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## STATUTORY INSTRUMENTS

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# 1978 No. 1908 (N.I. 27)

## Rehabilitation of Offenders (Northern Ireland) Order 1978

[20th December  
1978]

### 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—

- (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);

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- (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<sup>F1</sup> . . . 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.

(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** [1996 NI 24](#)

### **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—

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- (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).

[<sup>F2</sup>(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.]

F2 2002 c. 29

### Rehabilitation of persons dealt with in service disciplinary proceedings

4.—(1) <sup>F3</sup> . . . 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.

*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*

F3 1996 c. 46

### 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) <sup>F4</sup> 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

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- (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) <sup>F4</sup> 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.

**F4** [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; and

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- (d) a sentence of detention during the pleasure of the Secretary of State or the Governor or for life, or for a term exceeding thirty months, passed under<sup>[F5]</sup> Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (children] convicted of grave crimes) or a corresponding court-martial punishment;
- <sup>[F6]</sup>(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 ,]
- 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<sup>[F7]</sup> 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.

**TABLE A**

**Rehabilitation periods (subject to reduction by half for persons under<sup>[F7]</sup> 18]).**

<b>Sentence</b>	<b>Rehabilitation period</b>
A sentence of imprisonment or corrective training for a term exceeding six months but not exceeding thirty months.	Ten years
A sentence of cashiering, discharge with ignominy or dismissal with disgrace from Her Majesty's service.	Ten years
A sentence of imprisonment for a term not exceeding six months.	Seven years
A sentence of dismissal from Her Majesty's service.	Seven years
Any sentence of detention in respect of a conviction in service disciplinary proceedings.	Five years
A fine or any other sentence subject to rehabilitation under this Order, not being a sentence to which Table B or any of paragraphs (3) to (8) applies.	Five years

**TABLE B**

**Rehabilitation periods for certain sentences confined to young offenders.**

<b>Sentence</b>	<b>Rehabilitation period</b>
A sentence of Borstal training.	Seven years

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A custodial order under Schedule 5A to the Army Act 1955 or the Air Force Act 1955 or under Schedule 4A to the Naval Discipline Act 1957 where the maximum period of detention specified in the order is more than six months.	Seven years
[ <sup>F8</sup> A custodial order under section 71AA of the Army Act 1955 or the Air Force Act 1955, or under section 43AA of the Naval Discipline Act 1957, where the maximum period of detention specified in the order is more than six months.]	[ <sup>F8</sup> Seven years]
A sentence of detention for a term exceeding six months but not exceeding thirty months passed under [ <sup>F5</sup> Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998].	Five years
A sentence of detention for a term not exceeding six months passed under [ <sup>F5</sup> that Article 45].	Three years
A custodial order under any of the Schedules to the said Acts of 1955 and 1957, where the maximum period of detention specified in the order is six months or less.	Three years
[ <sup>F8</sup> A custodial order under section 71AA of the said Acts of 1955, or section 43AA of the said Act of 1957, where the maximum period of detention specified in the order is six months or less.]	[ <sup>F8</sup> Three years]

(3) The rehabilitation period applicable to an order discharging a person absolutely for an offence shall be six months from the date of conviction.

(4) Where in respect of a conviction a person was conditionally discharged, bound over to keep the peace or to be of good behaviour or to keep the peace and be of good behaviour, or placed on probation, the rehabilitation period applicable to the sentence shall be one year from the date of conviction or a period beginning with that date and ending when the order for conditional discharge or probation order or (as the case may be) the recognizance to keep the peace or to be of good behaviour or to keep the peace and be of good behaviour ceases or ceased to have effect, whichever is the longer.

(5) Where in respect of a conviction any of the following sentences was imposed, that is to say—  
*Sub#paras. (a), (b) rep. by 1998 NI 9*

(c) a community supervision order under Schedule 5A to the Army Act 1955 or the Air Force Act 1955 or under Schedule 4A to the Naval Discipline Act 1957;  
*Sub#para. (d) rep. by 1991 c. 62*

the rehabilitation period applicable to the sentence shall be one year from the date of conviction or a period beginning with that date and ending when the order or requirement ceases or ceased to have effect, whichever is the longer.

