



# Policing and Crime Act 2017

## 2017 CHAPTER 3

### PART 9

#### MISCELLANEOUS AND GENERAL

### CHAPTER 1

#### MISCELLANEOUS

##### *Police collaboration*

#### **157 Power to enter into police collaboration agreements**

- (1) The Police Act 1996 is amended in accordance with subsections (2) to (4).
- (2) In section 22A (collaboration agreements)—
  - (a) in subsection (1)(b), for “and two or more policing bodies” substitute “and—
    - (i) one or more policing bodies together with one or more other persons, or
    - (ii) if no other person is a party to the agreement, two or more policing bodies.”;
  - (b) in subsection (6), for “(1)” substitute “(1)(a)”.
- (3) In section 23F (collaboration agreements: guidance), after subsection (2) insert—

“(3) The Secretary of State may give other persons who exercise functions of a public nature guidance about collaboration agreements or related matters, and those persons must have regard to the guidance in exercising such functions.”
- (4) In section 23G (collaboration agreements: directions), after subsection (2) insert—

“(2A) The Secretary of State may give one or more other persons who exercise functions of a public nature directions about collaboration agreements or related matters.”

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- (5) Schedule 19 contains amendments in relation to cases where the Director General of the National Crime Agency is a party to a collaboration agreement under section 22A of the Police Act 1996 (as amended by this section).

### *NCA powers*

## **158 Powers of NCA officers in relation to customs matters**

- (1) The Crime and Courts Act 2013 is amended as follows.
- (2) In section 9 (Director General: customs powers of Commissioners & operational powers)—
  - (a) in subsection (2), after paragraph (b) insert—
 

“(ba) the powers of a general customs official;”;
  - (b) in subsection (8), in the definition of “operational power”, after paragraph (b) insert—
 

“(ba) a power of a general customs official;”.
- (3) In section 10 (operational powers of other NCA officers), in subsection (1) after paragraph (b) insert—
 

“(ba) the powers of a general customs official;”.
- (4) In Schedule 5 (police, customs and immigration powers), after Part 5 (designation: powers of officers of Revenue and Customs) insert—

## **“PART 5A**

### DESIGNATIONS: POWERS OF GENERAL CUSTOMS OFFICIALS

#### *NCA officers*

- 18A (1) If an NCA officer is designated as a person having the powers of a general customs official, the NCA officer has, in relation to any customs matter, the same powers as a general customs official would have.
- (2) But that is subject to any limitation included in the designation.

#### *Powers only exercisable in relation to customs matters*

- 18B If a power of a general customs official is exercisable both—
- (a) in relation to a customs matter, and
  - (b) in relation to any other matter,
- the power is exercisable by a designated officer only in relation to the customs matter.

#### *Powers exercisable under warrant*

- 18C (1) This paragraph applies to an enactment if it provides for the issuing of warrants which authorise a general customs official to exercise any power in relation to a customs matter.

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- (2) For the purpose of enabling a designated officer to exercise that power in relation to a customs matter, the enactment has effect as if the designated officer were a general customs official.”
- (5) In paragraph 26 of that Schedule (modification of references), after paragraph (c) insert—
- “(ca) a power of a general customs official is exercisable by any NCA officer, a reference to a general customs official in any enactment which relates to that power is to be taken to be, or to include, a reference to any NCA officer by whom that power is exercisable;”.
- (6) In paragraph 27 of that Schedule (power to make further provision), in sub-paragraph (2), after paragraph (d)(ii) insert—
- “(ia) one or more grades of, or pay scales applicable to, general customs officials;”.
- (7) In paragraph 28 of that Schedule (functions of third parties relating to constables etc: extension to NCA), in sub-paragraph (2), after paragraph (c) insert—
- “(ca) a general customs official;”.

