
CHAPTER 100**REHABILITATION OF OFFENDERS**

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CHAPTER 100

REHABILITATION OF OFFENDERS

An Act to rehabilitate offenders who have not been reconvicted of any serious offence for periods of years, to penalise the unauthorised disclosure of their previous convictions and to amend the law of defamation. *11 of 1991*

*[Assent 26th September, 1991]
[Commencement 1st October, 1991]*

1. This Act may be cited as the Rehabilitation of Offenders Act. Short title

2. (1) In this Act — Interpretation

“Minister” means the Minister responsible for Rehabilitation;

“rehabilitation period applicable” means the rehabilitation period applicable by virtue of section 4 to a conviction for an offence;

“sentence” includes any order made by a court in dealing with a person in respect of his conviction for any offence, other than an order for committal or any order made in default of payment of any fine or other sum adjudged to be paid by or imposed on a conviction, or for want of sufficient distress to satisfy any such fine or other sum.

(2) In this Act, references to a conviction, however expressed, are references to a conviction by or before a court in The Bahamas.

(3) For the purposes of this Act, any of the following are circumstances ancillary to a conviction, that is to say —

- (a) the offence which was the subject of that conviction;
- (b) the conduct constituting that offence;
- (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 in pursuance of or undergone in compliance with any such sentence.

(4) For the purposes of this Act, “proceedings before a judicial authority” includes, in addition to proceedings before any court, proceedings before any tribunal, body or person having power —

- (a) by virtue of any law, custom or practice;
- (b) under the rules governing any association, institution, profession, occupation or employment; or
- (c) under any provision of an agreement providing for arbitration with respect to questions arising thereunder,

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.

Rehabilitated
persons and
spent
convictions

3. (1) Subject to subsections (2) and (3), where an individual has been convicted, whether before or after the commencement of this Act, of any offence and the following conditions are satisfied, that is to say —

- (a) the offence is not excluded from rehabilitation under this Act; and
- (b) the individual has not been convicted, during the rehabilitation period applicable to the first mentioned conviction, of an offence which is exclude from rehabilitation under this Act,

then, after the end of the rehabilitation period so applicable (including, where appropriate, any extension under subsection (3) of section 4 of the period originally applicable to the first mentioned conviction) or, where that rehabilitation period ended before the commencement of this Act, immediately after the commencement of this Act, that individual shall for the purposes of this Act be treated as a rehabilitated person in respect of the first-mentioned conviction and that conviction shall for those purposes be treated as spent.

(2) Notwithstanding anything to the contrary in any other provision of this Act, where an individual —

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- (a) has been convicted, whether before or after the commencement of this Act, of an offence which is not excluded from rehabilitation under this Act and which was committed when that individual was under the age of sixteen years; and
 - (b) has not been convicted, during the rehabilitation period applicable to the first-mentioned conviction, of an offence,

that individual shall for the purposes of this Act be treated as a rehabilitated person in respect of the first-mentioned conviction and that conviction shall for those purposes be treated as spent.

(3) A person shall not become a rehabilitated person for the purposes of this Act in respect of a conviction unless he has served or otherwise undergone or complied with any sentence imposed on him in respect of that conviction but —

- (a) failure to pay a fine or other sum adjudged to be paid by or imposed on a conviction; or
- (b) breach of a condition of a recognisance or of a bond to keep the peace or be of good behaviour,

shall not prevent a person from becoming a rehabilitated person for those purposes.

(4) An individual convicted of an offence may appeal to the Minister against the refusal of a public officer to treat that individual as a rehabilitated person in respect of a conviction, or to treat that conviction as spent, as required by the provisions of this Act.

4. (1) The offences excluded from rehabilitation under this Act are specified in the First Schedule and any other offence is an offence subject to rehabilitation under this Act.

The
rehabilitation
period applicable
to a conviction
First Schedule

(2) For the purposes of this Act, the rehabilitation period applicable —

- (a) to a conviction for an indictable offence, shall be a period of fourteen years; and
- (b) to a conviction for a summary offence or an indictable offence dealt with summarily, shall be a period of seven years,

reckoned in either case from the date of the conviction, or of the expiration of any period of custodial sentence (other than for the non-payment of a fine or other sum) imposed on that conviction, whichever is the later:

Provided that in the case of an individual who, at the date of his conviction, was under the age of eighteen years, the rehabilitation period applicable shall be half of the respective periods mentioned in paragraph (a), or (b), as the case may be.

