

608. The Minister may, after consultation with the Chief Justice, by order vary–

- (a) the maximum amounts of compensation that can be awarded by a court under section 596;
- (b) the sums that can be paid as a reward under section 607(2).

Power of court to allow time for payment, or payment by instalments, of costs and compensation.

609. If a court makes an order against a person for the payment of costs or compensation, the court may–

- (a) allow time for the payment of the sum due under the order;
- (b) direct payment of that sum by instalments of amounts and on dates that the court specifies.

PART 25 – REHABILITATION OF OFFENDERS

Rehabilitated persons and spent convictions.

610.(1) Subject to this section, if an individual has been convicted, whether before or after the commencement of this Part, of any offence or offences, and the conditions mentioned in subsection (2) are satisfied, then, after the end of the rehabilitation period applicable to the conviction (including any extension under section 614 of the period originally applicable) or, if that rehabilitation period ended before the commencement of this Part, after the commencement of this Part, that individual is for the purposes of this Part to be treated as a rehabilitated person in respect of the conviction and the conviction is for those purposes to be treated as spent.

(2) The conditions are that the individual–

- (a) did not have imposed on him in respect of that conviction a sentence which is excluded from rehabilitation under this Part; and
- (b) 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 section 614 a sentence which is excluded from rehabilitation under this Part.

(3) Subject to subsection (4), a person does not become a rehabilitated person for the purposes of this Part 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.

(4) The following do not prevent a person from becoming a rehabilitated person for the purposes of this Part–

- (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 or bond to keep the peace or 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, if 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).

(5) In this Part “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 a 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.
- (6) In this Part, references to a conviction, however expressed, include references to–
- (a) a conviction by or before a court outside Gibraltar; and
 - (b) any finding (other than a finding linked with a finding of mental disorder) in any criminal proceedings or in care proceedings under Part VIII of the Children Act 2009 that a person has committed an offence or done the act or made the omission charged.

(7) A conviction in respect of which an order is made placing the person convicted on probation or discharging him absolutely or conditionally is to be treated as a conviction for the purposes of this Part and the person in question may become a rehabilitated person in respect of that conviction and the conviction may become a spent conviction for those purposes accordingly.

Effect of rehabilitation.

611.(1) Subject to sections 615 to 618, a person who has become a rehabilitated person for the purposes of this Part in respect of a conviction is to 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.

- (2) Despite the provisions of any other enactment or rule of law to the contrary, but subject to subsection (1)–

- (a) no evidence is admissible in any proceedings before a court exercising its jurisdiction or functions in Gibraltar 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 must not, in any such proceedings, be asked, and, if asked, is not 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.

(3) Subject to the exceptions provided for by section 616, if a question seeking information with respect to a person's previous convictions, offences, conduct or circumstances is put to him or to any other person otherwise than in proceedings before a court–

- (a) the question is to be treated as not relating to spent convictions or to any circumstances ancillary to spent convictions, and the answer to it may be framed accordingly; and
- (b) the person questioned is not to be subject 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.

- (4) Subject to the exceptions provided for by section 616–

- (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 does 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) a conviction which has become spent or any circumstances ancillary thereto, or any failure to disclose a spent conviction or any such circumstances, is not 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.

(5) For the purposes of this section and section 615 any of the following are circumstances ancillary to a conviction—

- (a) the offence or offences which were the subject of that conviction;
- (b) the conduct constituting that offence or those offences;
- (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 pursuant to or undergone in compliance with any such sentence.

(6) For the purposes of this section and section 615, “proceedings before a court” includes, in addition to proceedings before a court of law, proceedings before any tribunal, body or person that has power—

- (a) by virtue of any enactment, 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 under it,

to decide any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question.

Excluded sentences.

612.(1) The sentences excluded from rehabilitation under this Part are—

- (a) a sentence of imprisonment for life;
- (b) a sentence of imprisonment for more than 48 months;
- (c) a sentence of detention during Her Majesty’s pleasure.

(2) Any other sentence is a sentence subject to rehabilitation under this Part.

Rehabilitation periods for particular sentences.