#### *Requirements to confirm nationality*

### **159 Requirement to state nationality**

In the UK Borders Act 2007, after section 43 (supply of police information) insert—

#### **“43A Requirement to state nationality**

- (1) An individual who is arrested for an offence must state his or her nationality if required to do so by an immigration officer or a constable in accordance with this section.
- (2) A requirement may be imposed on an individual under subsection (1) only if the immigration officer or constable suspects that the individual may not be a British citizen.
- (3) When imposing a requirement under subsection (1) the immigration officer or constable must inform the individual that an offence may be committed if the individual fails to comply with a requirement imposed under this section.
- (4) The immigration officer or constable must make a written record of the imposition of a requirement under subsection (1) as soon as practicable.
- (5) The written record is to be made in the presence of the individual where this is practicable.

#### **43B Offence of not giving nationality**

- (1) A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed in accordance with section 43A, whether by providing false or incomplete information or by providing no information.

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- (2) Information provided by a person in response to a requirement imposed in accordance with section 43A is not admissible in evidence in criminal proceedings against that person other than proceedings for an offence under this section.
- (3) A person who is guilty of an offence under subsection (1) is liable—
  - (a) on summary conviction in England and Wales, to either or both of the following—
    - (i) imprisonment for a term not exceeding 51 weeks (or 6 months if the offence was committed before the commencement of section 281(5) of the Criminal Justice Act 2003);
    - (ii) a fine;
  - (b) on summary conviction in Northern Ireland, to either or both of the following—
    - (i) imprisonment for a term not exceeding 6 months;
    - (ii) a fine not exceeding level 5 on the standard scale.”

## 160 Requirement to produce nationality document

In the UK Borders Act 2007, after section 46 (seizure of nationality documents) insert—

### “46A Requirement to produce nationality document

- (1) This section applies where—
  - (a) an individual has been arrested on suspicion of the commission of an offence, and
  - (b) the individual is to be released after arrest (whether or not on bail)—
    - (i) before a decision is taken on whether the individual should be charged with an offence, or
    - (ii) after being charged with an offence.
- (2) Before the individual is released an immigration officer or a constable may give the individual a notice requiring the production of a nationality document not later than 72 hours after the individual is released.
- (3) A notice may be given under subsection (2) only if the immigration officer or constable giving it suspects that the individual may not be a British citizen.
- (4) A notice under subsection (2) must be given in writing.
- (5) The notice must include statements that—
  - (a) the individual to whom it is given must produce the nationality document not later than 72 hours after the individual is released, and
  - (b) an offence may be committed if an individual fails to comply with a notice given under this section.
- (6) The notice must also set out—
  - (a) the person to whom the document must be produced, and
  - (b) the means by which the document must be produced.
- (7) In this section, and in sections 46B and 46C—

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“nationality document” means a passport relating to the individual or, if there is no passport relating to the individual, one or more documents that enable the individual’s nationality or citizenship to be established;

“passport” means—

- (a) a United Kingdom passport (within the meaning of the Immigration Act 1971),
- (b) a passport issued by or on behalf of the authorities of a country or territory outside the United Kingdom, or by or on behalf of an international organisation, or
- (c) a document that can be used (in some or all circumstances) instead of a passport.

#### **46B Retention of nationality document etc**

- (1) An immigration officer or constable may retain a nationality document produced in response to a notice under section 46A(2) while the immigration officer or constable suspects that—
  - (a) the individual to whom the document relates may be liable to removal from the United Kingdom in accordance with a provision of the Immigration Acts, and
  - (b) retention of the document may facilitate the individual’s removal.
- (2) Section 28I of the Immigration Act 1971 (seized material: access and copying) has effect in relation to a nationality document produced by an individual in response to a notice under section 46A(2) and retained by an immigration officer as if the nationality document had been seized when the individual had custody or control of it.
- (3) Section 21 of the Police and Criminal Evidence Act 1984 or Article 23 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (seized material: access and copying) has effect in relation to a nationality document produced by an individual in response to a notice under section 46A(2) and retained by a constable in England and Wales or Northern Ireland as if the nationality document had been seized when the individual had custody or control of it.

