



**Isle of Man**  
Government

*Reiltys Ellan Vannin*



# Consultation on amendments to the Rehabilitation of Offenders Act 2001

Department of Home Affairs  
*Rheynn Cooishyn Sthie*

August 2019

## **1. Introduction**

This paper is issued by the Department of Home Affairs for the purpose of obtaining views on the proposed amendments, by Order, to the [Rehabilitation of Offenders Act 2001](#) (the Act).

The purpose of the Order is to minimise the disparity between the timelines for 'spent' convictions found in the Rehabilitation of Offenders Act 2001 (an Act of Tynwald) and those in the United Kingdom's Rehabilitation of Offenders Act 1974<sup>1</sup> (an Act of Parliament) (the UK Act).

## **2. Submissions**

The deadline for responses is 5pm on Thursday 12 September 2019.

Responses must be made in writing and sent by email or post to:

[GeneralEnquiries.DHA@gov.im](mailto:GeneralEnquiries.DHA@gov.im)  
Legislation and Policy Office  
Department of Home Affairs  
First Floor, Headquarters Building  
Tromode Road, Douglas,  
Isle of Man, IM2 5PA

## **3. Order**

The draft Rehabilitation of Offenders Act 2001 (Amendment) Order 2019 has been prepared and is included at Appendix 1.

A summary of the proposed amendments and the underlying rationale is included below:

### **Background**

The Rehabilitation of Offenders Act 2001 was introduced with the specific intention of aligning the way in which the Island viewed historic convictions and treated those guilty of such offences with the Rehabilitation of Offenders Act 1974 (an Act of Parliament).

The Rehabilitation of Offenders Act 1974 had its origins in the report prepared by the Gardiner Committee titled 'Living it Down'<sup>2</sup> which resulted in the UK's Rehabilitation of Offenders Act 1974.

The Island from 1974 to 2001 was out of step with the concept of rehabilitation enacted in the UK, where UK legislation allowed that an individual who had offended in their early years could then be rehabilitated and be otherwise a model citizen.

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<sup>1</sup> 1974 c. 53

<sup>2</sup> Living it down, the problem of old convictions: the report of a committee set up by JUSTICE, the Howard League for Penal Reform [and] the National Association for the Care and Resettlement of Offenders; chairman of committee, Lord Gardiner 1972 ISBN 0420439102

The introduction of the 2001 Act to the Island allowed for those who had committed an offence in their past to be considered to be rehabilitated after a certain period, assuming that no additional offences were committed by that individual. In practice this meant that after this period, if there has been no further conviction, the conviction is considered "spent" and, with certain exceptions, need not be disclosed by the ex-offender in any context such as when applying for a job, obtaining insurance, or in civil proceedings.

The current primary legislation of the Island is supplemented by the Rehabilitation of Offenders Act 2001 (Exceptions) Order 2018<sup>3</sup>, as there are some professions for which, by law, no conviction is considered spent. Those excepted roles relevant for the purposes of that Order (e.g. healthcare, education) require both spent and unspent convictions, cautions, reprimands and warning to be disclosed through a Disclosure and Barring Service (DBS) check.

### **Rehabilitation of Offenders Act 2001 (Amendment) Order 2019**

In Schedule 1 Part 2 (Rehabilitation Periods for Particular Sentences) for paragraph 7 both the text forming paragraph 7 along with the Table are to be substituted by the paragraph text and new Table found in the proposed Order.

This new table makes the following changes:

- Introduces a three column format that makes it possible to see at a glance the type of sentence and associated timeframes for that sentence to be considered spent, for both those aged over and under 18 at time of sentencing
- where possible aligns the rehabilitation periods by amending same to align with those found in the UK Act (to align with Disclosure and Barring Service (DBS) checks)
- Clearly identifies and specifies the timeframes for a fine, a community order and a compensation order to be spent

#### **4. Excluded Matters**

The Department is aware that two particular matters which have not been addressed within this draft Order are likely to be of interest to those wishing to take part in this consultation therefore these have been outlined below.

The first is that the sentence of custody for a term exceeding 30 months term has not been addressed as an amendment to Section 2 of the Act would be required to allow for this<sup>4</sup>.

