



Protection of Freedoms Act 2012

2012 CHAPTER 9

PART 5

SAFEGUARDING VULNERABLE GROUPS, CRIMINAL RECORDS ETC.

CHAPTER 4

DISREGARDING CERTAIN CONVICTIONS FOR BUGGERY ETC.

General

92 Power of Secretary of State to disregard convictions or cautions

- (1) A person who has been convicted of, or cautioned for, an offence under—
 - (a) section 12 of the Sexual Offences Act 1956 (buggery),
 - (b) section 13 of that Act (gross indecency between men), or
 - (c) section 61 of the Offences against the Person Act 1861 or section 11 of the Criminal Law Amendment Act 1885 (corresponding earlier offences),may apply to the Secretary of State for the conviction or caution to become a disregarded conviction or caution.
- (2) A conviction or caution becomes a disregarded conviction or caution when conditions A and B are met.
- (3) Condition A is that the Secretary of State decides that it appears that—
 - (a) the other person involved in the conduct constituting the offence consented to it and was aged 16 or over, and
 - (b) any such conduct now would not be an offence under section 71 of the Sexual Offences Act 2003 (sexual activity in a public lavatory).
- (4) Condition B is that—

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- (a) the Secretary of State has given notice of the decision to the applicant under section 94(4)(b), and
 - (b) the period of 14 days beginning with the day on which the notice was given has ended.
- (5) Sections 95 to 98 explain the effect of a conviction or caution becoming a disregarded conviction or caution.

93 Applications to the Secretary of State

- (1) An application under section 92 must be in writing.
- (2) It must state—
 - (a) the name, address and date of birth of the applicant,
 - (b) the name and address of the applicant at the time of the conviction or caution,
 - (c) so far as known to the applicant, the time when and the place where the conviction was made or the caution given and, for a conviction, the case number, and
 - (d) such other information as the Secretary of State may require.
- (3) It may include representations by the applicant or written evidence about the matters mentioned in condition A in section 92.

94 Procedure for decisions by the Secretary of State

- (1) In considering whether to make a decision of the kind mentioned in condition A in section 92, the Secretary of State must, in particular, consider—
 - (a) any representations or evidence included in the application, and
 - (b) any available record of the investigation of the offence and of any proceedings relating to it that the Secretary of State considers to be relevant.
- (2) The Secretary of State may not hold an oral hearing for the purpose of deciding whether to make a decision of the kind mentioned in condition A in section 92.
- (3) Subsection (4) applies if the Secretary of State—
 - (a) decides that it appears as mentioned in condition A in section 92, or
 - (b) makes a different decision in relation to the matters mentioned in that condition.
- (4) The Secretary of State must—
 - (a) record the decision in writing, and
 - (b) give notice of it to the applicant.

Effect of disregard

95 Effect of disregard on police and other records

- (1) The Secretary of State must by notice direct the relevant data controller to delete details, contained in relevant official records, of a disregarded conviction or caution.
- (2) A notice under subsection (1) may be given at any time after condition A in section 92 is met but no deletion may have effect before condition B in that section is met.

- (3) Subject to that, the relevant data controller must delete the details as soon as reasonably practicable.
- (4) Having done so, the relevant data controller must give notice to the person who has the disregarded conviction or caution that the details of it have been deleted.
- (5) In this section—
 - “delete”, in relation to such relevant official records as may be prescribed, means record with the details of the conviction or caution concerned—
 - (a) the fact that it is a disregarded conviction or caution, and
 - (b) the effect of it being such a conviction or caution,
 - “the names database” means the names database held by the National Policing Improvement Agency for the use of constables,
 - “official records” means records containing information about persons convicted of, or cautioned for, offences and kept by any court, police force, government department or local or other public authority in England and Wales for the purposes of its functions,
 - “prescribed” means prescribed by order of the Secretary of State,
 - “relevant data controller” means—
 - (a) in relation to the names database, any chief officer of police of a police force in England and Wales who is a data controller in relation to the details concerned,
 - (b) in relation to other relevant official records, such person as may be prescribed,
 - “relevant official records” means—
 - (a) the names database, and
 - (b) such other official records as may be prescribed.
- (6) An order under this section—
 - (a) may make different provision for different purposes,
 - (b) is to be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.