#### **46C Offence of failing to produce nationality document**

- (1) A person commits an offence if, without reasonable excuse, the person fails to comply with a notice given in accordance with section 46A.
- (2) The fact that a person deliberately destroyed or disposed of a nationality document is not a reasonable excuse for the purposes of subsection (1) unless the destruction or disposal was—
  - (a) for a reasonable cause, or
  - (b) beyond the control of the person charged with the offence.
- (3) In subsection (2)(a) “reasonable cause” does not include the purpose of—
  - (a) delaying the handling or resolution of a claim or application or the taking of a decision,
  - (b) increasing the chances of success of a claim or application, or

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- (c) complying with instructions given by a person who offers advice about, or facilitates, immigration into the United Kingdom, unless in the circumstances of the case it is unreasonable to expect non-compliance with the instructions or advice.
- (4) A person who is guilty of an offence under subsection (1) is liable—
  - (a) on summary conviction in England and Wales, to either or both of the following—
    - (i) imprisonment for a term not exceeding 51 weeks (or 6 months if the offence was committed before the commencement of section 281(5) of the Criminal Justice Act 2003);
    - (ii) a fine;
  - (b) on summary conviction in Scotland, to either or both of the following—
    - (i) imprisonment for a term not exceeding 12 months;
    - (ii) a fine not exceeding level 5 on the standard scale;
  - (c) on summary conviction in Northern Ireland, to either or both of the following—
    - (i) imprisonment for a term not exceeding 6 months;
    - (ii) a fine not exceeding level 5 on the standard scale.”

## 161 Pilot schemes

- (1) The Secretary of State may by regulations made by statutory instrument provide for any provision of sections 159 and 160 to come into force for a period of time to be specified in or under the regulations for the purpose of assessing the effectiveness of the provision.
- (2) Regulations under subsection (1) may make different provision for different purposes or different areas.
- (3) More than one set of regulations may be made under subsection (1).
- (4) Provision included in regulations under subsection (1) does not affect the provision that may be included in relation to sections 159 and 160 in regulations under section 183 (commencement).

## 162 Requirement to give information in criminal proceedings

In the Courts Act 2003, after section 86 (alteration of place fixed for Crown Court trial) insert—

### “86A Requirement to give information in criminal proceedings

- (1) A person who is a defendant in proceedings in a criminal court must provide his or her name, date of birth and nationality if required to do so at any stage of proceedings by the court.
- (2) Criminal Procedure Rules must specify the stages of proceedings at which requirements are to be imposed by virtue of subsection (1) (and may specify other stages of proceedings when such requirements may be imposed).

- (3) A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed by virtue of subsection (1), whether by providing false or incomplete information or by providing no information.
- (4) Information provided by a person in response to a requirement imposed by virtue of subsection (1) is not admissible in evidence in criminal proceedings against that person other than proceedings for an offence under this section.
- (5) A person guilty of an offence under subsection (3) is liable on summary conviction to either or both of the following—
  - (a) imprisonment for a term not exceeding 51 weeks (or 6 months if the offence was committed before the commencement of section 281(5) of the Criminal Justice Act 2003), or
  - (b) a fine.
- (6) The criminal court before which a person is required to provide his or her name, date of birth and nationality may deal with any suspected offence under subsection (3) at the same time as dealing with the offence for which the person was already before the court.
- (7) In this section a “criminal court” is, when dealing with any criminal cause or matter—
  - (a) the Crown Court;
  - (b) a magistrates’ court.”

