

**DRAFT REHABILITATION OF OFFENDERS (EXCEPTIONS) (JERSEY) REGULATIONS 200-**

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## **REPORT**

These Regulations supplement the Rehabilitation of Offenders (Jersey) Law 2001 and are required in order to bring the Law into force. They replace an earlier version lodged as P.64/2002.

### **The effect of the Law**

The Law introduces new rules to facilitate the rehabilitation of offenders. Once a specified period of time has elapsed since the conviction, the conviction is treated as 'spent'. The offender is treated for all purposes in law as if he had not committed it or been convicted of it. A spent conviction need not be disclosed when the offender or any other person is asked a question about the offender's past convictions and it is made an offence for a person, in the course of his official duties, to disclose a spent conviction without the offender's consent.

Further, the fact of a spent conviction or its non-disclosure is not a proper ground for turning the offender down for employment, dismissing him from a post or excluding him from any office or profession. Evidence of a spent conviction is not admissible in judicial proceedings, which are given a wide definition so as to include proceedings before tribunals, in disciplinary proceedings of professional organizations and in any other proceedings affecting a person's rights.

### **Exceptions in the Law**

However, there are some cases or situations in which the rule for rehabilitation is inappropriate. The Law already places some limits on the circumstances in which it applies -

- the rule does not apply to convictions resulting in a sentence of life imprisonment or imprisonment for more than 30 months;
- evidence of spent convictions can be produced in criminal proceedings or courts-martial;
- evidence of spent convictions can be produced in proceedings relating to adoption, the marriage of a minor, and the provision of accommodation, care or schooling of minors or under the Children (Jersey) Law 1969;
- evidence of spent convictions can be produced, with the consent of the offender, in proceedings in which he is a party or witness;
- finally, a judicial authority has a discretion, in proceedings, to receive evidence of a spent conviction and to have regard to a spent conviction if it is satisfied that justice cannot otherwise be done.

### **The Regulations**

These Regulations, then, add to the key exceptions in the Law.

Throughout the Regulations there are references to Articles 10(1), 10(2)(b) and 7 of the Law, creating exceptions to the rules contained in them.

Article 10(1) of the Law is the rule that a spent conviction and the circumstances relating to it need not be disclosed when a question is put regarding the offender's past convictions or conduct.

Article 10(2)(b) of the Law is the rule that non-disclosure of a spent conviction or the circumstances relating to it is not a proper ground for dismissal or exclusion from any employment, profession or office.

Article 7 of the Law states 2 rules. First that, once a conviction is spent, the offender is treated for all purposes in law as if he had not committed the act or been convicted of it. Secondly, that a spent conviction is not admissible in evidence and need not be disclosed in questioning in proceedings.

In formulating these Regulations, the Committee has had careful regard to the need to preserve the object of the Law, to rehabilitate offenders, whilst ensuring that public interests and safety are protected through the creation of essential exceptions to the rule for rehabilitation.

Following the lodging of P.64/2002, the Committee received further representations regarding the provisions to be included in these Regulations. These draft Regulations incorporate changes made in the light of those representations. Firstly, they enable persons whose employment involves access to criminal records to disclose those records in the course of their duties

without committing an offence. Secondly, they enable the Attorney General and States of Jersey police to disclose information when co-operating with the Attorney General or the police or another law enforcement agency in another jurisdiction. Thirdly, they incorporate additional provisions requiring the following persons to disclose in full their past convictions -

- applicants for a public service vehicle licence or badge;
- applicants for a liquor licence;
- associates of, and employees controlling or advising on client assets, compliance officers and money laundering officers in, financial services businesses;
- the States' analyst and staff;
- persons wishing to train as child carers;
- all staff of the Lieutenant Governor.

The Report accompanying the revised Rehabilitation of Offenders (Jersey) Law 2001 (Appointed Day) Act 200-(P.156/2002) describes the financial and manpower implications of bringing the Rehabilitation of Offenders (Jersey) Law 2001 and these Regulations into force.

## **Explanatory Note**

The purpose of these Regulations is to specify circumstances which shall be an exception to the rule in the Rehabilitation of Offenders (Jersey) Law 2001 that a spent conviction need not be disclosed.

### *Opening provisions*

*Regulation 1* is the interpretation provision.

*Regulation 2* defines “work” to include unpaid work.

*Regulation 3* limits the application of the Regulations to questions asked by a person in the course of his office or employment. It also requires the person being questioned and, if different, the person to whom the question relates, to be informed that spent convictions must be disclosed.

### *General categories*

*Regulation 4* requires the disclosure of spent convictions for the purpose of assessing a person’s suitability for any judicial appointment or as Attorney General, Solicitor General, Crown Advocate, Judicial Greffier, Viscount or Greffier of the States or as a deputy to or substitute for any of them. It also makes it possible for a spent conviction or non-disclosure of it to be a proper ground for dismissal or exclusion from the appointment.

*Regulation 5* requires the disclosure of spent convictions for the purpose of assessing a person’s suitability for admission to practice as an advocate or solicitor or for the purpose of assessing a person’s suitability for registration or enrolment to practice in the Island as a doctor, dentist, optician, pharmacist, midwife, veterinary surgeon, chiropodist, chiropractor, clinical psychologist, dietician, medical laboratory technician, occupational therapist, orthoptist, osteopath, physiotherapist, psychotherapist, radiographer or speech therapist. It also makes it possible for a spent conviction or non-disclosure of it to be a proper ground for the withdrawal of any such authority to practice in the Island, and for spent convictions to be disclosed in disciplinary proceedings and proceedings regarding any such authority to practice in the Island.

*Regulation 6* requires disclosure of spent convictions for the purpose of assessing a person’s suitability for appointment as a States’ Police officer, Honorary Police officer, port control officer, police cadet, customs officer, immigration officer, fishery officer or traffic officer. It also makes it possible for a spent conviction or non-disclosure of it to be a proper ground for dismissal or exclusion from the appointment and for spent convictions to be disclosed in disciplinary proceedings.

