

Ordinance 10 of 2019

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**REHABILITATION OF OFFENDERS
(AMENDMENT) ORDINANCE 2019**

An Ordinance to amend the Rehabilitation of Offenders Ordinance 2009 by introducing provisions in relation to cautions.

R.J. Thomson
ADMINISTRATOR

18 October 2019

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

Short title

1. This Ordinance may be cited as the Rehabilitation of Offenders (Amendment) Ordinance 2019.

Commencement

2. This Ordinance comes into force on 12 November 2019.

Amendment of the Rehabilitation of Offenders Ordinance 2009

3. The Rehabilitation of Offenders Ordinance 2009(a) is amended as follows.

Amendment of section 2

4.—(1) Section 2 (interpretation) is amended as follows.

(2) In subsection (1), in the definition of “official record”, at the end insert “and persons given a caution for any offence”.

(3) In subsection (1), at the appropriate place in alphabetical order insert—

““caution” means—

- (a) a conditional caution given under section 47A (conditional caution) of the Criminal Procedure Ordinance 2016;
- (b) any other caution given to a person in the Areas in respect of an offence, which at the time the caution is given, that person has admitted;
- (c) anything corresponding to a caution falling within paragraph (a) or (b) which is given to a person in respect of an offence under the law outside the Areas;

“caution information” means information imputing that a named or otherwise identifiable living person (“the named person”) has committed, been charged with or cautioned for any offence which is the subject of a spent caution;”.

New section 8A

5. After section 8 (defamation) insert—

“8A. Protection afforded to spent cautions

Schedule 1 (protection for spent cautions) has effect.”

New section 9A

6. After section 9 (unauthorised disclosure of spent convictions) insert—

“9A. Unauthorised disclosure of spent cautions

(1) Subject to any 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 caution information, to another person.

(2) A person who breaches subsection (1) commits an offence and is 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 named person or another person at the express request of the named person, or
- (b) to a person whom he reasonably believed to be a person specified in paragraph (a).

(a) Ordinance 11/2009.

(4) A prosecution for breaching subsection (1) must not be started without the consent of the Attorney General and Legal Adviser.

(5) A person must not obtain caution information by fraud, dishonesty or bribery.

(6) A person who contravenes subsection (5) commits an offence and is liable on conviction to a fine of €465 or imprisonment for 6 months, or both.

(7) The Administrator may, by order published in the Gazette, make provisions excepting the disclosure of caution information derived from an official record from subsection (1) in such cases as may be specified in the order.”

New Schedule 1

7. At the end of section 11 (commencement) insert—

“SCHEDULE 1

Protection for spent cautions

(section 8A)

Preliminary

1.—(1) For the purpose of this Schedule a caution must be regarded as a spent caution—

- (a) in the case of a conditional caution given under section 47A of the Criminal Procedure Ordinance 2016—
 - (i) at the end of the period of three months from the date on which the caution is given, or
 - (ii) if earlier, the date the caution ceases to have effect; and
- (b) in any other case, at the time the caution is given.

(2) If a person is subsequently prosecuted and convicted of the offence in respect of which a conditional caution was given—

- (a) for the period specified in sub-paragraph (1)(a) substitute the rehabilitation period for the offence, and
- (b) if the conviction occurs after the end of the period specified in sub-paragraph (1)(a), the caution must be treated for the purposes of this Schedule as not having become spent in relation to any period before the end of the rehabilitation period for the offence.

(3) For the purposes of sub-paragraph (1), a conditional caution ceases to have effect when—

- (a) there has been compliance with the conditions of the caution, or
- (b) there has been partial compliance or non-compliance with the conditions of the caution and no prosecution resulting in a conviction was brought for the offence for which the caution was given.

2.—(1) In this Schedule “ancillary circumstances” in relation to a caution means—

- (a) the offence which was the subject of the caution or the conduct constituting that offence;
- (b) any process preliminary to the caution (including consideration by any person of how to deal with that offence and the procedure for giving the caution);
- (c) any proceedings for that offence which take place before the caution is given (including anything which happens after that time for the purpose of bringing the proceedings to an end);
- (d) any judicial review proceedings relating to the caution;

- (e) in the case of a conditional caution, any conditions attached to the caution or anything done in pursuance of, or undergone in compliance with, those conditions.
- (2) Where the caution relates to two or more offences, references in sub-paragraph (1) to the offence which was the subject of the caution include a reference to each of the offences concerned.

