

SEXUAL OFFENCES (PARDONS ETC) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Sexual Offences (Pardons Etc) Bill as introduced in the House of Commons on Wednesday 29 June 2016 (Bill 6).

- These Explanatory Notes have been produced by The Public Bill Office on behalf of John Nicolson MP in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament as a whole.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes are best read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a provision of the Bill does not seem to require any explanation or comment, the Notes will simply say in relation to it that the provision is self-explanatory.

Overview of the Bill

- 1 This Bill seeks to grant pardons directly for past convictions of men for conduct where the relevant offences have since been abolished. The Bill explicitly does not grant such a pardon, or any other relief, for conduct that remains unlawful. In addition, the Bill remedies defects in the Protection of Freedoms Act 2012 by completing the suite of offences for which disregards can be sought and enabling relatives of deceased men to apply for such on their behalf.

Policy and legal background

- 2 The Protection of Freedoms Act 2012 (sections 92 to 101) created a method for individuals to have convictions or cautions "disregarded" if they were for conduct where specified offences had since been abolished. A person with a "disregarded" conviction or caution is (among other things) treated as never having committed (or been charged with) the offence. Applications are made to the Secretary of State, who must consider in particular any representations or evidence included in the application and any available relevant records of the investigation or court proceedings. If the application is granted, the Secretary of State must direct the deletion from official records of the details of the conviction or caution.
- 3 A disregard is different to a pardon. A pardon can be granted posthumously but it does not expunge the conviction itself nor require the amendment or deletion of official records.
- 4 The mathematician Alan Turing received a Royal Pardon in 2013 for his 1952 conviction for 'gross indecency'. Turing was sentenced to 'chemical castration', an experience that may have contributed to his apparent suicide two years later at the age of 41.
- 5 There is an amendment proposed, by Lord Sharkey and others, to the Policing and Crime Bill which is currently under consideration in committee in the House of Lords which allows applications to be made by relatives or others for a disregard of a deceased person's conviction or caution. The effect of that amendment is reproduced in this Bill.

Territorial extent and application

- 6 Clause 5 states that the Bill would extend to England and Wales. Criminal law is, so far as is relevant to this Bill, devolved in Scotland¹ and Northern Ireland.

Commentary on provisions of the Bill

Clause 1

- 7 Clause 1 establishes, declaratively, the principle that no pardon, disregard or other remedy proposed by this Bill will apply to conduct, behaviour or activities that are currently an offence. The most obvious example of this would be that past sexual activity in relation, or preparatory, to sex with a person under the current age of consent (16) would not attract a pardon. See also Clause 2(4).

Clause 2

- 8 Clause 2 establishes a pardon for persons convicted or cautioned for a relevant offence. A

¹ See <http://www.stonewallscotland.org.uk/sexual-health/%E2%80%8Bsexual-offences-law> (external link).

relevant offence is one contained in specified statutory provisions where particular conditions are met. The specified statutory provisions are: section 12 of the Sexual Offences Act 1956 (SOA 1956) (buggery); section 13 SOA 1956 (gross indecency between men); section 32, SOA 1956 (solicitation by men); section 61 Offences Against the Person Act 1861 and section 11 of the Criminal Law Amendment Act 1885. The facts of the relevant offence must fulfil all of the following conditions: the other party to the offence must (a) have consented and (b) have been 16 or older at the time of the offence; the offence must not otherwise constitute sexual activity in a public lavatory contrary to section 71 of the Sexual Offences Act 2003; and, the offence must not be contrary to the law at the time the Bill receives Royal Assent. Clause 2(4) gives the Secretary of State the power to amend these conditions.

- 9 The clause also contains a further caveat (subsection (6)) restricting the effect of the pardon. This ensures that any individual seeking to benefit from the practical, as opposed to the symbolic, benefits of the pardon must apply for a disregard under the Protections of Freedom Act 2012. This allows the Secretary of State to check the official records of the offence in question, together with any other evidence, to ensure the offence satisfies the specified conditions before amending or deleting the official record of the offence. The pardon does not give rise to a right to compensation. Clause 2(6) also preserves the right of the Crown to exercise the Royal Prerogative of Mercy in any other deserving case which is outside the specified criteria.
- 10 Clause 2(7) clarifies and preserves the right of those receiving the benefit of the pardon under Clause 2(2) to also make an application for a disregard under the Protection of Freedoms Act 2012 (as amended by this Bill).

Clause 3

- 11 Clause 3 amends the Protection of Freedoms Act 2012 with the effect set out below.
 - a. Offences under section 32 of the Sexual Offences Act 1956 (solicitation by men) are added to the list of offences for which a disregard can be sought (cl 3(2)(a) and (b)).
 - b. A deceased person's conviction or caution can be disregarded, on the application of a relative (cl 3(2)(c)), if the Secretary of State decides the criteria are met.
 - c. In the case of a deceased person, the conviction or caution can only be disregarded if the available records provide the Secretary of State with enough information to make a decision. Representations or evidence supplied with the application will not suffice.
- 12 Clauses 3(2)(c) and 3(3) substantially reproduce the amendment of the 2012 Act sought by Lord Sharkey via a new clause proposed in relation to the Government's Policing and Crime Bill (currently in committee in the House of Lords).²

Clauses 4 and 5

- 13 Clauses 4 and 5 make provision in relation to: the making and scrutiny of regulations under clause 2(5) for refining or updating the definition of a 'relevant' offence; the names of an Act arising from the Bill; when the Act would come into force; and the Act's territorial extent (England and Wales).

Commencement

- 14 Clause 5 states that the Bill will come into force on the day it receives Royal Assent.

² See the relevant new clause [here](#).

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Financial implications of the Bill

15 The Bill contains no provisions with a direct impact on either public expenditure or taxation.

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