*Regulation 7* requires disclosure of spent convictions for the purpose of assessing a person’s suitability for employment within the Bailiff’s Department, Law Officers’ Department, Viscount’s Department, Judicial Greffe or the prison or as civilian support staff for the States’ Police or Honorary Police, or as a probation or community service officer. It also makes it possible for a spent conviction or non-disclosure of it to be a proper ground for dismissal or exclusion from the employment.

*Regulation 8* requires disclosure of spent convictions for the purpose of assessing a person’s suitability for appointment as Official Analyst or employment within the Analyst’s laboratory. It also makes it possible for a spent conviction or non-disclosure of it to be a proper ground for dismissal or exclusion from the appointment or employment.

*Regulation 9* requires disclosure of spent convictions for the purpose of assessing a person’s suitability for employment within the Lieutenant-Governor’s official residence. It also makes it possible for a spent conviction or non-disclosure of it to be a proper ground for dismissal or exclusion from the employment.

*Regulation 10* requires disclosure of spent convictions for the purpose of assessing a person’s suitability to be a firearm dealer or to pursue an occupation which requires a licence to import, manufacture, store, use, convey, sell or transfer explosives or to hold a firearm certificate or licence in respect of explosives or fireworks. It also makes it possible for a spent conviction or non-disclosure of it to be a proper ground for dismissal or exclusion from the occupation and for spent convictions to be disclosed in proceedings relating to such licences and certificates.

*Regulation 11* requires disclosure of spent convictions for the purpose of assessing a person’s suitability to pursue an occupation which requires a gambling licence or certificate or registration by the Gambling Committee or to hold any such authorization. It also makes it possible for a spent conviction or non-disclosure of it to be a proper ground for dismissal or exclusion from the occupation and for spent convictions to be disclosed in proceedings relating to such licences, certificates and registration.

*Regulation 12* requires disclosure of a spent conviction for the purpose of assessing a person's suitability to hold a public service vehicle licence or a badge to drive a public service vehicle or to be employed in an occupation which requires such a licence or badge. It also makes it possible for a spent conviction or non-disclosure of it to be a proper ground for dismissal or exclusion from the occupation and for spent convictions to be disclosed in proceedings relating to such licences and badges.

*Regulation 13* requires disclosure of a spent conviction for the purpose of assessing a person's suitability to hold a liquor licence or be registered as a manager of licensed premises or approved as a deputy to a such a licensee or manager. It also requires disclosure of a spent conviction for the purpose of assessing a person's suitability for employment in an occupation requiring the employee to hold such a licence or be registered as such a manager or so approved. It also makes it possible for a spent conviction or non-disclosure of it to be a proper ground for dismissal or exclusion from the occupation and for spent convictions to be disclosed in proceedings relating to such licences, registration and approval.

*Regulation 14* requires disclosure of spent convictions for the purpose of assessing a person's suitability for any office or employment if the question is put by a States' employee and the purpose of disclosure is to safeguard the Island's security. It also makes it possible for a spent conviction or non-disclosure of it to be a proper ground for dismissal or exclusion from the office or employment.

*Regulation 15* enables the Attorney General and the States of Jersey Police to pass on full conviction records to the Attorney General, police and law enforcement agencies of another jurisdiction. Onward disclosure within the receiving jurisdiction would then be regulated by any local legislation regarding the rehabilitation of offenders.

#### *Contact with children and other vulnerable persons*

*Regulation 16* requires disclosure of spent convictions for the purpose of assessing a person's suitability to adopt or foster children. The requirement also applies to anyone who lives in the same household as the prospective adopter or foster parent.

*Regulation 17* requires disclosure of spent convictions for the purpose of assessing a person's suitability to work with or in proximity with children or in a post conferring responsibility for children. The requirement also applies to anyone living or regularly working on premises where work with children takes place. A spent conviction or non-disclosure of it may be a proper ground for dismissal. This Regulation also requires disclosure of spent convictions for the purpose of assessing an application for registration of a nursery or private school or as a childminder and in proceedings relating to any such registration and for the purpose of assessing the suitability of a person enrolling for a course of education which includes a placement caring for, training, supervising or being in charge of children.

*Regulation 18* requires disclosure of spent convictions for the purpose of assessing a person's suitability to work with vulnerable people, such as persons over 65 or those who are physically or mentally impaired. A spent conviction or non-disclosure of it may be a proper ground for dismissal. This Regulation also requires disclosure of spent convictions for the purpose of assessing a person's suitability for appointment as a curator or an application for registration of a nursing home and in proceedings relating to any such registration.

#### *Financial services*

*Regulation 19* requires disclosure of spent convictions for the purpose of assessing a person's suitability for appointment as a Commissioner or officer of the Jersey Financial Services Commission. A spent conviction or non-disclosure of it may be a proper ground for dismissal.

*Regulation 20* requires disclosure of spent convictions for relevant offences (defined in *Regulation 1*) when a question is asked by or on behalf of the Jersey Financial Services Commission in the discharge of its regulatory functions in respect of collective investment funds, banking business, insurance business and financial services business. The Regulation also makes a spent conviction for a relevant offence or non-disclosure of it a proper ground for the exercise of certain regulatory powers of the Commission and requires the disclosure of spent convictions for relevant offences in proceedings arising from the exercise of such powers. In addition, the Jersey Financial Services Commission is authorized, in the exercise of its powers to co-operate with supervisory authorities in other jurisdictions, to pass on details of a spent conviction for a relevant offence which has been disclosed to it.

*Regulation 21* requires disclosure of a spent conviction for a relevant offence when a question is put to assess a person's suitability to be an employee, associate, principal person, director, chief executive or controlling shareholder of a regulated financial business. It also makes it possible for a spent conviction for a relevant offence or non-disclosure of it to be a proper ground for dismissal or exclusion from such an employment or post.

#### *General provisions*

*Regulation 22* has the effect that it is not an offence for a person who, in the course of his or her official duties, has access to official records, to disclose information contained in those records, if the person does so only in the course of those duties.

*Regulation 23* requires disclosure of spent convictions in any proceedings before a Mental Health Review Tribunal.

*Regulation 24* is a rule of general application, requiring disclosure of spent convictions in any proceedings arising from a decision taken on considering a spent conviction or held for the receipt of evidence in proceedings to which these Regulations apply.