Protection relating to spent cautions and ancillary circumstances

3.—(1) A person who is given a caution for an offence is to be treated from the time the caution is spent for all purposes in law as a person who has not committed, been charged with or prosecuted for, or been given a caution for the offence; and notwithstanding the provisions of any other enactment or rule of law to the contrary—

- (a) no evidence shall be admissible in any judicial proceedings to prove that such a person has committed, been charged with or prosecuted for, or been given a caution for the offence, and
 - (b) such a person must not, in any such proceedings, be asked, and if asked must not be required to answer any question relating to that person's past which cannot be answered without acknowledging or referring to a spent caution or any ancillary circumstances.
- (2) Nothing in sub-paragraph (1) applies in relation to any proceedings for the offence which are not part of the ancillary circumstances relating to the caution.
- (3) Subject to any order made under sub-paragraph (5), if a question seeking information relating to a person's previous cautions, offences, conduct or circumstances is put to any person (including the person to whom the information relates) other than in judicial proceedings—
- (a) the person who is questioned is to assume that the question does not relate to a spent caution or any ancillary circumstances 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 caution or any ancillary circumstances.
- (4) Subject to the provisions of any order made under sub-paragraph (5) —
- (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 caution or any ancillary circumstances (whether the caution is that person's own or another's), and
 - (b) a spent caution or ancillary circumstances, or any failure to disclose such a caution or any such circumstances, is not a proper ground for dismissing or excluding a person from any office, profession, occupation or employment or for prejudicing that person in any way in any such office, profession, occupation or employment.
- (5) The Administrator may by order published in the Gazette—
- (a) provide for exceptions or modifications from the application of either or both sub-paragraphs (3)(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 sub-paragraph (4) in such cases or classes of cases and in relation to cautions of such description as may be specified in the order.
- (6) Nothing in this paragraph affects—
- (a) the operation of the caution in question, or
 - (b) the operation or any enactment by virtue of which, in consequence of any caution, a person is subject to any disqualification, disability, prohibition or other

restriction or effect, the period of which extends beyond the period specified in sub-paragraph 1(1).

4.—(1) Subsections 7(2), (3) and (4) apply for the purposes of this Schedule as follows.

(2) Subsection 7(2) applies to the determination of any issue, and the admission or requirement of any evidence, relating to a person's previous cautions or to ancillary circumstances as it applies to matters relating to a person's previous convictions and the circumstances relating to those convictions.

(3) Subsection 7(3) applies to evidence of a person's previous cautions and ancillary circumstances as it applies to evidence of a person's convictions and the circumstances relating to those convictions; and for this purpose subsection 7(3) has effect as if—

(a) any reference to subsections (2) or (4) of section 7 were a reference to those subsections as applied by this paragraph, and

(b) any reference to proceedings to which section 8 applies were omitted.

(4) Subsection 7(4) applies for the purpose of excluding the application of paragraph 3(1); and for that purpose subsection 7(4) has effect as if the reference to proceedings to which section 8 applies were omitted.

(5) References in the provisions applied by this paragraph to subsection 4(1) are to be read as references to sub-paragraph 3(1)."

EXPLANATORY NOTE

(This note is not part of the Ordinance)

1. This explanatory note relates to the Rehabilitation of Offenders (Amendment) Ordinance 2019 (“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 Ordinance amends the Rehabilitation of Offenders Ordinance 2009 (“the principal Ordinance”).

3. The principal Ordinance supports the rehabilitation into society of reformed offenders. Under the principal Ordinance, following a certain period of time (which varies according to the severity of the sentence passed), all convictions (except those resulting in a sentence of imprisonment exceeding 4 years) are regarded as “spent”. As a result, the offender is regarded as rehabilitated. For most purposes the principal Ordinance treats a rehabilitated person as if he or she had never committed an offence, and as such, they are not obliged to declare them, for example, when applying for a job (although there may be exemptions in relation to applications for certain positions or jobs).

4. The principal Ordinance currently applies to convictions only. The Ordinance amends the principal Ordinance so as to apply its provisions, with appropriate modifications, to adult and youth conditional and other cautions.

5. Section 6 of the Ordinance inserts a new section 9A (unauthorised disclosure of spent cautions) into the principal Ordinance. The new section 9A makes provision in respect of the unauthorised disclosure of spent cautions mirroring the provisions in section 9 of the principal Ordinance relating to the unauthorised disclosure of spent convictions. The new section 9A makes it an offence for a person, who in the course of his or her official duties has access to the caution information, to disclose caution information otherwise than in the course of official duties or for any person to obtain caution information by fraud, dishonesty or bribery.

6. Section 7 of the Ordinance inserts a new Schedule 1 into the principal Ordinance. Paragraph 1 of the new Schedule 1 sets out the rehabilitation periods for spent cautions. The rehabilitation period for a conditional caution is extended where the offender is subsequently prosecuted and convicted for the offence in respect of which the conditional caution was given. In such cases the rehabilitation period for the caution is extended so that it is the same as the rehabilitation period for the offence.

7. Paragraph 3 of the new Schedule 1 sets out the protection afforded to persons relating to their spent cautions and the ancillary circumstances in relation to such cautions. As a result of the protection afforded, no-one may ask a question in civil proceedings that might lead to the disclosure of a spent caution and any person with a spent caution applying for a job can answer “no” if asked if he or she has ever been cautioned. Failure to disclose a spent caution may not be taken as a ground for dismissing a person from employment. The Administrator may, by order made as a public instrument, specify exceptions to the protection afforded under paragraph 3.

8. Sub-paragraph 3(6) of the new Schedule 1 ensures that the protection afforded under paragraph 3 does not affect the operation of the caution itself (for example, if the conditions attached to a conditional caution apply for a period longer than 3 months) or the operation of any enactment.

9. Paragraph 4 of the new Schedule 1 applies, with modifications, section 7 of the principal Ordinance which places limitations on the effect of rehabilitation under the principal Ordinance.

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