



Historical Sexual Offences (Pardons and Disregards) (Scotland) Act 2018

2018 asp 14

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 6th June 2018 and received Royal Assent on 11th July 2018

An Act of the Scottish Parliament to pardon persons convicted of certain historical sexual offences and to provide a process for convictions for those offences to be disregarded.

PART 1

INTRODUCTORY

1 Purpose of this Act

The purpose of this Act is to acknowledge the wrongfulness and discriminatory effect of past convictions for certain historical sexual offences by—

- (a) pardoning persons who have been convicted of those offences, and
- (b) providing for a process for convictions for those offences to be disregarded.

Commencement Information

II [S. 1](#) in force at 15.10.2019 by [S.S.I. 2019/205](#), [reg. 2](#)

2 Historical sexual offence: definition

(1) In this Act, “historical sexual offence” means—

- (a) an offence under section 13(5)(a) or (c), (6) or (9) of the Criminal Law (Consolidation) (Scotland) Act 1995,
- (b) an offence under section 80(7)(a), (c) or (d), (9) or (12) of the Criminal Justice (Scotland) Act 1980,
- (c) an offence under section 7 of the Sexual Offences (Scotland) Act 1976,
- (d) an offence under section 11 of the Criminal Law Amendment Act 1885,
- (e) the common law offence of sodomy,

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- (f) the common law offence of shameless indecency, in so far as that offence covered sexual activity between men,
 - (g) any other offence which falls within subsection (2),
 - (h) an offence of attempting, inciting or conspiring to commit any of the offences mentioned in paragraphs (a) to (g).
- (2) An offence falls within this subsection if the offence—
- (a) regulated, or was used in practice to regulate, sexual activity between men, and
 - (b) either—
 - (i) has been repealed or, in the case of an offence at common law, abolished, or
 - (ii) has not been repealed or abolished but once covered sexual activity between men of a type which, or in circumstances which, would not amount to the offence on the day on which section 3 comes into force.
- (3) Where an offence of the type described in subsection (2)(b)(ii) covers or once covered activity other than sexual activity between men, the offence falls with subsection (2) only to the extent that it once covered sexual activity between men.
- (4) In this section, “sexual activity between men” includes—
- (a) any physical or affectionate activity between males of any age which is of a type which is characteristic of persons involved in an intimate personal relationship,
 - (b) conduct intended to introduce or procure such activity.

Commencement Information

I2 S. 2 in force at 15.10.2019 by [S.S.I. 2019/205](#), [reg. 2](#)

PART 2

PARDONS FOR CERTAIN HISTORICAL SEXUAL OFFENCES

3 Pardons for certain historical sexual offences

A person who has been convicted of a historical sexual offence is pardoned for the offence if the conduct constituting the offence, if occurring in the same circumstances, would not be an offence on the day on which this section comes into force.

Commencement Information

I3 S. 3 in force at 15.10.2019 by [S.S.I. 2019/205](#), [reg. 2](#)

4 Pardons: supplementary

A pardon under section 3 does not—

- (a) affect any conviction or sentence, or
- (b) give rise to any right, entitlement or liability.

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Commencement Information

I4 S. 4 in force at 15.10.2019 by S.S.I. 2019/205, reg. 2

PART 3

DISREGARDING CERTAIN CONVICTIONS FOR HISTORICAL SEXUAL OFFENCES

5 Application to have conviction for historical sexual offence disregarded

- (1) A person who has been convicted of a historical sexual offence may apply to the Scottish Ministers for the conviction to be disregarded.
- (2) An application made under subsection (1) must be in writing and must include—
 - (a) the applicant's name, address and date of birth,
 - (b) in so far as known to the applicant, the applicant's name and address at the time of the conviction,
 - (c) in so far as known to the applicant, the time when and place where the conviction took place and the relevant case number,
 - (d) in so far as known to the applicant, the nature and circumstances of the offence and the sentence imposed,
 - (e) any other information which the Scottish Ministers may require.
- (3) An application made under subsection (1) may also include any other information which the applicant wishes the Scottish Ministers to consider when determining the application.

Commencement Information

I5 S. 5 in force at 15.10.2019 by S.S.I. 2019/205, reg. 2

6 Application for disregard: further information

- (1) The Scottish Ministers may request any person to make representations, or to provide further information, in relation to an application made under section 5(1).
- (2) A person so requested is authorised to make such representations or, as the case may be, to provide such information for the purposes of assisting the Scottish Ministers to determine the application.