*Seizure etc of travel documents*

**163 Powers to seize etc invalid travel documents**

- (1) Schedule 8 to the Anti-social Behaviour, Crime and Policing Act 2014 (Powers to seize invalid passports etc) is amended as follows.
- (2) For the italic heading before paragraph 3 substitute “Powers of search and seizure etc: places other than ports”.
- (3) In paragraph 3, for sub-paragraph (1) substitute—
  - “(1) An examining officer who is a constable or a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971 may exercise any of the powers under this paragraph, at a place that is not a port, if the examining officer reasonably believes that a person is in possession of a cancelled UK passport or an invalid non-UK travel document.”
- (4) In that paragraph, in sub-paragraph (2)—
  - (a) for “This paragraph applies to a passport” substitute “A passport is “a cancelled UK passport”;
  - (b) at the end of paragraph (a) insert “and”;
  - (c) omit the “and” at the end of paragraph (b);
  - (d) omit paragraph (c).
- (5) After sub-paragraph (2) insert—

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“(2A) An invalid travel document is “an invalid non-UK travel document” if it is, or appears to be, a passport or other document which has been issued by or for the government of a state other than the United Kingdom.”

(6) In that paragraph—

(a) in sub-paragraph (3)—

- (i) in paragraph (a), for “the constable” substitute “the examining officer”;
- (ii) in paragraph (b), for “the constable” substitute “the examining officer”;
- (iii) in paragraph (d), for “the constable believes” substitute “the examining officer reasonably believes”;

(b) in sub-paragraph (4)—

- (i) in paragraph (c), for “the constable believes” substitute “the examining officer reasonably believes”;
- (ii) in paragraph (d), for “the constable” substitute “the examining officer”;

(c) in sub-paragraph (5)—

- (i) in the opening words, for “A constable” substitute “An examining officer”;
- (ii) in sub-paragraph (b), for “the constable’s behalf” substitute “the examining officer’s behalf”.

(7) After paragraph 3 insert—

*“Powers of entry, search and seizure etc: constables*

3A (1) A constable may exercise any of the powers under this paragraph in relation to any premises, other than premises forming part of a port, if the constable reasonably believes that a cancelled UK passport or an invalid non-UK travel document is on the premises (whether or not in the possession of a person who is also on the premises).

(2) The powers are—

- (a) to enter the premises;
- (b) to search the premises for travel documents and to take possession of any that the constable finds;
- (c) to inspect any travel document taken and to retain it while its validity is checked;
- (d) (subject to paragraph 4) to retain any travel document taken that the constable reasonably believes to be invalid.

(3) A constable—

- (a) may if necessary use reasonable force for the purpose of exercising a power under this paragraph;
- (b) may authorise a person to carry out on the constable’s behalf a search under this paragraph.

(4) This paragraph does not affect any power of a constable under paragraph 3(3), (4)(a) to (c) or (5) in relation to a person on any premises entered under sub-paragraph (2)(a).”



- (8) In paragraph 4 (retention or return of documents seized)—
- (a) in sub-paragraph (1), for “2(2)(c) or 3(3)(c)” substitute “2(2)(c), 3(3)(c) or 3A(2)(c)”;
  - (b) after sub-paragraph (2) insert—

“(2A) If it is established that a travel document taken from any premises under paragraph 3A—

    - (a) is valid, or
    - (b) is invalid only because it has expired,

it must be returned to the person to whom it was issued straight away.”;
  - (c) after sub-paragraph (3) insert—

“(3A) A travel document taken from premises under paragraph 3A must be returned to the person to whom it was issued before the end of the period of 7 days beginning with the day on which it was taken, unless during that period it is established that the document is invalid for some reason other than expiry.”;
  - (d) in sub-paragraph (4), for “(2)(b) or (3)” substitute “(2)(b), (2A), (3) or (3A)”;
  - (e) in that sub-paragraph, after “from whom he or she took the document” insert “or (as the case may be) to whom it was issued”;
  - (f) in sub-paragraph (5), for “(2) or (3)” substitute “(2), (2A), (3) or (3A)”.
- (9) In paragraph 5 (offences), in sub-paragraph (2), for “a search under paragraph 2 or 3” substitute “the exercise of a power of search under paragraph 2, 3 or 3A, or the exercise of a power of entry under paragraph 3A,”.
- (10) In paragraph 6 (power of arrest), for “2” substitute “2 or 3”.

