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REHABILITATION OF OFFENDERS ORDINANCE 2009

An Ordinance to rehabilitate offenders who have not been reconvicted of any serious offence within a specified period of time, to penalise the unauthorised disclosure of their convictions, to amend the law of defamation and for related matters

J. H. GORDON
ADMINISTRATOR

21st May 2009.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

1. Short Title

This Ordinance may be cited as the Rehabilitation of Offenders Ordinance 2009.

2. Interpretation

(1) In this Ordinance—

“corresponding Republican law” means the Republican Rehabilitation of Offenders Law of 1981(a);

“disqualification” includes any disqualification, disability, prohibition, or other penalty;

“official record” means a record kept for the functions of the SBA police or the Administration which contains information about persons convicted of offences;

“rehabilitated person ” has the meaning assigned to it in section 3(1);

“rehabilitation period” is the period of time prescribed by or calculate in accordance with section 5;

“Republican military offence” means a military offence as defined in the corresponding Republican law;

“specified information” means information suggesting or recording that an identifiable living person has committed, been charged with, prosecuted for or convicted of a spent conviction;

“spent conviction” has the meaning assigned to it in section 3(1);

(2) In this Ordinance the word “sentence” includes any order made by a court in dealing with a person in relation to his conviction of any offence or offences but does not include—

- (a) an order for committal or any other order made in default of a payment of a fine or any other money to be paid on conviction or because of lack of sufficient distress to satisfy such fine or sum; or
 - (b) an order dealing with a person in respect of a suspended sentence of imprisonment.
- (3) In this Ordinance the word “conviction” includes—
- (a) a conviction before a court other than a court as defined in the Courts (Constitution and Jurisdiction) Ordinance 2007**(b)**;
 - (b) a finding (other than a finding of insanity) in any criminal proceedings resulting in a minor being given a sentence under section 12(1)(b), (c), (d), or (g) (methods of dealing with juvenile offenders) of the Juvenile Offenders Ordinance**(c)**;
 - (c) despite section 13 (effects of probation orders and of absolute or conditional discharges) of the Probation and Other Non-custodial Sentences Ordinance 2006**(d)**, a conviction resulting in an order placing the offender under probation or granting the offender an absolute or conditional discharge.
- (4) In this Ordinance “judicial proceedings” include—
- (a) proceedings before a court;
 - (b) proceedings before any tribunal body or person having power to determine any question affecting the rights, privileges obligations or liabilities of any person or to receive evidence affecting the determination of any such a question, whether that power arises under—
 - (i) any enactment, custom, law or practice;
 - (ii) the rules governing any association, institution, profession, occupation or employment;
 - (c) arbitration proceedings.
- (5) In this Ordinance the following are “circumstances connected with a spent conviction”—
- (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 under or in compliance with such sentence.
- (6) In this Ordinance a sentence excluded from rehabilitation means a sentence of—
- (a) imprisonment for life;
 - (b) imprisonment for a term exceeding 4 years.

3. Rehabilitated persons and spent convictions

- (1) Subject to subsections (4) and (5), if a person is convicted of an offence either before or after the coming into force of this Ordinance and if, in relation to that offence, the conditions specified in subsection (2) are satisfied—
- (a) that person will be a rehabilitated person in relation to that offence; and
 - (b) that conviction will be a spent conviction.
- (2) The conditions are that—
- (a) the rehabilitation period specified in section 5 applicable to that conviction (including any extension under subsections 6(5) and (6) for a subsequent conviction) has passed; and
 - (b) the person has not had imposed—
 - (i) in relation to the conviction in question, any sentence excluded from rehabilitation; or
 - (ii) during the rehabilitation period specified in section 5 for a subsequent conviction, a sentence excluded from rehabilitation.

