

MINERS' STRIKE (PARDONS) (SCOTLAND) ACT 2022

EXPLANATORY NOTES

THE ACT

Pardons

3. The effect of section 1 of the Act is that certain individuals who were convicted of certain offences committed during the 1984-85 national miners' strike are pardoned for those offences if the requirements of the pardon are met.
4. The pardon applies automatically when the requirements of the pardon are met. There is no application process for a pardon.

Qualifying individuals

5. The pardon applies to qualifying individuals. "Qualifying individual" is defined in section 2 of the Act to mean an individual who was a miner, an individual who was (at the time of the commission of the offence) a member of the same household as a miner, or an individual who was (at the time of the commission of the offence) a parent of a miner, a child of a miner or a sibling of a miner. "Sibling of a miner" is defined in section 5 of the Act as an individual who has at least one parent in common with a miner. That means that a half sibling of a miner is a qualifying individual.
6. The definition of "qualifying individual" includes a deceased individual, so the pardon applies to those living and posthumously.

Meaning of "miner"

7. In accordance with the definition of "miner" in section 5 of the Act, the pardon applies to individuals who were employed by—
 - the National Coal Board, or
 - small mine licensees, to work at small private pits.
8. It does not matter what role the miner had. The definition of "miner" includes, for example, all underground workers, all surface workers and all of those employed in workshops that were situated away from the coal mines.
9. There is no need for the miner to have been employed in Scotland: the miner could have been employed in any part of Great Britain. As long as the conviction (as defined in section 5 of the Act) was from a Scottish criminal court, it does not matter that the individual did not live in Scotland and had travelled from outside Scotland to participate in strike activity.
10. The miner could have been employed at any time during the strike period of 12 March 1984 to 3 March 1985. That means that the definition of "miner" includes miners who

retired, or who were sacked during the strike period, who were not employed or on strike at the time that the offence was committed.

Meaning of “household”

11. “Household” is defined in section 5 of the Act. For an individual to be classed as being in the same household as a miner for the purposes of the pardon, the individual must have lived with the miner as a family or other unit. It does not matter whether the individual and the miner were related so, for example, a group of friends who rented a flat together would constitute a household. A lodger could count as a member of a household if the lodger was living as “one of the family”.
12. The individual and the miner must have been living in a private dwelling that was their only or main residence and they must have shared cooking facilities and shared a living room or sitting room or dining area.

The offences

13. A conviction comes within the scope of the pardon if it was for an offence listed in section 3 of the Act. Those offences are—
 - the common law offence of breach of the peace,
 - breach of bail, which at the time of the strike was covered by section 3 of the Bail etc. (Scotland) Act 1980,
 - an offence under section 41(1)(a) of the Police (Scotland) Act 1967, or
 - theft.
14. The definition of “conviction” in section 5 of the Act extends its meaning so that it includes the scenario in which a person is unfit for trial and there is instead an examination of the facts, at which the court examines the available evidence and may make a finding as to whether the person did the act or made the omission constituting the offence (but there is no conviction). It also includes an absolute discharge, which is deemed not to be a conviction (other than for limited purposes).
15. Section 41(1)(a) of the Police (Scotland) Act 1967 criminalised assault of, or resisting, molesting, obstructing or hindering a constable, or a person assisting a constable, in the execution of the constable’s duty.

Qualifying conduct

16. The pardon applies to conduct that occurred during the 1984-85 miners’ strike which, for the purposes of the Act, is the period of nationwide industrial action led by the National Union of Mineworkers, which took place across the UK from 12 March 1984 to 3 March 1985 (inclusive).
17. In addition, the conduct must meet one of the conditions set out in subsection (2), (3) or (4) of section 1 of the Act. If the conduct constituted an offence listed in section 3(a) to (c) of the Act (breach of the peace, breach of bail conditions or an offence under section 41(1)(a) of the Police (Scotland) Act 1967), the conduct must meet either condition A (as set out in section 1(2) of the Act) or condition B (as set out in section 1(3) of the Act). If the conduct constituted the offence of theft, the conduct must meet condition C (as set out in section 1(4) of the Act).
18. Condition A applies to conduct that occurred while the qualifying individual was engaged or participating in activity supporting or opposing the miners’ strike. This would include conduct that occurred in the course of an organised picket or demonstration. It would also include informal strike activity, such as an altercation or a disturbance in the community or a spontaneous demonstration.

*These notes relate to the Miners' Strike (Pardons) (Scotland)
Act 2022 (asp 6) which received Royal Assent on 26 July 2022*

19. Condition A also applies to conduct that occurred while the qualifying individual was engaged or participating in ancillary activity such as assembling before or after or travelling to or from activity supporting or opposing the miners' strike. For example, conduct that occurred between qualifying individuals attempting to reach the picket line and police seeking to block them. Another example would be an altercation between qualifying individuals and police in the aftermath of strike activity in the community.
20. Condition B applies to conduct that occurred in response to conduct that meets Condition A. For example, where a qualifying individual responded with general threats or insults to strike-related abusive comments made by another party.
21. Conditions A and B do not cover conduct that occurred for a reason unrelated to the miners' strike. That means that conduct which just happened to take place at, or on the way to or from, strike activity (but could equally have taken place in another context) would not be covered by the pardon. For example, a conviction of breach of the peace following a personal dispute would not be pardoned.
22. In the context of breach of bail, the conduct which breached the bail condition must itself meet condition A or condition B. An example of conduct that would come within the pardon is a qualifying individual returning to the picket line in defiance of a bail condition prohibiting the qualifying individual from doing so (provided that the other requirements of the pardon are met).
23. Condition C applies to theft committed by a qualifying individual because of economic hardship arising from participation (whether by the qualifying individual or another person) in the miners' strike.

Pardons: supplementary

24. Section 4(a) and (b) provides that section 1 does not affect any conviction or sentence or give rise to any right, entitlement or liability. For example, a pardon does not create any right to financial compensation and it does not reverse any decision made by the judiciary at the time.
25. As set out in section 4(c), nothing in section 1 affects the prerogative of mercy – that is, the common law power of the Crown to issue a pardon, commute a sentence or quash a conviction.

Commencement

26. Section 6 provides that all of the provisions of the Act come into force on the day after Royal Assent.