(3) Where during the rehabilitation period applicable to a conviction —

- (a) the person convicted is convicted of a further offence; and
- (b) such further offence is not an offence excluded from rehabilitation under this Act,

then, if the rehabilitation period applicable in accordance with this section to either of the convictions would end earlier than the period so applicable in relation to the other, the rehabilitation period which would (apart from this subsection) end the earlier shall be extended so as to end at the same time as the other rehabilitation period.

Effect of
rehabilitation

5. (1) Subject to sections 6 and 7, a person who has become a rehabilitated person for the purposes of this Act 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; and, notwithstanding the provisions of any other written law or rule of law to the contrary, but subject as aforesaid —

- (a) no evidence shall be admissible in any proceedings before a judicial authority to prove that any such 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 any circumstances ancillary thereto.

(2) Subject to subsections (3) to (5) of section 6 and to the provisions of any order made under subsection (4), where a question seeking information with respect to a person's previous convictions, 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 spent convictions and the answer thereto 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 a spent conviction in his answer to the question.

(3) Subject to subsections (3) to (5) of section 6 and to the provisions of any order made under subsection (4) —

- (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 a spent conviction (whether the conviction is his or another's); and
- (b) a conviction which has become spent or any circumstances ancillary thereto, 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.

(4) The Minister may by order —

- (a) make such provision as seems to him appropriate for excluding or modifying the application of either or both of paragraphs (a) and (b) of subsection (2) in relation to questions put in such circumstances as may be specified in the order; and

Limitations on
rehabilitation
under this Act

- (b) provide for such exceptions from the provisions of subsection (3) as seem to him appropriate, in such cases or classes of case, and in relation to convictions of such a description, as may be specified in the order.
6. (1) Nothing in subsection (1) of section 5 shall affect —
- (a) any power of the Governor-General exercisable in Her Majesty's name and on Her Majesty's behalf under Article 90 of the Constitution;
 - (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 written law 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 in accordance with section 4 to the conviction.
- (2) Nothing in subsection (1) of section 5 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 thereto —
- (a) in any criminal proceedings before a court (including any appeal or reference in a criminal matter);
 - (b) in any proceedings relating to adoption or to the guardianship, wardship, marriage, custody, care or control of a child or young person; or
 - (c) in any proceedings in which he is a party or witness, provided that 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 notwithstanding the provisions of subsection (1) of section 5.

(3) Subsection (1) of section 5 shall not apply in relation to any proceedings specified in the Second Schedule.

(4) Subsection (2) of section 5 shall not apply in relation to —

- (a) any question asked by or on behalf of any person, in the course of duties of his office or employment, in order to assess the suitability —
 - (i) of the person to whom the question relates for admission to any of the professions specified in Part I of the Third Schedule; Part I of Third Schedule
 - (ii) of the person to whom the question relates for any office or employment specified in Part II of the Third Schedule; Part II of Third Schedule
 - (iii) of the person to whom the question relates or of any other person to pursue any occupation specified in Part III of the Third Schedule or to pursue it subject to a particular condition or restriction; Part III of Third Schedule
 - (iv) of the person to whom the question relates or of any other person to hold a licence, certificate or permit of a kind in Part IV of the Third Schedule, Part IV of Third Schedule

where the person questioned is informed at the time the question is asked that, by virtue of this paragraph, spent convictions are to be disclosed;

- (b) any question asked by or on behalf of any person, in the course of his duties as a person employed in the service of the Crown, in order to assess, for the purpose of safeguarding national security, the suitability of the person to whom the question relates or of any other person for any office or employment where the person questioned is informed at the time the question is asked that, by virtue of this paragraph, spent convictions are to be disclosed for the purpose of safeguarding national security.

(5) Paragraph (b) of subsection (3) of section 5 shall not apply in relation to —

Part I of Third
Schedule

(a) the dismissal or exclusion of any person from any profession specified in Part I of the Third Schedule;

(b) the dismissal or exclusion of any air traffic controller, or any operator or any vehicle, vessel or aircraft used for public transportation, on the ground of a conviction of an offence an element of which is the use or possession of any drugs or alcohol;

(c) any office, employment or occupation specified in Part II or Part III of that Schedule; or

Parts II and III
of Third
Schedule

(d) any action taken for the purpose of safeguarding national security.

(6) Where, by virtue of any of the provisions of subsections (3) to (5), the operation of any of the provisions of this Act is excluded in relation to spent convictions, the exclusion shall be taken to extend to spent convictions for offences of every description.