*Pardons for certain abolished offences etc*

**164 Posthumous pardons for convictions etc of certain abolished offences: England and Wales**

- (1) A person who has been convicted of, or cautioned for, an offence specified in subsection (3) and who has died before this section comes into force is pardoned for the offence if two conditions are met.
- (2) Those conditions are that—
- (a) the other person involved in the conduct constituting the offence consented to it and was aged 16 or over, and
  - (b) any such conduct at the time this section comes into force would not be an offence under section 71 of the Sexual Offences Act 2003 (sexual activity in a public lavatory).
- (3) The offences to which subsection (1) applies are—
- (a) an offence under section 12 of the Sexual Offences Act 1956 (buggery) or under section 13 of that Act (gross indecency between men);
  - (b) an offence under any of the following provisions (which made provision similar to section 12 of the Sexual Offences Act 1956)—

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- (i) 25 Hen. 8 c. 6 (1533) (an Act for the punishment of the vice of buggery);
    - (ii) 2 & 3 Edw. 6 c. 29 (1548) (an Act against sodomy);
    - (iii) 5 Eliz. 1 c. 17 (1562) (an Act for the punishment of the vice of buggery);
    - (iv) section 15 of 9 Geo. 4 c. 31 (1828) (an Act for consolidating and amending the law relating to offences against the person);
    - (v) section 61 of the Offences against the Person Act 1861;
  - (c) an offence under section 11 of the Criminal Law Amendment Act 1885 (which made provision similar to section 13 of the Sexual Offences Act 1956).
- (4) The list of offences in subsection (3) is to be read as if it also included the corresponding service offences and, for that purpose, the corresponding service offences are—
- (a) an offence under an enactment set out in subsection (5) which is such an offence by virtue of any of the enactments mentioned in subsection (3);
  - (b) an offence under section 32 of 13 Chas. 2 c. 9 (1661) (An Act for the regulation and better government of the navy);
  - (c) an offence under section 29 of 22 Geo. 2 c. 33 (1749) (An Act for amending and consolidating the laws relating to the navy);
  - (d) an offence of sodomy mentioned in, and punishable under, section 38 of the Naval Discipline Act 1860, section 38 of the Naval Discipline Act 1861, section 41 of the Naval Discipline Act 1864 or section 45 of the Naval Discipline Act 1866.
- (5) The enactments referred to in subsection (4)(a) 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.
- (6) The reference in subsection (2)(b) to an offence under section 71 of the Sexual Offences Act 2003 is to be read as including a reference to an offence under section 42 of the Armed Forces Act 2006 which is such an offence by virtue of section 71 of that Act of 2003.
- (7) Subject to subsection (8), the following provisions of section 101 of the Protection of Freedoms Act 2012 apply for the purposes of this section and section 167(1) (so far as relating to this section) as they apply for the purposes of Chapter 4 of Part 5 of that Act—
- (a) in subsection (1), the definitions of “caution”, “conviction”, and “sentence” (and the related definition of “service disciplinary proceedings”);
  - (b) subsections (2) and (5) to (7).
- (8) The definition of “service disciplinary proceedings” in section 101(1) of the 2012 Act applies in accordance with subsection (7) with the modification that it also includes any proceedings (whether in England and Wales or elsewhere) under—
- (a) 13 Chas. 2 c. 9 (1661) (An Act for the regulation and better government of the navy),

- (b) 22 Geo. 2 c. 33 (1749) (An Act for amending and consolidating the laws relating to the navy), or
- (c) the Naval Discipline Act 1860, the Naval Discipline Act 1861 or the Naval Discipline Act 1864.

(9) Except in relation to service disciplinary proceedings, this section applies only in relation to persons convicted or cautioned in England and Wales.