(6) Where in respect of a conviction any of the following orders was made, that is to say—  
*Sub-para. (a) rep. by 1998 NI 9*

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[<sup>F5</sup>(b) a juvenile justice centre order under Article 39 of the Criminal Justice (Children) (Northern Ireland) Order 1998;

(c) an attendance centre order under Article 37 of that Order of 1998.]

the rehabilitation period applicable to the sentence shall be a period beginning with the date of conviction and ending one year after the date on which the order ceases or ceased to have effect.

(7) Where in respect of a conviction a hospital order under Part III of the Mental Health [<sup>F9</sup> (Northern Ireland) Order 1986 (with or without a restriction order)] was made, the rehabilitation period applicable to the sentence shall be the period of five years from the date of conviction or a period beginning with that date and ending two years after the date on which the hospital order ceases or ceased to have effect, whichever is the longer.

(8) Where in respect of a conviction an order was made imposing on the person convicted any disqualification, disability, prohibition or other penalty, the rehabilitation period applicable to the sentence shall be a period beginning with the date of conviction and ending on the date on which the disqualification, disability, prohibition or penalty (as the case may be) ceases or ceased to have effect.

(9) For the purposes of this Article—

(a) “corresponding court-martial punishment” means a punishment awarded under section 71A(3) or (4) of the Army Act 1955, section 71A(3) or (4) of the Air Force Act 1955 or section 43A(3) or (4) of the Naval Discipline Act 1957;

(b) “sentence of imprisonment” includes an order for detention in a young offenders centre and a sentence of penal servitude, and “term of imprisonment” shall be construed accordingly;

(c) consecutive terms of imprisonment or of detention under [<sup>F5</sup> Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998] and terms which are wholly or partly concurrent (being terms of imprisonment or detention imposed in respect of offences of which a person was convicted in the same proceedings) shall be treated as a single term;

(d) no account shall be taken of any subsequent variation, made by a court in dealing with a person in respect of a suspended sentence of imprisonment, of the term originally imposed; and

(e) a sentence imposed by a court outside Northern Ireland shall be treated as a sentence of that one of the descriptions mentioned in this Article which most nearly corresponds to the sentence imposed.

(10) References in this Article to the period during which a probation order<sup>F5</sup> . . . is or was in force include references to any period during which any order to which this paragraph applies, being an order made or imposed directly or indirectly in substitution for the first-mentioned order, is or was in force.

(11) Paragraph (10) applies—

(a) to any such order as is mentioned in that paragraph;

(b) to any order having effect under section 25(1) of the Children and Young Persons Act 1969 as if it were a [<sup>F10</sup> supervision order imposing a residence requirement as mentioned in section 12AA of that Act]; and

(c) to any order having effect for the purposes of section 73(1) of the Social Work (Scotland) Act 1968.

(12) The reference in paragraph (5) to the period during which a reception order has effect includes a reference to any subsequent period during which by virtue of an order under section 25(1) of the Children and Young Persons Act 1969 or for the purposes of section 73(1) of the Social Work (Scotland) Act 1968, that Act of 1969 or, as the case may be, that Act of 1968 has effect in relation to the person in respect of whom the reception order was made and paragraph (10) shall accordingly have effect in relation to any subsequent period.

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(13) The Secretary of State may by order—

- (a) substitute different periods or terms for any of the periods or terms mentioned in paragraphs (1) to (8); and
- (b) substitute a different age for the age mentioned in paragraph (2)(a);

but no order shall be made under this paragraph unless a draft of it has been laid before, and approved by resolution of, each House of Parliament.

<b>F5</b>	1998 NI 9
<b>F6</b>	Art. 6(1)(e) added (15.5.2008) by virtue of <a href="#">Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1))</a> , arts. 1(4), 102(1), <b>Sch. 5 para. 3</b> ; S.R. 2008/217, <b>art. 2</b> , Sch. paras. 16, 18(a) (with art. 3)
<b>F7</b>	2002 c.26
<b>F8</b>	1981 c. 55
<b>F9</b>	1986 NI 4
<b>F10</b>	1995 NI 2

### **The rehabilitation period applicable to a conviction**

7.—(1) Where only one sentence is imposed in respect of a conviction (not being a sentence excluded from rehabilitation under this Order) the rehabilitation period applicable to the conviction is, subject to the following provisions of this Article, the period applicable to the sentence in accordance with Article 6.