(7) If at any stage in any proceedings before a judicial authority (not being proceedings to which, by virtue of this Act, subsection (1) of section 5 has no application, or proceedings to which section 7 applies), 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 thereafter be 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 thereto, that authority may admit or, as the case may be, require the evidence in question notwithstanding the provisions of subsection (1) of section 5, and may determine any issue to which the evidence relates in disregard, so far as necessary, of those provisions.

(8) 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.

(9) The Minister may by order exclude the application of subsection (1) of section 5 in relation to any proceedings specified in the order (other than proceedings to which section 7 applies) to such extent and for such purposes as may be so specified.

7. (1) This section applies to any action for libel or slander begun after the commencement of this Act 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.

Defamation
actions

(2) Nothing in subsection (1) of section 5 shall affect an action to which this section applies where the publication complained of took place before the conviction in question became spent, and the following provisions of this section shall not apply in any such case.

(3) Subject to subsection (5) and (6), nothing in subsection (1) of section 5 shall prevent the defendant in an action to which this section 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.

(4) Without prejudice to the generality of subsection (3), where in any such action malice is alleged against a defendant who is relying on a defence of qualified privilege, nothing in subsection (1) of section 5 shall restrict the matters he may establish a rebuttal of the allegation.

(5) A defendant in any such action shall not by virtue of subsection (3) be entitled to rely upon the defence of justification if the publication is proved to have been made with malice.

(6) Subject to subsection (7) a defendant in any such action shall not, by virtue of subsection (3), 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 subsection (1) of section 5.

(7) Subsection (3) shall apply without the qualifications imposed by subsection (6) 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.

8. (1) Subject to the provisions of any order made under subsection (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 therein, is guilty of an offence if, knowing or having reasonable cause to suspect that any specified information which he has obtained in the course of those duties is specified information, he discloses it, otherwise than in the course of those duties to another person.

(2) In any proceedings for an offence under subsection (1), it shall be a defence 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 is guilty of an offence.

(4) The Minister may by order make such provision as appears to him to be appropriate for excepting the disclosure of specified information derived from an official record from the provisions of subsection (1) in such cases or classes of case as may be specified in the order.

Unauthorised
disclosure of
spent
convictions

(5) Any person guilty of an offence under subsection (1) or (3) is liable on summary conviction to a fine of one thousand dollars.

(6) In this section —

“official record” means a record kept for the purposes of its functions by a court, Government department or public body or by the Royal Bahamas Police Force, being a record containing information about persons convicted of offences;

“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.

9. The Minister may by order amend the provisions of the First or Third Schedule.

Amendment of
First and Third
Schedules.

FIRST SCHEDULE (Section 4(1))

EXCEPTED OFFENCES

Manslaughter in respect of which a sentence of five years or more has been imposed on conviction.

Murder.

Possession of dangerous drugs with intent to supply.

Treason.

Armed robbery.

Rape.

Unlawful carnal knowledge contrary to section 286 of the Penal Code.

SECOND SCHEDULE (Section 6(3))

EXCEPTED PROCEEDINGS

1. Proceedings in respect of a person’s admission to, or disciplinary proceedings against a member of, any profession specified in Part I of the Third Schedule.

2. Disciplinary proceedings against a member of the Public Service including proceedings under the Police Act and the Defence Act.

3. Proceedings by way of appeal against, or review of, any decision taken by virtue of the provisions of this Act, on consideration of a spent conviction.

4. Proceedings held for the receipt of evidence affecting the determination of any question arising in any proceedings specified in this Schedule.

THIRD SCHEDULE (Section 6(4) and (5))

PART I EXCEPTED PROFESSIONS

1. Counsel and attorney.
2. Medical practitioner.
3. Dentist, dental nurse, dental hygienist, dental technician.
4. Veterinary surgeon.
5. Nurse, midwife.
6. Optician.
7. Chemist, pharmacist.

PART II EXCEPTED OFFICES AND EMPLOYMENTS

1. Justice of the Court of Appeal and Justice of the Supreme Court.
2. Member of the Royal Bahamas Police Force, Police Volunteer Reservist and Supernumerary Police Officer.
3. The following members of the Public Service —
 - (a) persons employed in any public office to which Article 117 of the Constitution applies;
 - (b) members of the Royal Bahamas Defence Force; and
 - (c) members of the Prison Service.
4. Any person whose duties include the keeping or maintenance of financial records, books or accounts, or the auditing of any such records, books or accounts.

**PART III
REGULATED OCCUPATIONS**

1. Firearms dealer within the meaning assigned to that expression by subsection (1) of section 2 of the Firearms Act.

**PART IV
EXCEPTED LICENCES, CERTIFICATES AND PERMITS**

1. A licence, certificate or permit issued under the Firearms Act.