

Business and Regulatory Impact Assessment - Miners' Strike (Pardons) (Scotland) Bill

October 2021

Fit with Scottish, UK and EU policy

These proposals relate to events which happened in Scotland, however the Scottish Government has continued to press the UK Government to hold a full UK-wide public inquiry into the events of the 1984/ 85 Miners' Strike.

Rationale for Government intervention

The 1984/85 miners' strike was a bitter and divisive dispute. In commissioning an independent review into the policing of the Strike, the Scottish Government aimed to provide an opportunity to share experiences of the Strike, as a way of bringing reconciliation between police officers who were upholding the law in difficult circumstances which they had never encountered before - and miners who were protecting jobs, their way of life and their communities. The expectation in commissioning the review was that the process and outcome would help to bring a degree of closure to those affected by the Strike.

In adopting a truth and reconciliation approach, the report made a single recommendation, that "subject to establishing suitable criteria, the Scottish Government should introduce legislation to pardon men convicted for matters related to the Strike". The recommendation is framed with a view to promoting reconciliation and inclusion.

In accepting that recommendation, the Scottish Government considered carefully the criteria that might apply to such pardons - so that it has a rationale which is well-thought through and informed by the views of stakeholders. The 2021 public consultation on the qualifying criteria contributed to this process by gathering views from former miners, retired police officers and members of former mining communities. [Miners' strike 1984 to 1985 pardon: consultation - gov.scot \(www.gov.scot\)}](https://www.gov.scot/resources/documents/2021/04/Miners-strike-1984-to-1985-pardon-consultation-2021-04-20.pdf)

The Bill will enable the pardoning of miners, which in turn will help to heal wounds and bring comfort to miners, their families and mining communities. The Bill therefore contributes towards the realisation of the Scottish Government's vision for justice of "a just, safe and resilient Scotland". The Bill also links to the Scottish Government's justice outcome, "we live in safe, cohesive and resilient communities", and to the National Performance Framework Values to respect the rule of law and to act in an open and transparent way.

The most relevant national outcome is :

- We live in communities that are inclusive, empowered, resilient and safe;

Consultation

Public Consultation

The report of the IRG reflected the significant amount of evidence that the group considered – including UK Government Cabinet papers and files, and various academic papers and past reports on the strike. The report also drew heavily from the powerful testimonies heard during the review's stakeholder events, as well as the written submissions received as part of its call for evidence.

A full Scottish Government public consultation on the proposals for pardons and setting the eligibility criteria ran from 12 March to 4 June 2021. The consultation contained fourteen questions that were based on the recommendations of the IRG. The consultation received 377 responses, including 59 campaign responses. Of the substantive responses (i.e. non-campaign responses) received, 294 were submitted by individuals and 13 by organisations or groups. An Analysis report of the consultation responses was published in August 2021 [Miners' strike 1984/85 pardon consultation: analysis of responses - gov.scot \(www.gov.scot\)}](https://www.gov.scot/resources/documents/2021/08/Miners-strike-1984-85-pardon-consultation-analysis-of-responses.pdf)

The majority of respondents favoured the only qualifying criteria to be the range of offences - being Breach of the Peace; Breach of Bail; and the offence under section 41(1)(a) of the Police (Scotland) Act 1967 (commonly known as Obstruction). Having discussed the consultative response further with key stakeholders, the Bill proposes that the pardon be issued to miners who were convicted in Scotland of any or all three offences while travelling to / from, or participating in, a picket line, demonstration or similar activity which was in support of the Strike.

Business

The policy intention underpinning the proposals is that there would be no need for individuals to apply for a personal pardon. The pardon is intended to be collective and would be automatic if the individual believed that their circumstances met the qualifying criteria. There is no requirement to provide documentary proof to be pardoned. Although the legislation may trigger an interest in past conviction data, the ability to request this information already exists and therefore the Bill does not create a new burden or entitlement in that regard. The proposals are therefore not expected to have a significant impact on businesses. Our discussions with the relevant record holders (Police Scotland; the Scottish Courts & Tribunal Service; and the National Records for Scotland) are summarised below for completeness.

Police Scotland

Due to the application of the 20/40 and 30/70 retention rules, Police Scotland will now only hold data in their Criminal History System on convicted persons who were given a custodial sentence in excess of 5 years (which would indicate a very serious offence). Information can be requested free of charge via a Subject Access Request by an individual or someone acting in a legal capacity for them. Anecdotal evidence suggests that few if any custodial sentences were given in Scotland in respect of activity related to the Strike.

Scottish Court & Tribunal Service (SCTS)

SCTS have advised that conviction information - even where it is available and can be traced - will be limited and is not expected to confirm either the circumstances that gave rise to the offence, or that the offence was connected to the Strike.

Costs associated with searching, retrieving and considering wider issues such as data protection, are expected to be around £23 per enquiry.

