁷1986 c.24 ⁸1996 c.4 ⁹2000 c.14

- (d) Insurance and Pensions Authority is acting within its powers under the Insurance Act 1986, the Insurance Intermediaries (General Business) Act 1996, Retirements Benefits Schemes Act 2000 and where publishing or broadcasting is a requirement to fulfil its statutory obligations.

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

PART I

Professions

1. Medical practitioner.
2. Advocate.
3. Accountant.
4. Dentist, dental hygienist, dental auxiliary.
5. Veterinary surgeon.
6. Nurse, midwife.
7. Ophthalmic optician, dispensing optician.
8. Pharmaceutical chemist.
9. Teacher.
10. Any profession to which the Professions Supplementary to Medicine Act 1960 (an Act of Parliament) applies and which is undertaken following registration under that Act.

PART II

Offices and employments

1. Judicial appointments.
2. The Attorney General and any employment in his office.
3. Constables, persons appointed as police cadets to undergo training with a view to becoming constables and persons employed for the purposes of, or to assist the constables of, a police force established under any enactment; naval, military and air force police.
4. Any employment which is concerned with the administration of, or is otherwise normally carried out wholly or partly within the precincts of, a prison, remand centre, detention centre, Borstal institution or young offenders institution, and members of boards of visitors appointed under section 18 of the Custody Act 1995¹⁰.
5. Traffic wardens appointed under section 33 of the Road Traffic Regulation Act 1985¹¹.
6. Probation officers appointed under section 27 of the Criminal Justice Act 1963¹²
7. Any employment as teacher in a school or establishment for further education and any other employment which is carried out wholly or partly within the precincts of a school or establishment for further education, being employment which is of such a kind as to enable the holder to have access to persons in attendance at the school or establishment for further education in the course of his normal duties.

¹⁰1995 c.1 ¹¹1985 .c 20 ¹²1963 .XIX p. 975

8. Proprietors of independent schools.
9. Any employment by the Department of Health and Social Services in connection with the provision of social services or by any other body in connection with the provision by it of similar services, being employment which is of such a kind as to enable the holder to have access to any of the following classes of person in the course of his normal duties, namely-
 - (a) persons suffering from 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.
10. Any employment which is concerned with the provision of health services and which is of such a kind as to enable the holder to have access to persons in receipt of such services in the course of his normal duties.
11. Any office or employment concerned with the provision to person aged under 18 of accommodation, care, leisure and recreational facilities, schooling, social services, supervision or training, school crossing patrol being an office or employment of such a kind as to enable the holder to have access in the course of his normal duties to such persons, and any other office or employment the normal duties of which are carried out wholly or partly on the premises where such provision takes place.

PART III

Regulated occupations

1. Firearms dealer.
2. Any occupation in respect of which an application to the Gaming Control Commission for a licence, certificate or registration is required by or under any enactment.
3. Director, controller or manager of an insurance company
4. Dealer in securities.
5. Manager or trustee of a collective investment scheme within the meaning of section 30 of the
Financial Supervision Act 1988.
6. Any occupation which is concerned with the management or carrying on a home in respect of which registration is required by section 2 of the Nursing and Residential Homes Act 1988¹³.
7. Any occupation in respect of which the holder, as occupier of premises on which explosives are kept, is required by an Order made under section 4 of the Dangerous Goods Act 1928¹⁴ to obtain from the police or a court of summary jurisdiction a certificate as to his fitness to keep the explosives.
8. Any occupation in respect of which an application to the Financial Supervision Commission
or the Insurance and Pensions Authority for a licence, permit, authorisation, certificate or registration or any other permission is required by or under any enactment.
9. Any employment where an application is made for a public service vehicle licence to the Road Traffic Commissioners.

10. Any employment where an application is made to a Local Authority for a Hackney Carriage Drivers Licence.

¹³1988 c.19 ¹⁴1928 XVI p.16
Any employment where an application is made to the Department of Transport for registration as an Approved Driving Instructor.

