



GOVERNMENT OF GIBRALTAR
MINISTRY OF JUSTICE

REHABILITATION OF OFFENDERS (*Criminal Procedure and Evidence Act 2011*)

GUIDANCE NOTE

This guidance note provides background information on **Part 25 of the Criminal Procedure and Evidence Act 2011** which introduces provisions into the criminal justice system which are intended to promote the rehabilitation of persons who have been convicted of a crime involving a sentence of 30 months imprisonment or less. These provisions provide that after a certain period, and subject to certain conditions, a conviction should be regarded as spent for all purposes and the person should be treated as rehabilitated in respect of the conviction.

The purpose of the system is to protect those who committed a crime in the past, but who have reformed their ways, from being marked for ever with the tag of 'criminal'. So after a period of time the conviction will be 'spent', meaning that it cannot, under normal circumstances be referred to in the future. There will be no need for the person convicted to reveal the fact of the conviction when applying for a job, appearing as a witness in court, looking for a house to rent etc. The rehabilitation can only occur in respect of offences for which the sentence was imprisonment for 30 months or less, or another punishment such as a fine. The length of time which must pass before the conviction is spent depends largely on the severity of the sentence.

There are some exceptions to regarding convictions as spent, in particular in relation to some jobs. For example, prospective lawyers, care workers, police officers and tax inspectors may be obliged to reveal any spent convictions so that the employer can be aware of them – but they can only be taken into account by the employer if relevant.

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The following paragraphs of this guidance give a brief overview of the various sections.

Section 610 sets out the basic principle, but attaches a number of conditions. They include the person not being sentenced to imprisonment for life or for more than 30 months or to detention during Her Majesty's pleasure. This means that only sentences of up to 2 ½ years can be treated as spent under this Part.

A subsequent conviction does not prevent the original conviction being the subject of rehabilitation. Nor does non-payment of a fine or failure to comply with the conditions of a sentence mean the person cannot eventually become rehabilitated. (Section 610(4).)

Section 611 sets out the consequences of a conviction being spent. No evidence may be produced in court to show that the person has committed or been charged with or prosecuted for or convicted of the offence and the person must not be asked, and, if asked, is not required to answer, any question relating to his past which cannot be answered without acknowledging or referring to the spent conviction.

The rule also applies to non-court proceedings, so that, for example, a prospective employer cannot ask about such convictions. A person questioned must not be prejudiced because of failure to acknowledge or disclose a spent conviction (Section 611(3)).

Section 613 prescribes the rehabilitation periods i.e. the time from the conviction which must pass before the conviction can be treated as spent. (The periods are set out in Schedule 11.) For example, the rehabilitation period for a sentence of between 6 and 30 months is 10 years for an adult and 5 years for a juvenile (at the date of conviction.) See the following table:

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SCHEDULE 11

(Section 613)

TABLE OF REHABILITATION PERIODS

<i>A sentence of imprisonment of more than 6 months but not more than 30 months</i>	<i>10 years for an adult, 5 years for a juvenile</i>
<i>A sentence of imprisonment of 6 months or less</i>	<i>7 years for an adult, 3 ½ years for a juvenile</i>
<i>A fine</i>	<i>5 years</i>
<i>A community sentence</i>	<i>5 years for an adult; 2 ½ years for a juvenile</i>
<i>A conditional discharge or binding over</i>	<i>The date on which the order or binding over ceases or 1 year whichever is longer</i>
<i>A hospital order under the Mental Health Act</i>	<i>5 years from the date of conviction or 2 years after the order expires, whichever is longer</i>
<i>Disqualification and other orders imposing a disability, prohibition or other penalty</i>	<i>The date on which the order ceases to have effect</i>
<i>An absolute discharge or a caution</i>	<i>6 months</i>
<i>A probation order under the Criminal Procedure Act</i>	<i>5 years for an adult, 2 ½ years for a juvenile, or the date on which the order ceases, whichever is longer</i>

Section 614 contains detailed provisions on the calculation of the rehabilitation period, including the effect of a further conviction during the period. Generally, the period in relation to the first conviction is extended to the end of the period in relation to the later conviction.