National Records of Scotland (NRS)

NRS hold summary information for sheriff court records in Criminal and Quasi-criminal roll books which are likely to hold the date, name of accused, running number, charge, plea, result (admonished or guilty) and sentence. For unindexed sheriff court cases this would involve a search of roll books and or indictments. The estimated cost of this would be up to £100 per enquiry. If a result is confirmed then it will also involve correspondence with the data controller (SCTS) to allow access to the information. For requests by the data subject, NRS would refer them to the SCTS as data controller. It should be noted that NRS have not received any requests for proof of conviction in relation to Historical Sexual Offences (Pardons and Disregards) (Scotland) Act 2018. which had provided for a pardon in respect of past convictions.

Options

In developing proposals for the Bill, the Scottish Government have considered the following options:

1. Bring forward primary legislation to provide that an automatic and collective pardon will apply where the qualifying criteria are met;
2. Provide additional funding resource to the Coalfields Regeneration Trust and the National Mining Museum of Scotland. This gesture would reflect Scottish Government sympathy for former mining communities who continued to be affected by the Strike.
3. Apologise for the hardship suffered by miners as a result of the Strike.
4. Do nothing.

The options were appraised through an assessment of their ability to deliver the following policy intentions :

- recognition of the hardship and disproportionate impact on miners from participating in the Strike;
- removal of stigma associated with a criminal conviction;
- providing a means for reconciliation within mining communities.

Sectors and groups affected

Options 1 to 4 have impacts for some or all of the following bodies:

Former miners
Families of former miners
National Union of Mineworkers

Wider mining communities
Police Scotland
ACPO
Retired Police Officers Association (RPOAS)
Former police officers
COPFS
Senior members of the Judiciary
Law Society of Scotland
Faculty of Advocates
Political interests – MPs ; MSPs ; relevant Local Councils
Disclosure Scotland

Benefits

Option 1 – Bring forward primary legislation whereby an automatic and collective pardon will apply where the qualifying criteria are met.

This options scores high across all three criteria. It has the benefit of officially recognising the hardship suffered by miners, their families and communities during the Strike, and providing comfort. The IRG report claims that the pardon could also aid reconciliation between former miners and police officers by helping to heal wounds and aiding understanding of different perspectives on the Strike. The pardon can also remove the stigma and shame of having a criminal conviction that a number of former miners still feel.

Option 2- Provide additional funding resource to the Coalfields Regeneration Trust and the National Mining Museum of Scotland.

This gesture would recognise the hardship suffered in the mining communities at a national level, while also expressing sympathy to former mining communities who continued to be affected by the economic consequences of the Strike. However, the option would do nothing to remove the stigma of criminal convictions or to reconcile former miners and police officers. Indeed, representations to the Scottish Government from stakeholders indicated that a non-monetary form of redress such as a pardon would be more meaningful than monetary redress.

Option 3 – Scottish Government apology for the hardship and disproportionate impact suffered by miners who participated in the Strike.

Similar to the pardon, this sort of official recognition scored highly in recognising hardship and aiding reconciliation. However, at an individual level, it would do little to relieve the burden of the stigma of criminal conviction. In addition, the apology could be perceived as meaningless given that the National Coal Board was a UK nationalised body and that the Scottish Government was not in existence at that time. It would therefore be inappropriate for the Scottish Government to issue an apology for matters outwith its control or design, and where it is not a successor to the UK Government at the time of the Strike.

Option 4 - Do nothing

This option scored low on all criteria as it would not recognise hardship; aid reconciliation; or affect the burden of stigma. Indeed, doing nothing would be a

rejection of the recommendation from the IRG report and could signal that the important matters raised in the Report were being ignored. This could generate even greater feelings of hurt for miners, their families and communities.

Conclusion

The conclusion is to progress **option 1**

Costs

It is anticipated that there will be no cost attached to Option 1. The issuing of a pardon in any given case will be automatic and therefore involves no direct consideration of a case by the Scottish Government or any delegated body. It will be a matter for a person to consider whether they meet the criteria specified in the bill and if so, they should consider themselves pardoned. This will also apply in cases where a person considers that the terms of the criteria in the Bill are met in the case of a deceased person. There will be no documentation required from people seeking a pardon, and no written communication sent to those who consider that the qualifying criteria for the pardon have been met.

Scottish Firms Impact Test

The Bill does not require any evidence about a criminal conviction to be provided by someone seeking a pardon. There has been engagement with the Scottish Courts & Tribunal Service, Police Scotland and National Records of Scotland to establish the impact on these bodies in the event that those affected by the pardon (or surviving relatives) choose to confirm details of relevant convictions. Few if any detailed records survive from the Strike given the passage of time, and persons seeking historical conviction information may rely on existing arrangements to this information if that is their wish.

Otherwise, the Scottish Government is unable to identify any specific businesses which would be impacted directly or indirectly by this Bill.

Competition Assessment

The changes will have no competitive impacts; therefore a competition assessment has not been completed.

