

DRAFT REHABILITATION OF OFFENDERS (JERSEY) LAW 200

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STATES OF JERSEY

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REPORT

Rehabilitation of Offenders (Jersey) Law

This draft Law has a purpose similar to that of the Rehabilitation of Offenders Act 1974 of the United Kingdom. That Act sought to give effect to the principle that when a person has made a sincere and successful attempt to live down a conviction and go straight, then both common justice and the need to remove a barrier to the rehabilitation of offenders demand that his/her efforts should not be prejudiced by the unwarranted disclosure of that earlier conviction. The Act provided that, after a set rehabilitation period of up to ten years (depending on the sentence imposed), a conviction resulting in a non custodial sentence or a custodial sentence of not more than 30 months had to be treated in law as spent and the convicted person had to be treated as a rehabilitated person, provided that he/she had not meanwhile been convicted of a serious offence. Evidence of spent convictions was generally rendered inadmissible in judicial proceedings except criminal proceedings and proceedings concerning minors.

Since the enactment of the 1974 Act in the United Kingdom, the Legislation Committee on several occasions has considered the desirability of enacting provisions in Jersey similar to that Act. In 1980 the [then] Attorney General and Solicitor General advised the Committee in the following terms -

“The Rehabilitation of Offenders Act is an uneasy compromise between two fundamentally irreconcilable points of view both of which may, in our opinion, be equally adopted by the reasonable man. The first point of view is that offenders should, after a certain length of time, be entitled officially to live down their past. There should be no requirement, for example, for a man convicted of petty larceny in his youth to reveal that conviction when applying for a job after thirty years of responsible citizenship. The opposite viewpoint is that a person about to employ a man in some kind of fiduciary capacity, for example as a book-keeper, has a right to know if the proposed employee was convicted of fraudulent conversion even ten years before. The decision to disregard past misdemeanours should be the province of the employer for it is he who pays the cost if the calculated risk goes wrong. He should not be forced by statute into taking the risk at the expense of his own judgment and in ignorance of the fact that the risk exists at all.

The arguments in favour of enacting a Rehabilitation of Offenders Law may be developed as follows. A special investigation by the Home Office Research Unit some years ago revealed that there are about one million people in England and Wales who have at least one serious conviction followed by a period of ten or more years during which no conviction has been recorded. The investigation suggested that those individuals suffered in the following ways even though they had done much to show that they were now established as law-abiding citizens -

- (a) employment and social opportunity were denied to them on the basis of old convictions;*
- (b) employers could lawfully dismiss them on discovering a conviction long since lived down;*
- (c) trade unions, clubs, professional bodies, etc., could lawfully expel members found to have a criminal past, no matter how distant;*
- (d) as witnesses in any court proceedings and as parties in civil actions (i.e. in any judicial proceedings other than that of the accused in criminal proceedings) previous convictions however ancient could be used as of right to attack their character.*

The Rehabilitation of Offenders Act in England attempted to remedy these defects by providing that a ‘rehabilitated person’ (i.e. one who has kept out of trouble for a fixed period of years since his last conviction) should be treated for all purposes in Law as though the conviction had never been recorded. In consequence, a ‘judicial authority’ (e.g. civil court, club committee, professional disciplinary committee, arbitration tribunal or trades union) has no right to know of the conviction and the individual concerned has no corresponding duty to disclose it. This is equally true where an individual or limited liability company is seeking information from the convicted person. As a result the convicted person is under no duty to tell a prospective employer that he was convicted of theft five years before; he is under no duty to tell an insurance company that five years before he was convicted of arson or was disqualified for holding a driving licence for a conviction of driving whilst under the influence of drink or drugs. The Act specifically provides that subsequent discovery by an employer of the employee’s conviction is not a proper ground for his dismissal.

The contrary argument, and the compromise achieved by the Rehabilitation of Offenders Act, finds expression mainly in the Rehabilitation of Offenders Act, 1974 (Exceptions) Order, 1975. That Exceptions Order excludes from the ambit of the Act entire classes of people no matter how trivial their offence. It withholds the right of statutory

rehabilitation from intending entrants to all the professions and from those who wish to carry out a considerable number of occupations or to hold various forms of licence or permit. A person, for example, wishing to hold a firearms certificate, to become a veterinary surgeon or a solicitor or a handicapped children's nurse, or a traffic warden (the list is fairly comprehensive) is denied the benefit of the Act for the whole of his or her life whatever the nature of the offence. Another important aspect of the Act is that it does not apply to criminal proceedings.”

The Legislation Committee of the time decided not to introduce legislation. However in 1996 the Committee resolved to re-examine the feasibility of enacting local legislation facilitating the rehabilitation of offenders. The present Committee has given careful consideration to the competing arguments. In particular it is noted that the Rehabilitation of Offenders Act 1974 sought to implement proposals contained in the Justice Report entitled *Living it Down: the Problem of Old Convictions* set up by Justice, the Howard League for Penal Reform and the National Association for the care and resettlement of offenders, and chaired by Lord Gardiner. That Report concluded that -

“..... when a man has demonstrably done all he can to rehabilitate himself, and enough time has passed to establish his sincerity, it is in society's interest to accept him for what he now is and, as long as he does not offend again, to ensure that he is no longer liable to have his present pulled from under his feet by his past” [paragraph 18].

It was also noted that Great Britain at that time was the only member of the Council of Europe without a law by which a person's rehabilitation could be accepted by society.

