



# Policing and Crime Act 2017

## 2017 CHAPTER 3

### PART 9

#### MISCELLANEOUS AND GENERAL

#### CHAPTER 1

#### MISCELLANEOUS

#### *Pardons for certain abolished offences etc*

#### **164 Posthumous pardons for convictions etc of certain abolished offences: England and Wales**

[<sup>F1</sup>(A1) Subsection (1) applies in relation to a person—

- (a) who was convicted of, or cautioned for, an offence in circumstances where the conduct constituting the offence was sexual activity between persons of the same sex, and
- (b) who died before the end of the period of twelve months beginning with—
  - (i) the day on which section 194 of the Police, Crime, Sentencing and Courts Act 2022 comes into force, or
  - (ii) if later, the day on which the offence referred to in paragraph (a) became an abolished offence (see subsection (1A)).]

[<sup>F2</sup>(1) The person is pardoned for the offence if—

- (a) any other person involved in the sexual activity was aged 16 or over, and
- (b) the offence has become an abolished offence.

(1A) An offence becomes an abolished offence at the point at which conditions A and B are first met.

(1B) Condition A is that the offence has been repealed or, in the case of an offence at common law, abolished by enactment (whether or not it was re-enacted or replaced).

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*Changes to legislation: Policing and Crime Act 2017, Section 164 is up to date with all changes known to be in force on or before 27 May 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*

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(1C) Condition B is that the sexual activity referred to in subsection (A1)(a) would not, if occurring in the same circumstances, constitute an offence.]

<sup>F3</sup>(2) .....

<sup>F3</sup>(3) .....

<sup>F3</sup>(4) .....

<sup>F3</sup>(5) .....

<sup>F3</sup>(6) .....

(7) Subject to [<sup>F4</sup>subsections (8) and (8A)], the following provisions of section 101 of the Protection of Freedoms Act 2012 apply for the purposes of this section and section 167(1) (so far as relating to this section) as they apply for the purposes of Chapter 4 of Part 5 of that Act—

- (a) in subsection (1), the definitions of “caution”, “conviction”, and “sentence” (and the related definition of “service disciplinary proceedings”);
- (b) subsections (2) and (5) to (7) [<sup>F5</sup>(but as if the reference in subsections (6A) and (6C) to section 92 were a reference to this section)].

(8) The definition of “service disciplinary proceedings” in section 101(1) of the 2012 Act applies in accordance with subsection (7) with the modification that it also includes any proceedings (whether in England and Wales or elsewhere) under—

- (a) 13 Chas. 2 c. 9 (1661) (An Act for the regulation and better government of the navy),
- (b) 22 Geo. 2 c. 33 (1749) (An Act for amending and consolidating the laws relating to the navy), <sup>F6</sup>...
- <sup>F7</sup>(ba) .....
- (c) the Naval Discipline Act 1860, the Naval Discipline Act 1861 or the Naval Discipline Act 1864 [<sup>F8</sup>, <sup>F9</sup>...]

<sup>F10</sup>(ca) the Mutiny Act 1878, the Marine Mutiny Act 1878, any Act previously in force corresponding to either of those Acts or any relevant Articles of War, or]

<sup>F11</sup>(d) the Army Discipline and Regulation Act 1879.]

<sup>F12</sup>(8A) Section 101(6D) of the 2012 Act is to be read, in its application to this section by virtue of subsection (7) of this section, as if the enactments listed in that subsection included—

- (a) Article 2 of Section 20 of the Articles of War of 1749 (offences triable by courts martial outside Great Britain),
- (b) section 38 of the Naval Discipline Act 1860,
- (c) section 38 of the Naval Discipline Act 1861,
- (d) section 41 of the Naval Discipline Act 1864,
- (e) Article 93 of Section 2 of the Articles of War of 1876 (offences not specified in Marine Mutiny Act or Articles of War),
- (f) section 41 of the Army Discipline and Regulation Act 1879, and
- (g) any provision corresponding to the provision mentioned in paragraphs (a) or (e), contained in other relevant Articles of War.]