Consumer Assessment

The policy intention underpinning the proposals is that there would be no need for individuals to apply for a personal pardon. The pardon will be granted automatically if the qualifying criteria are met.

The Scottish Government therefore does not consider that implementing this policy will affect consumers (defined as anyone who buys goods or digital content, or uses goods or services either in the private or public sector, now or in the future")

It is not considered that the policy will affect the quality, availability or price of any goods or services in a market. It is not considered that the policy will affect the essential services market, such as energy or water. It is not considered that implementing this policy will involve storage or increased use of consumer data.

It is not considered that the policy will impact the information available to consumers on either goods or services, or their rights in relation to these. It is not considered that the policy will affect routes for consumers to seek advice or raise complaints on consumer issues. An existing route is available to miners to seek to quash a conviction through working with the Scottish Criminal Cases Review Commission and the Bill does not impact on that route.

Test run of business forms

The policy intention underpinning the Bill proposals is that there would be no need for individuals to apply for a personal pardon. The pardon will be granted automatically if the qualifying criteria are met.

Implementing this policy intention would not require new forms for businesses to complete.

Digital Impact Test

The policy intention underpinning the proposals in the consultation is that there would be no need for individuals to apply for a personal pardon. The pardon will be granted automatically if the qualifying criteria are met.

The Scottish Government does not consider that there will be any impact on technology or technological advances as a result of implementing such a policy.

Legal Aid Impact Test

The policy intention underpinning the proposals in the consultation is that there would be no need for individuals to apply for a personal pardon. The pardon will be granted automatically if the qualifying criteria are met.

It is considered that this policy will not result in additional people seeking legal assistance or being taken through the courts.

The Scottish Government does not consider that this would create implications on fulfilling individuals' right to access to justice through availability of legal aid and possible expenditure from the legal aid fund. Access to justice team have agreed they do not anticipate an impact on the legal aid fund.

Enforcement, sanctions and monitoring

The policy intention underpinning the proposals in the consultation is that there would be no need for individuals to apply for a personal pardon. The pardon will be granted automatically if the qualifying criteria are met.

The Scottish Government therefore would not have the means to monitor the number of individuals who considered themselves pardoned following their self-assessment of the qualifying criteria. This would be a collective, symbolic pardon and therefore enforcement or sanctions would not be appropriate.

Implementation and delivery plan

The Scottish Government intends to take forward this legislation in the current Parliamentary session.

Summary and recommendation

The Scottish Government considers that option 1 offers the most benefit; will best support the delivery of a number of national outcomes; and responds most positively to the recommendation from the IRG Report. Option 1 will also provide the best means of achieving the policy intentions of recognising hardship and disproportionate impacts of participating in the Strike; aiding reconciliation; and removing the stigma of criminal convictions.

Summary costs and benefits table

Option	Total benefit per annum – economic, environmental, social	Total cost per annum - economic, environmental, social, policy and administrative
1. Bring forward legislation to provide a pardon to miners, subject to qualifying criteria.	<ul style="list-style-type: none">• Recognises hardship and disproportionate impact in a public, national and legislative way. Helps to bring a degree of closure to those affected by the Strike• Creates opportunities to build understanding and	<ul style="list-style-type: none">• None

	<p>reconciliation within mining communities - and to help heal psychological wounds.</p> <ul style="list-style-type: none"> • The pardon would also bring a restoration of dignity to a number of miners, their families and their communities. 	
<p>2. Provide additional funding to Coalfields Regeneration Trust and the National Mining Museum of Scotland.</p>	<ul style="list-style-type: none"> • Recognises hardship and disproportionate impact on miners by providing investment in former mining communities. 	<ul style="list-style-type: none"> • Financial cost to be determined in due course by Scottish Ministers. • Would do nothing to remove the stigma of criminal convictions or to reconcile former miners and police officers. • Not favoured by stakeholders.
<p>3. Scottish Government apology</p>	<ul style="list-style-type: none"> • Recognises hardship and disproportionate impact in a public and national way. • Provides some aid to reconciliation. 	<ul style="list-style-type: none"> • Would do little to relieve the burden of the stigma of criminal conviction. • Could be perceived as meaningless • Would be inappropriate for the Scottish Government to issue an apology for matters outwith its control or design.
<p>4. Do nothing.</p>	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Would be a rejection of the recommendation from the IRG report. • Could signal disinterest in the important matters raised in the IRG Report leading to even greater feelings of hurt for miners, their families and communities. • Negates any opportunity to

		<p>understanding and reconciliation within mining communities - and to help heal wounds.</p> <ul style="list-style-type: none">• Negates any opportunity to bring a degree of closure to those affected by the Strike.
--	--	--

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the Bill. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Keith Brown

Date: 14 October 2021

Minister's Name : Keith Brown

Minister's Title : Cabinet Secretary for Justice & Veterans

Scottish Government contact point: David Scott



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2021

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80201-525-6 (web only)

Published by The Scottish Government, October 2021

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS961866 (10/21)

W W W . g o v . s c o t