*Closing provision*

*Regulation 25* is the citation and commencement provision.

REHABILITATION OF OFFENDERS (EXCEPTIONS) (JERSEY) REGULATIONS 200-

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## Rehabilitation of Offenders (Jersey) Law 2001

### REHABILITATION OF OFFENDERS (EXCEPTIONS) (JERSEY) REGULATIONS 200-

(Promulgated on the \_\_\_\_\_ day of \_\_\_\_\_ 200-)

#### STATES OF JERSEY

The \_\_\_\_\_ day of \_\_\_\_\_ 200-

**THE STATES**, in pursuance of Articles 8(5), 10(3) and 11(4) of the Rehabilitation of Offenders (Jersey) Law 2001,<sup>[1]</sup> have made the following Regulations -

#### *Opening provisions*

#### **Interpretation**

**1.**-(1) In these Regulations, except where the context otherwise requires

“children” means persons not of full age;

“Commission” means the Jersey Financial Services Commission established by Article 2 of the Financial Services Commission (Jersey) Law 1998;<sup>[2]</sup>

“compulsory school age” has the same meaning as in the Education (Jersey) Law 1999;<sup>[3]</sup>

“firearms dealer” has the same meaning as in the Firearms (Jersey) Law 2000;<sup>[4]</sup>

“Law” means the Rehabilitation of Offenders (Jersey) Law 2001;<sup>[5]</sup>

“prison” has the same meaning as in the Prison (Jersey) Law 1957;<sup>[6]</sup>

“relevant offence” means -

- (a) an offence involving fraud or other dishonesty;
- (b) an offence under any enactment (whether or not of the Island) relating to banking or other financial services, building societies, collective investment funds, companies (including insider dealing), consumer credit, consumer protection, credit unions, friendly societies, industrial and provident societies, insurance, insolvency or money laundering;
- (c) an offence of perjury or conspiracy to pervert the course of justice;
- (d) an offence committed (whether under the law of the Island or elsewhere) in connection with, or in relation to taxation, for which a person aged 21 or more may be sentenced to imprisonment for a term of 2 years or more.

(2) Where these Regulations disapply any provision of the Law, the disapplication extends to spent convictions for offences of every description, unless it is expressed to extend only to spent convictions for relevant offences.

(3) A reference in these Regulations to a Regulation by number only and without further identification is a reference to the Regulation of that number in these Regulations.

(4) A reference in a Regulation to a paragraph, sub-paragraph or clause by number or letter only and without further identification is a reference to the paragraph, sub-paragraph or clause of that number or letter in the Regulation.

(5) Unless the context otherwise requires, a reference in these Regulations to an enactment is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied under another enactment, including another provision of these Regulations.

**“Work” to include voluntary work, etc.**

2. In these Regulations -

“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.

**General conditions for questions**

3.-(1) Except in Regulation 15, these Regulations shall apply only to a question-

- (a) if, at the time the question is asked, the person questioned is informed that, by virtue of these Regulations -
  - (i) in the case of a question to which Regulation 15 or 16 applies, spent convictions for any relevant offence must be disclosed, and
  - (ii) in the case of a question asked to which any other provisions of these Regulations applies, all spent convictions must be disclosed; and
- (b) where the person to whom the question relates is not the person questioned, if, before the question is asked, the person to whom it relates is informed that it will be asked and of the requirements for disclosure referred to in sub-paragraph (a).

(2) Save as provided in Regulation 16, these Regulations shall apply only to a question asked by or on behalf of a person in the course of the duties of his office or employment.

*General categories*

**Judiciary and legislature**

4.-(1) Article 10(1) of the Law<sup>[7]</sup> shall not apply when a question is asked in order to assess the suitability of the person to whom the question relates -

- (a) for any judicial appointment, being 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;
- (b) for appointment as -
  - (i) Attorney General, Solicitor General or a Crown Advocate,
  - (ii) Judicial Greffier, Deputy Judicial Greffier or a Greffier Substitute,
  - (iii) Viscount, Deputy Viscount or a Viscount Substitute,
  - (iv) Greffier of the States or Deputy Greffier of the States.

(2) Article 10(2)(b) of the Law<sup>[8]</sup> shall not apply to any appointment mentioned in paragraph (1).

## Professions

5.-(1) Article 10(1) of the Law<sup>5</sup> shall not apply when a question is asked in order to assess the suitability of the person to whom the question relates for admission as an advocate or solicitor of the Royal Court.

(2) Article 10(1) of the Law<sup>8</sup> shall not apply when a question is asked in order to assess the suitability of the person to whom the question relate for authorization, enrolment, recognition or registration, as the case may be, to practice any of the following professions in the Island, namely -

- (a) medical practitioner, pursuant to the Medical Practitioners (Registration) (Jersey) Law 1960;<sup>[9]</sup>
- (b) dentist, pursuant to the Dentists (Registration) (Jersey) Law 1961<sup>[10]</sup> or ancillary dental worker, pursuant to Article 10 of that Law;
- (c) ophthalmic optician or dispensing optician, pursuant to the Opticians (Registration) (Jersey) Law 1962;<sup>[11]</sup>
- (d) pharmacist, pursuant to the Pharmacy, Poisons and Medicines (Jersey) Law 1952;<sup>[12]</sup>
- (e) midwife, pursuant to the Loi (1922) sur la Santé Publique (Sage-femmes);<sup>[13]</sup>
- (f) veterinary surgeon, pursuant to the Veterinary Surgeons (Jersey) Law 1999;<sup>[14]</sup>
- (g) any profession to which the Health Care (Registration) (Jersey) Law 1995<sup>[15]</sup> applies and which is undertaken following registration under that Law.

(3) Article 10(2)(b) of the Law<sup>[16]</sup> shall not apply to -

- (a) the dismissal or exclusion of any person from the profession of advocate or solicitor of the Royal Court;
- (b) the cancellation of any authorization, enrolment, recognition or registration to practice in the Island any profession mentioned in paragraph (2).