613.(1) For the purposes of this Part the rehabilitation period applicable to a sentence specified in the first column of the table in Schedule 11 (Table of rehabilitation periods) is the period beginning with the date of the conviction in respect of which the sentence is imposed, and ending—

- (a) where the defendant is an adult, at the time listed specified in the second column of the table in Schedule 11;
- (b) where the defendant is a juvenile, at the time listed specified in the third column of the table in Schedule 11.

(2) In subsection (1) and Schedule 11 the age of the defendant is the age at the date of conviction.

(2A) Where no provision is made by or under a community or youth rehabilitation order or a relevant order for the last day on which the order is to have effect, the rehabilitation period for the order is to be the period of 24 months beginning with the date of conviction.

(2B) There is no rehabilitation period for–

- (a) an order discharging a person absolutely for an offence;
- (b) a caution; or
- (c) any other sentence in respect of a conviction where the sentence is not dealt with in Schedule 11 or under subsection (2A),

and, in such cases, references in this Part to any rehabilitation period are to be read as if the period of time were nil.

(3) For the purposes of this section–

- (a) consecutive terms of imprisonment are to be treated as a single term;
- (b) terms of imprisonment which are wholly or partly concurrent (that is terms of imprisonment imposed in respect of offences of which a person was convicted in the same proceedings) are to be treated as a single term;
- (c) no account is to be taken of any subsequent variation, made by a court dealing with a person in respect of a suspended sentence of imprisonment, of the term originally imposed;
- (d) no account is to be taken of any subsequent variation of the day originally provided for by or under an order as the last day on which the order is to have effect;
- (e) a sentence imposed by a court outside Gibraltar is to be treated as the sentence mentioned in this section to which it most closely corresponds.

(4) A reference in this Part to the period during which a probation order was in force include references to any period during which any order or requirement to which this subsection applies, being an order or requirement made or imposed directly or indirectly in substitution for the first-mentioned order or requirement, is or was in force.

(5) The Minister may by Order amend the second or third column of the Table in Schedule 11 or the number of months for the time being specified in subsection (2A).

(6) In this section and Schedule 11 “relevant order” means–

- (a) an order discharging a person conditionally for an offence;
- (b) an order binding a person over to keep the peace or be of good behaviour;
- (c) a hospital order under the Mental Health Act 2016; or
- (d) any order which imposes a disqualification, disability, prohibition or other penalty and is not otherwise dealt with in Schedule 11 or under subsection (2A),

but does not include a reparation order.

The rehabilitation period applicable to a conviction.

614.(1) If only one sentence is imposed in respect of a conviction (not being a sentence excluded from rehabilitation under this Part) the rehabilitation period applicable to the conviction is, subject to the following provisions of this section, the period applicable to the sentence in accordance with section 613.

(2) If 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 Part, then, subject to this section, if the periods applicable to those sentences in accordance with section 613 differ, the rehabilitation period applicable to the conviction is the longer or the longest (as the case may be) of those periods.

(3) Without affecting subsection (2), if in respect of a conviction a person was conditionally discharged or a probation order was made, and after the end of the rehabilitation period applicable to the conviction in accordance with subsection (1) or (2) he is dealt with, in consequence of a breach of conditional discharge or probation order, 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 subsection (2) (taking into account any sentence imposed when he is so dealt with) ends later than the rehabilitation period previously applicable to the conviction—

- (a) he is to be treated for the purposes of this Part as not having become a rehabilitated person in respect of that conviction; and
- (b) the conviction is for those purposes to be treated as not having become spent,

in relation to any period falling before the end of the new rehabilitation period.

(4) Subject to subsection (6), if 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 Part is imposed on him in respect of the later conviction,

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

(5) If a person is convicted of a further offence during a rehabilitation period in respect of an offence—

- (a) if the rehabilitation period is the rehabilitation period applicable to an order imposing on the person any disqualification, disability, prohibition or other penalty, the rehabilitation period applicable to the later conviction is not extended by reference to that period; but
- (b) if any other sentence is imposed in respect of the first-mentioned conviction for which a rehabilitation period is prescribed by section 613, the rehabilitation period applicable to the later conviction is, if appropriate, extended under subsection (4) by reference to the rehabilitation period applicable in accordance with that section to that sentence, or, if 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) For the purposes of subsection (4)(a) the following are to be disregarded—

- (a) a conviction of an indictable offence tried summarily pursuant to Part 8;
- (b) any conviction by or before a court outside Gibraltar of an offence in respect of conduct which, if it had taken place in Gibraltar, would not have constituted an offence under the law of Gibraltar.

