

Seychelles

## Rehabilitation of Offenders Act Act 2 of 1996

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# Seychelles

## Rehabilitation of Offenders Act

Act 2 of 1996

Commenced on 1 June 2001

*[This is the version of this document at 30 June 2012 and includes any amendments published up to 30 June 2014.]*

### 1. Short title and commencement

This Act may be cited as the Rehabilitation of Offenders Act

### 2. Interpretation

In this Act—

"**conviction**" includes—

- (i) a conviction by or before a court outside Seychelles in respect of a conduct which if it had taken place in Seychelles would constitute an offence under a written law in Seychelles;
- (ii) a finding at a Children's Hearing under the Children Act that a child has committed an offence;
- (iii) a finding by a court-martial under the Defence Force (Offences) Act that an individual has committed a serious offence;
- (iv) a finding in criminal proceeding that a person has committed an offence;

"**excluded sentence**" means a sentence referred to in Part I of the Schedule;

"**person**" means an individual;

"**rehabilitated person**" a person who has been rehabilitated in terms of [section 3](#);

"**rehabilitation period**" means the rehabilitation period referred to in [section 4](#);

"**sentence**" includes an order by a court or other body in respect of a conviction for an offence and a finding by a Children Hearing under the Children Act that a child has committed an offence but does not include—

- (i) an order made in default of payment of a fine or other sum adjudged to be paid or imposed on a conviction;
- (ii) an order dealing with a person in respect of a suspended sentence of imprisonment,

and a sentence imposed by a court outside Seychelles shall be treated as a sentence mentioned in this Act which most nearly corresponds to the sentence imposed;

"**spent conviction**" means a conviction in respect of which an individual has been rehabilitated in terms of [section 3](#).

### 3. Spent conviction and rehabilitation

- (1) Subject to subsection (2), where a person has been convicted of an offence, whether before or after the commencement of this Act and—
  - (a) the sentence imposed in respect of the conviction is not an excluded sentence;
  - (b) during the period of rehabilitation relating to the conviction there has not been imposed on the person in respect of a subsequent conviction an excluded sentence;

- (c) the person has served the first-mentioned sentence, the first-mentioned conviction shall, after the end of the period of rehabilitation, be treated as spent and the person shall be treated as having been rehabilitated in respect of the conviction.
- (2) A person shall not be treated as not having served a sentence if the person—
- (a) fails to pay a fine or other sum, not being a sum or amount referred to in subsection (3), adjudged to be paid or imposed on a conviction or breach of a condition of a recognizance or of a bond of caution to keep the peace or be of good behaviour;
  - (b) breach of a 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.
- (3) Subsection (2)(a) shall not apply to an amount ordered by the court under the Misuse of Drugs Act to be recovered as benefit from drug trafficking or under section 153B of the Criminal Procedure Code as proceed of an offence.

#### 4. Rehabilitation period

- (1) The rehabilitation period for a conviction starts from the date of the conviction and is calculated on the basis of the rehabilitation period for the sentence imposed in respect of the conviction.
- (2) Part II of the Schedule applies for the purpose of specifying the rehabilitation period applicable to a sentence and the entry in the first column of the Part specifies the sentence and the corresponding entry in the second column specifies the rehabilitation period applicable to the sentence.
- (3) Where there is one sentence imposed in respect of a conviction the rehabilitation period applicable to the conviction is the rehabilitation period specified for the sentence.
- (4) Where there are more than one sentence imposed in respect of a conviction and—
- (a) the rehabilitation periods specified for the sentences are the same, the rehabilitation period applicable to the conviction is the rehabilitation period specified for any of the sentences;
  - (b) the rehabilitation periods specified for the sentences differ, the rehabilitation period for the conviction is the longest of the rehabilitation periods specified for the sentences.
- (5) 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—
- (a) the person is dealt with, in consequence of a breach of the conditional discharge or probation, for the offence for which the order of conditional discharge or probation was made; and
  - (b) after taking into account any sentence imposed when the person is so dealt with the rehabilitation period applicable for the conviction ends later than the rehabilitation period applicable to the conviction prior to the person being dealt with,
- the person shall be treated as not having been rehabilitated in respect of the conviction and the conviction shall not be treated as having been spent before the end of the rehabilitation period applicable to the conviction after the person had been dealt with as provided in paragraph (b).
- (6) Subject to subsection (7), where during the rehabilitation period applicable to a conviction—
- (a) the person who was convicted is convicted of another offence; and
  - (b) sentence is imposed on the person in respect of the later conviction,
- if the rehabilitation period applicable to either of the convictions would end earlier than the rehabilitation period applicable to the other conviction, the rehabilitation period which would end earlier shall be extended to end at the same time as the other rehabilitation period.