The Legislation Committee has concluded that there is no reason why Jersey should stand apart from other jurisdictions in seeking to afford a person who genuinely seeks to overcome the stigma of an earlier conviction a fair opportunity to do so.

Accordingly, this draft Law would establish the basic premise that where (subject to certain limited exceptions) a person has been convicted and sentenced for any offence or offences and the relevant rehabilitation period has passed without the offender reoffending, such conviction would be regarded as spent.

The Draftsman's Explanatory Note explains the detailed provisions of the draft Law. However, it is essential to draw attention to certain key aspects of the proposed legislation.

The convictions to which the Law applies

Not every conviction will qualify to become spent and result in rehabilitation. For example a conviction resulting in a custodial sentence of more than thirty months will not become spent [see the definition of “sentence excluded from rehabilitation” in Article 1(1)]. The draft Law does not therefore seek to categorise offences which qualify for rehabilitation. For example an offence charged as a grave and criminal assault will qualify for rehabilitation if the sentence imposed was less than thirty months, but will not qualify for rehabilitation if the sentence imposed exceeded thirty months. In other words, rehabilitation does not depend upon the classification of the offence, but upon the gravity of the circumstances surrounding the offence as marked by the sentence actually imposed by the Court.

Periods of rehabilitation

The rehabilitation period will vary with the gravity of the offence. The draft Law attempts to strike a balance between, on the one hand, simplicity, which might suggest one period for all offenders and, on the other hand, justice, which might suggest different periods appropriate to the circumstances of each offender. The table in *Article 3(1)* sets out several rehabilitation periods (depending on the sentence) of six months, one year, three years, five years, seven years and ten years.

For the most part the rehabilitation periods are halved for persons under eighteen years of age.

Where conviction is coupled with any prohibition, disqualification etc. (for example from driving) the rehabilitation period will run to the end of the time when the disqualification ceases to have effect (*Article 3(3)*).

Effect of rehabilitation

Assuming that a convicted person manages to complete the period of rehabilitation without reoffending and having it extended, the basic effect is that he/she is treated for all purposes in law as a person who has not committed or been prosecuted or sentenced for the relevant offence [*Article 7(1)*]. In proceedings before a judicial authority [see the definition of “proceedings before a judicial authority” in *Article 1(1)*] evidence neither of the offence nor of the trial is admissible and questions concerning such matters may not be asked in those proceedings. If asked they need not be answered at all or need not be answered truthfully. There are however exceptions -

- Courts hearing criminal proceedings will still have full criminal records before them.
- The draft Law does not affect the admission of evidence of previous offences and convictions in proceedings relating to minors [*Article 8(2)*] or, with the rehabilitated person's own consent, any other proceedings in which he is a party or witness [*Article 8(2)(e)*].
- The States may by regulations exclude rehabilitation provisions in relation to any proceedings (other than defamation actions).

In any event, evidence of spent convictions and their ancillary circumstances may be admitted in any proceedings where a judicial authority is satisfied in all the circumstances that justice cannot otherwise be done [*Article 8(3)*]. Nothing in the Law affects the exercise of the Royal Prerogative of mercy or the enforcement of process for unpaid fines or breach of any condition of a sentence [*Article 8(1)*].

There are of course situations in which a person may be requested to furnish information other than in proceedings before a judicial authority. *Article 10* of the draft Law provides in effect that where questions seeking information with respect to a person's previous convictions, offences, conduct or circumstances are asked, they are to be treated as not relating to spent convictions or their ancillary circumstances, and no penalty results from failure to disclose the true facts in the answer. Also, where any person is obliged by law, agreement or arrangement to make a disclosure, the obligation does not extend to disclosure of a spent conviction or the ancillary circumstances; nor is such a conviction or circumstances or the failure to disclose them a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him/her in any way in any occupation or employment [*Article 10(2)*]. This is however subject to exclusions or modifications in any regulations made by the States under *Article 10(3)*. The equivalent subordinate legislation in the United Kingdom [the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended S.I. 1975/1023] makes exclusions in respect of excepted professions, excepted offices and employments and regulated occupations. The Appendix to this Report sets out in summary form the relevant exceptions in that jurisdiction. The exceptions in relation to working with children are especially worthy of note.

The Legislation Committee would expect to propose to the States a broadly similar group of exemptions in the event of the principal legislation being enacted.

Defamation

Since revelation of a person's spent convictions is not a criminal offence except in the special circumstances dealt with in *Article 11* or where it amounts to a criminal libel, *Article 9* will become the principal 'enforcement' provision in the Law. As a rehabilitated person is to be treated as someone who has not committed nor been convicted etc., of the conduct constituting the offence underlying the spent conviction, to publish material suggesting otherwise would on the face of it be defamatory.

In any action for defamation founded on the imputation that the plaintiff had committed or been tried for a spent offence, the Law generally would have no effect where publication took place before the conviction became spent.

Unauthorised disclosure of spent convictions

The other method of enforcing the protection granted by the Law would be through criminal proceedings. *Article 11* would create the offence of unauthorised disclosure of spent convictions by any person who in the course of his/her official duties had access to any official record [see definition of "official record" in *Article 1(1)*] or the information in it. The offence would be committed when, knowing or having reasonable cause to suspect that any information obtained in the course of such duties was specified information [again as defined in *Article 1(1)*] a person disclosed it otherwise than in the course of his/her duties.

Conclusion

It is a quarter of a century since the enactment in the United Kingdom of the Rehabilitation of Offenders Act 1974. It was noted then that Great Britain was the only member of the Council of Europe without a law by which a person's rehabilitation could be accepted by Society. In the intervening years, whilst consideration has been given by the Insular Authorities to the possibility of introducing similar legislation in Jersey, no Proposition or *projet de loi* on the subject has been put to the States for consideration.

