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## **Disregarding certain criminal convictions**

### **Section 5 of the Historical Sexual Offences (Pardons and Disregards) (Scotland) Act 2018**

[Guidance notes for applicants](#)



## Guidance for applicants

This application form is for use by anyone who wishes to make an application to the Scottish Ministers to have one or more of their convictions for certain historical sexual offences, as listed in Section 2 of the Historical Sexual Offences (Pardons and Disregards) (Scotland) Act 2018, formally disregarded.

The purpose of the Historical Sexual Offences (Pardons and Disregards) (Scotland) Act 2018 (“the Act”) is to acknowledge the wrongfulness and discriminatory effect of past convictions for certain historical sexual offences by pardoning men who have been convicted of those offences, and to provide a separate process for convictions for those offences to be “disregarded”.

There are a number of reasons people may have been convicted of a historical sexual offence for behaviour that is no longer illegal. Prior to 1980, all same-sex sexual activity between men was illegal in Scotland. Between 1980 and 2001, the age of consent was lower for sexual activity between opposite-sex partners than for same-sex sexual activity between men. Similarly, same-sex sexual activity between men remained criminal in a number of circumstances where the same activity involving opposite-sex partners would not be.

The Act therefore seeks to address this injustice, by providing an **automatic** pardon to any person (including any deceased person) who was convicted under discriminatory laws that were used to criminalise same-sex sexual activity between men that is now lawful. The pardon is a symbolic step intended to be a formal acknowledgement that the laws used to convict people for same sex sexual activity were in themselves discriminatory in nature and that laws of more general application were used in a discriminatory way – and it is intended to lift the ‘burden’ of conviction. No steps have to be taken by a person to receive the pardon, which will come into effect from 15 October 2019.

The pardon does **not** affect any conviction. Therefore, the disregard scheme is a separate, practical measure contained in the Act to address the discriminatory effect that these convictions can continue to have on a person’s day to day life. It provides a mechanism to have these convictions “disregarded”, or in other words ‘removed’, so that information held in records about the conviction(s) would never be disclosed on, for example, a disclosure issued by Disclosure Scotland, ensuring that a person whose conviction has been disregarded cannot be prejudiced in future by the disclosure of information about these convictions.

## Am I eligible to apply to have my conviction disregarded?

An application should come from the person who wishes to have their conviction disregarded. A third party, for example a friend or relative, can complete the application form for the person whom the conviction relates to, however the application would ordinarily still need to be signed by the person seeking to have a



conviction disregarded, with the exception of those with Power of Attorney, explained further below.

In any other circumstances, if you wish or require a representative to sign the form on your behalf, or you are intending to do so for someone else, please contact us to discuss at the details below:

**By email:** [section5applications@gov.scot](mailto:section5applications@gov.scot)

**In writing:** Criminal Law & Practice Team, Area GW.14, St Andrews House, Regent Road, Edinburgh, EH1 3DG.

### Power of attorney

As an attorney, you have the right to make an application on behalf of the person you represent, in order to have their eligible conviction(s) disregarded.

In order for us to process your application, we require you to provide proof of your identity (further guidance provided below) and a certified copy of the legal document stating you have been granted a welfare or combined power of attorney to [section5applications@gov.scot](mailto:section5applications@gov.scot) or in writing to Criminal Law & Practice Team, Area GW.14, St Andrews House, Regent Road, Edinburgh, EH1 3DG.

### What is meant by ‘conviction’?

The word “conviction” means any finding in criminal proceedings that a person has committed an offence, and includes alternatives to prosecution such as a warning by the police or procurator fiscal or a conditional offer of a fixed penalty. A conviction also includes the situation where a case was referred to a children’s hearing on the ground that a child has committed an offence, and that ground of referral was accepted or established.

### What are eligible convictions?

Section 2 of the Act defines the offences which are included under the disregard scheme.

Please find in the accompanying Annex to this guidance a list of the specific offences which may be eligible to be disregarded.

You can still apply for a disregard if you were convicted of any other offence, such as breach of the peace, or a local authority byelaw, which regulated, or was used in practice to regulate, sexual activity between men that would not be a criminal offence today.

Examples of the type of behaviour a person may have been criminalised for include any physical or affectionate behaviour between men of any age which is typical of an intimate personal relationship, ranging from kissing or holding hands to sexual intercourse.



It also includes behaviour that is intended to initiate or lead to sexual relations, for example chatting up another man.

Applications relating to any other convictions will not be accepted. However, if you do not know what offence you were convicted of, you can still apply and the Scottish Ministers will seek to identify what offence you received a conviction for.