- (3) If in relation to any person and offence the conditions specified in subsection (2) are satisfied on the date that this Ordinance comes into force, then the consequences specified in subsection (1) apply from that date.
- (4) If in relation to any conviction a person has not served or otherwise undergone or complied with any sentence imposed on him then the consequences specified in subsection (1) do not apply.
- (5) The following do not prevent the consequences specified in subsection (1) from applying—
 - (a) failing to pay a fine or other sum adjudicated to be paid by or imposed on a conviction;
 - (b) breaching a condition of a recognizance to keep the peace and be of good behaviour;
 - (c) breaching a condition or obligation applicable in relation to a sentence which renders the person to whom the condition applies—
 - (i) liable to be dealt with for the offence for which it was imposed; or
 - (ii) in the case of a suspended sentence of imprisonment, liable to be dealt with in respect of that sentence (whether or not in any case he is in fact dealt with); or
 - (d) failing to comply with a suspended sentence supervision order.

4. Effects of rehabilitation

- (1) The effects of rehabilitation are listed in subsections (2) to (5) and are subject to the exceptions specified in sections 7 and 8.
- (2) In relation to any spent conviction, the rehabilitated person is to be treated for all purposes in law as a person who has not committed, been charged with, prosecuted for or convicted of that offence.
- (3) In any judicial proceedings—
 - (a) evidence must not be admitted to prove that a rehabilitated person has committed, been charged with, prosecuted for or convicted of a spent offence;
 - (b) a rehabilitated person must not be asked, and if asked, must not be required to answer any question relating to his past which cannot be answered without acknowledging or referring to a spent conviction of that person or any circumstances connected with a spent conviction.
- (4) Subject to any order made under subsection (6) if a question seeking information relating to a person's previous convictions, offences, conduct or circumstances is put to any person (whether or not that person is a rehabilitated person) other than in judicial proceedings—
 - (a) the person who is questioned is to assume that the question does not relate to a spent conviction or to any circumstances connected with a spent conviction and may frame the response accordingly; and
 - (b) the person who is questioned must not be subject to any liability or otherwise prejudiced in law for failing to acknowledge or disclose a spent conviction.
- (5) Subject to the provisions of any order made under subsection (6)—
 - (a) any requirement imposed on a person by any rule of law or any provision of an agreement or arrangement to disclose any matters to any other person does not extend to requiring that person to disclose a spent conviction or any circumstances connected with a spent conviction (whether the conviction is his own or that of some other person); and
 - (b) a spent conviction or any circumstances connected with a spent conviction is not a proper ground for dismissing or excluding a rehabilitated person from any office, profession, occupation or employment or for prejudicing that person in any way in any such office, profession, occupation or employment.
- (6) The Administrator may make an order, published in the Gazette which may—
 - (a) provide for exceptions or modifications from the application of either or both subsection (4)(a) or (b) in relation to questions put in such circumstances as may be described in the order;

- (b) provide for exceptions from the provisions of subsection (5) in such cases or classes of case and in relation to convictions of such a description as may be specified in the order.

5. Rehabilitation periods for particular sentences

- (1) For the purposes of this Ordinance—
- (a) the rehabilitation period applicable to a sentence is reckoned from the date of the sentence;
- (b) the rehabilitation period applicable to a particular sentence specified in the first column of the table to this section is—
- (i) in relation to a person of 21 and over on the date when the offence was committed, the period specified in the second column of the table in relation to that sentence;
- (ii) in relation to a person of 18 years and over but under 21 years on the date when the offence was committed, the period specified in the third column of the table in relation to that sentence; and
- (iii) in relation to a person under the age of 18 years on the date when the offence was committed, the period specified in the fourth column of the table in relation to that sentence.

Sentence	Rehabilitation period		
	Persons of 21 years and over	Persons of 18 years and over but under 21 years	Persons under 18 years
Imprisonment of 1 year or more but not exceeding 2 years.	5 years	30 months	18 months
Imprisonment of 6 months or more but not exceeding 1 year	4 years	2 years	1 year
Imprisonment not exceeding 6 months	3 years	18 Months	Immediate rehabilitation
Fine exceeding €500 or any other fine not excluded from rehabilitation	2 years	1 year	Immediate rehabilitation
Fine of up to and including €500.	1 year	Immediate rehabilitation	Immediate rehabilitation

