

STATES OF JERSEY



Jersey

DRAFT REHABILITATION OF OFFENDERS (EXCEPTIONS) (AMENDMENT No. 2) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 23rd September 2019
by the Minister for Home Affairs**

STATES GREFFE

REPORT

The Draft Rehabilitation of Offenders (Exceptions) (Amendment No. 2) (Jersey) Regulations 201- (the “draft Regulations”) would provide for the making of enquiries regarding spent convictions as part of the processing of applications for a licence to produce, supply, offer to supply or possess a controlled drug or to cultivate *Cannabis* plants.

During the course of a recent review of the application process, it was noted that the Island had, by omission, effectively adopted a position on such licence applications that was inconsistent with that of the United Kingdom. Whereas the UK legislation provided scope for a controlled drug licensing regime to make enquiries regarding the spent convictions of an applicant seeking a licence to produce, supply, offer to supply, or possess a controlled drug, Jersey had no such provision.

It is considered that there is not a sound policy reason for Jersey to adopt a different position to that of the United Kingdom on such a matter. On that basis, these draft Regulations resolve the matter by inserting within the [Rehabilitation of Offenders \(Exceptions\) \(Jersey\) Regulations 2002](#) the necessary scope for any person applying for a licence under Article 3 (which may be in association with Article 10) of the [Misuse of Drugs \(General Provisions\) \(Jersey\) Order 2009](#) in respect of a controlled drug to be asked about their full criminal record, and for a corresponding Enhanced DBS certificate to be sought by the applicant.

Financial and manpower implications

There are no direct financial or other resource implications arising from these draft Regulations.

EXPLANATORY NOTE

The Draft Rehabilitation of Offenders (Exceptions) (Amendment No. 2) (Jersey) Regulations 201-, if passed, will permit the making of enquiries regarding spent convictions in processing an application for a licence to produce, supply, offer to supply or possess a controlled drug or to cultivate *Cannabis* plants.

Regulation 1 adds an exception to the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002 in respect of controlled drugs (the production, supply and possession of which is controlled under the Misuse of Drugs (Jersey) Law 1978). The exception will permit the making of enquiries regarding spent convictions (which, absent the exception, may not normally be the subject of such enquiries) when officials are processing an application for a licence to produce, supply, offer to supply or possess a controlled drug or to cultivate *Cannabis* plants. Such enquiries may be made with respect to the applicant for or holder of such a licence, and with respect to a person who has a role in or a relationship with the applicant or holder.

Regulation 1 adds an additional exception permitting spent convictions, in the context of an application for such a licence, to be taken into account with respect to a person's role in or relationship with the applicant or holder, as well as an exception permitting spent convictions to be raised in proceedings relating to the refusal of such a licence, or to the imposition of conditions on such a licence.

Regulation 2 sets out the name by which these Regulations may be cited and states that they come into force on the seventh day after the day on which they are made.



Jersey

DRAFT REHABILITATION OF OFFENDERS (EXCEPTIONS) (AMENDMENT No. 2) (JERSEY) REGULATIONS 201-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES make these Regulations under Articles 8(5) and 10(3) of the Rehabilitation of Offenders (Jersey) Law 2001¹ –

1 Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002 amended

In the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002², after Article 13, there is inserted –

“13A Licensing of controlled drugs

- (1) This Regulation applies with respect to –
 - (a) a licence issued under Article 3 of the Misuse of Drugs (General Provisions) (Jersey) Order 2009³ to produce, supply, offer to supply or possess a controlled drug; and
 - (b) a licence issued under Article 10 of that Order to cultivate plants of the genus *Cannabis*.
- (2) Article 10(1) of the Law shall not apply when a question is asked in order to assess the suitability of a person to hold a licence referred to in paragraph (1), if the question relates to –
 - (a) the applicant for or the holder of such a licence; or
 - (b) a person who, as a result of his or her role in, or relationship to, the applicant for or holder of such a licence –
 - (i) is required to be named in the application for the licence, or
 - (ii) would have been so required had the person been in that role or had that relationship at the time the application was made.
- (3) Article 10(2)(b) of the Law shall not, in the context of any matter related to an application for a licence referred to in paragraph (1),

apply to a person's role in, or relationship to, an applicant for or a holder of such a licence.

- (4) Article 7 of the Law shall not apply to any proceedings in respect of the refusal of, or the imposition of conditions attached to, a licence referred to in paragraph (1).”.

2 Citation and commencement

These Regulations may be cited as the Rehabilitation of Offenders (Exceptions) (Amendment No. 2) (Jersey) Regulations 201- and come into force on the seventh day after the day on which they are made.

ENDNOTES

Table of Endnote References

<i>1</i>	<i>chapter 08.840</i>
<i>2</i>	<i>chapter 08.840.50</i>
<i>3</i>	<i>chapter 08.680.60</i>