This draft legislation if adopted will be similar to the law of the United Kingdom. It will also follow principles which have long been accepted and applied in countries such as Australia, Belgium, Canada, Denmark, France, Germany, the Netherlands, Japan, Sweden and the United States of America.

The Legislation Committee believes that the balance of fairness and justice falls squarely in favour of affording to a person who genuinely seeks to reform himself or herself a reasonable opportunity to do so, subject to exemptions where it is of particular importance that a person's full history is known.

Explanatory Note

This draft Law introduces arrangements for the rehabilitation of offenders.

Article 1 is the interpretation provision.

Articles 2 to 6 are the rules for rehabilitation.

Article 2 contains the general rules for rehabilitation. Rehabilitation will not apply when an offender is given a custodial sentence of more than 30 months. Otherwise an offender will be rehabilitated after the period of time specified in his case in *Article 3* if he completes his sentence and, on a subsequent conviction is not given, within that period, a custodial sentence of more than 30 months.

Article 3 sets out the rehabilitation periods applicable to different sentences. Sentences which the courts may no longer impose are included so as to ensure that rehabilitation is available for all offenders now living, whenever sentence was passed on them.

Article 4 makes it clear that where 2 or more sentences are imposed for a conviction, it is the longer or longest rehabilitation period which applies.

Article 5 has the effect that if an offender is convicted of a further offence during a rehabilitation period and the sentence for the further offence is also subject to rehabilitation, the rehabilitation period which would have expired first is extended to expire at the same time as the other rehabilitation period. There is no extension if the second sentence is a disqualification or similar prohibition.

Article 6 is concerned with an offender who breaches a binding over order or probation order imposed on an offence and consequently is sentenced by a court for that offence, where the substituted sentence is imposed after the expiry of the rehabilitation period applicable to the original order. The effect of the substituted sentence is that the offender is not then rehabilitated in respect of the conviction until the rehabilitation period for the substituted sentence has been completed.

Articles 7 to 10 state the effect of rehabilitation.

Article 7 states the general rule that, once a person is rehabilitated in respect of a conviction ('a spent conviction') no evidence regarding that conviction may be admitted in judicial proceedings and the person is not required to disclose the conviction in judicial proceedings.

Articles 8 and 9 set out circumstances in which the general rule in *Article 7* does not apply. Most notably, the rule does not apply to criminal proceedings and proceedings concerned with minors (*Article 8(2)*) and may be overridden, in the interests of justice, in other proceedings (except defamation actions dealt with in *Article 9*) by the court or tribunal hearing the proceedings (*Article 8(3) and (4)*). In addition, power is given to the States to make Regulations disapplying the rule in other proceedings. *Article 9* applies to defamation actions founded on the publication of details of a spent conviction and modifies defences of justification, fair comment and privilege available to the defendant.

Article 10 states the effect of rehabilitation in circumstances other than judicial proceedings. The general rule is that a person is not required to disclose a spent conviction and may not be dismissed or excluded from any occupation by reason only of a spent conviction. Power is given to the States to make Regulations disapplying the rule in specified cases.

Article 11 creates two offences. It is an offence for a person, acting in the course of his official duties, to disclose information regarding a spent conviction to a person other than the rehabilitated person, unless he does so at the request of the rehabilitated person. The penalty for the offence is a fine up to level 3 on the standard scale. It is also an offence for a person to obtain information regarding a spent conviction by means of fraud, dishonesty or a bribe. The penalty for the offence is imprisonment for up to 6 months and/or a fine up to level 4 on the standard scale. Power is given to the States to make Regulations allowing the disclosure of information regarding spent convictions in specified circumstances.

Article 12 is the citation and commencement provision.

The *Schedule* lists service disciplinary convictions which are not to have the effect, under *Article 5*, of extending an existing rehabilitation period.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993 level 1 is £50, level 2 is £500, level 3 is £2000 and level 4 is £5000.

REHABILITATION OF OFFENDERS (JERSEY) LAW 200-

ARRANGEMENT OF ARTICLES

1. Interpretation
2. General rule for rehabilitation
3. Rehabilitation periods for particular sentences
4. Rehabilitation period applicable to a conviction
5. Effect of further conviction within rehabilitation period
6. Effect of sentence for breach of binding over or probation after end of rehabilitation period
7. Effect of rehabilitation: subsequent judicial proceedings
8. Limitations on rehabilitation: subsequent judicial proceedings
9. Defamation actions
10. Effect of rehabilitation: other circumstances
11. Unauthorized disclosure of spent conviction
12. Citation and commencement

Schedule - Service disciplinary convictions

REHABILITATION OF OFFENDERS (JERSEY) LAW 200-

A LAW to provide for the rehabilitation of certain offenders who have not been reconvicted, within a certain period of time, for a serious offence, to penalize the unauthorized disclosure of spent convictions, to amend the law of defamation and for connected purposes; sanctioned by Order of Her Majesty in Council of the

(Registered on the day of 200-)

STATES OF JERSEY

The day of 200-

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

ARTICLE 1

Interpretation

(1) In this Law, unless the context otherwise requires -

“1935 Loi” means the Loi appliqué à cette Ile certaines des dispositions de l’Acte de Parlement intitulé ‘Children and Young Persons Act, 1933’^[1] (23 Geo.5, c.12) confirmed by Order of His Majesty in Council of the twenty-first day of February 1935;

