



# 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    - “(b) the offence has been repealed or, in the case of an offence at common law, abolished by enactment (whether or not it has been re-enacted or replaced), and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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*Changes to legislation: There are currently no known outstanding effects for the Police, Crime, Sentencing and Courts Act 2022, Section 194. (See end of Document for details)*

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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.

**Commencement Information**

**I1** S. 194 not in force at Royal Assent, see [s. 208\(1\)](#)

**I2** S. 194 in force at 13.6.2023 by [S.I. 2023/641](#), [reg. 2\(a\)](#) (with [reg. 3](#))

**Changes to legislation:**

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