- (2) In relation to a person who has been sentenced for a Republican military offence, the rehabilitation period is the same as under the corresponding Republican law.
- (3) In relation to a person who has been sentenced to a term of imprisonment of 2 years or more but not exceeding 4 years the Resident Judge's Court may order that the person is a rehabilitated person and that the conviction is a spent conviction—
- (a) on the application of the person in question; and
- (b) if more than 8 years has elapsed from the date of the conviction.
- (4) If, in relation to a conviction, a court orders that a person is absolutely discharged, then the rehabilitation period is deemed to have been completed immediately.
- (5) If, in relation to a conviction, a court orders that a person is given a conditional discharge, or that he enters into his own recognizance to keep the peace and be of good behaviour, the rehabilitation period is the longer of—
- (a) one year from the date of conviction; or

- (b) the period beginning on the date of conviction and ending when the order in question ceases to have effect.
- (6) If, in relation to a conviction, a court imposes any of the sentences specified in subsection (7), the rehabilitation period is the longer of—
 - (a) one year from the date of the conviction; or
 - (b) the period beginning on the date of conviction and ending when the order or obligation ceases to have effect.
- (7) The sentences specified in this subsection are—
 - (a) an order for custody under section 12(1)(b) of the Juvenile Offenders Ordinance;
 - (b) an order under section 12(1)(c) of that Ordinance placing the convicted person under the care of a capable person.
- (8) If, in relation to a conviction, a court orders that a person is to be detained under section 12(1)(d) of the Juvenile Offenders Ordinance, the rehabilitation period is from the date of the making of the order until one year from when the order ceases to have effect.
- (9) If, in respect of a conviction, an order is made imposing on the person convicted any disqualification, the rehabilitation period applicable to the sentence is the period beginning with the date of conviction and ending on the dates when the disqualification ceases to have effect.
- (10) For the purposes of this section—
 - (a) consecutive terms of imprisonment and terms which are wholly or partly concurrent are to be treated as a single term if they are terms of imprisonment in respect of criminal offences for which the person was convicted in the same proceedings;
 - (b) a sentence imposed by a court outside the Areas is to be treated as a sentence referred to in this section which most nearly corresponds with the sentence imposed.

6. The rehabilitation period applicable to a conviction

- (1) If only one sentence is imposed in respect of a conviction (other than a sentence excluded from rehabilitation under this Ordinance) the rehabilitation period is, subject to the provisions of this section, the period applicable in accordance with section 5.
- (2) If more than one sentence is imposed in respect of a conviction and none of those sentences is excluded from rehabilitation, then, subject to this section, the rehabilitation period applicable to that conviction is the longest period applicable to those sentences.
- (3) Without prejudice to subsection (2), subsection (4) applies in circumstances where a convicted person has been dealt with for breach of a conditional discharge or probation to which the conviction relates after the end of the rehabilitation period applicable to the conviction in accordance with subsection (1) or (2).
- (4) A convicted person referred to in subsection (3) is not a rehabilitated person and the offence is not a spent offence until the end of the new rehabilitation period.
- (5) Subsection (6) applies if, during the rehabilitation period applicable to a conviction (the “first conviction”)—
 - (a) the person is convicted of a further offence;
 - (b) the person is not given a sentence for that further conviction which is excluded from rehabilitation; and
 - (c) the rehabilitation period applicable to that further conviction ends later than that for the first conviction.
- (6) If subsection (5) applies, then the rehabilitation period for the first conviction is extended so as to end at the same time as the rehabilitation period for the second conviction.
- (7) Subsection (5) does not operate to extend a rehabilitation period applicable to a conviction imposed by section 5(8), but it may operate to extend any other rehabilitation period specified in section 5 applicable to the same conviction.
- (8) The following are to be disregarded for the purpose of subsection (5)(a)—
 - (a) Any conviction for a criminal offence for which the maximum penalty is either a fine of €256 or less or imprisonment of 3 months or less;

- (b) any conviction by a court outside the areas for an offence in relation to conduct which if it had taken place within the areas, would not have constituted an offence under the laws in force in the Areas.