“1969 Law” means the Children (Jersey) Law 1969;^[2]

“1994 Law” means the Criminal Justice (Young Offenders) (Jersey) Law 1994;^[3]

“Air Force Act” means the Air Force Act 1955 (c.19) as it has effect in the Island by virtue of any Order in Council;

“Army Act” means the Army Act 1955 (c.18) as it has effect in the Island by virtue of any Order in Council;

“attendance centre order” means an order under Article 23 of the 1969 Law^[4] or Article 8 of the 1994 Law;^[5]

“binding over order” means an order for the provisional release of an offender under Article 2 of the Loi (1937) sur l’atténuation des peines et sur la mise en liberté surveillée;^[6]

“corresponding court-martial punishment” means a punishment awarded under section 71A(3) or (4) of the Army Act, section 71A(3) or (4) of the Air Force Act or section 43A(3) or (4) of the Naval Discipline Act;

“enactment” includes an enactment of the United Kingdom which has effect in the Island, whether by Order in Council or otherwise;

“lesser sentence” means any sentence other than a sentence excluded from rehabilitation;

“Naval Discipline Act” means the Naval Discipline Act 1957 (c.53) as it has effect in the Island by virtue of any Order in Council;

“official record” means a record -

- (a) kept, for the purposes of its functions, by any court or public authority in the Island or by the States of Jersey Police Force or the Honorary Police or kept, in the Island or elsewhere, for the purposes of any of Her Majesty's forces; and
- (b) containing information about persons convicted of offences;

“probation order” means an order under the Loi (1937) sur l’atténuation des peines et sur la mise en liberté surveillée^[7] made on the condition described in Article 3 thereof;

“proceedings before a judicial authority” means -

- (a) proceedings before any court of law; or
- (b) proceedings before any tribunal, body or person having power -
 - (i) by virtue of any enactment or rule of customary law or practice, or
 - (ii) under the rules governing any association, institution, profession, occupation or employment, or
 - (iii) under any provision of an agreement providing for arbitration with respect to any questions arising under the agreement,

to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question;

“rehabilitation” means rehabilitation in accordance with and for the purposes of this Law;

“sentence” includes any order made by a court in respect of the conviction of a person of any offence or offences, other than -

- (a) an order for committal; or
- (b) any other order made -
 - (i) in default of payment of any fine or other sum adjudged to be paid by or imposed on a conviction, or
 - (ii) for want of sufficient distress to satisfy any such fine or other sum;

“sentence excluded from rehabilitation” means -

- (a) a sentence of imprisonment for life;
- (b) a sentence of custody for life;
- (c) a sentence of preventive detention;
- (d) a sentence of imprisonment, detention in a young offender institution, youth custody or corrective training for a term exceeding 30 months;
- (e) a sentence of detention during Her Majesty's pleasure or a sentence of detention for a term exceeding 30 months passed under Article 4 of the 1935 Loi,^[8] Article 13 of the 1969 Law^[9] or Article 5(4) of the 1994 Law^[10] or a corresponding court-martial punishment;

“service disciplinary proceedings” means any of the following -

- (a) any proceedings under the Army Act, the Air Force Act or the Naval Discipline Act (whether before a court-martial or before any other court or person authorized thereunder to award a punishment in respect of any offence);

- (b) any proceedings under any Act previously having effect in the Island corresponding to any of the Acts mentioned in sub-paragraph (a);

“specified information” means information imputing that a named or otherwise identifiable rehabilitated living person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which is the subject of a spent conviction.

(2) In this Law, a reference to a sentence of detention for any term without more means a sentence passed under Article 4 of the 1935 Loi,⁸ Article 13 of the 1969 Law⁹ or Article 5(4) of the 1994 Law.¹⁰

(3) For the purposes of this Law, any finding that a person is guilty of an offence in respect of any act or omission which was the subject of service disciplinary proceedings shall be treated as a conviction and any punishment awarded or order made by virtue of Schedule 5A to the Army Act or the Air Force Act or by virtue of Schedule 4A to the Naval Discipline Act in respect of any such finding shall be treated as a sentence.

(4) In this Law, any reference to a conviction, however expressed, includes a reference -

(a) to a conviction by or before a court outside the Island; and

(b) to any finding, other than a finding linked with a finding of insanity, in any criminal proceedings that a person has committed an offence or done the act or made the omission charged.

(5) In this Law, any reference to circumstances ancillary to a conviction shall be construed as a reference to any of the following -

(a) the offence or offences which were the subject of that conviction;

(b) the conduct constituting that offence or those offences; and

(c) any process or proceedings preliminary to that conviction, any sentence imposed in respect of that conviction, any proceedings, whether by way of appeal or otherwise, for reviewing that conviction or any such sentence, and anything done pursuant to, or undergone in compliance with, any such sentence.

(6) In this Law, a reference to an Article by number only is a reference to the Article of that number in this Law and a reference in an Article or other division of this Law to a paragraph or sub-paragraph by number only is a reference to the paragraph or sub-paragraph of that number in the Article or other division in which that reference occurs.

(7) In this Law, a reference 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 this Law.

ARTICLE 2

General rule for rehabilitation

(1) Rehabilitation shall only apply to a conviction, whether before or after this Law comes into force, for an offence for which a lesser sentence is imposed.

(2) An individual shall be rehabilitated in respect of such a conviction if -

(a) during the rehabilitation period applicable to the conviction, there is not imposed on him, for a subsequent conviction, a sentence excluded from rehabilitation; and

(b) he has served or otherwise undergone or complied with any sentence imposed on him in respect of such conviction.