(4) Article 7 of the Law<sup>[17]</sup> shall not apply to -

- (a) any proceedings in respect of a person's admission as an advocate or solicitor of the Royal Court or any disciplinary proceedings against such a person; or
- (b) any proceedings in respect of the cancellation of any person's authorization, enrolment, recognition or registration to practice in the Island any profession mentioned in paragraph (2).

## Law enforcement officers

6.-(1) Article 10(1) of the Law<sup>6</sup> shall not apply when a question is asked in order to assess the suitability of the person to whom the question relates for office or appointment as -

- (a) a member of the States of Jersey Police Force;
- (b) a member of the Honorary Police;
- (c) a member of the Port Control Unit established by Article 13B of the Police Force (Jersey) Law 1974;<sup>[18]</sup>
- (d) a police cadet, to undergo training with a view to becoming a member of the States of Jersey Police Force;
- (e) a customs officer, pursuant to Article 4 of the Customs and Excise (Jersey) Law 1999;<sup>[19]</sup>

- (f) an immigration officer, pursuant to paragraph 1 of Part 1 of Schedule 2 to the Immigration Act 1971, as it is applied to the Island pursuant to the Immigration (Jersey) Order 1993;<sup>[20]</sup>
- (g) a fishery officer, pursuant to Article 14 of the Sea Fisheries (Jersey) Law 1994;<sup>[21]</sup>
- (h) a traffic officer, pursuant to the Motor Traffic (Jersey) Law 1935.<sup>[22]</sup>
- (2) Article 10(2)(b) of the Law<sup>[23]</sup> shall not apply to any office or appointment mentioned in paragraph (1).
- (3) Article 7 of the Law<sup>[24]</sup> shall not apply to disciplinary proceedings against any officer mentioned in paragraph (1)(a) to (c) or a police cadet.

#### **Other posts related to the judiciary, the legislature and law enforcement**

7.-(1) Article 10(1) of the Law<sup>3</sup> shall not apply when a question is asked in order to assess the suitability of the person to whom the question relates -

- (a) for appointment to the Bailiff's Department, the Law Officers Department, the Viscount's Department or the Judicial Greffe;
- (b) for employment for the purposes of or to assist members of the States of Jersey Police Force or Honorary Police;
- (c) for employment concerned with the administration of or otherwise normally carried out wholly or partly within the precincts of the prison;
- (d) for appointment as a probation officer, being a person named or designated as a délégué pursuant to the Loi (1937) sur l'atténuation des peines et sur la mise en liberté surveillée;<sup>[25]</sup>
- (e) for designation as a relevant officer pursuant to Article 10 of the Criminal Justice (Community Service Orders) (Jersey) Law 2001.<sup>[26]</sup>

(2) Article 10(2)(b) of the Law<sup>[27]</sup> shall not apply to any appointment, employment or office mentioned in paragraph (1).

#### **Official Analyst and staff**

8.-(1) Article 10(1) of the Law<sup>7</sup> shall not apply when a question is asked in order to assess the suitability of the person to whom the question relates -

- (a) for appointment as Official Analyst;
- (b) for employment in the laboratory of the Official Analyst.

(2) Article 10(2)(b) of the Law<sup>27</sup> shall not apply to any appointment or employment mentioned in paragraph (1).

(3) In this Regulation, "Official Analyst" has the same meaning as in the Food and Drugs (Jersey) Law 1966.<sup>[28]</sup>

#### **Lieutenant Governor's staff**

9.-(1) Article 10(1) of the Law<sup>[29]</sup> shall not apply when a question is asked in order to assess the suitability of the person to whom the question relates for employment within the official residence of the Lieutenant Governor.

(2) Article 10(2)(b) of the Law<sup>29</sup> shall not apply to any employment falling within paragraph (1).

#### **Firearms, explosives and fireworks**

**10.**-(1) Article 10(1) of the Law<sup>29</sup> shall not apply when a question is asked in order to assess the suitability of the person to whom the question relates -

- (a) to pursue any of the following occupations or to pursue any of them subject to a particular condition or restriction, namely -
  - (i) firearms dealer,
  - (ii) any occupation in respect of which a person, as occupier of premises on which explosives are kept, is required to obtain a licence from the Home Affairs Committee under the Explosives (Jersey) Law 1970,<sup>[30]</sup>
  - (iii) any occupation in respect of which a person, as seller of fireworks, is required to obtain a licence from a Connétable under Article 7 of the Explosives (Jersey) Law 1970;<sup>[31]</sup>
- (b) to hold any of the following certificates, permits or licences or to hold any of them subject to a particular condition or restriction -
  - (i) a firearm certificate issued under the Firearms (Jersey) Law 2000,<sup>[32]</sup>
  - (ii) a permit issued under Article 12(1)(c), 14(8), 19(2) or 50 of the Firearms (Jersey) Law 2000,<sup>32</sup>
  - (iii) any licence granted under the Explosives (Jersey) Law 1970.<sup>[33]</sup>

(2) Article 10(2)(b) of the Law<sup>[34]</sup> shall not apply to any occupation mentioned in paragraph (1)(a).

(3) Article 7 of the Law<sup>[35]</sup> shall not apply to any proceedings under the Firearms (Jersey) Law 2000<sup>32</sup> 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 or the imposition, variation, or revocation of conditions of any such registration;
- (b) the grant, renewal, variation or revocation of a firearm certificate;
- (c) the grant of a permit under Article 12(1)(c), 14(8), 19(2) or 50 of that Law;
- (d) the grant, renewal, variation or cancellation of a licence under the Explosives (Jersey) Law 1970.<sup>33</sup>

### **Gambling**

**11.**-(1) Article 10(1) of the Law<sup>[36]</sup> shall not apply when a question is asked in order to assess the suitability of the person to whom the question relates -

- (a) to hold any licence or certificate issued by or be registered by the Gambling Committee; or
- (b) for employment in any occupation for which any such licence, certificate or registration is required.

(2) Article 7 of the Law<sup>[37]</sup> shall not apply to any proceedings in respect of the refusal, imposition of conditions upon or variation or revocation of any licence or certificate granted by or any registration by the Gambling Committee.

