Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Rehabilitation of Offenders (Northern Ireland) Order 1978. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

1978 No. 1908 (N.I. 27)

Rehabilitation of Offenders (Northern Ireland) Order 1978

[20th December 1978]

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Modifications etc. (not altering text)

C1 Order modified by Road Traffic Offenders (Northern Ireland) Order 1996 (S.I. 1996/1320 (N.I. 10)), art. 64A (as inserted (14.12.2010) by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3)(5), 39(6), **Sch. 4 para. 16**); S.R. 2010/370, **art. 2(2)**, Sch. Pt. II

C2 Order modified by Road Traffic Offenders (Northern Ireland) Order 1996 (S.I. 1996/1320 (N.I. 10)), art. 82A(7) (as inserted (14.12.2010) by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3)(5), 39(6), **Sch. 4 para. 24**); S.R. 2010/370, **art. 2(2)**, Sch. Pt. II

C3 Order: functions transferred from Secretary of State to Department of Justice (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 4(1)(2), **Sch. 1** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

Title and commencement

1. This Order may be cited as the Rehabilitation of Offenders (Northern Ireland) Order 1978 … *Commencement …*

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

"government department" includes a department of the Government of the United Kingdom;

"sentence" includes any order made by a court in dealing with a person in respect of his conviction of any offence or offences other than—

(a) an order for committal or any other 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;

(b) an order dealing with a person in respect of a suspended sentence of imprisonment;

"service disciplinary proceedings" means any of the following—

(za) **[**[F1]any proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006 (except proceedings before a civilian court within the meaning of that Act);**]**

(a) any proceedings under the Army Act 1955 , the Air Force Act 1955 , or the Naval Discipline Act 1957 (whether before a court-martial or before any other court or person authorised thereunder to award a punishment in respect of any offence);

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

(c) any proceedings before a Standing Civilian Court established under the Armed Forces Act 1976 ;

(d) any proceedings under any corresponding enactment or law applying to a force, other than a home force, to which section 4 of the Visiting Forces (British Commonwealth) Act 1933 applies or applied at the time of the proceedings, being proceedings in respect of a member of a home force who is or was at that time attached to the first-mentioned force under that section;

whether in any event those proceedings take place in Northern Ireland or elsewhere;

"statutory provision" has the meaning assigned to it by section 1(*f*) of the Interpretation Act (Northern Ireland) 1954.

(3) In this Order references to a conviction include references—

(a) to a conviction by or before a court outside Northern Ireland; 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;

and[F2]. . . a conviction in respect of which an order is made placing the person convicted on probation or discharging him absolutely or conditionally shall be treated as a conviction for the purposes of this Order and the person in question may become a rehabilitated person in respect of that conviction and the conviction a spent conviction for those purposes accordingly.

[[F3](3A) This Order does not apply to any disregarded conviction or caution within the meaning of Chapter 5 of Part 5 of the Protection of Freedoms Act 2012.

(3B) Accordingly, references in this Order to a conviction or caution do not include references to any such disregarded conviction or caution.**]**

(4) Any reference in this Order to an enactment of the Parliament of the United Kingdom is a reference to it as re-enacted with or without modification.

F1 Art. 2(2): paragraph (za) in definition of "service disciplinary proceedings" inserted (28.3.2009 for certain purposes, otherwise 31.10.2009) by Armed Forces Act 2006 (c. 52), ss. 378(1), 383(2), **Sch. 16 para. 84** (with savings by Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059), **Sch. 1 para. 17**); S.I. 2009/812, **art. 3(a)(b)**; S.I. 2009/1167, **art. 4**

F2 1996 NI 24

F3 Art. 2(3A)(3B) inserted (31.1.2017 for specified purposes, 28.6.2018) by Policing and Crime Act 2017 (c. 3), **ss. 168(2)**, 183(4), (5)(e); S.R. 2018/128, art. 2(a)

Rehabilitated persons and spent convictions

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

(a) he did not have imposed on him in respect of that conviction a sentence which is excluded from rehabilitation under this Order; and

(b) he has not had imposed on him in respect of a subsequent conviction during the rehabilitation period applicable to the first-mentioned conviction in accordance with Article 7 a sentence which is excluded from rehabilitation under this Order;

then, after the end of the rehabilitation period so applicable (including, where appropriate, any extension under Article 7(4) of the period originally applicable to the first-mentioned conviction) or, where that rehabilitation period ended before the commencement of this Article, after the commencement of this Article, that individual shall for the purposes of this Order 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) A person shall not become a rehabilitated person for the purposes of this Order 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 the following shall not, by virtue of this paragraph, prevent a person from becoming a rehabilitated person for those purposes—

(a) 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 recognizance to keep the peace or to be of good behaviour or to keep the peace and be of good behaviour;

(b) 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, or, where the sentence was 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 so dealt with).