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The Section also deals with the effect of a breach of a conditional discharge or probation order made under the Criminal Procedure Act.

Section 619 makes it an offence for a person who, in the course of his official duties, has custody of or access to any official record or information about spent convictions to disclose the information to another person, except in the course of those duties.

Section 620 says that courts and those who appear in them should not refer to a spent conviction if it can reasonably be avoided; that reference should not be made in open court to a spent conviction without the authority of the presiding officer; and that a person when passing sentence should not refer to spent convictions unless it is necessary to explain the sentence.

Exceptions: when spent convictions must be disclosed

Section 616 and Schedule 12 override the employment rights which an ex-offender might otherwise have in respect of spent convictions by enabling employers to request information about spent convictions when recruiting for certain occupations or professions.

Where someone is interviewed for entry into one of the professions or office or employment positions covered by Schedule 12:

- A person may be asked questions about spent (and unspent) convictions and will be under an obligation to answer, provided the questions are asked for the purpose of assessing the applicant's suitability for the position or profession
- The applicant must be informed that spent convictions should be disclosed.

Schedule 12 lists the **specifically excepted occupations, offices and professions**. See Schedule 12 attached as Appendix 1.

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It will be seen that this is an important change. Personnel officers should make themselves familiar with its provisions. Understanding both the letter of the law and the intention behind it is a very necessary part of work in human resources. Within Government, it should also be remembered that the list of exceptions in Schedule 12 to the general rule may be important. While the intention of the Act is to permit ex-offenders move on from their past, it is not without exception.

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SCHEDULE 12

(Sections 616 and 617(1))

EXCEPTIONS TO REHABILITATION

In this Schedule—

“care services” means—

- (a) accommodation and nursing or personal care in a care home;
- (b) personal care or nursing or support for a person to live independently in his own home;
- (c) social care services; or
- (d) any services provided in an establishment catering for a person with learning difficulties;

“Financial Services Commission” means the body established by the Financial Services Commission Act 2007;

“financial services legislation” means any of the Acts listed in Part 5 of this Schedule and any item of subsidiary legislation made under any of them;

“firearms dealer” has the meaning given by section 2 of the Firearms Act;

“funds in court” has the meaning given by the Supreme Court Fund Rules;

“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;

“key worker”, in relation to a body, means any individual who is likely, in the course of the duties of his office or employment to play a significant role in the decision making process of the body in relation to the exercise of the body’s statutory functions, or to support directly such a person;

“member of the judiciary” means persons appointed 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;

“personal information” means any information which is of a personal or confidential nature and is not in the public domain and it includes information in any form but excludes anything disclosed for the purposes of proceedings in a particular cause or matter;

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“road service licence” means a road service licence granted under the Transport Act 1998;

“tribunal security officers” means persons who, in the course of their work, guard tribunal buildings, offices and other accommodation used in relation to tribunals against unauthorised access or occupation, against outbreaks of disorder or against damage;

“tribunal” means a person other than a court exercising the judicial power of the Crown;

“vulnerable adult” means a person aged 18 or over who has a condition of the following type—

- (a) a substantial learning or physical disability;
- (b) physical or mental illness or mental disorder, chronic or otherwise, including an addiction to alcohol or drugs; or
- (c) a significant reduction in physical or mental capacity.

PART 1

EXCEPTED PROFESSIONS

1. Barrister or solicitor.
2. Chartered accountant or certified accountant.
3. Medical practitioner, dentist or pharmacist.
4. Nurse, midwife or health visitor.
5. Veterinary surgeon.
6. Psychologist.
7. Legal executive.
8. Actuary.