Commencement Information

I6 S. 6 in force at 15.10.2019 by S.S.I. 2019/205, reg. 2

7 Determination of application for disregard

- (1) When determining an application made under section 5(1), the Scottish Ministers must in particular—

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- (a) consider all representations and other information included in the application,
 - (b) consider all representations made or other information provided in pursuance of section 6 in relation to the application, and
 - (c) except where it appears to them that the offence to which the application relates is not a historical sexual offence, take reasonable steps to obtain (and, where available, consider) any record of—
 - (i) the investigation of the conduct which led to the conviction, and
 - (ii) any subsequent proceedings relating to the conduct.
- (2) Having done so, the Scottish Ministers must—
- (a) unless subsection (3) applies, determine that the conviction in respect of which the application is made is to be disregarded, or
 - (b) where subsection (3) applies, determine that the conviction is not to be disregarded.
- (3) This subsection applies if it appears to the Scottish Ministers—
- (a) that the offence for which the applicant was convicted is not a historical sexual offence, or
 - (b) that the conduct constituting the historical sexual offence, if occurring in the same circumstances, would have been an offence on the day on which section 3 came into force.
- (4) The Scottish Ministers must—
- (a) record their determination, and the reasons for it, in writing,
 - (b) provide notice of their determination, and the reasons for it, to the applicant, and
 - (c) where they have determined that a conviction for a historical sexual offence is to be disregarded, inform the applicant that references to the conviction will be removed in pursuance of section 10.
- (5) Where the Scottish Ministers determine that a conviction for a historical sexual offence is to be disregarded, the disregard takes effect from the day falling 14 days after notice of their determination is given.

Commencement Information

I7 S. 7 in force at 15.10.2019 by [S.S.I. 2019/205](#), [reg. 2](#)

8 Appeals

- (1) This section applies where the Scottish Ministers have determined that a conviction in respect of which an application is made under section 5(1) is not to be disregarded.
- (2) The applicant may, with the permission of the sheriff, appeal against the determination.
- (3) When deciding an appeal, the sheriff may not take account of any representations which were, or other information which was, not available to the Scottish Ministers when determining the application.
- (4) On an appeal, the sheriff must—
 - (a) unless subsection (5) applies, order that the conviction in respect of which the appeal is made is to be disregarded, or

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- (b) where subsection (5) applies, dismiss the appeal.
- (5) This subsection applies if it appears to the sheriff—
 - (a) that the offence for which the appellant was convicted is not a historical sexual offence, or
 - (b) that the conduct constituting the historical sexual offence, if occurring in the same circumstances, would have been an offence on the day on which section 3 came into force.
- (6) The sheriff's decision on an appeal is final.
- (7) Where the sheriff orders that a conviction for a historical sexual offence is to be disregarded, the disregard takes effect from the day falling 14 days after the sheriff's order is made.
- (8) An appeal under this section is to be made—
 - (a) to a sheriff of the sheriffdom in which the appellant resides, or
 - (b) where no sheriff has jurisdiction under paragraph (a), to a sheriff of the sheriffdom of Lothian and Borders at Edinburgh.

Commencement Information

18 S. 8 in force at 15.10.2019 by S.S.I. 2019/205, reg. 2

9 Effect of disregard

- (1) This section applies where a disregard for a conviction for a historical sexual offence has taken effect (see sections 7(5) and 8(7)).
- (2) The person who was convicted of the offence is to be treated for all purposes as not having—
 - (a) committed the offence,
 - (b) been charged with, or prosecuted for, the offence,
 - (c) been convicted of the offence, or
 - (d) been sentenced for the offence.
- (3) In particular—
 - (a) no evidence is admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in Scotland to prove that the person has done, or undergone, anything within subsection (2), and
 - (b) the person is not, in any such proceedings, to be asked (and, if asked, is not to be required to answer) any question relating to the person's past which cannot be answered without acknowledging or referring to the conviction or any circumstances ancillary to it.
- (4) Where a question is put to a person, other than in such proceedings, seeking information with respect to the previous convictions, offences, conduct or circumstances of any person—
 - (a) the question is to be treated as not relating to any disregarded conviction, or any circumstances ancillary to it (and the answer to the question may be framed accordingly), and