[[F4](2A) In paragraph (2)(a) the reference to a fine or other sum adjudged to be paid by or imposed on a conviction does not include a reference to an amount payable under a confiscation order made under Part 4 of the Proceeds of Crime Act 2002.**]**

F4 2002 c. 29

Rehabilitation of persons dealt with in service disciplinary proceedings

4.—(1) [F5]. . . For the purposes of this Order any finding that a person is guilty of an offence in respect of any act 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 1955 or to the Air Force Act 1955 or Schedule 4A to the Naval Discipline Act 1957 in respect of any such finding shall be treated as a sentence.

[[F6](1A) Section 376(1) to (3) of the Armed Forces Act 2006 ("conviction" and "sentence" in relation to summary hearings and the SAC) apply for the purposes of this Order as they apply for the purposes of that Act.**]**

Paras. (2)#(4) rep. by 1996 c. 46

Para. (5) amends sch. 5A to 1955 c. 18 (3 & 4 Eliz.2); sch. 5A to 1955 c. 19 (3 & 4 Eliz.2); sch. 4A to 1957 c. 53

F5 1996 c. 46

F6 Art. 4(1A) inserted (28.3.2009 for certain purposes, otherwise 31.10.2009) by Armed Forces Act 2006 (c. 52), ss. 378(1), 383(2), **Sch. 16 para. 85** (with savings by Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059), **Sch. 1 para. 17**); S.I. 2009/812, **art. 3(a)(b)**; S.I. 2009/1167, **art. 4**

Effect of rehabilitation

5.—(1) Subject to Articles 8 and 9, a person who has become a rehabilitated person for the purposes of this Order 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 or offences which were the subject of that conviction; and, notwithstanding the provisions of any other statutory provision or rule of law to the contrary, but subject as aforesaid—

(a) no evidence shall be admissible in any proceedings before a judicial authority exercising its functions in Northern Ireland 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 spent convictions or any circumstances ancillary thereto.

(2 [F7] Subject to the provisions of any order made under paragraph (4), where a question seeking information with respect to a person's previous convictions, offences, conduct or circumstances is put to him or to any 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 the provisions of any order made under paragraph (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 own or another's); and

(b [F7] 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 Secretary of State may by order—

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

(b) provide for such exceptions from the provisions of paragraph (3) as seem to him appropriate, in such cases and in relation to convictions of such description, as may be specified in the order.

(5) For the purposes of this Article and Article 8 any of the following are circumstances ancillary to a conviction, that is to say—

(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 in pursuance of or undergone in compliance with any such sentence.

(6) For the purposes of this Article and Article 8 "proceedings before a judicial authority" includes, in addition to proceedings before any of the ordinary courts of law, proceedings before any tribunal, body or person having power—

(a) by virtue of any statutory provision, 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.

F7 1979 c.37

Rehabilitation periods for particular sentences

6.—(1) The sentences excluded from rehabilitation under this Order are—

(a) a sentence of imprisonment for life;

(b) a sentence of imprisonment or corrective training for a term exceeding thirty months;

(c) a sentence of preventive detention; F8. . .

(d) a sentence of detention during the pleasure of the **[**F9Minister in charge of the Department of Justice**]** or for life, or for a term exceeding thirty months, passed under**[**F10 Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (children**]** convicted of grave crimes) F11. . . ;

[F12(e) an indeterminate custodial sentence imposed under Article 13 of the Criminal Justice (Northern Ireland) Order 2008 or an extended custodial sentence imposed under Article 14 of that Order ,**]**

[F13(e) a sentence of detention for life, or for a term exceeding thirty months, passed under section 209 of the Armed Forces Act 2006;

(f) a sentence of detention during Her Majesty's pleasure under section 218 of that Act; and

(g) any of the following passed as a result of any of sections 219 to 222 of that Act—

(i) a sentence of imprisonment for public protection under section 225 of the Criminal Justice Act 2003;

(ii) a sentence of detention for public protection under section 226 of that Act;

(iii) an extended sentence under section **[**F14226A, 226B,**]** 227 or 228 of that Act;**]**

and any other sentence is a sentence subject to rehabilitation under this Order.

(2) For the purposes of this Order—

(a) the rehabilitation period applicable to a sentence specified in the first column of Table A below is the period specified in the second column of that Table in relation to that sentence, or, where the sentence was imposed on a person who was under**[**F15 eighteen**]** years of age at the date of his conviction, half that period; and

(b) the rehabilitation period applicable to a sentence specified in the first column of Table B below is the period specified in the second column of that Table in relation to that sentence;

reckoned in either case from the date of the conviction in respect of which the sentence was imposed.