PART 2

EXCEPTED OFFICES AND EMPLOYMENTS

1. Judicial appointments.

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2. The Attorney-General and any officer appointed by him to conduct prosecutions.
3. The clerk to the Magistrates' Court and any assistant clerk.
4. Police officers and police cadets training to becoming police officers.
5. Any employment concerned with the administration of, or otherwise normally carried out wholly or partly within the precincts of the prison, and members of the board of visitors appointed under section 8 of the Prison Act.
6. Traffic wardens appointed under section 84 of the Traffic Act 2005.
7. Probation officers and community service officers.
8. Immigration officers.
9. Any office or employment concerned with the provision of care services to vulnerable adults, and of such a kind as to enable a person, in the course of his normal duties, to have access to vulnerable adults in receipt of such services.
10. Any employment or other work concerned with the provision of health services and of such a kind as to enable the holder of the employment or the person engaged in the work to have access to persons in receipt of such services in the course of his normal duties.
11. Any work in an educational institution if the normal duties of the work involve regular contact with juveniles.
12. Any employment with the Gibraltar Society for the Prevention of Cruelty to Animals which involves the humane killing of animals.
13. Any office or employment under the Income Tax Act or the Imports and Exports Act.
14. Any employment concerned with monitoring, for the purpose of protecting juveniles, communications by means of the internet.
15. Any employment or other work which is normally carried out in a hospital used primarily for the provision of psychiatric services.
16. Judges' clerks, secretaries and legal secretaries.
17. Court officers who, in the course of their work, have direct contact with judges of the Supreme Court or the Court of Appeal.
18. Persons who in the course of their work have regular access to personal information relating to an identifiable member of the judiciary.

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19. Court officers who, in the course of their work, attend the Magistrates' Court, the Supreme Court or the Court of Appeal.
20. Court security officers, and tribunal security officers.
21. Persons who, in the course of their work, have unsupervised access to court-houses, offices and other accommodation used in relation to the courts or any tribunal established by law.
22. Persons who execute court judgments and persons who act under their authority.
23. The Official Receiver and his deputy.
24. Persons appointed to the office of Public Trustee under the Public Trustee Act and deputies to or agents of the Public Trustee.
25. Receivers appointed under section 16 of the Supreme Court Act.
26. Home inspectors.
27. Court officers and other persons who exercise functions in connection with the administration and management of funds in court.
28. Persons whose work in any Government department gives them access to sensitive or personal information about children or vulnerable adults.
29. Any office, employment or other work concerned with the establishment or operation of a database under Part XII of the Children Act 2009, if the person has access to information included in the database.
30. Any office, employment or other work of a kind that requires or permits a person to be given access to a database under Part XII of the Children Act 2009.
31. Any employment with the Care Agency.
32. Any work with children, as defined in section 617.
33. Office as or employment with the Licensing Authority or the Gambling Commissioner under the Gambling Act 2005.
34. Any office or employment with the Financial Services Commission.
35. Any employment or other work in which the normal duties involve caring for, training, supervising, or being solely in charge of, juveniles serving in the naval, military or air forces of the Crown.

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PART 3

EXCEPTED OCCUPATIONS

1. Firearms dealer.
2. Any occupation in respect of which a licence is required under the Gambling Act 2005.
3. Any occupation which is concerned with carrying on a nursing home in respect of which registration is required by the Medical and Health Act.
4. Any occupation in respect of which the holder, as occupier of premises on which explosives are kept, is required pursuant to Part III of the Explosives Regulations to obtain from the Commissioner of Police an explosives certificate certifying him to be a fit person to acquire or acquire and keep explosives.

PART 4

EXCEPTED LICENCES, CERTIFICATES AND PERMITS

1. Firearm certificates, shot gun certificates and permits issued under the Firearms Act.
2. Explosives certificates issued by the Commissioner of Police pursuant to the Explosives Regulations as to the fitness of a person to acquire or acquire and keep explosives.
3. Road service licences issued to owners and drivers of public service vehicles under the Transport Act 1998.
4. Licences issued under the Gambling Act 2005.