- (7) For the purposes of subsection (6), where the rehabilitation period applicable to a conviction is based solely on the rehabilitation period applicable to a sentence which is an order imposing on the person convicted a disqualification, disability, probation or other penalty, the rehabilitation period applicable to another conviction shall not under that subsection be extended by reference to the rehabilitation period applicable to the conviction in respect of which the order was imposed.
- (8) The rehabilitation period applicable to a sentence imposed on a person who at the time of the conviction in respect of which the sentence was imposed was less than 17 years old is half the period applicable in the case of a person who is 17 years or over.

## 5. Effect of rehabilitation

- (1) Subject to sections 6, 7 and 8, a person who is rehabilitated in respect of a conviction shall be treated for all purposes in law as a person who has not committed, been charged with, prosecuted for, convicted of or sentenced for the offence which was the subject of conviction and—
  - (a) evidence shall not be admissible in any proceeding before a judicial authority in Seychelles to prove otherwise or any matter or circumstance which tends to prove otherwise; and
  - (b) the person shall not, in a proceeding referred to in paragraph (a), be asked or required to answer a question relating to the person's past which cannot be answered without acknowledging or referring to a spent conviction or any circumstances relating to the conviction;
  - (c) a question seeking information with respect to the person's previous conviction or circumstances relating to the previous conviction put to the person or any other person, including a body corporate, otherwise than in a proceeding before a judicial authority shall be treated as not relating to a spent conviction and the person answering the question may reply accordingly and shall not suffer any liability or otherwise be prejudiced for failing to acknowledge or disclose a spent conviction or circumstances relating to a spent conviction in answer;
  - (d) where there is an obligation under a written law, agreement or arrangement for a person, whether an individual or body corporate, to disclose any matter to another person, whether an individual or body corporate, that obligation shall not extend to require the person to disclose a spent conviction or any circumstances relating to a spent conviction;
  - (e) a spent conviction or any circumstances relating to a spent conviction or failure to disclose a spent conviction or circumstances relating to a spent conviction shall not be a ground for dismissing or excluding a person from office, profession, occupation or employment or for prejudicing that person in any way in an occupation or employment.
- (3) For the purposes of this section and [section 6\(2\)](#) and Part III of the Schedule—
  - (a) the circumstances relating to a conviction are—
    - (i) the offence which is the subject of the conviction;
    - (ii) the conduct constituting the offence; and
    - (iii) any proceeding or process preliminary to the conviction, the sentence imposed in respect of the conviction, any proceeding by way of review of or appeal against the conviction and anything done or undergone in compliance with a sentence passed in connection with the conviction;
  - (b) proceedings before a judicial authority includes proceedings before a tribunal, body or person having power—
    - (i) under a written law or practice;
    - (ii) under the rules governing an association, institution, profession, occupation or employment;

- (iii) under an agreement providing for arbitration with respect to questions arising under the arbitration,

to determine a question affecting the right, privilege or obligation of a person or to receive evidence affecting the determination of that question.

*[Please note: numbering as in original.]*

## 6. Limitation on rehabilitation

- (1) Nothing in [section 3](#)(1) shall affect—
  - (a) the power of pardon of the President under article 60 of the Constitution;
  - (b) the enforcement by any process or proceeding of a fine or other sum adjudged to be paid or imposed in respect of a spent conviction;
  - (c) the issue of any process for the purpose of a proceeding in respect of a breach of a condition or requirement applicable to a sentence imposed in respect of a spent conviction;
  - (d) the operation of a written law by virtue of which, in consequence of a conviction, a person is subject, otherwise than by way of sentence, to a 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) Subject to subsection (4), nothing in [section 5](#)(1) shall affect the determination of an issue or prevent the admission or requirement of any evidence relating to a person's previous conviction or circumstances relating to a conviction—
  - (a) in a criminal proceeding before a court in Seychelles;
  - (b) in a disciplinary proceeding of any service or in a proceeding on an appeal from a disciplinary proceeding of any service;
  - (c) in a proceeding relating to adoption or the guardianship, fostering, wardship, care, custody or marriage of or the compulsory measure taken in respect of or the access to a minor or to the provision of a person of accommodation, care or schooling for minors;
  - (d) in a proceeding in which the person is a party or witness if on the occasion when the issue or the admission or requirement of the evidence falls to be determined the person consents to the determination of the issue or the admission or requirement of the evidence.
- (3) In subsection 2(a), "criminal proceeding" includes a criminal appeal or a reference in a criminal matter.
- (4) Reference shall not be made in open court in the course of a proceeding referred to in subsection (2) to a spent conviction of a person—
  - (a) without the authority of the judge or person presiding at the proceeding; and
  - (b) unless the judge or person presiding at the proceeding is of the opinion that the interest of justice so requires.
- (5) Nothing in subsection 5(1) shall prevent a judicial authority at any stage of a proceeding before the authority, not being a proceeding referred to in subsection 2(a) to (c) of this section or to which [section 7](#) applies, or the person, carrying out a proceeding which is the subject of an order under [section 5](#)(2) from admitting or requiring evidence relating to a person's spent conviction or to circumstances relating to the spent conviction, where the judicial authority is satisfied having regard to all the circumstances of the case that justice cannot otherwise be done.
- (6) Nothing in [section 5](#)(1) (c), (d) or (e) shall apply in relation to a matter specified in Part III of the Schedule.