(3) Where the conditions in paragraph (2) are satisfied, the individual shall be rehabilitated in respect of the conviction and the conviction treated as spent -

(a) after the end of the rehabilitation period applicable to the conviction; or

(b) where that period ended before this Law comes into force, after this Law comes into force.

(4) An individual shall not be treated as having failed to satisfy the condition in paragraph (2)(b) by reason only of -

(a) the failure to pay a fine or other sum adjudged to be paid by or imposed on a conviction, or breach of a condition of a binding over order; or

(b) the breach of any condition or requirement applicable in relation to a sentence which renders the person to whom it applies liable to be dealt with for the offence for which the sentence was imposed.

ARTICLE 3

Rehabilitation periods for particular sentences

(1) The rehabilitation period applicable to a sentence specified in the first column of the table below is the period specified in the second column of that table in relation to that sentence in the case of any person or any particular description of person.

<i>Sentence</i>	<i>Rehabilitation period</i>
1. An absolute discharge.	6 months from the conviction date.
2. A binding over order.	Whichever is the longer of one year from the conviction date or the period beginning with that date and ending when the binding over order ceases or ceased to have effect.
3. An attendance centre order.	The period beginning with the conviction date and ending one year after the date on which the attendance centre order ceases or ceased to have effect.
4. A sentence, for a term not exceeding 6 months, of detention.	3 years from the conviction date.
5. A custodial order, where the maximum period of detention specified in the order is six months or less, under Schedule 5A to the Army Act or the Air Force Act or under Schedule 4A to the Naval Discipline Act.	3 years from the conviction date.

<i>Sentence</i>	<i>Rehabilitation period</i>
6. Any sentence of detention in respect of a conviction in service disciplinary proceedings.	<p>Person aged 18 or more: 5 years from the conviction date.</p> <p>Person aged less than 18: 2½ years from the conviction date.</p>
7. A fine, or any other sentence subject to rehabilitation under this Law, not being a sentence within any other item in this column of this table.	<p>Person aged 18 or more: 5 years from the conviction date.</p> <p>Person aged less than 18: 2½ years from the conviction date.</p>
8. A sentence, for a term exceeding 6 months but not exceeding 30 months, of detention.	5 years from the conviction date.
9. A probation order.	<p>Person aged 18 or more: 5 years from the conviction date.</p> <p>Person aged less than 18: whichever is the longer of 2½ years from the conviction date or a period beginning with that date and ending when the probation order ceases or ceased to have effect.</p>
10. A sentence, for a term not exceeding 6 months, of imprisonment, detention in a young offender institution or youth custody.	<p>Person aged 18 or more: 7 years from the conviction date.</p> <p>Person aged less than 18: 3½ years from the conviction date.</p>

<i>Sentence</i>	<i>Rehabilitation period</i>
11. A custodial order, where the maximum period of detention specified in the order is more than 6 months, under section 71AA of or Schedule 5A to the Army Act or the Air Force Act or under section 43AA of or Schedule 4A to the Naval Discipline Act.	7 years from the conviction date.
12. A sentence of dismissal from Her Majesty's service.	Person aged 18 or more: 7 years from the conviction date. Person aged less than 18: 3½ years from the conviction date.
13. A sentence of cashiering, discharge with ignominy or dismissal with disgrace from Her Majesty's Service.	Person aged 18 or more: 10 years from the conviction date. Person aged less than 18: 5 years from the conviction date.
14. A sentence, for a term exceeding 6 months but not exceeding 30 months, of imprisonment, detention in a young offender institution, youth custody or corrective training.	Person aged 18 or more: 10 years from the conviction date. Person aged less than 18: 5 years from the conviction date.

<i>Sentence which may no longer be passed</i>	<i>Rehabilitation period</i>
15. Birching.	One year from the conviction date.
16. A fit person order under Article 24 of the 1969 Law. ^[11]	Whichever is the longer of one year from the conviction date or the period beginning with that date and ending when the order ceases or ceased to have effect.
17. An approved school order under Article 7 of the 1935 Loi ^[12] or under Article 24 of the 1969 Law. ¹¹ An order under Article 13 of the 1935 Loi. ¹²	The period beginning with the conviction date and ending one year after the date on which the order ceases or ceased to have effect.
18. An order for detention in or committal to a detention centre or a young offenders' centre under Article 19 or 20 of the 1969 Law. ^[13]	3 years from the conviction date.
19. A sentence of Borstal training.	7 years from the conviction date.

(2) For the purpose of determining the rehabilitation period applicable to a person by virtue of the table above, his age shall be taken at the conviction date.

(3) Where, in respect of a conviction, an order was made imposing on the person convicted any disqualification, disability, prohibition or other penalty, the rehabilitation period applicable to the sentence shall be a period beginning with the conviction date and ending on the date on which the disqualification, disability, prohibition or penalty, as the case may be, ceases or ceased to have effect.

(4) The States may by Regulations substitute or amend the table in paragraph (1) for the purpose of re-arranging the table or of adding a description of sentence and specifying the rehabilitation period applicable to that sentence, and may specify different rehabilitation periods in the cases of persons of different ages.

