

HISTORICAL SEXUAL OFFENCES (PARDONS AND DISREGARDS) (SCOTLAND) ACT 2018

EXPLANATORY NOTES

THE ACT

Part Two – Pardons for Certain Historical Sexual Offences

Section 3 – Pardons for certain historical sexual offences

14. The effect of section 3 is that any person (including any deceased person) who was convicted of a historical sexual offence as defined in section 2 is pardoned for the offence if the conduct for which the person was convicted would no longer constitute any offence under Scots law as it exists on the day on which this section comes into force.
15. There are a number of reasons people may have been convicted of a historical sexual offence for behaviour that is no longer illegal. Prior to 1980, all same-sex sexual activity between men was illegal in Scotland. Between 1980 and 2001, the age of consent was lower for sexual activity between opposite-sex partners than for same-sex sexual activity between men. Similarly, same-sex sexual activity between men remained criminal in a number of circumstances where the same activity involving opposite-sex partners would not be.
16. For example, where soliciting and importuning would only be criminal in relation to opposite-sex partners where it occurred in the context of prostitution, the same was not true where it related to sexual activity between men. Sexual activity which was treated as occurring in private if it happened between opposite-sex partners was treated as having taken place in public when it happened between men, because there was a restrictive definition of what constituted “private” in this context. Between 1980 and 1995 there was also a specific offence criminalising same-sex relationships between men who were crew members of a UK merchant ship (section 80(7)(d) of the Criminal Justice (Scotland) Act 1980).
17. More generally, it is thought that men may have been prosecuted using common law offences for displays of affection in a public place of a kind that would not have been criminal where they involved opposite-sex partners.
18. As such, if a person was convicted of, for example, an offence under section 13(5)(c) of the Criminal Law (Consolidation) (Scotland) Act 1995 because the person with whom they engaged in sexual activity was aged 16 or 17, they would be pardoned. If a person was convicted of the same offence for engaging in sexual activity with a child under the age of 16, that person is not pardoned.
19. [Section 16](#) provides that, for the purpose of section 3, a “person” includes a deceased person and accordingly the pardon applies posthumously.