(2) Where more than one sentence is imposed in respect of a conviction (whether or not in the same proceedings) and none of the sentences imposed is excluded from rehabilitation under this Order, then, subject to the following provisions of this Article, if the periods applicable to those sentences in accordance with Article 6 differ, the rehabilitation period applicable to the conviction shall be the longer or the longest (as the case may be) of those periods.

(3) Without prejudice to paragraph (2), where in respect of a conviction a person was conditionally discharged or placed on probation and after the end of the rehabilitation period applicable to the conviction in accordance with paragraph (1) or (2) he is dealt with, in consequence of a breach of conditional discharge or probation, for the offence for which the order for conditional discharge or probation order was made, then, if the rehabilitation period applicable to the conviction in accordance with paragraph (2) (taking into account any sentence imposed when he is so dealt with) ends later than the rehabilitation period previously applicable to the conviction, he shall be treated for the purposes of this Order as not having become a rehabilitated person in respect of that conviction, and the conviction shall for those purposes be treated as not having become spent, in relation to any period falling before the end of the new rehabilitation period.

- (4) Subject to paragraph (5), where during the rehabilitation period applicable to a conviction—
- (a) the person convicted is convicted of a further offence; and
  - (b) no sentence excluded from rehabilitation under this Order is imposed on him in respect of the later conviction;

if the rehabilitation period applicable in accordance with this Article 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 paragraph) end the earlier shall be extended so as to end at the same time as the other rehabilitation period.

(5) Where the rehabilitation period applicable to a conviction is the rehabilitation period applicable in accordance with Article 6(8) to an order imposing on a person any disqualification, disability, prohibition or other penalty, the rehabilitation period applicable to another conviction shall not by virtue of paragraph (4) be extended by reference to that period; but if any other sentence is

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imposed in respect of the first-mentioned conviction for which a rehabilitation period is prescribed by any other provision of Article 6, the rehabilitation period applicable to another conviction shall, where appropriate, be extended under paragraph (4) by reference to the rehabilitation period applicable in accordance with that Article to that sentence or, where more than one such sentence is imposed, by reference to the longer or longest of the periods so applicable to those sentences, as if the period in question were the rehabilitation period applicable to the first-mentioned conviction.

- (6) <sup>F11</sup> . . . , for the purposes of paragraph (4)( a) there shall be disregarded—
- (a) any conviction in Northern Ireland of an offence which is not triable on indictment;
  - (b) any conviction by or before a court outside Northern Ireland of an offence in respect of conduct which, if it had taken place in Northern Ireland, would not have constituted an offence under the law in force in Northern Ireland.

[<sup>F11</sup>(bb) any conviction in service disciplinary proceedings for an offence listed in the Schedule;]  
Para. (7) rep. by 1996 c. 46

**F11** 1996 c. 46

#### **Limitations on rehabilitation under this Order, etc.**

8.—(1) Nothing in Article 5(1) shall affect—

- (a) the enforcement by any process or proceedings of any fine or other sum adjudged to be paid by or imposed on a spent conviction;
- (b) 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
- (c) the operation of any statutory provision 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 Article 7 to the conviction.

