



# Protection of Freedoms Act 2012

## 2012 CHAPTER 9

### PART 5

SAFEGUARDING VULNERABLE GROUPS, CRIMINAL RECORDS ETC.

### CHAPTER 4

DISREGARDING CERTAIN CONVICTIONS FOR BUGGERY ETC. [<sup>F1</sup>: ENGLAND AND WALES]

*Appeals and other supplementary provision*

#### **101 Interpretation: Chapter 4**

(1) In this Chapter—

“caution” means—

- (a) a caution given to a person in England and Wales in respect of an offence which, at the time the caution is given, that person has admitted, or
- (b) a reprimand or warning given under section 65 of the Crime and Disorder Act 1998 (reprimands and warnings for persons aged under 18),

“conviction” includes—

- (a) a finding that a person is guilty of an offence in respect of conduct which was the subject of service disciplinary proceedings [<sup>F1</sup>(including anything that under section 376(1) and (2) of the Armed Forces Act 2006 is to be treated as a conviction for the purposes of that Act)],
- (b) a conviction in respect of which an order has been made discharging the person concerned absolutely or conditionally, and
- (c) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that a person has committed an offence or done the act or made the omission charged,

“disregarded caution” is a caution which has become a disregarded caution by virtue of this Chapter,

**Changes to legislation:** Protection of Freedoms Act 2012, Section 101 is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

“disregarded conviction” is a conviction which has become a disregarded conviction by virtue of this Chapter,

“document” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its provision or production include providing or producing a copy of the information in legible form,

[<sup>F2</sup>“enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978),]

“information” includes documents,

“notice” means notice in writing,

“official records” has the meaning given by section 95(5),

“sentence” includes—

- (a) any punishment awarded, and
- (b) any order made by virtue of Schedule 5A to the Army Act 1955, Schedule 5A to the Air Force Act 1955 or Schedule 4A to the Naval Discipline Act 1957,

in respect of a finding that a person is guilty of an offence in respect of conduct which was the subject of service disciplinary proceedings, [<sup>F3</sup> (including anything that under section 376(1) and (3) of the Armed Forces Act 2006 is to be treated as a sentence for the purposes of that Act),]

“service disciplinary proceedings” means any proceedings (whether in England and Wales or elsewhere)—

- (a) under the Naval Discipline Act 1866, the Army Act 1881, the Air Force Act 1917, the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 (whether before a court-martial or before any other court or person authorised under the enactment concerned to award a punishment in respect of an offence), <sup>F4</sup>...
- (b) before a Standing Civilian Court established under the Armed Forces Act 1976 [<sup>F5</sup>, or
- (c) in respect of a service offence (whether or not before a court but excepting proceedings before a civilian court within the meaning of the Armed Forces Act 2006);

and for the purposes of paragraph (c) “service offence” means a service offence within the meaning of the Armed Forces Act 2006, or an SDA offence within the meaning of the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (SI 2009/1059).]

(2) Paragraph (b) of the definition of “conviction” applies despite the following (which deem a conviction of a person discharged not to be a conviction)—

- (a) section 14 of the Powers of Criminal Courts (Sentencing) Act 2000, and
- (b) section 187 of the Armed Forces Act 2006 or any corresponding earlier enactment.

<sup>F6</sup>(3) .....

<sup>F7</sup>(4) .....

(5) In this Chapter a reference to an offence includes [<sup>F8</sup>a reference to an inchoate or ancillary offence relating to the offence.]

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(6) In the case of an attempt, conspiracy [F9, incitement, encouraging or assisting], the references in this Chapter to the conduct constituting the offence are references to the conduct to which the attempt, conspiracy [F10, incitement, encouraging or assisting] related (whether or not that conduct occurred).

[F11(6A) For the purposes of section 92, an inchoate or ancillary offence is to be treated as repealed or abolished to the extent that the offence to which it relates is repealed or abolished.

(6B) A reference to an inchoate or ancillary offence in relation to an offence is a reference to an offence of—

- (a) attempting, conspiracy or incitement to commit the offence,
- (b) encouraging or assisting the commission of the offence, or
- (c) aiding, abetting, counselling or procuring the commission of the offence.

(6C) For the purposes of section 92, an offence under an enactment mentioned in subsection (6D) is to be treated as repealed to the extent that the conduct constituting the offence under the enactment—

- (a) was punishable by reference to an offence under the law of England and Wales which has been repealed or abolished, or
- (b) if the conduct was not punishable by the law of England and Wales, was punishable by reference to equivalent conduct constituting an offence under the law of England and Wales which has been repealed or abolished.

(6D) The enactments are—

- (a) section 45 of the Naval Discipline Act 1866,
- (b) section 41 of the Army Act 1881,
- (c) section 41 of the Air Force Act 1917,
- (d) section 70 of the Army Act 1955,
- (e) section 70 of the Air Force Act 1955,
- (f) section 42 of the Naval Discipline Act 1957, and
- (g) section 42 of the Armed Forces Act 2006.]

(7) For the purposes of subsections [F12(5), (6) and (6B)] an attempt to commit an offence includes conduct which—

- (a) consisted of frequenting with intent to commit the offence any river, canal, street, highway, place of public resort or other location mentioned in section 4 of the Vagrancy Act 1824 (as it then had effect) in connection with frequenting by suspected persons or reputed thieves, and
- (b) was itself an offence under that section.

#### Textual Amendments

- F1** Words in s. 101(1) inserted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. 194(10)(a)(i), 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)
- F2** Words in s. 101(1) inserted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. 194(10)(a)(v), 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)
- F3** Words in s. 101(1) inserted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. 194(10)(a)(ii), 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)
- F4** Word in s. 101(1) omitted (13.6.2023) by virtue of Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. 194(10)(a)(iii), 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)

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- F5** Words in s. 101(1) inserted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 194(10)(a)(iv)**, 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)
- F6** S. 101(3) omitted (13.6.2023) by virtue of Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 194(10)(b)**, 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)
- F7** S. 101(4) omitted (13.6.2023) by virtue of Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 194(10)(b)**, 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)
- F8** Words in s. 101(5) substituted for s. 101(5)(a)(b) (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 194(10)(c)**, 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)
- F9** Words in s. 101(6) substituted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 194(10)(d)(i)**, 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)
- F10** Words in s. 101(6) substituted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 194(10)(d)(ii)**, 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)
- F11** S. 101(6A)-(6D) inserted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 194(10)(e)**, 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)
- F12** Words in s. 101(7) substituted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 194(10)(f)**, 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)

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**Modifications etc. (not altering text)**

- C1** Pt. 5 Ch. 4: power to amend conferred (31.1.2017 for specified purposes) by Policing and Crime Act 2017 (c. 3), **ss. 166**, 183(1)(5)(e) (with s. 167)
- C2** S. 101 applied in part (with modifications) (31.1.2017) by Policing and Crime Act 2017 (c. 3), **ss. 164(7)-(8A)**, 183(5)(b)(e) (with ss. 164(9), 167) (as amended (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **s. 195(6)-(8)(13)**, 208(1) (with s. 195(14)); S.I. 2023/641, reg. 2(b))

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**Commencement Information**

- I1** S. 101 in force at 1.10.2012 by S.I. 2012/2234, **art. 3(l)**

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing SI 2012/2234 art. 13 by [S.I. 2014/831 art. 2\(2\)](#)
- specified provision(s) transitional provisions and savings for commencing S.I. 2013/1814 by [S.I. 2013/1813 art. 2-9](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 1 para. 7A inserted by [2019 c. 3 Sch. 2 para. 20](#)