PART IV

In this Schedule -

Childminding means a person who is required to register under section 1 of the Nurseries and Child Minders Regulation Act 1974¹⁵;

“dealer in securities” means a person dealing in securities within the meaning of section 4 of the Insider Dealing Act 1998¹⁶;

“firearms dealer” has the meaning assigned to that expression by section 32 of the Firearms Act 1947¹⁷;

“further education” has the meaning assigned to that expression by section 71 of the Isle of Man Education Act 1949¹⁸;

“health services” means services provided under the National Health Service (Isle of Man) Acts 1948¹⁹ to 1979²⁰ and similar services provided otherwise than under the National Health Service;

“Independent School” has the meaning assigned by section 165 of the Isle of Man Education Act 1949 as amended by Schedule 2 of the Treasury Act 1985²¹;

In relation to an insurance company, “controller” and “insurance manager” shall be construed in accordance with section 34 of the Insurance Act 1986;

“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” and “independent school” have the meanings assigned to those expressions by section 165 of the Isle of Man Education Act 1949;

“school” has the meaning assigned to that expression by section 165 of the Isle of Man Education Act 1949;

“social services”, in relation to the services provided by the Department of Health and Social Security in discharging its social services functions within the meaning of National Assistance (Isle of Man) Act 1951²²;

“teacher” includes a warden of a community centre, leader or a youth club or similar institution, youth worker;

SCHEDULE 2

Article 3

EXCEPTED LICENCES, CERTIFICATES AND PERMITS

1. Firearms certificates and regulated weapons issued under the Firearms Act 1947 and the Shotguns, Air weapons and Crossbows Act 1994²³ and permits issued under section 4(12) or 4(6)(c) of the 1947 Act.
2. Licences issued under section 21 of the Children and Young Persons Act 1966²⁴ (which relates to persons under the age of 18 going abroad for the purpose of performing or being exhibited for profit).
3. Certificates issued by the police or a court of summary jurisdiction under an Order made under section 4 of the Explosives Act 1928 as to the fitness of a person to keep explosives for private use.

¹⁵1974 c.12 ¹⁶1998 c.2 ¹⁷1947 XVI p.586 ¹⁸1949 XVII p.516 ¹⁹1948 XVII p.365 ²⁰1979 c.25 ²¹1985 c.25
²²1951 XVII p.1008 ²³1994 c.2 ²⁴1966 XX p.89

SCHEDULE 3

Article 5

EXCEPTED PROCEEDINGS

1. Proceedings in respect of a person's admission to, or disciplinary proceedings against a member of, any profession specified in Part I of Schedule 1 to this Order.
2. Proceedings before the Court of Appeal or the High Court in the exercise of their disciplinary jurisdiction in respect of solicitors.
3. Disciplinary proceedings against a constable.
4. Proceedings before the Gaming Control Commission.
5. Proceedings under the Mental Health Act 1998²⁹ before any Mental Health Review Tribunal.
6. 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; or
 - (b) the grant, renewal, variation or revocation of a firearm certificate; or
 - (c) the grant, renewal or revocation of a shot gun certificate; or
 - (d) the grant of a permit under section 4(12) or 4(6)(c) of that Act.
7. Proceedings in respect of the grant, renewal or variation of a licence under section 21 of the Children and Young Persons Act 1966 (which relates to persons under the age of 18 going abroad for the purpose of performing or being exhibited for profit).
8. Proceedings of the Insurance and Pensions Authority under the Insurance Act 1986, Insurance Intermediaries (General Business) Act 1996 and the Retirement Benefits Schemes Act 2000.
9. Proceedings in respect of a determination by the Department of Education as to the suitability of a person-
 - (a) for employment as a teacher in a school or establishment for further education (within the meaning of paragraph 10 of Part II of Schedule 1 to this Order), or in determining the extent to which a person may be employed as such a teacher; or
 - (b) to be the proprietor of an independent school (within the meaning of paragraph 11 of the said Part II),(including proceedings before an Independent Schools Tribunal in respect of the above matters under section 103 of the Education Act 1949.
10. Proceedings in respect of an application for, or cancellation of, registration under section 2 of the Nursing and Residential Homes Act 1988.
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.

291998 c.3

14. Proceedings of the Financial Supervision under the Financial Supervision Act 1988, the Investment Business Acts 1991 and 1993, the Banking Act 1998, the Corporate Service Providers Act 2000 and the Building Societies Act 1986.

15. Proceedings of a Review Committee appointed under the Banking Act 1998, the Corporate Service Providers Act 2000, the Investment Business Acts 1991 and 1993 or the Retirement Benefits Scheme Act 2000.

MADE

2001

Minister for Home Affairs

EXPLANATORY NOTE

This Note is not part of the Order)

This Order makes exception in the operation of the Rehabilitation of Offender Act 2001 which comes into force on 21st June 2001. The provisions of the Act affected are section 3(1) which makes it an offence to publish or broadcast a spent conviction, section 4 which modifies obligations in law and in agreements to take into account the individuals right not to disclose a spent conviction, section 5(1) which relates to evidence being produced in any judicial proceedings of details of spent convictions, and section 8 which makes it an offence to pass on information on spent convictions that are contained within official records. The exceptions are concerned with various types of work (Schedule 1), licences, certificates and permits (Schedule 2) and proceedings (Schedule 3).