

**WRITTEN QUESTION TO THE PRESIDENT OF THE HOME AFFAIRS COMMITTEE BY
BY DEPUTY T.J. LE MAIN OF ST. HELIER**

ANSWER TO BE TABLED ON TUESDAY 23rd NOVEMBER 2004

Question

Will the President inform the Assembly why, despite the coming into force of the 'Rehabilitation of Offenders (Jersey) Law 200-' on 1st December 2002, it is not possible to have one's minor convictions erased or spent, and when this will be possible?

Answer

In December 2003, the Legislation Committee 'invited' the Home Affairs Committee to take responsibility for the Rehabilitation of Offenders (Jersey) Law 2001, and the draft Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 200-. The Committee accepted this responsibility and, with the permission of the Probation Board, has agreed that the Chief Probation Officer would undertake the necessary work in respect of the draft Regulations, subject to core business taking priority.

Access to criminal records usually takes place during vetting for certain areas of employment, or where a person applies for subject access in respect of their own convictions. In the first category, it is the case under the Law that the Health and Social Services Committee, for example, will need to vet those applying for occupations involving work with children or vulnerable people where the complete record must be known and which is catered for in the Law. In the case of the second category, i.e. where there is no automatic right to have access to the complete record for vetting purposes, the individual makes an application for the information held about previous convictions under the subject access procedure. That information is personal to the individual and spent convictions need not be disclosed, where the law identifies they need not be disclosed. Employers with no right to vet the full record should not require an employee to provide this information and individuals need not disclose it. There is no lawful right for the employer in this category to have sight of this complete subject access material. Information about unspent convictions should be given in the context of an application form, which is filled in by the applicant, and which carries a clear warning about the consequences of providing false information.

The Chief Probation Officer has identified a couple of areas where there are difficulties –

The first concerns the Rules in respect of exemptions. The finance industry and Financial Services Commission want further categories to be exempted from legislative protection, and the Legislation Committee, which had previous responsibility for this Law, received a degree of lobbying on behalf of the finance industry to allow them access to the complete records of all levels of staff, not just principals and senior staff. So far this encroachment on the original purpose of the Law has been resisted by both Legislation and Home Affairs Committees.

The second concerns the ability of the Police to issue records amended in line with the Law. Criminal records in Jersey come from two sources. The first is a local database relating to minor convictions. These typically include minor drunkenness, breach of the peace, some traffic offences, and some findings of Parish Hall Enquiries. The main source of Criminal Records is the Police National Computer database for England and Wales. The database contains records of offences classed as 'recordable' under English guidelines. These typically include offences such as theft, burglary, assault and more serious crimes. This database is controlled by authorities in the U.K. and managed in accordance with U.K. Law. The States Police are able to gain direct access to this database subject to conditions and performance criteria set by the U.K. authorities. One caveat is that the information gained from the Police National Computer cannot be tampered with or amended in any way. To require the States of Jersey Police to issue records amended in line with the provisions of the Rehabilitation of Offenders (Jersey) Law 2001, would be both difficult and costly. It would involve the re-inputting of data from the Police National Computer into a separate database, assuming that the clearance from the U.K. authorities to do so could be obtained, which is doubtful. Furthermore,

amendment of that data to show only unspent convictions would have to be constantly updated, and constantly checked against the information held elsewhere to ensure it was a true record in real time. This process would be both costly and labour intensive, even if it could be done.

The Committee is looking at possible ways to overcome these difficulties, which it is determined not to leave unaddressed, and it hopes to receive a paper on this subject at its meeting in December.