(2) Nothing in Article 5(1) 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 in Northern Ireland (including any appeal or reference in a criminal matter);
- (b) in any service disciplinary proceedings or in any proceedings on appeal from any service disciplinary proceedings;
- [<sup>F12</sup>(bb) in any proceedings under Part 2 of the Sexual Offences Act 2003, or on appeal from any such proceedings;]
- [<sup>F13</sup>(c) in any proceedings relating to adoption, the marriage, [<sup>F14</sup> civil partnership,] of any minor, the exercise of the inherent jurisdiction of the High Court with respect to minors or the provision by any person of accommodation, care or schooling for minors;
- (cc) in any proceedings brought under the Children (Northern Ireland) Order 1995;]
- (d) in any proceedings relating to the variation or discharge of a supervision order under the Children and Young Persons Act (Northern Ireland) 1968 ;
- (e) in any proceedings in which he is a party or a 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 Article 5(1); [<sup>F15</sup> or,

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*Sub#para. (f) rep. by 1987 c. 22*

(3) If at any stage in any proceedings before a judicial authority in Northern Ireland (not being proceedings to which, by virtue of paragraph (2) or of any order for the time being in force under paragraph (4), Article 5(1) has no application, or proceedings to which Article 9 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 paragraph (1) of Article 5, and may determine any issue to which the evidence relates in disregard, so far as necessary, of those provisions.

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

(5) 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.

**F12** 2003 c. 42  
**F13** 1995 NI 2  
**F14** 2004 c.33  
**F15** 1979 c.37

## **Defamation actions**

**9.—(1)** This Article applies to any action for libel or slander begun after the commencement of this Article 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.

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

(3) Subject to paragraphs (5) and (6), nothing in Article 5(1) shall prevent the defendant in an action to which this Article 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 paragraph (3), where in any such action malice is alleged against a defendant who is relying on a defence of qualified privilege, nothing in Article 5(1) shall restrict the matters he may establish in rebuttal of the allegation.

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

(6) Subject to paragraph (7) a defendant in any such action shall not, by virtue of paragraph (3), be entitled to rely on any matter or adduce or require any evidence for the purpose of establishing (whether under<sup>F16</sup> section 14 of the Defamation Act 1996] or otherwise) 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 Article 5(1).

(7) Paragraph (3) shall apply without the qualifications imposed by paragraph (6) in relation to—

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- (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.

**F16** 1996 c. 31

### Unauthorised disclosure of spent convictions

#### 10.—(1) In this Article—

“official record” means a record kept for the purposes of its functions by any court, police force, Government department, or public authority in Northern Ireland, or a record kept, in Northern Ireland or elsewhere, for the purposes of any of Her Majesty's forces, being in either case a record containing information about persons convicted of offences; and

“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.

(2) Subject to the provisions of any order made under paragraph (5), 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, shall be guilty of an offence if, knowing or having reasonable cause to suspect that any specified information 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.

(3) In any proceedings for an offence under paragraph (2) it shall be a defence for the defendant 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.

(4) Any person who obtains any specified information from any official record by means of any fraud, dishonesty or bribe shall be guilty of an offence.

(5) The Secretary of State may by order make such provisions as appears to him to be appropriate for excepting the disclosure of specified information derived from an official record from the provisions of paragraph (2) in such cases as may be specified in the order.

(6) Any person guilty of an offence under paragraph (2) shall be liable on summary conviction to a fine not exceeding<sup>F17</sup> level 4 on the standard scale].

(7) Any person guilty of an offence under paragraph (4) shall be liable on summary conviction to a fine not exceeding<sup>F17</sup> level 5 on the standard scale] or to imprisonment for a term not exceeding six months, or to both.

(8) Proceedings for an offence under paragraph (2) shall not be instituted except by or on behalf of the Director of Public Prosecutions for Northern Ireland.

**F17** 1984 NI 3

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## Orders

**11.** Orders made under this Order by the Secretary of State (except an order made under Article 1 or 6(13)) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

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## [<sup>F18</sup>SCHEDULE

### [<sup>F19</sup>Article 7]: SERVICE DISCIPLINARY CONVICTIONS]

**F18** 1996 c. 46

**F19** 1996 c. 46

1. Any conviction for an offence mentioned in this Schedule is a conviction referred to in [<sup>F20</sup> Article 7(6)(bb) (convictions to be disregarded for the purposes of extending a period of rehabilitation following subsequent conviction).]