(3) Article 10(2)(b) of the Law<sup>36</sup> shall not apply to any occupation to which paragraph (1)(a) applies.

### **PSV licence and badge holders**

**12.**-(1) Article 10(1) of the Law<sup>36</sup> shall not apply when a question is asked in order to assess the suitability of the person to whom the question relates -

- (a) to hold a public service vehicle licence;
- (b) to be issued with a badge to drive a public service vehicle licence;
- (c) for employment in any occupation for which such a licence or badge is required.

(2) Article 7 of the Law<sup>37</sup> shall not apply to any proceedings in respect of the refusal, suspension or revocation of a public service vehicle licence or a badge.

(3) Article 10(2)(b) of the Law<sup>[38]</sup> shall not apply to employment in any occupation falling within paragraph (1) (c).

(4) In this Regulation, “badge”, “public service vehicle” and “public service vehicle licence” have the same meaning as in the Motor Traffic (Jersey) Law 1935.<sup>[39]</sup>

### **Liquor licensing**

13.-(1) Article 10(1) of the Law<sup>38</sup> shall not apply when a question is asked in order to assess the suitability of the person to whom the question relates -

- (a) to be granted a licence under the 1974 Law;
- (b) to be registered as a manager of licensed premises;
- (c) to be approved as a deputy for a licence holder or manager pursuant to Article 20 of the 1974 Law;
- (d) for employment in any occupation which requires the employee to hold a licence under the 1974 Law or be registered as a manager of licensed premises or approved pursuant to Article 20 of that Law.

(2) Article 7 of the Law<sup>[40]</sup> shall not apply to any proceedings in respect of -

- (a) the refusal of, imposition of conditions upon or variation of any licence or in respect of the grant of a licence of a category different from that applied for;
- (b) the refusal of registration of a person as manager of licensed premises;
- (c) the refusal of approval of a person pursuant to Article 20 of the 1974 Law.

(3) Article 10(2)(b) of the Law<sup>[41]</sup> shall not apply to employment in any occupation falling within paragraph (1) (d).

(4) In this Regulation, “1974 Law” means the Licensing (Jersey) Law 1974<sup>[42]</sup> and “licence”, “licensed premises” and “manager” have the same meaning as in that Law.

### **Security of the Island**

14.-(1) Article 10(1) of the Law<sup>41</sup> shall not apply when a question is asked by or on behalf of an officer mentioned in Article 36A(6) of the States of Jersey Law 1966<sup>[43]</sup> in order to assess, for the purposes of safeguarding the security of the Island, the suitability of the person to whom the question relates for any office or employment, where the person questioned is informed, at the time the question is asked, that, by virtue of these Regulations, spent convictions are to be disclosed for the purpose of safeguarding the security of the Island.

(2) Article 10(2)(b) of the Law<sup>41</sup> shall not apply to any exclusion or dismissal, for the purpose of safeguarding the security of the Island, from an office or employment to which paragraph (1) applies.

### **International co-operation**

15. Article 10(1) of the Law<sup>41</sup> shall not apply where a question is put to the Attorney General or the States of Jersey Police Force by -

- (a) the Attorney General, or person of comparable office, of another place or territory; or
- (b) a police force or other law enforcement agency of another place or territory.

*Contact with children and other vulnerable persons*

**Adopters and foster parents**

16. Article 10(1) of the Law<sup>[44]</sup> shall not apply when a question is asked by or on behalf of a person employed by the Adoption Service established by Article 1A of the Adoption (Jersey) Law 1961<sup>[45]</sup> or by any of the approved adoption societies described in paragraph (4) of that Article or by or on behalf of an officer of the Health and Social Services Committee, for the purpose of assessing the suitability of any person to adopt or foster children in general or a child in particular, where -

- (a) the question relates to the person whose suitability is being assessed; or
- (b) the question relates to a person living in the same household as the person whose suitability is being assessed.

**Work with children**

17.-(1) This Article applies to the following descriptions of work with children-

- (a) a position whose normal duties include work in -
  - (i) an institution which is exclusively or mainly for the detention of children,
  - (ii) a hospital or nursing home which is exclusively or mainly for children,
  - (iii) a school which is exclusively or mainly for the education of children, or
  - (iv) a children's home or voluntary home within the meaning of the Children (Jersey) Law 1969;<sup>[46]</sup>
- (b) a position whose normal duties include work on premises required to be registered as a nursery under Article 68(1)(a) of the Children (Jersey) Law 1969,<sup>[47]</sup> disregarding any work which is done -
  - (i) on a part of the premises in which children are not looked after, or
  - (ii) at times when children are not looked after;
- (c) a position whose normal duties include caring for, training, supervising or being in charge of children, otherwise than in the course of the children's employment;
- (d) a position whose normal duties involve contact with children otherwise than in the course of the children's employment and in the absence of a person who holds a position described in sub-paragraph (c) or of any of the following persons -
  - (i) the child's parent or guardian or any adult with whom the child lives,
  - (ii) the person in charge of any establishment mentioned in sub-paragraph (a) in which the child is accommodated, is a patient or receives education, or any person acting on behalf of such a person,
  - (iii) a person whose premises are registered as a nursery under Article 68(1)(a) of the Children (Jersey) Law 1969,<sup>47</sup>
  - (iv) a person who is registered as a child minder under Article 68(1)(b) of the Children (Jersey) Law 1969<sup>[48]</sup>