7. Limitations of rehabilitations

- (1) Nothing in this Ordinance affects—
 - (a) the power of the Administrator to grant a free pardon, to quash any conviction 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 person if the conviction in respect of which the fine or other sum is imposed is spent;
 - (c) the issue of any process for the purpose of proceedings for breach of any condition or requirement applicable to a sentence imposed on a person in respect of a spent conviction; or
 - (d) the operation of any legislation under which, as a result of any conviction, a person is subject, other than by way of sentence, to any disability the period of which extends beyond the rehabilitation period applicable in accordance with section 6.
- (2) Nothing in section 4(1) to (3) affects the determination of any issue or prevents the admission or requirement of any evidence relating to a person's previous convictions or to circumstances connected with a spent conviction—
 - (a) in any criminal proceedings before a court in the Areas (including any appeal or reference in a criminal matter);
 - (b) in any proceedings relating to adoption, the custody, marriage, care or control of any child or communication with a child or the provision of accommodation, care or schooling for children;
 - (c) in any proceedings in relation to the care of a minor under the Children Ordinance(e) or an appeal against such proceedings or in any proceedings relating to the amendment or cancellation of an order of care or supervision under that Ordinance;
 - (d) in any proceedings in relation to which the person is a party or a witness, if the person consents to the determination of the issue or the admission or requirement of the evidence despite section 4(1) to (3).
- (3) If, in any judicial proceedings (other than those to which subsection (2)(a) to (d) or an order made under subsection (4) or section 8 applies), the court or other authority before whom the proceedings are held is satisfied that in all of the circumstances of the case justice cannot be done except by admitting or requiring evidence of a person's spent convictions or circumstances connected with a person's spent convictions, that court or authority may admit or require the evidence in question despite section 4(1) to (3), and may determine any issue to which the evidence relates.
- (4) The Administrator may by order published in the Gazette exclude the application of section 4(1) to (3) in relation to any proceedings specified in the order (other than proceedings to which section 8 applies) to such extent and for such purposes as may be specified.
- (5) No order made by a court in respect of any person other than on conviction is to 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 that person in respect of any offence.

8. Defamation

- (1) This section applies to any action for defamation—
 - (a) begun after the commencement of this Ordinance by a rehabilitated person; and
 - (b) founded on the publication of any matter which imputes that the rehabilitated person has committed, been charged with, prosecuted for, convicted of or sentenced for an offence which was the subject of a conviction which was spent at the date of the publication.
- (2) Subject to subsections (4) and (5), in an action to which this section applies nothing in section 4(1) to (3) prevents a defendant from relying on any defences of justification, fair comment or absolute or qualified privilege which is available to that defendant or restricts the matters which that defendant may establish in support of such defences.

- (3) Without prejudice to the generality of subsection (2) in an action to which this section applies, if malice is alleged against a defendant relying on a defence of qualified privilege, nothing in section 4(1) to (3) restricts the matters which that defendant may establish to rebut that allegation.
- (4) Subsection (2) does not entitle a defendant in any action to which this section applies to rely on a defence of justification if the publication is proved to have been made with malice.
- (5) Subsection (2) does not entitle a defendant in an action to which this section applies to rely on any matter or adduce 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 inadmissible in the proceedings as a result of section 4(1) to (3) unless that publication is of a type specified in subsection (6).
- (6) The publications specified in this subsection are—
 - (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.

9. Unauthorised disclosure of spent convictions

- (1) Subject to an order made under subsection (7), a person who, in the course of official duties has or has had access to any official records or the information contained in those records, must not, other than in the course of his official duties, disclose information which that person knows or has reasonable cause to suspect is specified information to another person.
- (2) A person who breaches subsection (1) commits an offence and liable on conviction to a fine of €340.
- (3) In any proceedings for an offence under subsection (2) it is a defence for the defendant to show that disclosure was made to—
 - (a) 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 a person specified in paragraph (a).
- (4) A prosecution for breaching subsection (1) must not be started without the consent of the Attorney General and Legal Advisor.
- (5) A person must not obtain specified information by fraud, dishonesty or bribery.
- (6) A person who contravenes subsection (5) commits an offence and liable on conviction to a fine of £465 and 6 months in prison.
- (7) The Administrator may, by order published in the Gazette make provisions excepting the disclosure of specified information derived from an official record from subsection (1) in such cases as may be specified in the order.