(5) For the purposes of this Article -

- (a) "sentence of imprisonment" includes a sentence of penal servitude or hard labour and "term of imprisonment" shall be construed accordingly;
- (b) consecutive terms of imprisonment or of detention and terms which are wholly or partly concurrent, being terms of imprisonment or detention imposed in respect of offences of which a person was convicted in the same proceedings shall be treated as a single term; and
- (c) a sentence imposed by a court outside the Island shall be treated as a sentence of that one of the descriptions in this Article which most nearly corresponds to the sentence imposed.

ARTICLE 4

Rehabilitation period applicable to a conviction

(1) Subject to Articles 5 and 6, where only one lesser sentence is imposed for a conviction, the rehabilitation period applicable to the conviction is that which is applicable to that sentence in accordance with Article 3.

(2) Subject to Articles 5 and 6, where 2 or more lesser sentences are imposed for a conviction (whether or not in the same proceedings), the rehabilitation period applicable to the conviction is that which is applicable to each of those

sentences, if the same, or, if different, the longest of the rehabilitation periods applicable to those sentences.

ARTICLE 5

Effect of further conviction within rehabilitation period

- (1) This Article applies where, during the rehabilitation period applicable to a conviction ('the first conviction') -
 - (a) the person is convicted of a further offence ('the second conviction') and the conviction is not -
 - (i) a conviction in service disciplinary proceedings for an offence listed in the Schedule to this Law, or
 - (ii) a conviction by or before a court outside the Island of an offence in respect of conduct which, if it had taken place in the Island, would not have constituted an offence under the laws of the Island;
 - and
 - (b) a sentence excluded from rehabilitation is not imposed on him in respect of the second conviction.

(2) Subject to paragraph (3), if the rehabilitation periods applicable to the first conviction and the second conviction would end on different dates, the period which would end first shall be extended so as to end on the same date as the other period.

- (3) The rehabilitation period applicable to a conviction shall not be extended where -
 - (a) only one lesser sentence was imposed for the other conviction; and
 - (b) the rehabilitation period applicable to that sentence was determined in accordance with Article 3(3).

(4) For the purposes of paragraph (2), in determining the rehabilitation period applicable to a conviction for which 2 or more lesser sentences are imposed, there shall be disregarded any rehabilitation period applicable to a sentence in accordance with Article 3(3).

ARTICLE 6

Effect of sentence for breach of binding over or probation after end of rehabilitation period

(1) This Article applies where a binding over order or probation order was imposed for a conviction and, after the end of the rehabilitation period applicable to the conviction in accordance with Article 4, the person is dealt with, in consequence of a breach of the binding over order or probation order, for the offence for which such order was imposed.

(2) Without prejudice to Article 4(2), if the rehabilitation period applicable to the conviction in accordance with that paragraph, taking into account any sentence imposed when the person is dealt with for the breach, ends later than the rehabilitation period previously applicable to the conviction, he shall be treated as not having become rehabilitated in respect of the conviction, and the conviction shall be treated as not having become spent, before the end of the new rehabilitation period.

ARTICLE 7

Effect of rehabilitation: subsequent judicial proceedings

(1) Subject to Articles 8 and 9, a person rehabilitated in respect of a conviction shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence which was the subject of that conviction.

- (2) Subject to Articles 8 and 9, but notwithstanding any enactment or rule of customary law to the contrary -
 - (a) no evidence shall be admissible in any proceedings before a judicial authority to prove that a person who has become a rehabilitated person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which was the subject of a spent conviction; and

- (b) a person shall not, in any such proceedings, be asked and, if asked, shall not be required to answer, any question relating to his past which cannot be answered without acknowledging or referring to a spent conviction or spent convictions or any circumstances ancillary to such convictions.

ARTICLE 8

Limitations on rehabilitation: subsequent judicial proceedings

- (1) Nothing in Article 7 shall affect -
- (a) any right of Her Majesty, by virtue of Her Royal prerogative or otherwise, to grant a free pardon, to quash any conviction or sentence, or to commute any sentence;
 - (b) the enforcement by any process or proceedings of any fine or other sum adjudged to be paid by or imposed on a spent conviction;
 - (c) the issue of any process for the purpose of proceedings in respect of any breach of a condition or requirement applicable to a sentence imposed in respect of a spent conviction; or
 - (d) the operation of any enactment by virtue of which, in consequence of any conviction, a person is subject, otherwise than by way of sentence, to any disqualification, disability, prohibition or other penalty the period of which extends beyond the rehabilitation period applicable to the conviction.
- (2) Nothing in Article 7 shall affect the determination of any issue, or prevent the admission or requirement of any evidence, relating to a person's previous convictions or to circumstances ancillary to them -
- (a) in any criminal proceedings before a court in the Island, including any appeal or reference in a criminal matter;
 - (b) in any service disciplinary proceedings or in any proceedings on appeal from any service disciplinary proceedings;
 - (c) in any proceedings relating to adoption, the marriage of any minor, the exercise of the inherent jurisdiction of the Royal Court with respect to minors or the provision by any person of accommodation, care or schooling for minors;
 - (d) in any proceedings brought under the 1969 Law; ^[14]
 - (e) in any proceedings in which he is a party or a witness, provided that, notwithstanding Article 7, on the occasion when the issue or the admission or requirement of the evidence falls to be determined, he consents to the determination of the issue or, as the case may be, the admission or requirement of the evidence.
- (3) Subject to paragraph (4), if, at any stage in any proceedings before a judicial authority in the Island, the authority is satisfied, in the light of any considerations which appear to it to be relevant, including any evidence which has been or may be thereafter put before it, that justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions or to circumstances ancillary to such convictions, the authority -
- (a) notwithstanding Article 7, may admit or, as the case may be, require the evidence in question; and
 - (b) may, in determining any issue to which the evidence relates, disregard Article 7 so far as necessary.
- (4) Paragraph (3) does not apply to proceedings -
- (a) to which, by virtue of paragraph (2) or any Regulations made under paragraph (5), Article 7 does not apply; or
 - (b) to which Article 9 applies.
- (5) The States may by Regulations exclude the application of Article 7 in relation to any proceedings specified in the Regulations, other than proceedings to which Article 9 applies, to such extent and for such purposes as may be so specified.

