



# Protection of Freedoms Act 2012

## 2012 CHAPTER 9

### PART 5

SAFEGUARDING VULNERABLE GROUPS, CRIMINAL RECORDS ETC.

### CHAPTER 4

DISREGARDING CERTAIN CONVICTIONS FOR BUGGERY ETC.

*Appeals and other supplementary provision*

#### **99 Appeal against refusal to disregard convictions or cautions**

- (1) The applicant may appeal to the High Court if—
  - (a) the Secretary of State makes a decision of the kind mentioned in section 94(3)(b), and
  - (b) the High Court gives permission for an appeal against the decision.
- (2) On such an appeal, the High Court must make its decision only on the basis of the evidence that was available to the Secretary of State.
- (3) If the High Court decides that it appears as mentioned in condition A in section 92, it must make an order to that effect.
- (4) Otherwise it must dismiss the appeal.
- (5) A conviction or caution to which an order under subsection (3) relates becomes a disregarded conviction or caution when the period of 14 days beginning with the day on which the order was made has ended.
- (6) There is no appeal from a decision of the High Court under this section.

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*Status: This is the original version (as it was originally enacted).*

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## 100 Advisers

- (1) The Secretary of State may appoint persons to advise whether, in any case referred to them by the Secretary of State, the Secretary of State should decide as mentioned in condition A in section 92.
- (2) The Secretary of State may disclose to a person so appointed such information (including anything within section 94(1)(a) or (b)) as the Secretary of State considers relevant to the provision of such advice.
- (3) The Secretary of State may pay expenses and allowances to a person so appointed.

## 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,
- (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,

“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,

“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,

“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), or
- (b) before a Standing Civilian Court established under the Armed Forces Act 1976.
- (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.
- (3) The references in section 92(1) to offences under particular provisions are to be read as including references to offences under—
- (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, or
- (f) section 42 of the Naval Discipline Act 1957,
- which are such offences by virtue of those provisions.
- (4) The reference in section 92(3)(b) to an offence under section 71 of the Sexual Offences Act 2003 is to be read as including a reference to an offence under section 42 of the Armed Forces Act 2006 which is such an offence by virtue of section 71 of the Act of 2003.
- (5) In this Chapter a reference to an offence includes—
- (a) a reference to an attempt, conspiracy or incitement to commit that offence, and
- (b) a reference to aiding, abetting, counselling or procuring the commission of that offence.
- (6) In the case of an attempt, conspiracy or incitement, the references in this Chapter to the conduct constituting the offence are references to the conduct to which the attempt, conspiracy or incitement related (whether or not that conduct occurred).
- (7) For the purposes of subsections (5) and (6) 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.