Limitations on rehabilitation under this Part, etc.

615.(1) Nothing in section 611(1) affects—

- (a) any right of Her Majesty, by virtue of Her Royal prerogative or otherwise, to grant a free pardon, to quash any conviction or sentence, or to commute any sentence;
- (b) the enforcement by any process or proceedings of any fine or other sum adjudged to be paid by or imposed on a spent conviction;
- (c) the issue of any process for the purpose of proceedings in respect of any breach of a condition or requirement applicable to a sentence imposed in respect of a spent conviction; or
- (d) the operation of any enactment by virtue of which, in consequence of any conviction, a person is subject, otherwise than by way of sentence, to any disqualification, disability, prohibition or other penalty the period of which extends beyond the rehabilitation period applicable in accordance with section 614 to the conviction.

(2) Subject to section 620, nothing in section 611(1) affects the determination of any issue, or prevents the admission or requirement of any evidence, relating to a person's previous convictions or to circumstances ancillary to it—

- (a) in any criminal proceedings before a court in Gibraltar, including any appeal or reference in a criminal matter;
- (b) in any care proceedings under the Children Act 2009 or on appeal from any such proceedings, or in any proceedings relating to the variation or discharge of a care order or supervision order under that Act;
- (c) in any proceedings in which the person is a party or a witness, if, when the issue or the admission or requirement of the evidence falls to be decided, the person consents to the determination of the issue or, as the case may be, the admission or requirement of the evidence despite the provisions of section 611(1).

(3) If at any stage in any proceedings before a court the court 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 to them, the court may admit or, as the case may be, require the evidence in question despite the provisions of section 611(1), and may decide any issue to which the evidence relates in disregard, so far as necessary, of those provisions.

(4) Subsection (3) does not apply to proceedings to which, by virtue of section 612(1) or of an order made under subsection (5), section 611(1) has no application, or proceedings to which section 618 applies.

(5) The Minister may by order exclude the application of section 611(1) in relation to any proceedings specified in the order (other than proceedings to which section 618 applies) to such extent and for such purposes as are so specified.

(6) No order made by a court with respect to any person otherwise than on a conviction may 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 an offence.

Exceptions to rehabilitation.

616.(1) Section 611(3) does not apply in relation to any question asked by or on behalf of any person in the course of the duties of his office or employment, in order to assess the suitability—

- (a) of the person to whom the question relates for admission to any of the professions specified in Part 1 of Schedule 12;
- (b) of the person to whom the question relates for any office or employment specified in Part 2 of Schedule 12;
- (c) of the person to whom the question relates or of any other person to pursue any occupation specified in Part 3 of Schedule 12 or to pursue it subject to a particular condition or restriction; or
- (d) of the person to whom the question relates or of any other person to hold a licence, certificate or permit of a kind specified in Part 4 of Schedule 12 or to hold it subject to a particular condition or restriction,

if the person questioned is informed at the time the question is asked that, by virtue of this section, spent convictions are to be disclosed.

(2) Section 611(3) does not apply in relation to any question asked in the course of duties by or on behalf of a person—

- (a) employed in the service of the Government or the Crown or any statutory body; or
- (b) authorised to provide air traffic services,

if—

- (c) the question is asked in order to assess, for the purpose of safeguarding the security of Gibraltar, the suitability of the person to whom the question relates or of any other person; and
- (d) the person questioned is informed at the time the question is asked that, by virtue of this section, spent convictions are to be disclosed for the purpose of safeguarding the security of Gibraltar.

