

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

EXPLANATORY NOTES

THE ACT

Part 4 - General

Section 12 – Saving for Royal Pardons

45. **Section 12** provides that nothing in this Act affects the Royal prerogative of mercy – that is, the common law power of the Crown to issue a pardon, commute a sentence or quash a conviction.

Section 13 – Application of the Act to conduct dealt with otherwise than by prosecution

46. **Section 13** makes provision with regards conduct that was dealt with by means of an alternative to prosecution.
47. **Section 13(2)** provides that references to a “conviction” and to a person being “convicted”, or to a sentence, include references to, or a person being given, an alternative to prosecution.
48. **Section 13(3)** provides that an alternative to prosecution includes a warning given by a constable or procurator fiscal, the acceptance of a conditional offer of a fixed penalty under section 302 of the Criminal Procedure (Scotland) Act 1995, or the acceptance of an offer made by a procurator fiscal to do anything else (e.g. undertake an activity, treatment or receive services) as an alternative to prosecution for an alleged offence.
49. **Section 13(4)** provides that where a child has been referred to a children’s hearing on offence grounds and that ground has been established or accepted in such proceedings, that is to be treated for the purpose of this Act as a conviction; and that any disposal of such a case by a children’s hearing is to be treated as a sentence.
50. These provisions ensure that matters which are not convictions before a criminal court but which can show up on a disclosure check as instances of offending behaviour are encompassed within the pardon and disregard scheme.

Section 14 – Regulations

51. **Section 14** makes provision concerning the Scottish Ministers’ powers to make regulations under this Act.
52. **Section 14(1)** provides that each power to make regulations in the Act (except section 17 on commencement) includes power to make incidental, supplementary, consequential, transitional, transitory or saving provision and that different provision can be made for different purposes.

*These notes relate to the Historical Sexual Offences (Pardons and Disregards)
(Scotland) Act 2018 (asp 14) which received Royal Assent on 11 July 2018*

53. Sections 14(2) and 14(3) provide that the regulation-making powers at section 10(3), to prescribe the manner in which disregarded convictions are to be removed from official records, and at section 10(5), to prescribe a “relevant record keeper”, are both subject to the affirmative Parliamentary procedure; and that the power to make ancillary provision at section 15 is subject to the affirmative Parliamentary procedure if the regulations amend any part of the text of an Act, but otherwise is subject to the negative procedure.

Section 15 – Ancillary provision

54. Section 15 provides a power for the Scottish Ministers to make, by regulations, incidental, supplementary, consequential, transitional, transitory or saving provision relating to the Act or for the purpose of giving full effect to it.

Section 16 – Interpretation

55. Section 16 defines certain key terms used in the Act. For the purposes of section 3 and the pardon only, “person” includes a deceased person. In the remainder of the Act, including for the purposes of Part 3 in relation to an application for a disregard and its effect, “person” refers only to living persons.

Section 17 – Commencement

56. Section 17 provides that this section and sections 15, 16 and 18 come into force on the day after Royal Assent. All other provisions come into force on a day or days appointed by regulations made by the Scottish Ministers, and those regulations may make transitional, transitory or saving provision related to commencement.