



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

## 2018 asp 14

### 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.

#### **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.

## **7 Determination of application for disregard**

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

## **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
  - (b) where subsection (5) applies, dismiss the appeal.

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*Status: This is the original version (as it was originally enacted).*

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- (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.

## **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
  - (b) the person questioned is not to be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose that conviction or any circumstance ancillary to it in answering the question.
- (5) Any obligation imposed on any person by any enactment or rule of law, or by the provisions of any agreement or arrangement, to disclose any matters to any other

person is not to extend to requiring the disclosure of a disregarded conviction or any circumstances ancillary to it.

- (6) In this section, “proceedings before a judicial authority” includes, in addition to any court proceedings, proceedings before any tribunal, body or person having power by virtue of any enactment, rule of law, arbitration agreement, rules, custom or practice—
- (a) to determine any question affecting the rights, privileges, obligations or liabilities of any person, or
  - (b) to receive evidence affecting the determination of any such question.
- (7) For the purposes of this section, circumstances ancillary to a conviction are any circumstances of—
- (a) the offence which was the subject of the conviction,
  - (b) the conduct constituting the offence,
  - (c) any process or proceedings preliminary to the conviction,
  - (d) any sentence imposed in respect of the conviction,
  - (e) any proceedings (whether by way of appeal or otherwise) for reviewing the conviction or sentence,
  - (f) anything done in pursuance of, or undergone in compliance with, any such sentence.

## **10 Removal of disregarded convictions from official records**

- (1) Where a disregard for a conviction for a historical sexual offence has taken effect (see sections 7(5) and 8(7)), the Scottish Ministers must—
- (a) where they are the relevant record keeper in relation to any official records held by them, remove all references to the disregarded conviction contained in those official records (and, where the disregard has effect by virtue of section 8(7), give notice of the removal to the person who has the disregarded conviction), and
  - (b) require every other relevant record keeper to remove all references to the disregarded conviction contained in official records held by the keeper.
- (2) A relevant record keeper issued with a requirement under subsection (1)(b) must—
- (a) comply with the requirement as soon as reasonably practicable (but no earlier than the day on which the disregard takes effect), and
  - (b) give notice of the removal to the person who has the disregarded conviction.
- (3) The Scottish Ministers may, by regulations, prescribe the manner in which references to disregarded convictions are to be removed from official records in pursuance of this section.
- (4) Regulations may, in particular, provide that removal from records means recording with the details of the conviction—
- (a) the fact that it is a disregarded conviction, and
  - (b) the effect of it being a disregarded conviction.
- (5) A “relevant record keeper” means such person as may be prescribed in regulations made by the Scottish Ministers (and may, in particular, include the Scottish Ministers acting in their capacity as the holder of official records of a type so prescribed).

## **11 Advisers**

- (1) The Scottish Ministers may appoint persons to advise or assist them on the determination of applications made under section 5(1).
- (2) The Scottish Ministers may provide to an appointed person, or authorise that person to access, such information contained in or relating to such applications as they consider relevant.
- (3) The Scottish Ministers may pay an appointed person such allowances and expenses as they consider appropriate.