(6) No order made by a court with respect to any person otherwise than on a conviction shall be included in any list or statement of that person's previous convictions given or made to any court which is considering how to deal with him in respect of any offence.

ARTICLE 9

Defamation actions

(1) For the purposes of this Article, "defamation action" means an action for libel or slander begun after this Law comes into force by a rehabilitated person and founded upon the publication of any matter imputing that the plaintiff has committed or been charged with or prosecuted for or convicted of or sentenced for an offence which was the subject of a spent conviction.

(2) Nothing in Article 7 shall affect a defamation action where the publication complained of took place before the conviction in question became spent.

(3) Paragraphs (4) to (8) apply to a defamation action where the publication complained of took place after the conviction in question became spent.

(4) Subject to paragraphs (6) and (7), nothing in Article 7 shall prevent the defendant in a defamation action to which this paragraph applies from relying on any defence of justification or fair comment or of absolute or qualified privilege which is available to him or restrict the matters he may establish in support of any such defence.

(5) Without prejudice to the generality of paragraph (4), where, in any such action, malice is alleged against a defendant who is relying on a defence of qualified privilege, nothing in Article 7 shall restrict the matters he may establish in rebuttal of the allegation.

(6) A defendant in any such action shall not, by virtue of paragraph (4), be entitled to rely upon the defence of justification if the publication is proved to have been made with malice.

(7) Subject to paragraph (8), a defendant in any such action shall not, by virtue of paragraph (4), be entitled to rely on any matter or adduce or require any evidence for the purpose of establishing the defence that the matter published constituted a fair and accurate report of judicial proceedings if it is proved that the publication contained a reference to evidence which was ruled to be inadmissible in the proceedings by virtue of Article 7.

(8) Paragraph (4) shall apply without the qualifications imposed by paragraph (7) in relation to -

- (a) any report of judicial proceedings contained in any bona fide series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law; and
- (b) any report or account of judicial proceedings published for bona fide educational, scientific or professional purposes, or given in the course of any lecture, class or discussion given or held for any of those purposes.

ARTICLE 10

Effect of rehabilitation: other circumstances

(1) Subject to Regulations made under paragraph (3), where a question seeking information with respect to a person's previous convictions, offences, conduct or circumstances is put to him or to any other person otherwise than in proceedings before a judicial authority -

- (a) the question shall be treated as not relating to spent convictions or to any circumstances ancillary to such convictions, and the answer to the question may be framed accordingly; and
- (b) the person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose a spent conviction or any circumstances ancillary to such a conviction in his answer to the question.

(2) Subject to Regulations made under paragraph (3) -

- (a) any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person shall not extend to requiring him to disclose a spent conviction or any circumstances ancillary to such a conviction (whether the conviction is his own or another's); and
 - (b) a conviction which has become spent or any circumstances ancillary to it, or any failure to disclose a spent conviction or any such circumstances, shall not be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him in any way in any occupation or employment.
- (3) The States may by Regulations -
- (a) make such provisions as seem to them appropriate for excluding or modifying the application of either or both of paragraph (1)(a) and (b) in relation to questions put in such circumstances as may be specified in the Regulations; and
 - (b) provide for such exceptions from either or both of the provisions of paragraph (2) as seem to them appropriate, in such cases or classes of case, and in relation to convictions of such a description, as may be specified in the Regulations.

ARTICLE 11

Unauthorized disclosure of spent conviction

(1) Subject to Regulations made under paragraph (4), any 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 shall be guilty of an offence if, knowing or having reasonable cause to suspect that any specified information he has obtained in the course of those duties is specified information, he discloses it to another person.

(2) In any proceedings for an offence under paragraph (1), it shall be a defence for the defendant to show that the disclosure was made -

- (a) to the rehabilitated person or to another person at the express request of the rehabilitated person; or
- (b) to a person whom he reasonably believed to be the rehabilitated person or to another person at the express request of a person whom he reasonably believed to be the rehabilitated person.

(3) Any person who obtains any specified information from any official record by means of any fraud, dishonesty or bribe shall be guilty of an offence.

(4) The States may by Regulations make such provision as appears to them to be appropriate for excepting from paragraph (1) the disclosure of specified information derived from an official record, in such cases or classes of case as may be specified in the Regulations.

(5) A person guilty of an offence under paragraph (1) shall be liable to a fine not exceeding level 3 on the standard scale.^[15]

(6) A person guilty of an offence under paragraph (3) shall be liable to imprisonment for a term not exceeding 6 months or a fine not exceeding level 4 on the standard scale,¹⁵ or both.

ARTICLE 12

Citation and commencement

This Law may be cited as the Rehabilitation of Offenders (Jersey) Law 200- and shall come into force on such day as the States by Act appoint.