- (v) any person holding a position mentioned in sub-paragraph (f);
- (e) a position whose normal duties include caring for children under the age of 16 in the course of the children's employment;
- (f) work in an institution providing -
  - (i) full and part-time education suitable to the requirements of persons over compulsory school age (including vocational, social, physical and recreational training), and
  - (ii) organized leisure time in connection with the provision of such education,
 where the normal duties of that work involve regular contact with children;
- (g) a position of line manager, being a position whose normal duties include -
  - (i) supervising the day-to-day performance of an individual's duties in his work in a position mentioned in sub-paragraphs (a) to (f),
  - (ii) being the person to whom an individual, in his work in a position mentioned in sub-paragraphs (a) to (f), is directly responsible for the performance of his duties in that work, or
  - (iii) having authority to dismiss an individual from his work in a position mentioned in sub-paragraphs (a) to (f);
- (h) trustee of a children's charity;
- (j) member of the governing body of a school;
- (k) chief officer of an administration of the Education Committee;
- (l) chief officer of an administration of the Health and Social Services Committee or director of an administration of that Committee providing services for children.
- (2) For the purposes of paragraph (1)(h) -
  - (a) a charity is a children's charity if the individuals who are workers for the charity normally include individuals working in any position mentioned in paragraph (1)(a) to (f);
  - (b) an individual is a worker for a charity if he does work under arrangements made by the charity which are wholly or mainly for the purposes for which the charity is established.
- (2) Article 10(1) of the Law<sup>[49]</sup> shall not apply when a question is asked in order to assess the suitability of a person for any work with children where -
  - (a) the question relates to the person whose suitability is being assessed;
  - (b) the person whose suitability is being assessed lives on the premises where his work with children would take place and the question relates to a person living in the same household as him;
  - (c) the person whose suitability is being assessed lives on the premises where his work with children would normally take place and the question relates to a person who regularly works on those premises at a time when the work with children usually takes place; or
  - (d) the work for which the person's suitability is being assessed is child minding, being the reception of children as mentioned in Article 68(1)(b) of the Children (Jersey) Law 1969,<sup>[50]</sup> which would normally take place on premises other than premises where that person lives and the question relates to a person who lives on those other premises or to a person who regularly works on them at a time when the child minding takes place.

(3) Article 10(2)(b) of the Law<sup>[51]</sup> shall not apply to any work with children.

(4) Article 10(1) of the Law<sup>51</sup> shall not apply when a question is asked in order to assess the suitability of the person to whom the question relates -

(a) to have premises registered as a nursery under Article 68(1)(a) of the Children (Jersey) Law 1969,<sup>[52]</sup> or

(b) to be registered as a childminder under Article 68(1)(b) of that Law.<sup>[53]</sup>

(5) Article 10(1) of the Law<sup>51</sup> shall not apply when a question is asked in order to assess, for the purposes of the determination of an application for registration of a non-provided school pursuant to Article 40 of the Education (Jersey) Law 1999,<sup>[54]</sup> the suitability of a person to be the proprietor of or a teacher in a non-provided school.

(6) Article 7 of the Law<sup>[55]</sup> shall not apply to any proceedings arising from any determination regarding the suitability of a person for any purpose described in paragraph (4) or (5).

(7) Article 10(1) of the Law<sup>51</sup> shall not apply where a question is asked in order to assess the suitability of a person to enrol in any course of education which includes a work placement in a position falling within paragraph (1)(c).

### **Work with vulnerable persons**

**18.**-(1) Article 10(1) of the Law<sup>[56]</sup> shall not apply when a question is asked in order to assess the suitability of the person to whom the question relates -

(a) for any employment or work which is concerned with the provision of social services and of such a kind as to enable the employee or person engaged in that work to have access to any of the following classes of persons in the course of his normal duties, namely -

(i) persons over the age of 65,

(ii) persons suffering from serious mental illness or mental disorder of any description,

(iii) persons addicted to alcohol or drugs,

(iv) persons who are blind, deaf or dumb, or

(v) other persons who are substantially and permanently disabled by illness, injury or congenital condition;

(b) for any employment or work which is concerned with the provision of health services and of such a kind as to enable the employee or person engaged in that work to have access to persons in receipt of such services in the course of his normal duties;

(c) for any occupation which is concerned with the management or carrying on of a nursing home;

(d) for appointment as a curator under Article 50 of the Mental Health (Jersey) Law 1969.<sup>[57]</sup>

(2) Article 10(1) of the Law<sup>56</sup> shall not apply when a question is asked by or on behalf of any person in order to assess the suitability of the person to whom the question relates for registration under the Nursing and Residential Homes (Jersey) Law 1994.<sup>[58]</sup>

(3) Article 10(2)(b) of the Law<sup>[59]</sup> shall not apply to any employment, work, occupation or appointment mentioned in paragraph (1).

(4) Article 7 of the Law<sup>[60]</sup> shall not apply to any proceedings in respect of any determination regarding the suitability of a person for registration under the Nursing and Residential Homes (Jersey) Law 1994.<sup>58</sup>

*Financial services*

**Jersey Financial Services Commission**

19.-(1) Article 10(1) of the Law<sup>58</sup> shall not apply when a question is asked in order to assess the suitability of the person to whom the question relates -

- (a) for appointment as a Commissioner of the Commission, pursuant to Article 3 of the Financial Services Commission (Jersey) Law 1998;<sup>[61]</sup>
  - (b) for appointment as an officer, servant or agent of the Commission, pursuant to Article 9 of that Law.<sup>[62]</sup>
- (2) Article 10(2)(b) of the Law<sup>59</sup> shall not apply to any appointment mentioned in paragraph (1).

**Supervision of financial services by Commission**

20.-(1) In this Regulation and Regulation 21-

“1988 Law” means the Collective Investment Funds (Jersey) Law 1988;<sup>[63]</sup>

“1991 Law” means the Banking Business (Jersey) Law 1991;<sup>[64]</sup>

“1996 Law” means the Insurance Business (Jersey) Law 1996;<sup>[65]</sup>

“1998 Law” means the Financial Services (Jersey) Law 1998;<sup>[66]</sup>

“controller” has the same meaning as in the 1991 Law;

“finance employee” means an employee whose duties include -

- (a) having control of or advising upon any property, including money and investments, belonging to a client of the employer;
- (b) being responsible for ensuring that the employer’s business is conducted in compliance with the requirements of the 1988 Law, 1991 Law, 1996 Law and 1998 Law;
- (c) being the person to whom, in accordance with any procedure established by the employer, another employee must disclose any suspicion of a money laundering offence,

and, subject to paragraph (2), the expressions “associate”, “principal person” and “relevant supervisory authority”, when used in relation to any of the aforementioned Laws, shall have the same meaning as in that Law.