The second is that cautions are not included within the attached draft Order because the law, as it stands, only provides for those convicted and sentenced by a court to become rehabilitated.

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<sup>3</sup> SD 2018/0327

<sup>4</sup> Section 2 entitled "*Sentences excluded from rehabilitation*", states at subsection (b), that a sentence of custody for a term exceeding 30 months is specifically excluded from rehabilitation, the other two sentences excluded by subsections (a) and (c) of section 2 respectively, are custody for life, and detention during Her Majesty's pleasure.

It is proposed to rectify this situation within new primary legislation by providing both for the rehabilitation of sentences over 30 months, and that cautions may become 'spent cautions', these two matters will then be aligned with the relevant rehabilitation periods found within the UK Act. The Department intends to introduce these changes through a Bill in the House of Keys in 2019.

## **5. Next steps**

Following this consultation exercise, any comments arising in response to the proposed changes will be considered and amendments incorporated into the Order where appropriate. It is then intended to submit the Order to the October 2019 sitting of Tynwald.

Statutory Document No. 20XX/XXXX

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*Rehabilitation of Offenders Act 2001*

## REHABILITATION OF OFFENDERS ACT 2001 (AMENDMENT) ORDER 2019

*Approved by Tynwald:* XXXX  
*Coming into Operation:* XXXX

The Department of Home Affairs makes the following Order under section 7(2) of the Rehabilitation of Offenders Act 2001.

### 1 Title

This Order is the Rehabilitation of Offenders Act 2001 (Amendment) Order 2019.

### 2 Commencement

If approved by Tynwald, this Order comes into operation on XXXX.<sup>1</sup>

### 3 Interpretation

In this Order “the Act” means the Rehabilitation of Offenders Act 2001.

### 4 Amendment of the Act

- (1) Part 2 (Rehabilitation Periods for Particular Sentences) of Schedule 1 to the Act is amended as follows.
- (2) For paragraph 7 substitute —

For the purposes of this Act the rehabilitation period for a sentence is the period beginning with the date of the conviction in which the sentence is imposed and ending at the time listed in the following Table in relation to that sentence —

- (a) the rehabilitation period applicable to a sentence specified in column 1 of the Table for a person aged 18 or over at the

<sup>1</sup> Tynwald approval is required further to section 10(2) of the Rehabilitation of Offenders Act 2001.

- date of his or her conviction is the period specified in column 2 of the Table in relation to that sentence;
- (b) where the sentence was imposed on a person who was under 18 years of age at the date of his or her conviction, the rehabilitation period applicable to a sentence specified in column 1 of the Table is the period specified in column 3 of the Table in relation to that sentence. **22**
- (3) For the Table in paragraph 7, substitute the Table set out in the Schedule to this Order.

**MADE**

**W. M. MALARKEY**  
*Minister for Home Affairs*

## SCHEDULE

## [ARTICLE 4(3)]

## TABLE

Sentence	Rehabilitation Period offenders aged 18 or over	Rehabilitation period offenders under 18 years of age
A custodial sentence of over 6 months but not exceeding 30 months	48 months from the date on which the sentence (including any licence period) is completed	24 months from the date on which the sentence (including any licence period) is completed
A custodial sentence of up to 6 months	24 months from the date on which the sentence (including any licence period) is completed	18 months from the date on which the sentence (including any licence period) is completed
Fine	12 months from the date of the conviction in respect of which the fine was imposed	6 months from the date of the conviction in respect of which the fine was imposed
Community order	12 months from the last day on which the order has effect	6 months from the last day on which the order has effect
Compensation order	On discharge of the order (i.e. when it is paid in full)	On discharge of the order (i.e. when it is paid in full)

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*EXPLANATORY NOTE**(This note is not part of the Order)*

The Rehabilitation of Offenders Act 2001 (the 2001 Act) aims to support rehabilitation of the offenders by providing specific periods - subject to sentence passed - after which convictions become “spent” and an individual is regarded as rehabilitated.

Sentences excluded from these provisions and where rehabilitation for the purposes of the 2001 Act is not possible, include custodial sentences for life and those of over 30 months. In such cases, convictions are never spent and an individual is not rehabilitated for the purposes of the 2001 Act.





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