SCHEDULE

(Article 5(1))

SERVICE DISCIPLINARY CONVICTIONS

1. Any conviction for an offence mentioned in this Schedule is a conviction referred to in Article 5(1)(a)(i).

Provisions of the Army Act 1955 and the Air Force Act 1955

2. Any offence under any of the provisions of the Army Act 1955 or the Air Force Act 1955 listed in the first column of the following table -

<i>Provision</i>	<i>Subject-matter</i>
Section 29	Offences by or in relation to sentries, persons on watch etc.
Section 29A	Failure to attend for duty, neglect of duty etc.
Section 33	Insubordinate behaviour.
Section 34	Disobedience to lawful commands.
Section 34A	Failure to provide a sample for drug testing.
Section 35	Obstruction of provost officers.
Section 36	Disobedience to standing orders.
Section 38	Absence without leave.
Section 39	Failure to report or apprehend deserters or absentees.
Section 42	Malingering.
Section 43	Drunkenness.
Section 43A	Fighting, threatening words etc.
Section 44	Damage to, and loss of, public or service property etc.
Section 44A	Damage to, and loss of, Her Majesty's aircraft or aircraft material.

<i>Provision</i>	<i>Subject-matter</i>
Section 44B	Interference etc. with equipment, messages or signals.
Section 45	Misapplication and waste of public or service property.
Section 46	Offences relating to issues and decorations.
Section 47	Billeting offences.
Section 48	Offences in relation to requisitioning of vehicles.
Section 50	Inaccurate certification.
Section 51	Low flying.
Section 52	Annoyance by flying.
Section 54	Permitting escape, and unlawful release of prisoners.
Section 55	Resistance to arrest.
Section 56	Escape from confinement.
Section 57	Offences in relation to courts-martial.
Section 61	Making of false statements on enlistment.
Section 62	Making of false documents.
Section 63	Offences against civilian population.
Section 69	Conduct to prejudice of military discipline or air-force discipline.

3. Any offence under section 68 or 68A of the Army Act 1955 in relation to an offence under any of the provisions of that Act listed in paragraph 2.

4. Any offence under section 68 or 68A of the Air Force Act 1955 in relation to an offence under any of the provisions of that Act listed in paragraph 2.

Provisions of the Naval Discipline Act 1957

5. Any offence under any of the provisions of the Naval Discipline Act 1957 listed in the first column of the following table -

<i>Provision</i>	<i>Subject-matter</i>
Section 6	Offences by or in relation to sentries, persons on watch, etc.
Section 7	Failure to attend for duty, neglect of duty, etc.
Section 11	Insubordinate behaviour.
Section 12	Disobedience to lawful commands.
Section 12A	Failure to provide a sample for drug testing.
Section 13	Fighting, threatening words etc.
Section 14	Obstruction of provost officers.
Section 14A	Disobedience to standing orders.
Section 17	Absence without leave etc.
Section 18	Failure to report deserters and absentees.
Section 21	Low flying.
Section 22	Annoyance by flying.
Section 25	Inaccurate certification.
Section 27	Malingering.
Section 28	Drunkenness.
Section 29	Damage to, and loss of, public or service property etc.
Section 29A	Damage to, and loss of, Her Majesty's aircraft or aircraft material.
Section 29B	Interference etc. with equipment, messages or signals.
Section 30	Misapplication and waste of public or service property.
Section 31	Offences relating to issues and decorations.
Section 32	Billeting offences.
Section 33	Offences in relation to the requisitioning of vehicles etc.

<i>Provision</i>	<i>Subject-matter</i>
Section 33A	Permitting escape, and unlawful release of prisoners.
Section 33B	Resistance to arrest.
Section 33C	Escape from confinement.
Section 34A	False statements on entry.
Section 35	Falsification of documents.
Section 35A	Offences against civilian population.
Section 38	Offences in relation to courts-martial.
Section 39	Conduct to the prejudice of naval discipline.

6. Any offence under section 40 or 41 of the Naval Discipline Act 1957 in relation to an offence under any of the provisions of that Act listed in paragraph 5.

^[1] Tome 1933-1936, page 245 and Tome 1957-1960, page 177 (both repealed by Volume 1968-1969, page 341).

^[2] Volume 1968-1969, page 247, Volume 1970-1972, page 511, Volume 1973-1974, page 371, Volume 1979-1981, page 25, Volume 1986-1987, pages 20 and 173, Volume 1994-1995, pages 58 and 118, Volume 1996-1997, pages 15 and 616 and Volume 1999, page 431.

^[3] Volume 1994-1995, page 35, Volume 1999, page 429, and R & O 8859.

^[4] Volume 1968-1969, page 272 and Volume 1994-1995, page 58.

^[5] Volume 1994-1995, page 42.

^[6] Tome VII, page 190.

^[7] Tome VII, page 190.

^[8] Tome 1933-1936, page 245 and Tome 1957-1960, page 177 (both repealed by Volume 1968-1969, page 341).

^[9] Volume 1968-1969, page 263 and Volume 1994-1995, page 58.

^[10] Volume 1994-1995, page 40.

^[11] Volume 1968-1969, page 274 and Volume 1994-1995, page 58.

^[12] Tome 1933-1936, page 245 and Tome 1957-1960, page 177 (both repealed by Volume 1968-1969, page 341).

^[13] Volume 1968-1969, pages 268 and 269 and Volume 1994-1995, page 58.

^[14] Volume 1968-1969, page 247, Volume 1970-1972, page 511, Volume 1973-1974, page 371, Volume 1979-1981, page 25, Volume 1986-1987, pages 20 and 173, Volume 1994-1995, pages 58 and 118, Volume 1996-1997, pages 15 and 616 and Volume 1999, page 431.

^[15] Volume 1992-1993, page 437.