

PROTECTION OF FREEDOMS ACT 2012

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 5: Safeguarding vulnerable groups, criminal records etc.

Chapter 4 of Part 5: Disregarding certain convictions for buggery etc.

Section 92: Power of Secretary of State to disregard convictions or cautions

360. *Subsection (1)* provides that a person convicted of, or cautioned for, an offence under:
- section 12 of the Sexual Offences Act 1956 Act (“the 1956 Act”) for the offence of buggery,
 - section 13 of the 1956 Act for the offence of gross indecency between men, or
 - section 61 of the Offences against the Person Act 1861 or section 11 of the Criminal Law Amendment Act 1885 (which contained the corresponding pre-1956 offences).
- may apply to the Secretary of State (in practice, the Home Secretary) to have the conviction or caution disregarded.
361. By virtue of section 101(3) to (7), these provisions also cover persons with a conviction for a corresponding offence under military service law, or for the inchoate offences of attempting, loitering with intent, conspiring to commit, or inciting the commission of, an offence of buggery or gross indecency; or aiding, abetting, counselling or procuring the commission of an offence of buggery or gross indecency.
362. *Subsection (2)* provides that a caution or conviction can only be disregarded if the conditions set out in *subsections (3)* and *(4)* are both met.
363. *Subsection (3)* sets out the first condition, which is that it appears to the Secretary of State that the other person involved in the conduct which amounted to the original offence consented to it and was aged at least 16 years old at the time. The offence must also be one which would not fall within the provisions of section 71 of the Sexual Offenders Act 2003 (that is, sexual activity in a public lavatory) as the intention is that these provisions should only apply to behaviour that is no longer criminal. (As well as consensual gay sex with a person over the age of consent, the offence in section 12 of the 1956 Act also encompasses non-consensual buggery, bestiality and under-age buggery, and the section 13 offence also includes gross indecency with somebody under the age of consent, all of which remains criminal behaviour today.)
364. *Subsection (4)* sets out the second condition, namely that the Secretary of State has given notice to the applicant of the decision to disregard the conviction or caution; such notice takes effect 14 days after that notice has been given.

*These notes refer to the Protection of Freedoms Act
2012 (c.9) which received Royal Assent on 1 May 2012*

365. The effect of a relevant conviction or caution being designated as a disregarded conviction or caution is explained in sections 95 to 98 (*subsection (5)*).