(9) Except in relation to service disciplinary proceedings, this section applies only in relation to persons convicted or cautioned in England and Wales.

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[<sup>F13</sup>(10) In this section—

“the Articles of War of 1749” means the Rules and Articles for the better government of His Majesty’s horse and foot guards (etc.), made under [23 Geo. 2 c. 4 \(1749\)](#) (an Act for punishing mutiny and desertion; and for the better payment of the army and their quarters);

“the Articles of War of 1876” means the Rules and Articles (etc.) for the better government of Her Majesty’s royal marine forces, made under the Marine Mutiny Act 1876;

“enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978);

“relevant Articles of War” means Articles of War made under—

- (a) the Mutiny Act 1878,
- (b) the Marine Mutiny Act 1878, or
- (c) any Act previously in force corresponding to either of those Acts.]

[<sup>F14</sup>“sexual activity” includes—

- (a) any physical or affectionate activity which is of a type characteristic of people involved in an intimate personal relationship, and
- (b) conduct intended to lead to sexual activity.]

[<sup>F15</sup>(11) Subsection (1) does not apply in relation to an offence for which the person has previously been pardoned under this section or section 165.]

#### Textual Amendments

- F1** S. 164(A1) inserted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 195(3)**, 208(1) (with s. 195(14)); S.I. 2023/641, reg. 2(b)
- F2** S. 164(1)-(1C) substituted for s. 164(1) (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 195(4)**, 208(1) (with s. 195(14)); S.I. 2023/641, reg. 2(b)
- F3** S. 164(2)-(6) omitted (13.6.2023) by virtue of Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 195(5)**, 208(1) (with s. 195(14)); S.I. 2023/641, reg. 2(b)
- F4** Words in s. 164(7) substituted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 195(6)(a)**, 208(1) (with s. 195(14)); S.I. 2023/641, reg. 2(b)
- F5** Words in s. 164(7)(b) inserted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 195(6)(b)**, 208(1) (with s. 195(14)); S.I. 2023/641, reg. 2(b)
- F6** Word in s. 164(8)(b) omitted (15.2.2022) by virtue of Armed Forces Act 2021 (c. 35), **ss. 19(3)(a)**, 24(3)
- F7** S. 164(8)(ba) omitted (13.6.2023) by virtue of Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 195(7)(a)**, 208(1) (with s. 195(14)); S.I. 2023/641, reg. 2(b)
- F8** Word in s. 164(8)(c) inserted (15.2.2022) by Armed Forces Act 2021 (c. 35), **ss. 19(3)(c)**, 24(3)
- F9** Word in s. 164(8)(c) omitted (13.6.2023) by virtue of Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 195(7)(b)**, 208(1) (with s. 195(14)); S.I. 2023/641, reg. 2(b)
- F10** S. 164(8)(ca) inserted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 195(7)(c)**, 208(1) (with s. 195(14)); S.I. 2023/641, reg. 2(b)
- F11** S. 164(8)(d) inserted (15.2.2022) by Armed Forces Act 2021 (c. 35), **ss. 19(3)(d)**, 24(3)
- F12** S. 164(8A) inserted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 195(8)**, 208(1) (with s. 195(14)); S.I. 2023/641, reg. 2(b)
- F13** S. 164(10) inserted (15.2.2022) by Armed Forces Act 2021 (c. 35), **ss. 19(4)**, 24(3)
- F14** Words in s. 164(10) inserted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 195(9)**, 208(1) (with s. 195(14)); S.I. 2023/641, reg. 2(b)

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**F15** S. 164(11) inserted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 195(10), 208(1)** (with s. 195(14)); S.I. 2023/641, reg. 2(b)

**Changes to legislation:**

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

- specified provision(s) amendment to earlier commencing S.I. 2017/1139, reg. 2 by [S.I. 2017/1162 reg. 2](#)