(3) Section 611(3) does not apply in relation to any question asked by or on behalf of any person in the course of his duties at work, in order to assess the suitability of a person to work with children, if—

- (a) the question relates to the person whose suitability is being assessed;
- (b) the person whose suitability is being assessed lives on the premises where his work with children would normally take place and the question relates to a person living in the same household as him;
- (c) the person whose suitability is being assessed lives on the premises where his work with children would normally take place and the question relates to a person who regularly works on those premises at a time when the work with children usually takes place; or
- (d) the work for which the person's suitability is being assessed is working with children which would normally take place on premises other than premises where that person lives and the question relates to a person who lives on those other premises or to a person who regularly works on them at a time when the work takes place,

and if the person to whom the question relates is informed at the time the question is asked that, by virtue of this section, spent convictions are to be disclosed.

(4) Section 611(3) does not apply in relation to any question asked by or on behalf of any person in the course of his duties to assess the suitability of any other person to adopt children in general or a child in particular if—

- (a) the question relates to the person whose suitability is being assessed; or

- (b) the question relates to a person over the age of 18 living in the same household as the person whose suitability is being assessed,

and if the person to whom the question relates is informed at the time the question is asked that, by virtue of this section, spent convictions are to be disclosed.

(5) Section 611(3) does not apply in relation to any question asked by or on behalf of any person, in the course of the duties of his work, in order to assess the suitability of a person to provide day care for children if–

- (a) the question relates to the person whose suitability is being assessed; or
- (b) the question relates to a person who lives on the premises which are or are proposed to be day care premises,

and if the person to whom the question relates is informed at the time the question is asked that, by virtue of this section, spent convictions are to be disclosed.

(6) Section 611(3) does not apply in relation to any question asked by or on behalf of a person listed in Part 5 of Schedule 12 to the extent that it relates to a conviction (or any circumstances ancillary to a conviction) of any individual, but only if–

- (a) the person questioned is informed at the time the question is asked that, by virtue of this section, spent convictions are to be disclosed; and
- (b) the question is asked in order to assess the suitability of the individual to whom the question relates in respect of any of the services mentioned in paragraph 1 of that Part,

and if the person to whom the question relates is informed at the time that the question is asked that, by virtue of this section, spent convictions are to be disclosed.

(7) Section 611(4) does not apply in relation to the dismissal or exclusion of any person from any profession specified in Part 1 of Schedule 12, or from any office or employment or occupation specified in Part 2 of that Schedule, or from any occupation specified in Part 3 of that Schedule.

(8) Section 611(4) does not apply in relation to any action taken for the purpose of safeguarding the security of Gibraltar.

(9) Section 611(4) does not apply in relation to any proceedings specified in Part 6 of Schedule 12 to the extent that a decision needs to be taken in those proceedings relating to a person's spent conviction or to circumstances ancillary to a conviction.

(10) Section 611(4) does not apply in relation to any decision specified in Part 7 of Schedule 12.

(11) Sections 611(3) and 611(4) do not apply in relation to any application for registration as an Authorised Person in the Register established under section 6(2) of the Legal Services Act 2017.

Exceptions: Supplementary.

617.(1) For the purpose of section 616 & Schedule 12, unless the context otherwise requires–

“day care premises” means any premises at which day care for children is provided and children are looked after;

“work” includes–

- (a) work of any kind, whether paid or unpaid, and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract; and
- (b) an office established by or by virtue of an enactment;

“work with children” means any work which is normally concerned with the provision of any form of information, advice or guidance wholly or mainly to children which relates to their physical, emotional or educational well-being and includes giving of such advice by means of telephone or other form of electronic communication including the internet and mobile telephone text messaging.

(2) If, by virtue of section 616, the operation of any provision of this Part is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description.

(3) In this Part any reference to a conviction includes a reference to a caution, and any reference to a spent conviction is to be construed accordingly.

Defamation actions.

618.(1) This section applies to any action for libel or slander begun after the commencement of this Part by a rehabilitated person and founded upon the publication of any matter imputing that the claimant 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 611(1) affects an action to which this section applies if the publication complained of took place before the conviction in question became spent, and the following provisions of this section do not apply in any such case.

(3) Subject to subsections (5) and (6), nothing in section 611(1) prevents the defendant in an action to which this section applies from relying on any defence of justification or fair comment or of absolute or qualified privilege which is available to him, or restricts the matters he may establish in support of any such defence.