(2) The expression “associate” shall not include -

- (a) a person’s husband, wife, child or stepchild;
- (b) a person who, apart from this paragraph, would be an associate by virtue only of being an employee of a company, unless the person’s duties include any of the functions described in the definition “finance employee” in paragraph (1).

(3) Article 10(1) of the Law<sup>[67]</sup> shall not apply to a spent conviction for a relevant offence when a question is asked by or on behalf of the Commission -

- (a) in the discharge of its functions under the 1988 Law, in relation to -
  - (i) a holder of or an applicant for a permit under that Law,
  - (ii) a principal person in relation to a holder of or applicant for a permit under that Law,

- (iii) an associate or finance employee of a holder of or applicant for a permit under that Law;
- (b) in the discharge of its functions under the 1991 Law, in relation to -
  - (i) a person registered or who has applied for registration under that Law,
  - (ii) an associate, controller, director, finance employee or manager of a person registered or who has applied for registration under that Law;
- (c) in the discharge of its functions under the 1996 Law, in relation to -
  - (i) a holder of or an applicant for a permit under that Law,
  - (ii) an associate, chief executive, director, finance employee or shareholder controller of a holder of or applicant for a Category B permit under that Law;
- (d) in the discharge of its functions under the 1998 Law, in relation to -
  - (i) a person registered under that Law,
  - (ii) an applicant for registration,
  - (iii) a principal person in relation to a person registered under that Law or who has applied for registration under that Law ,
  - (iv) a person who will become a principal person in relation to a person registered under that Law, or
  - (v) a finance employee or associate of a person registered under that Law or of an applicant for registration.

(4) Article 10(2)(b) of the Law<sup>[68]</sup> shall not apply, in relation to a spent conviction for a relevant offence, to any decision or proposed decision or act of the Commission in the discharge of its functions under the 1988 Law, the 1991 Law, the 1996 Law or the 1998 Law.

- (5) Article 7 of the Law<sup>[69]</sup> shall not apply to a spent conviction for a relevant offence in any proceedings under -
- (a) Article 20 of the 1988 Law;
  - (b) Article 16 of the 1991 Law;
  - (c) Article 10A or 23 of the 1998 Law.

(6) Article 11(1) of the Law<sup>[70]</sup> shall not apply to the communication by the Commission, in the discharge of any power of co-operation with a relevant supervisory authority pursuant to the 1988 Law, the 1991 Law, the 1996 Law or the 1998 Law, to such an authority of any spent conviction for a relevant offence disclosed to the Commission in answer to a question to which this Regulation applies.

#### **Work in supervised financial services**

**21.**-(1) Article 10(1) of the Law<sup>[71]</sup> shall not apply to a spent conviction for a relevant offence when a question is put -

- (a) by or on behalf of -
  - (i) a holder of a permit under the 1988 Law,
  - (ii) a person registered under the 1998 Law,
  - (iii) a person who has applied or intends to apply for a permit under the 1988 Law or for registration under

the 1998 Law, or

- (iv) a principal person in relation to any of the foregoing persons;  
and relates to an individual who is or is seeking to become an associate or finance employee of the person by whom or on whose behalf the question is put; or
  - (b) by or on behalf of -
    - (i) a person registered under the 1991 Law, or
    - (ii) a person who has applied or intends to apply for registration under that Law,  
and relates to an individual who is or is seeking to become an associate, controller, director, finance employee or manager of the person by whom or on whose behalf the question is put;
  - (c) by or on behalf of the holder of or a person who has applied or intends to apply for a Category B permit under the 1996 Law in relation to a person who is seeking to become an associate, chief executive, director, finance employee or shareholder controller of the person by whom or on whose behalf the question is put.
- (2) Article 10(2)(b) of the Law<sup>[72]</sup> shall not apply, in relation to a spent conviction for a relevant offence -
- (a) to the dismissal or exclusion of an individual from being or becoming an associate or finance employee of a person mentioned in paragraph (1)(a);
  - (b) to the dismissal or exclusion of an individual from being an associate, controller, director, finance employee or manager of a person mentioned in paragraph (1)(b); or
  - (c) to the dismissal or exclusion of an individual from being an associate, chief executive, director, finance employee, or shareholder controller of a person mentioned in paragraph (1)(c).

#### *General provisions*

#### **General rule for information held in the course of official duties**

22. Article 11(1) of the Law<sup>[73]</sup> shall not apply where a person who, in the course of his official duties has, or at any time has had, custody of or access to any official record or the information contained in it -
- (a) discloses any specified information derived from the record; and
  - (b) the disclosure is made in the course of that person's duties.

#### **Proceedings before Mental Health Review Tribunal**

23. Article 7 of the Law<sup>[74]</sup> shall not apply to proceedings under the Mental Health (Jersey) Law 1969<sup>[75]</sup> before the Mental Health Review Tribunal.

#### **General rule for proceedings**

24. Article 7 of the Law<sup>74</sup> shall not apply to proceedings -
- (a) by way of appeal against or review of any decision taken, by virtue of any provision of these Regulations, on consideration of a spent conviction; or
  - (b) held for the receipt of evidence affecting the determination of any question arising in proceedings specified in these Regulations.

#### *Closing provision*

#### **Citation and commencement**

**25.** These Regulations may be cited as the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 200- and shall come into force on 1st December 2002.