## 7. Defamation

- (1) This section applies to an action for defamation begun after the commencement of this Act by a rehabilitated person based upon the publication of a 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 [section 5\(1\)](#) shall affect an action referred to in subsection (1) where the publication complained of took place before the conviction in question became spent.
- (3) Subject to subsections (4) and (5), nothing in [section 5\(1\)](#) shall, in an action referred to in subsection (1)—
  - (a) prevent the defendant from relying on a defence of justification, fair comment or absolute or qualified privilege which is available to the defendant;
  - (b) restrict the matters the defendant may establish in support of the defence relied on or in rebuttal of an allegation.
- (4) A defence of justification under subsection (3) shall not be available to a defendant in an action referred to in subsection (1) if the publication is proved to have been made with malice.
- (5) Subject to subsection (6), a defendant shall not, in an action referred to in subsection (1), be entitled under subsection (3) 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 a judicial proceeding if it is proved that the publication contained a reference to evidence which was ruled to be inadmissible in the proceeding by virtue of [section 5\(1\)](#).
- (6) The qualification to subsection (3) contained in subsection (5) shall not apply to—
  - (a) a report of a judicial proceeding contained in a *bona fide* series of law reports which does not form part of any other publication and consists solely of reports of proceedings in a court;
  - (b) a report or account of a judicial proceeding published, or given in the course of a lecture, class or discussion given or held, for *bona fide* educational, scientific or professional purposes.
- (7) Article 1383-3 of the Civil Code which provides that the law of defamation in Seychelles is governed by English law shall be read subject to this section.

## 8. Unauthorised disclosure of spent conviction

- (1) In this section—

"disciplinary force" means—

  - (a) a naval, military or air force;
  - (b) the police force;
  - (c) the prison force,

of Seychelles or any other similar force established by a written law;

"official record" means a record kept for the purposes of its functions by a court or public authority or a record kept for the purposes of a disciplinary force, being in either case a record containing information about persons convicted of offences;

"public authority" means a Ministry, department, division or agency of the Government, or a statutory or other body which is carrying out a governmental function;

"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 an offence which is the subject of a spent conviction.

- (2) A person who—
- (a) in the course of the person's official duties, has or at any time has had access to specified information or official record which contains specified information; or
  - (b) knowing or having reasonable cause to suspect that any information the person has obtained in the course of the person's duties is specified information,
- discloses the specified information otherwise than in the course of the person's duties to another person, whether an individual or body corporate, is guilty of an offence and liable on conviction to a fine of R10,000 and imprisonment for 1 year.
- (3) In a proceeding for an offence under subsection (2) it shall be a defence to show that the disclosure was made—
- (a) to the rehabilitated person or to another person, whether an individual or a body corporate at the express request of the rehabilitated person; or
  - (b) to another person whom the accused reasonably believed to be the rehabilitated person or to another person, whether an individual or a body corporate, at the express request of a person whom the accused believed to be the rehabilitated person.
- (4) A person who obtains or attempts to obtain specified information from an official record by means of any misrepresentation, dishonesty or bribe shall be guilty of an offence and liable on conviction to a fine of R20,000 and imprisonment for 2 years.

## 9. Statutory instrument

The Minister may make statutory instrument for carrying into effect the purposes and provisions of this Act and without prejudice to the generality of the foregoing may—

- (a) make an order required to be made under this Act;
- (b) by order specify anything required or necessary to be specified under this Act;
- (c) by regulations amend the Schedule.

## Schedule

### Part I – Excluded sentence (Section 2)

1. A sentence of imprisonment for life
2. A sentence of imprisonment for more than 60 months
3. A sentence of detention during the President's pleasure.

