



Police, Crime, Sentencing and Courts Act 2022

2022 CHAPTER 32

PART 12

DISREGARDS AND PARDONS FOR CERTAIN HISTORICAL OFFENCES

194 Disregard of certain convictions or cautions

- (1) The Protection of Freedoms Act 2012 is amended in accordance with subsections (2) to (10).
- (2) Section 92 (power of Secretary of State to disregard convictions or cautions) is amended in accordance with subsections (3) to (5).
- (3) In subsection (1) for the words from “under” to the end of paragraph (c) substitute “in circumstances where the conduct constituting the offence was sexual activity between persons of the same sex”.
- (4) In subsection (3)—
 - (a) in paragraph (a)—
 - (i) for the first “the” substitute “any”,
 - (ii) for “conduct constituting the offence consented to it and” substitute “sexual activity”, and
 - (iii) omit the second “and”, and
 - (b) for paragraph (b) substitute—
 - “(b) the offence has been repealed or, in the case of an offence at common law, abolished by enactment (whether or not it has been re-enacted or replaced), and
 - (c) the sexual activity would not, if occurring in the same circumstances at the point of decision, constitute an offence.”
- (5) After subsection (6) insert—

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- “(7) In this section “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.”
- (6) In section 93(3) (applications to the Secretary of State), for the words from “the matters” to the end substitute “—
- (a) whether a conviction or caution is of a kind mentioned in section 92(1);
 - (b) the matters mentioned in condition A in that section.”
- (7) In section 94 (procedure for decisions by the Secretary of State)—
- (a) in subsection (1)—
 - (i) after “considering” insert “whether a conviction or caution is of a kind mentioned in section 92(1) or”, and
 - (ii) for “section 92” substitute “that section”,
 - (b) in subsection (2)—
 - (i) after “deciding” insert “whether a conviction or caution is of a kind mentioned in section 92(1) or”, and
 - (ii) for “section 92” substitute “that section”,
 - (c) after subsection (2) insert—

“(2A) If the Secretary of State refuses an application on the basis that the caution or conviction is not of a kind mentioned in section 92(1), the Secretary of State must—

 - (a) record the decision in writing, and
 - (b) give notice of it to the applicant.”
- (8) In section 99 (appeal against refusal to disregard convictions or cautions)—
- (a) in subsection (1)(a) after “Secretary of State” insert “refuses an application on the basis mentioned in section 94(2A) or”,
 - (b) in subsection (3), for the words from “that it” to the end substitute “—
 - (a) that the conviction or caution is of a kind mentioned in section 92(1), it must make an order to that effect;
 - (b) that it appears as mentioned in condition A of that section, it must make an order to that effect.”, and
 - (c) in subsection (5), after “subsection (3)” insert “(b)”.
- (9) In section 100(1) (advisers)—
- (a) for the second “Secretary of State” substitute “Secretary of State—
 - (a) the caution or conviction is of a kind mentioned in section 92(1), or”,
 - (b) the remaining text becomes paragraph (b), and
 - (c) in that paragraph for “section 92” substitute “that section”.
- (10) In section 101—
- (a) in subsection (1)—
 - (i) in paragraph (a) of the definition of “conviction”, after “proceedings” insert “(including anything that under section 376(1) and (2) of the

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- Armed Forces Act 2006 is to be treated as a conviction for the purposes of that Act)”,
- (ii) at the end of the definition of “sentence” insert “(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)”,
 - (iii) at the end of paragraph (a) of the definition of “service disciplinary proceedings” omit “or”,
 - (iv) after paragraph (b) of the definition of “service disciplinary proceedings” insert “, 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).”, and
 - (v) in the appropriate place insert—
 - ““enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978),”
- (b) omit subsections (3) and (4),
 - (c) in subsection (5) for paragraphs (a) and (b) substitute “a reference to an inchoate or ancillary offence relating to the offence.”,
 - (d) in subsection (6)—
 - (i) for the first “or incitement” substitute “, incitement, encouraging or assisting”, and
 - (ii) for the second “or incitement” substitute “, incitement, encouraging or assisting”,
 - (e) after subsection (6) insert—
 - “(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.

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(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.”, and
- (f) in subsection (7) for “(5) and (6)” substitute “(5), (6) and (6B)”.

(11) Nothing in this section affects the disregard of a conviction or caution that was disregarded before this section comes into force.

195 Pardons for certain convictions or cautions

(1) The Policing and Crime Act 2017 is amended in accordance with subsections (2) to (13).

(2) Section 164 (posthumous pardons for convictions etc. of certain abolished offences) is amended in accordance with subsections (3) to (10).

(3) Before subsection (1) insert—

“(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)).”

(4) For subsection (1) substitute—

“(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).

(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.”

(5) Omit subsections (2) to (6).

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- (6) In subsection (7)—
- (a) for “subsection (8)” substitute “subsections (8) and (8A)”, and
 - (b) at the end of paragraph (b) insert “(but as if the reference in subsections (6A) and (6C) to section 92 were a reference to this section)”.
- (7) In subsection (8) (as amended by section 19 of the Armed Forces Act 2021)—
- (a) omit paragraph (ba),
 - (b) at the end of paragraph (c) omit “or”,
 - (c) after paragraph (c) (but before paragraph (d) inserted by section 19(3)(d) of the Armed Forces Act 2021) insert—
 - “(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”.
- (8) After subsection (8) insert—
- “(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) In subsection (10) (inserted by section 19 of the Armed Forces Act 2021) insert in the appropriate place—
- ““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.”
- (10) After subsection (10) insert—
- “(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.”
- (11) In section 165(1) (other pardons for convictions etc. of certain abolished offences) after “offence” insert “in the circumstances”.
- (12) Omit section 166 (power to provide disregards and pardons for additional abolished offences).
- (13) In section 167 (sections 164 to 166: supplementary)—
- (a) in the opening words of subsection (1) omit “, or under regulations under 166,”, and
 - (b) in subsection (2)—

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- (i) for “sections 164 to 166” substitute “section 164 or 165”, and
 - (ii) omit “or regulations under section 166”.
- (14) Nothing in this section affects a pardon for a conviction or caution which took effect before this section comes into force.
- (15) In section 19 of the Armed Forces Act 2021 (posthumous pardons in relation to certain abolished offences), omit subsection (2) and paragraphs (b) and (c) of subsection (3).