96 Effect of disregard for disclosure and other purposes

- (1) A person who has a disregarded conviction or caution is to be treated for all purposes in law as if the person has not—
 - (a) committed the offence,
 - (b) been charged with, or prosecuted for, the offence,
 - (c) been convicted of the offence,
 - (d) been sentenced for the offence, or
 - (e) been cautioned for the offence.
- (2) In particular—
 - (a) no evidence is to be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in England and Wales to prove that the person has done, or undergone, anything within subsection (1)(a) to (e), and
 - (b) the person is not, in any such proceedings, to be asked (and, if asked, is not to be required to answer) any question relating to the person’s past which cannot

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be answered without acknowledging or referring to the conviction or caution or any circumstances ancillary to it.

- (3) Where a question is put to a person, other than in such proceedings, seeking information with respect to the previous convictions, cautions, offences, conduct or circumstances of any person—
 - (a) the question is to be treated as not relating to any disregarded conviction or caution, or any circumstances ancillary to it (and the answer to the question may be framed accordingly), and
 - (b) the person questioned is not to be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose that conviction or caution or any circumstances ancillary to it in answering the question.
- (4) Any obligation imposed on any person by any enactment or rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person is not to extend to requiring the disclosure of a disregarded conviction or caution or any circumstances ancillary to it.
- (5) A disregarded conviction or caution, or any circumstances ancillary to it, is not a proper ground for—
 - (a) dismissing or excluding a person from any office, profession, occupation or employment, or
 - (b) prejudicing the person in any way in any office, profession, occupation or employment.
- (6) This section is subject to section 97 but otherwise applies despite any enactment or rule of law to the contrary.
- (7) See also section 98 (meaning of “proceedings before a judicial authority” and “circumstances ancillary to a conviction or caution”).

97 Saving for Royal pardons etc.

Nothing in section 96 affects any right of Her Majesty, by virtue of Her Royal prerogative or otherwise, to grant a free pardon, to quash any conviction or sentence, or to commute any sentence.

98 Section 96: supplementary

- (1) In section 96 “proceedings before a judicial authority” includes (in addition to proceedings before any of the ordinary courts of law) proceedings before any tribunal, body or person having power—
 - (a) by virtue of any enactment, law, custom or practice,
 - (b) under the rules governing any association, institution, profession, occupation or employment, or
 - (c) under any provision of an agreement providing for arbitration with respect to questions arising under that agreement,
 to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question.
- (2) For the purposes of section 96, circumstances ancillary to a conviction are any circumstances of—

- (a) the offence which was the subject of the conviction;
 - (b) the conduct constituting the offence;
 - (c) any process or proceedings preliminary to the conviction;
 - (d) any sentence imposed in respect of the conviction;
 - (e) any proceedings (whether by way of appeal or otherwise) for reviewing the conviction or any such sentence;
 - (f) anything done in pursuance of, or undergone in compliance with, any such sentence.
- (3) For the purposes of section 96, circumstances ancillary to a caution are any circumstances of—
- (a) the offence which was the subject of the caution;
 - (b) the conduct constituting the offence;
 - (c) any process preliminary to the caution (including consideration by any person of how to deal with the offence and the procedure for giving the caution);
 - (d) any proceedings for the offence which take place before the caution is given;
 - (e) anything which happens after the caution is given for the purpose of bringing any such proceedings to an end;
 - (f) any judicial review proceedings relating to the caution;
 - (g) in the case of a warning under section 65 of the Crime and Disorder Act 1998 (reprimands and warnings for persons aged under 18), anything done in pursuance of, or undergone in compliance with, a requirement to participate in a rehabilitation programme under section 66(2) of that Act.

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.

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.