PART 5

EXCEPTED QUESTIONERS

1. The Financial Services Commission when asking questions of any person in connection with—
 - (a) the issue of a certificate, licence, permit or declaration;
 - (b) the approval of any activity; or
 - (c) the making of an order or the giving of a direction,

under the financial services legislation.

2. Any person who is required by law or who is duly authorised by the Financial Services Commissioner to ask questions as mentioned in paragraph 1, when asking such questions.

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For purposes of this Schedule, the financial services legislation means any of the following Acts and any item of subsidiary legislation made under any of them—

Financial Collateral Arrangements Act 2004.

Financial Institutions (Prudential Supervision) Act, 1997.

Financial Services (Auditors) Act 2009.

Financial Services (Banking) Act.

Financial Services (Collective Investment Schemes) Act 2005.

Financial Services (Distance Marketing) Act 2006.

Financial Services (Insurance Companies) Act.

Financial Services (Investment and Fiduciary Services) Act.

Financial Services (Investor Compensation Scheme) Act 2002.

Financial Services (Listing of Securities) Act 2006.

Financial Services (Markets in Financial Instruments) Act 2006.

Financial Services (Moneylending) Act.

Financial Services (Occupational Pensions Institutions) Act 2006.

Financial Services (Takeover Bids) Act 2006.

Financial Services (Temporary Business Continuity) Act 2007.

Financial Services (Training and Competence) Act 2006.

Financial Services Act, 1998.

Financial Services Commission Act 2007.

PART 6

EXCEPTED PROCEEDINGS

1. Proceedings in respect of a person's admission to, or disciplinary proceedings against a member of, any profession specified in Part 1 of this Schedule.

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2. Disciplinary proceedings against a police officer.
3. Proceedings under or arising out of the Gambling Act 2005.
4. Proceedings at any hearing conducted pursuant to, or before any tribunal established under, the financial services legislation.
5. Proceedings under the Mental Health Act before any tribunal.
6. Proceedings under the Firearms Act in respect of—
 - (a) the registration of a person as a firearms dealer;
 - (b) the grant, renewal, variation or revocation of a certificate or permit.
7. Proceedings in respect of an application for, or cancellation of registration in respect of a nursing home under the Medical and Health Act.
8. Proceedings on an application to the Commissioner of Police for an explosives certificate pursuant to the Explosives Regulations as to the fitness of the applicant to acquire or acquire and keep explosives.
9. Proceedings relating to a road service licence.
10. Proceedings before the Parole Board.
11. Proceedings under Part IV of the Drug Trafficking Offences Act.
12. Proceedings by way of appeal against, or review of, any decision taken, by virtue of any of the provisions of this Schedule, 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.

PART 7

EXCEPTED DECISIONS

1. Any decision by the Financial Services Commission, or any other person or body relating to—
 - (a) the issue of a certificate, licence, permit or declaration;
 - (b) the approval of any activity; or
 - (c) the making of an order or the giving of a direction,

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under the financial services legislation, made by reason of, or partly by reason of, a spent conviction of an individual, or of any circumstances ancillary to such a conviction, or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.

2. Any decision of the Financial Services Commission to dismiss, fail to promote or exclude a person from being a key worker of the Commission, made by reason of, or partly by reason of, a spent conviction of an individual, or of any circumstances ancillary to such a conviction, or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.

3. Any decision by the Financial Services Commission, or any other person or body, to dismiss an individual from, to fail to promote to or to exclude an individual from a status under the financial services legislation by reason of, or partly by reason of, a spent conviction of that individual or of his associate, or of any circumstances ancillary to such a conviction, or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.

4. Any decision of an investment exchange or clearing house to refuse to admit any person as, or to exclude, a member by reason of, or partly by reason of, a spent conviction of an individual, or of any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.

5. Any decision of the Licensing Authority under the Gambling Act 2005.

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