In order for an eligible conviction to be disregarded it must appear to the Scottish Ministers that the conduct involved, if occurring in the same circumstances on the day the Act came into force (being 15 October 2019), would not amount to a criminal offence.

### **Military convictions**

If you are seeking to have a conviction disregarded which followed proceedings within the regime of the British Armed Forces, UK law applies and an application requires to be made under the equivalent UK Government scheme. This includes armed forces convictions which took place in Scotland. The application form and further guidance can be found at the following link:

<https://www.gov.uk/government/publications/disregarding-convictions-for-decriminalised-sexual-offences>

### **Convictions in England, Wales and Northern Ireland**

If the conviction relates to an offence committed in England and Wales, then UK law applies and an application requires to be made under the equivalent UK Government scheme. Again, the application form and further guidance can be found at the following link:

<https://www.gov.uk/government/publications/disregarding-convictions-for-decriminalised-sexual-offences>

If the conviction relates to an offence committed in Northern Ireland, then the law of Northern Ireland applies and similarly, an application requires to be made under the equivalent Northern Ireland scheme. The application form and further guidance can be found at the following link:

<https://www.nidirect.gov.uk/articles/pardons-and-disregards-homosexual-offences>

### **Completing the application form:**

There are three sections to the application form:

**Essential information - Section 1** relates to your current personal details and must be completed in full in order for an application to be accepted. We need this information so we can contact you and to match up your personal details with the proof of identity documents we ask you to submit. You only need to complete section 1 once



per application, regardless of the number of convictions you are applying to have disregarded. Failure to provide the information requested in section 1 will result in your application being rejected.

**Desirable information - Section 2** relates to your personal details at the time the offence(s) were committed and the details of the offence(s) themselves. You may have been convicted of more than one offence in a single court case. This section should be completed on a case by case basis as fully as possible. If you are applying to have more than one conviction disregarded across different cases, please copy section 2 as many times as necessary and complete a separate section 2 for each case. The more information you provide, the easier it will be to locate relevant records and progress your application quickly. Please be reassured your application will be dealt with even if you have been unable to provide some or all of the information in Section 2.

**Desirable information - Section 3** relates to any other information which you may wish the Scottish Ministers to consider when determining your application, for example, copies of any original documents from the time of your conviction such as a summary of evidence or court citation issued by the Procurator Fiscal; a fixed penalty notice; or any original court paperwork relating to your conviction(s).

When complete, you should sign and date the application form at the bottom of section 3.

Please ensure that you have included copies of any materials or documents that you wish to submit in support of your application along with evidence of your name, date of birth and current address, and return it to:

**By email:** [section5applications@gov.scot](mailto:section5applications@gov.scot)

**In writing:** Criminal Law & Practice Team, Area GW.14, St Andrews House, Regent Road, Edinburgh, EH1 3DG.

Please do not send original documents as we are unable to return them to you.

### **Confirming your identity and address:**

Criminal record information is sensitive personal information and its management is strictly governed. In order to safeguard the information and ensure that it is only disclosed to the person that it relates to, we require you to provide copies of two documents which between them confirm (a) your name (b) date of birth and (c) your current address. Further guidance on which documents are acceptable as evidence of your identity and address can be found in the application form.

### **Protecting your personal information:**

All information that you provide during the application process will be treated in the strictest confidence. Your criminal history information will only be processed as far as is necessary to progress your application. For example, we may ask relevant data



controllers, such as the police, to provide further information or copies of documents to help us make a decision. This is explained in more detail under 'what happens next' below. We will never disclose the information to any person or organisation not involved in the process without your express consent to do so. If you would like us to contact someone else acting on your behalf in respect of this application, you should enclose a signed letter along with your application setting out the contact details of the person acting on your behalf and stating that you consent to us discussing your application with that individual / organisation.

We will retain details of your application for a period of 6 years to enable us to deal with any subsequent queries or legal challenges that may arise. It will not be accessed for any other purposes and all personal details will be deleted after this period.

It is strongly recommended that you keep all the official correspondence you receive in relation to this application, as a record of what has happened. It will not be possible to provide further copies of correspondence after your personal details have been deleted at the conclusion of the retention period.

### **What happens next?**

Once we have received your completed application relevant details will be processed. If it is clear that the matters raised in your application are not eligible to be disregarded you will receive a letter to that effect. In all other cases you will receive an acknowledgement that your application has been received and is being processed.