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- [1] Recueil des Lois, Volume 2001, pages 68, 70 and 72.
- [2] Recueil des Lois, Volume 1998, page 234.
- [3] Recueil des Lois, Volume 1999, pages 445 and 449.
- [4] Recueil des Lois, Volume 2000, page 79.
- [5] Recueil des Lois, Volume 2001, page 51.
- [6] Recueil des Lois, Tome VIII, page 657, Volume 1994-1995, page 61 and Volume 1996-1997, page 801.
- [7] Recueil des Lois, Volume 2001, page 70.
- [8] Recueil des Lois, Volume 2001, page 70.
- [9] Recueil des Lois, Tome VIII, page 829 and Volume 1992-1993, page 267.
- [10] Recueil des Lois, Volume 1961-1962, page 135, Volume 1982-1983, page 143 and Volume 1992-1993, page 243.
- [11] Recueil des Lois, Volume 1961-1962, page 601.
- [12] Recueil des Lois, Tome VIII, page 111, Volume 1994-1995, page 577 and Volume 1999, page 418.
- [13] Recueil des Lois, Tomes IV-VI, page 556.
- [14] Recueil des Lois, Volume 1999, page 95.
- [15] Recueil des Lois, Volume 1994-1995, page 585, Volume 2002, page 415 and No. 8957.
- [16] Recueil des Lois, Volume 2001, page 70.
- [17] Recueil des Lois, Volume 2001, page 65.
- [18] Recueil des Lois, Volume 1973-1974, page 380 and Volume 1982-1983, page 57.
- [19] Recueil des Lois, Volume 1999, page 552.
- [20] Recueil des Lois, Volume 1992-1993, page 289 and Volume 1998, page 297.
- [21] Recueil des Lois, Volume 1994-1995, page 154.
- [22] Recueil des Lois, Tome VII, page 160 and Nos. 8721 and 30/2002.
- [23] Recueil des Lois, Volume 2001, page 70.
- [24] Recueil des Lois, Volume 2001, page 65.
- [25] Recueil des Lois, Tome VII, page 188, Volume 1994-1995, page 23, Volume 1998, page 657 and Volume 2001, page 47.
- [26] Recueil des Lois, Volume 2001, page 46.
- [27] Recueil des Lois, Volume 2001, page 70.
- [28] Recueil des Lois, Volume 1966-1967, page 144.
- [29] Recueil des Lois, Volume 2001, page 70.
- [30] Recueil des Lois, Volume 1970-1972, page 169, Volume 1975-1978, page 399 and Volume 1996-1997, page 777.
- [31] Recueil des Lois, Volume 1970-1972, page 173.
- [32] Recueil des Lois, Volume 2000, pages 73 and 141.
- [33] Recueil des Lois, Volume 1970-1972, page 169, Volume 1975-1978, page 399 and Volume 1996-1997, page 777.
- [34] Recueil des Lois, Volume 2001, page 70.
- [35] Recueil des Lois, Volume 2001, page 65.
- [36] Recueil des Lois, Volume 2001, page 70.

- [37] Recueil des Lois, Volume 2001, page 65.
- [38] Recueil des Lois, Volume 2001, page 70.
- [39] Recueil des Lois, Tome VII, page 160 and Nos. 8721 and 30/2002.
- [40] Recueil des Lois, Volume 2001, page 65.
- [41] Recueil des Lois, Volume 2001, page 70.
- [42] Recueil des Lois, Volume 1973-1974, page 277, Volume 1979-1981, page 395, Volume 1999, page 627 and Nos. 6072, 7373, 7442, 8358, 8501, 8560, 8699, 8770, 8945, 8984, 9051 and 9418.
- [43] Recueil des Lois, Volume 1966-1967, page 18 and Volume 1996-1997, pages 11 and 803.
- [44] Recueil des Lois, Volume 2001, page 70.
- [45] Recueil des Lois, Volume 1961-1962, page 365 and Volume 1994-1995, page 353.
- [46] Recueil des Lois, Volume 1968-1969, pages 248 and 251.
- [47] Recueil des Lois, Volume 1968-1969, page 307.
- [48] Recueil des Lois, Volume 1968-1969, page 308 and Volume 1970-1972, page 513.
- [49] Recueil des Lois, Volume 2001, page 70.
- [50] Recueil des Lois, Volume 1968-1969, page 308 and Volume 1970-1972, page 513.
- [51] Recueil des Lois, Volume 2001, page 70.
- [52] Recueil des Lois, Volume 1968-1969, page 307.
- [53] Recueil des Lois, Volume 1968-1969, page 308 and Volume 1970-1972, page 513.
- [54] Recueil des Lois, Volume 1999, page 471.
- [55] Recueil des Lois, Volume 2001, page 65.
- [56] Recueil des Lois, Volume 2001, page 70.
- [57] Recueil des Lois, Volume 1968-1969, page 398.
- [58] Recueil des Lois, Volume 1994-1995, page 85, Volume 1996-1997, page 564 and Volume 1999, page 516.
- [59] Recueil des Lois, Volume 2001, page 70.
- [60] Recueil des Lois, Volume 2001, page 65.
- [61] Recueil des Lois, Volume 1998, pages 235 and 283, Volume 1999, page 401 and Volume 2001, page 178.
- [62] Recueil des Lois, Volume 1998, page 240.
- [63] Recueil des Lois, Volume 1988-1989, page 133, Volume 1990-1991, page 1091, Volume 1996-1997, page 550, Volume 1998, pages 261 and 385, Volume 1999, pages 415 and 525, Volume 2000, page 697, Volume 2002, page 101 and No. 8081.
- [64] Recueil des Lois, Volume 1990-1991, page 477, Volume 1992-1993, page 93, Volume 1996-1997, page 551, Volume 1998, pages 265 and 685, Volume 1999, pages 420 and 525 and Volume 2002, page 95.
- [65] Recueil des Lois, Volume 1996-1997, pages 81 and 552, Volume 1998, pages 274 and 427, Volume 1999, pages 420 and 526, Volume 2000, page 701 and Volume 2002, page 113.
- [66] Recueil des Lois, Volume 1998, page 507, Volume 1999, pages 413, 420 and 527, Volume 2000, pages 705 and 715 to 745, Volume 2002, page 107 and Nos. 9402 and 127/2000.
- [67] Recueil des Lois, Volume 2001, page 70.
- [68] Recueil des Lois, Volume 2001, page 70.
- [69] Recueil des Lois, Volume 2001, page 65.
- [70] Recueil des Lois, Volume 2001, page 71.
- [71] Recueil des Lois, Volume 2001, page 70.
- [72] Recueil des Lois, Volume 2001, page 70.
- [73] Recueil des Lois, Volume 2001, page 71.

[74] Recueil des Lois, Volume 2001, page 65.

[75] Recueil des Lois, Volume 1968-1969, page 345, Volume 1970-1972, page 549, Volume 1994-1995, page 119, Volume 2001, page 298 and No. 5838.