

EXPLANATORY MEMORANDUM TO
THE PROTECTION OF FREEDOMS ACT 2012 (RELEVANT OFFICIAL
RECORDS) ORDER (NORTHERN IRELAND) 2018

S.R. 2018 No. 129

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under section 101D(5), (6), (7) and (8) of the Protection of Freedoms Act 2012 ('the 2012 Act').

2. Purpose of the instrument

- 2.1 The Statutory Rule is made to support the commencement of sections 168, 169, 170 and 172 of the Policing and Crime Act 2017 which makes new provision in relation to disregards and pardons for convictions for abolished offences.
- 2.2 The Statutory Rule prescribes which records of convictions and cautions, other than the main databases of police and criminal records, are relevant official records which will be disregarded should an application for a disregard be successful. These have been identified as court records and any other locally held police records. The Statutory Rule also prescribes the relevant data controllers in relation to relevant official records.

3. Background

- 3.1 Chapter 5 of Part 5 of the 2012 Act makes provision for a person who has a conviction or caution for certain consensual offences with persons over 17 (in particular in relation to historical offences of buggery and gross indecency between men) to apply to the Department of Justice to have that conviction or caution disregarded. It also sets out the circumstances in which an application will be successful.
- 3.2 Where an application is successful the Department of Justice must direct the relevant data controller to delete or annotate details, contained in relevant official records, of a disregarded conviction or caution.
- 3.3 A person who has a disregarded conviction or caution is to be treated for all purposes in law as if the person has not committed; been charged with or prosecuted for; been convicted of; been sentenced for; or been cautioned for the offence.
- 3.4 Where an application is unsuccessful Chapter 5 of Part 5 provides for a right of appeal to the High Court in Northern Ireland.
- 3.5 The Statutory Rule makes provision in relation to:
 - relevant official records
 - relevant data controllers
 - annotation of relevant official records

4. Consultation

- 4.1 A Legislative Consent Memorandum (LCM), laid before the Assembly in November 2016 by the Justice Minister, asked the Assembly to extend to Northern Ireland a number of provisions within the Policing and Crime Bill (enacted as the Policing and Crime Act 2017), by amendment at Lords Committee and Lords Report Stage. These included disregards and pardons for convictions of certain abolished offences. The LCM was debated and agreed by the Assembly on 28 November 2016. Briefing on the provisions was presented by the Department to the Northern Ireland Assembly's Justice Committee prior to the Assembly debate on the Legislative Consent Memorandum.

5. Equality Impact

- 5.1 No equality issues arise.

6. Regulatory Impact

- 6.1 There will be no financial impact on businesses, charities or voluntary bodies.

7. Financial Implications

- 7.1 None.

8. Section 24 of the Northern Ireland Act 1998

- 8.1 No s.24 issues arise.

9. EU Implications

- 9.1 None

10. Parity or Replicatory Measure

- 10.1 The Statutory Rule applies to Northern Ireland only. Parallel provision has been in place in England and Wales since 2012.

11. Additional Information

- 11.1 It is intended that the Statutory Rule will come into operation on 28th June 2018.