10. Legal proceedings

A court may take judicial notice of the corresponding Republican Law and section 23(2) to (4) of the Delegation of Functions to the Republic Ordinance 2007(f) applies to such Law.

11. Commencement

This Ordinance comes into force on 1 August 2009.

Notes

- (a) Law no. 70/81 Republic of Cyprus.
- (b) Ordinance 5/07.
- (c) Cap 157, Statute Laws of Cyprus revised edition 1959, as applied to and adapted in the Areas by the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369, United Kingdom) and the Laws (Adaptation and Interpretation) (Consolidation and Extension) Ordinance 1968 (5/68).
- (d) Ordinance 14/06.
- (e) Cap 352, Statute Laws of Cyprus revised edition 1959, as applied to and adapted in the Areas by the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369, United Kingdom) and the Laws (Adaptation and Interpretation) (Consolidation and Extension) Ordinance 1968 (5/68).
- (f) Ordinance 17/07.

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

Introduction

1. This explanatory note relates to the Rehabilitation of Offenders Ordinance 2009 (the “Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. The note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So when a section or part of a section does not seem to require any explanation or comment, none is given.

Particular points

3. The Ordinance provides for criminal convictions to become ignored or “spent” after a “rehabilitation period” has elapsed. After this period, an ex-offender is not normally obliged to mention their conviction when applying for a job, obtaining insurance or when involved in criminal or civil proceedings. Once a conviction becomes spent, it remains spent, even if a person is convicted of other offences later.

4. The Ordinance is likely to be of benefit to those people with few or minor convictions because further convictions during the rehabilitation period usually extends the rehabilitation period. People with many convictions, especially serious convictions, are not likely to benefit from the Ordinance unless those convictions are very old.

5. The length of the rehabilitation period depends on the sentence given, not on the offence committed. For a custodial sentence, the rehabilitation period is decided by the original sentence, not the time served. Custodial sentences of more than four years can never become spent and custodial sentences of more than two years can only become spent following an application to the Resident Judge’s Court. The rehabilitation period for particular sentences is specified in section 5.

6. The rehabilitation period for a disqualification is the length of the disqualification. If a person is disqualified at the same time as receiving another penalty, such as a fine, the longer rehabilitation period applies.

7. If a rehabilitation period is still running and the offender commits a relatively minor offence, that minor offence may not affect the rehabilitation period for the other conviction; each offence may become spent separately.

8. However, if the further offence is of a more serious nature, then neither conviction (even if the first one is for a minor offence) will become spent until both rehabilitation periods are over. If the further conviction leads to a prison sentence of more than four years, neither conviction will ever become spent. If a person is convicted of an offence which will never become spent but is later convicted of another offence with a fixed rehabilitation period the later conviction will become spent once the rehabilitation period has been completed without further convictions.

9. Persons (such as job applicants) with a criminal record who are asked (for example on an application form or at an interview) whether they have any previous convictions can answer ‘no’ if the convictions are spent and (in the case of a job application) the job applied for is not excepted from the Ordinance. Exceptions to this provision may be made in a separate order made by the Administrator.

10. Under the Ordinance, a spent conviction is not a proper ground for not employing or for dismissing someone. In civil proceedings, no-one should be asked questions which might lead to disclosure of spent convictions. If such questions are asked, they need not be answered. This rule does not apply:

- in civil proceedings relating to children (adoption, guardianship, wardship, marriage, custody, care and control, schooling);
- when the court is satisfied that justice cannot be done unless evidence of spent convictions is admitted (anyone who has spent convictions can always consent to evidence being given about them);
- if the proceedings involve a matter excepted from the Ordinance in a separate order made by the Administrator.

11. The rule on civil proceedings also applies to arbitration proceedings, disciplinary proceedings before an administrative tribunal, and (for example) to a club committee which has powers to affect anyone’s rights, privileges, obligations, or liabilities. Exceptions to this provision may be made in a separate order made by the Administrator.

(SBA/AG/2/CR/510)

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