**Part II – Rehabilitation period (Section 4(2))**

	<b>Sentence</b>		<b>Rehabilitation period</b>
4.	A sentence of imprisonment for more than 24 months but not more than 60 months	4.	144 months
5.	A sentence of imprisonment for more than 6 months but not more than 24 months	5.	108 months
6.	A sentence of imprisonment for not more than 6 months	6.	60 months
7.	A fine or any other sentence subject to rehabilitation, not being a sentence to which item 8, 9, 10 or 11 applies	7.	48 months
8.	A sentence consisting of a conditional discharge, being bound over to keep the peace or be of good behaviour or an order	8.	12 months or the period beginning with the date of conviction and ending when the order of probation conditional discharge, the recognisance or bond of caution to keep the peace or be of good behaviour ceases to have effect, whichever is the longer
9.	A sentence consisting of an order of absolute discharge	9.	6 months
10.	A sentence consisting of an order imposing a disqualification, disability, prohibition or other penalty	10.	A period beginning with the date of the conviction and ending on the date on which the disqualification, disability, prohibition or

			penalty ceases to have effect
11.	A sentence consisting of a supervision order made by a children's hearing under the Children Act against a child following a finding that the child has committed an offence or an order by a Juvenile Court committing a child to a Juvenile Centre.	11.	12 months from the date of conviction or a period beginning with the date of conviction and ending when the order ceases to have effect

### Part III – Specified matter (Section 6(6))

12. Nothing in section 5(1)(c) (d) or (e) shall apply in relation to—

- (a) a question asked by or on behalf of a person, in the course of the duties of the person's office or employment, in order to assess the suitability—
- (i) of the person to whom the question relates for admission to a specified profession;
  - (ii) of the person to whom the question relates for a specified office or employment;
  - (iii) of the person to whom the question relates or any other person to pursue a specified occupation;
  - (iv) of the person to whom the question relates or of any other person to hold a licence, certificate or permit of a specified kind,

where the person, whether an individual or body corporate, questioned is informed at the time the question is asked that spent convictions are to be disclosed;

- (b) a question asked by or on behalf of a person, whether an individual or body corporate, in the course of the duties of the person's office or employment, in order to assess the suitability of another person for a specified office or employment or suitability of another person to be concerned, otherwise than in the course of the duties of the person's office or employment, with a specified provision if—
- (i) the question relates to that other person and the specified provision would normally enable that other person to have access to the specified person;
  - (ii) the question relates to a person who lives in the same household as that other person and such provision would normally take place in that household,

where the person questioned is informed at the time the question is asked that spent convictions are to be disclosed;

- (c) any question relating to a relevant offence in order to assess the suitability of the person to whom the question relates to be a director or other officer of a company or, where necessary under a written law, a body corporate or statutory authority whether or not the question is addressed to the person or any other person, whether an individual or a body corporate, and where the person questioned is informed at the time the question is asked that spent convictions are to be disclosed;
- (d) the dismissal or exclusion of a person from a specified profession, office, employment or occupation;

- (e) the dismissal or exclusion or revocation of appointment of a person from the directorship or other office of a company, body corporate or statutory authority, by reason or partly by reason of the spent conviction of an individual for a relevant offence or any circumstances relating to the conviction or of a failure, whether or not by the person, to disclose the conviction or any circumstances relating to the conviction;
  - (f) an action taken for the purpose of safeguarding national security.
13. In paragraph (12)—
- "relevant offence" means an offence involving dishonesty;
- "specified employment or office" means —
- (i) employment in an office the holder of which has power, whether alone or with other, under any written law to determine a question affecting the rights, privileges, obligations or liabilities of a person;
  - (ii) employment in an office the holder of which has power under a written law to carry out public prosecutions;
  - (iii) officers of a court or tribunal;
  - (iv) police officers, prison wardens or probation officers;
  - (v) employment at or which is concerned with the administration of the National Youth Service or an orphanage or an institution where young persons are detained or an institution or establishment where old and infirm or mentally handicapped or substantially physically handicapped persons are cared for or looked after;
- "specified occupation" means an occupation specified by the Minister by order published in the *Gazette*;
- "specified person" means person under the age of 18;
- "specified profession" means—
- (i) medical practitioner, dentist or pharmacist;
  - (ii) legal practitioner or notary;
  - (iii) veterinary surgeon;
  - (iv) accountant or auditor;
  - (v) nurse or midwife;
  - (vi) dental hygienist or dental assistant;
  - (vii) teacher;
  - (viii) optician;
  - (ix) social worker;
- "specified provision" means the provision of accommodation, care, leisure and recreational facilities, schooling or training or supervision to specified persons.