(4) Without limiting subsection (3), if in any such action malice is alleged against a defendant who is relying on a defence of qualified privilege, nothing in section 611(1) restricts the matters he may establish in rebuttal of the allegation.

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

(6) Subject to subsection (7), a defendant in any such action is not, by virtue of subsection (3), entitled to rely on any matter or adduce or require any evidence for the purpose of establishing the defence that the matter published constituted a fair and accurate report of judicial proceedings, if it is proved that the publication contained a reference to evidence which was ruled to be inadmissible in the proceedings by virtue of section 611(1).

(7) Subsection (3) applies without the qualifications imposed by subsection (6) in relation to—

- (a) a 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;
- (b) a 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.

Unauthorised disclosure of spent convictions.

619.(1) In this section–

“official record” means a record containing information about persons convicted of offences that is kept by any of Her Majesty’s forces, or by a police force, court or Government department in Gibraltar or elsewhere, for the purposes of their functions;

“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 any order made under subsection (5), a 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 in it commits 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 proceedings for an offence under subsection (2) it is a defence to show that the disclosure was made–

- (a) to the rehabilitated person or to another person at the express request of the rehabilitated person; or
- (b) to a person whom the defendant reasonably believed to be the rehabilitated person or to another person at the express request of a person whom the defendant reasonably believed to be the rehabilitated person.

(4) A person who obtains any specified information from any official record by means of fraud, dishonesty or a bribe commits an offence.

(5) The Minister may by order make such provision as appears to him to be appropriate for excepting the disclosure of specified information derived from an official record from the provisions of subsection (2) in the cases or classes of case specified in the order.

(6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine at level 4 on the standard scale.

(7) A person who commits an offence under subsection (4) is liable on summary conviction to imprisonment for 6 months or to a fine at level 5 on the standard scale, or to both.

(8) Proceedings for an offence under subsection (2) or (4) may not be instituted except by, or with the consent of, the Attorney-General.

References to spent convictions in court proceedings.

620.(1) The court and every legal representative appearing in a court should not refer to a spent conviction if such reference can reasonably be avoided.

(2) After a verdict of guilty–

- (a) the court must be provided with a statement of the defendant’s record for the purpose of sentence;
- (b) the record should contain all previous convictions, but those which are spent should, as far as possible, be marked as such.

(3) No person should refer in open court to a spent conviction without the authority of the judge or person presiding, which authority should not be given unless the interests of justice so require.

(4) A person when passing sentence should make no reference to spent convictions unless it is necessary to do so to explain the sentence being passed.

PART 26 - ANTI-SOCIAL BEHAVIOUR ORDERS

Anti-social behaviour orders (ASBOs).

621.(1) If it appears to the Attorney-General that, in respect of any person aged 10 or over that—

- (a) the person has acted in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; and
- (b) an order under this section is necessary to protect any member of the public from further anti-social acts by the person,

the Attorney-General may apply by complaint to the Magistrates' Court for an order under this section.

(2) If, on such an application, the Magistrates' Court is satisfied of the matters mentioned in subsection (1), the court may make an anti-social behaviour order which prohibits the defendant from doing anything described in the order.

(3) An order under this section has effect for a period (not less than 6 months) specified in the order, or until further order.

(4) Subject to subsection (5), the Attorney-General or the defendant may apply in writing to the court which made an order under this section for it to be varied or discharged by a further order.

(5) Except with the consent of both parties, no order under this section may be discharged earlier than 6 months after it was made.

Orders on conviction in criminal proceedings (CRASBOs).

622.(1) If a person is convicted of an offence and the court is satisfied that—

- (a) the person has acted in an anti-social manner, that is to say in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; and
- (b) an order under this section is necessary to protect any member of the public from further anti-social acts by the person,

the court may make an anti-social behaviour order which prohibits the person from doing anything described in the order.

(2) The court may make an order under this section on its own initiative or on the application of the Attorney-General.

(3) An order under this section must not be made in respect of a person except—

- (a) in addition to a sentence imposed on the person for an offence; or
- (b) in addition to an order discharging the person conditionally.