**F20** 1996 c. 46

#### *Provisions of the Army Act 1955 and the Air Force Act 1955*

2. Any offence under any of the provisions of the Army Act 1955 or the Air Force Act 1955 listed in the first column of the following table:—

[ <sup>F21</sup> Provision]	[ <sup>F21</sup> Subject#matter]
[ <sup>F21</sup> Section 29]	[ <sup>F21</sup> Offences by or in relation to sentries, persons on watch etc.]
[ <sup>F21</sup> Section 29A]	[ <sup>F21</sup> Failure to attend for duty, neglect of duty etc.]
[ <sup>F21</sup> Section 33]	[ <sup>F21</sup> Insubordinate behaviour.]
[ <sup>F21</sup> Section 34]	[ <sup>F21</sup> Disobedience to lawful commands.]
[ <sup>F21</sup> Section 34A]	[ <sup>F21</sup> Failure to provide a sample for drug testing.]
[ <sup>F21</sup> Section 35]	[ <sup>F21</sup> Obstruction of provost officers.]
[ <sup>F21</sup> Section 36]	[ <sup>F21</sup> Disobedience to standing orders.]
[ <sup>F21</sup> Section 38]	[ <sup>F21</sup> Absence without leave.]
[ <sup>F21</sup> Section 39]	[ <sup>F21</sup> Failure to report or apprehend deserters or absentees.]
[ <sup>F21</sup> Section 42]	[ <sup>F21</sup> Malingering.]
[ <sup>F21</sup> Section 43]	[ <sup>F21</sup> Drunkenness.]
[ <sup>F21</sup> Section 43A]	[ <sup>F21</sup> Fighting, threatening words etc.]
[ <sup>F21</sup> Section 44]	[ <sup>F21</sup> Damage to, and loss of, public or service property etc.]
[ <sup>F21</sup> Section 44A]	[ <sup>F21</sup> Damage to, and loss of, Her Majesty's aircraft or aircraft material.]

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[ <sup>F21</sup> Section 44B]	[ <sup>F21</sup> Interference etc. with equipment, messages or signals.]
[ <sup>F21</sup> Section 45]	[ <sup>F21</sup> Misapplication and waste of public or service property.]
[ <sup>F21</sup> Section 46]	[ <sup>F21</sup> Offences relating to issues and decorations.]
[ <sup>F21</sup> Section 47]	[ <sup>F21</sup> Billeting offences.]
[ <sup>F21</sup> Section 48]	[ <sup>F21</sup> Offences in relation to requisitioning of vehicles.]
[ <sup>F21</sup> Section 50]	[ <sup>F21</sup> Inaccurate certification.]
[ <sup>F21</sup> Section 51]	[ <sup>F21</sup> Low flying.]
[ <sup>F21</sup> Section 52]	[ <sup>F21</sup> Annoyance by flying.]
[ <sup>F21</sup> Section 54]	[ <sup>F21</sup> Permitting escape, and unlawful release of prisoners.]
[ <sup>F21</sup> Section 55]	[ <sup>F21</sup> Resistance to arrest.]
[ <sup>F21</sup> Section 56]	[ <sup>F21</sup> Escape from confinement.]
[ <sup>F21</sup> Section 57]	[ <sup>F21</sup> Offences in relation to courts#martial.]
[ <sup>F21</sup> Section 61]	[ <sup>F21</sup> Making of false statements on enlistment.]
[ <sup>F21</sup> Section 62]	[ <sup>F21</sup> Making of false documents.]
[ <sup>F21</sup> Section 63]	[ <sup>F21</sup> Offences against civilian population.]
[ <sup>F21</sup> Section 69]	[ <sup>F21</sup> Conduct to prejudice of military discipline or air#force discipline.]

**F21** 1996 c. 46

3. Any offence under section 68 (attempt to commit military offence) or 68A (aiding and abetting etc., and inciting, military offence) of the Army Act 1955 in relation to an offence under any of the provisions of that Act listed in paragraph 2.

4. Any offence under section 68 (attempt to commit air-force offence) or 68A (aiding and abetting etc., and inciting, air-force offence) of the Air Force Act 1955 in relation to an offence under any of the provisions of that Act listed in paragraph 2.