In order to process your application, the Scottish Government may contact relevant record keepers (for example, Police Scotland; the Scottish Courts and Tribunal Service; and Crown Office and Procurator Fiscal Service) and request them to review their records and provide copies of any relevant documents to the Scottish Government to enable a decision to be made. Where an application raises complex issues, or where the available evidence is unclear or contradictory, it may be passed to specially appointed adviser(s) who will consider the application carefully and advise or assist the Scottish Ministers on the determination of your application.

Once the Scottish Ministers have made a decision, you will be informed of the outcome. If your application is successful, the Scottish Government will write to the relevant record keepers, for example Police Scotland or the Scottish Courts and Tribunals Service, and require them to delete, or where appropriate, redact (block out so they cannot be read) or annotate their records containing reference to the disregarded conviction. Where records are annotated, this means recording with the details of the conviction the fact that it is a disregarded conviction (i.e. that it should never be disclosed), and the effect of it being a disregarded conviction. Each record keeper will write to you to confirm that this has been done.

### **Effect of a disregard:**

Once the Scottish Ministers have given notice that a conviction has been disregarded and when a period of 14 days from issue of the notice has passed, a successful applicant will be treated in all circumstances as though the offence had never occurred



and need not disclose it for any purpose, for example, you will not be required to disclose it for job applications or during any court or tribunal proceedings.

### What if I disagree with the decision of the Scottish Ministers?

If you disagree with the decision reached by the Scottish Ministers you should first contact [section5applications@gov.scot](mailto:section5applications@gov.scot) or in writing to the Criminal Law & Practice Team, Area GW.14, St Andrews House, Regent Road, Edinburgh, EH1 3DG so that your application can be reviewed. It would be helpful if you could make clear the ground on which you think an error has been made in deciding your application. If you have additional information about the case that you did not submit with your application, please provide this when requesting that your application is reviewed.

If, having done so, you still consider that the decision reached in relation to your application is wrong on the basis of the information you have provided, you have a right of appeal under Section 8 to the Sheriff Court. When deciding an appeal, the Sheriff may not take account of any representations or information which was not available to the Scottish Ministers when determining the application. Therefore, if you have information that was not made available to Scottish Ministers, you should not submit an appeal to the Sheriff and instead submit a fresh application to the Scottish Ministers with this information. Where an appeal does take place, the Sheriff's decision on appeal is final.

You may apply for Legal Aid to progress an appeal. Legal aid should be available without the need for a contribution to be paid by you, unless the case is deemed to be without merit by the Scottish Legal Aid Board.

### Letters of comfort

You cannot apply for a disregard on behalf of someone who has died.

However we recognise families of those who have died may wish to have their loved one's name 'cleared.' Therefore, family members can apply for a letter of comfort. This is a formal letter which may be issued that will provide personalised recognition your loved one should never have been convicted of the particular offence, based on an assessment of the information you provide.

To apply for a letter of comfort, please email [section5applications@gov.scot](mailto:section5applications@gov.scot) or write to us at the Criminal Law & Practice Team, Area GW.14, St Andrews House, Regent Road, Edinburgh, EH1 3DG.

### Emotional support

Wrongful and discriminatory past convictions for certain historical sexual offences can have a damaging effect on your mental and emotional well-being. If you consider you may benefit from emotional support, you may wish to contact the **LGBT Helpline Scotland** at the contact details below, who can confidentially discuss a range of issues with you to support your emotional wellbeing.



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**LGBT Helpline:** 0300 123 2523 open every Tuesday and Wednesday between 12 - 9pm

**Email:** [helpline@lgbthealth.org.uk](mailto:helpline@lgbthealth.org.uk)





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## ANNEX

### **HISTORICAL SEXUAL OFFENCES CONTAINED UNDER SECTION 2 OF THE HISTORICAL SEXUAL OFFENCES (PARDONS AND DISREGARDS) (SCOTLAND) ACT 2018 THAT ARE ELIGIBLE TO BE DISREGARDED**

- an offence under section 13(5)(a) or (c), (6) or (9) of the Criminal Law (Consolidation) (Scotland) Act 1995;
- an offence under section 80(7)(a), (c) or (d), (9) or (12) of the Criminal Justice (Scotland) Act 1980;
- an offence under section 7 of the Sexual Offences (Scotland) Act 1976;
- an offence under section 11 of the Criminal Law Amendment Act 1885;
- the common law offence of sodomy;
- the common law offence of shameless indecency, in so far as that offence covered sexual activity between men;
- an offence of attempting, inciting or conspiring to commit any of the above offences.