*Provisions of the Naval Discipline Act 1957*

5. Any offence under any of the provisions of the Naval Discipline Act 1957 listed in the first column of the following table:—

[ <sup>F22</sup> Provision]	[ <sup>F22</sup> Subject#matter]
[ <sup>F22</sup> Section 6]	[ <sup>F22</sup> Offences by or in relation to sentries, persons on watch etc.]

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[ <sup>F22</sup> Section 7]	[ <sup>F22</sup> Failure to attend for duty, neglect of duty etc.]
[ <sup>F22</sup> Section 11]	[ <sup>F22</sup> Insubordinate behaviour.]
[ <sup>F22</sup> Section 12]	[ <sup>F22</sup> Disobedience to lawful commands.]
[ <sup>F22</sup> Section 12A]	[ <sup>F22</sup> Failure to provide a sample for drug testing.]
[ <sup>F22</sup> Section 13]	[ <sup>F22</sup> Fighting, threatening words etc.]
[ <sup>F22</sup> Section 14]	[ <sup>F22</sup> Obstruction of provost officers.]
[ <sup>F22</sup> Section 14A]	[ <sup>F22</sup> Disobedience to standing orders.]
[ <sup>F22</sup> Section 17]	[ <sup>F22</sup> Absence without leave etc.]
[ <sup>F22</sup> Section 18]	[ <sup>F22</sup> Failure to report deserters and absentees.]
[ <sup>F22</sup> Section 21]	[ <sup>F22</sup> Low flying.]
[ <sup>F22</sup> Section 22]	[ <sup>F22</sup> Annoyance by flying.]
[ <sup>F22</sup> Section 25]	[ <sup>F22</sup> Inaccurate certification.]
[ <sup>F22</sup> Section 27]	[ <sup>F22</sup> Malingering.]
[ <sup>F22</sup> Section 28]	[ <sup>F22</sup> Drunkenness.]
[ <sup>F22</sup> Section 29]	[ <sup>F22</sup> Damage to, and loss of, public or service property etc.]
[ <sup>F22</sup> Section 29A]	[ <sup>F22</sup> Damage to, and loss of, Her Majesty's aircraft or aircraft material.]
[ <sup>F22</sup> Section 29B]	[ <sup>F22</sup> Interference etc. with equipment, messages or signals.]
[ <sup>F22</sup> Section 30]	[ <sup>F22</sup> Misapplication and waste of public or service property.]
[ <sup>F22</sup> Section 31]	[ <sup>F22</sup> Offences relating to issues and decorations.]
[ <sup>F22</sup> Section 32]	[ <sup>F22</sup> Billeting offences.]
[ <sup>F22</sup> Section 33]	[ <sup>F22</sup> Offences in relation to the requisitioning of vehicles etc.]
[ <sup>F22</sup> Section 33A]	[ <sup>F22</sup> Permitting escape, and unlawful release of prisoners.]
[ <sup>F22</sup> Section 33B]	[ <sup>F22</sup> Resistance to arrest.]
[ <sup>F22</sup> Section 33C]	[ <sup>F22</sup> Escape from confinement.]
[ <sup>F22</sup> Section 34A]	[ <sup>F22</sup> False statements on entry.]
[ <sup>F22</sup> Section 35]	[ <sup>F22</sup> Falsification of documents.]
[ <sup>F22</sup> Section 35A]	[ <sup>F22</sup> Offences against civilian population.]

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[<sup>F22</sup>Section 38]

[<sup>F22</sup>Offences in relation to courts-martial.]

[<sup>F22</sup>Section 39]

[<sup>F22</sup>Conduct to the prejudice of naval discipline.]

**F22** 1996 c. 46

6. Any offence under section 40 (attempt to commit naval offence) or 41 (aiding and abetting etc., and inciting, naval offence) of the Naval Discipline Act 1957 in relation to an offence under any of the provisions of that Act listed in paragraph 5.

VALID FROM 28/03/2009

*[<sup>F23</sup>Provisions of the Armed Forces Act 2006*

**F23** Sch. para. 7 and cross-heading added (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. 87** (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**

7 Any service offence within the meaning of the Armed Forces Act 2006 except one punishable in the case of an offender aged 18 or over with imprisonment for more than two years.]

**Status:**

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