#### **165 Other pardons for convictions etc of certain abolished offences: England and Wales**

- (1) This section applies to a person who has been convicted of, or cautioned for, an offence mentioned in section 92(1) of the Protection of Freedoms Act 2012 and who is living at the time this section comes into force.
- (2) If, at the time this section comes into force, the person's conviction or caution has become a disregarded conviction or caution under Chapter 4 of Part 5 of the Protection of Freedoms Act 2012, the person is pardoned for the offence.
- (3) If, at any time after this section comes into force, the person's conviction or caution becomes a disregarded conviction or caution under Chapter 4 of Part 5 of the Protection of Freedoms Act 2012, the person is also pardoned for the offence at that time.
- (4) Expressions used in this section or section 167(1) (so far as relating to this section) and in Chapter 4 of Part 5 of the Protection of Freedoms Act 2012 have the same meaning in this section or (as the case may be) section 167(1) as in that Chapter (see section 101 of that Act).

#### **166 Power to provide for disregards and pardons for additional abolished offences: England and Wales**

- (1) The Secretary of State may by regulations made by statutory instrument amend section 92 of the Protection of Freedoms Act 2012 (power of Secretary of State to disregard convictions or cautions) so as to add further offences to the list of offences specified in subsection (1) of that section.
- (2) An offence may be added to that list only if—
  - (a) it was an offence under the law of England and Wales,
  - (b) it has been repealed or, in the case of an offence at common law, abolished, and
  - (c) either—
    - (i) the offence expressly regulated homosexual activity, or
    - (ii) although the offence did not expressly regulate homosexual activity, it appears to the Secretary of State that those responsible for investigating occurrences of the offence targeted occurrences involving, or connected with, homosexual activity.
- (3) Regulations under subsection (1) adding an offence may also amend section 92 so as to provide that, in relation to the offence, condition A is that it appears to the Secretary of State that matters specified in the amendment apply (in substitution for the matters specified in subsection (3)(a) and (b) of that section).
- (4) Regulations under subsection (1) may make consequential amendments of Chapter 4 of Part 5 of the 2012 Act.

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- (5) Regulations under subsection (1) adding an offence must also provide for any person who has been convicted of, or cautioned for, the offence to be pardoned where—
  - (a) the person has died before the regulations come into force or the person dies during the period of 6 months beginning with the day on which they come into force, and
  - (b) the conditions specified in the regulations are met.
- (6) Those conditions must correspond to the matters that are specified in condition A in section 92 of the 2012 Act as it applies in relation to the offence (that is, the matters which must appear to the Secretary of State to apply in order for condition A to be met).
- (7) Subsection (5)(a) does not apply in relation to a person who dies during the period of 6 months if, before the person's death, the person's conviction of, or caution for, the offence becomes a disregarded conviction or caution under Chapter 4 of Part 5 of the 2012 Act (and, accordingly, the person is pardoned for the offence before death under section 165(3) of this Act).
- (8) The regulations must make provision which has a comparable effect in relation to the pardons provided for by the regulations and the offences to which those pardons relate as section 164(4) to (9) of this Act has in relation to the pardons provided for by section 164(1) to (3) and the offences to which they relate.
- (9) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (10) In this section, “caution”, “conviction”, “disregarded caution” and “disregarded conviction” have the same meaning as in Chapter 4 of Part 5 of the 2012 Act (see section 101 of that Act).

## **167 Sections 164 to 166: supplementary**

- (1) A pardon under section 164 or 165, or under regulations under section 166, does not—
  - (a) affect any conviction, caution or sentence, or
  - (b) give rise to any right, entitlement or liability.
- (2) Nothing in this section or in sections 164 to 166 or regulations under section 166 affects the prerogative of mercy.

## **168 Disregarding certain convictions etc for abolished offences: Northern Ireland**

- (1) After Chapter 4 of Part 5 of the Protection of Freedoms Act 2012 (disregarding certain convictions for buggery etc) insert—

## “CHAPTER 5

### DISREGARDING CERTAIN CONVICTIONS FOR BUGGERY ETC: NORTHERN IRELAND

#### *General*

#### **101A Power of Department of Justice to disregard certain convictions or cautions**

- (1) A person who has in Northern Ireland been convicted of, or cautioned for, an offence under—
  - (a) Article 19 of the Criminal Justice (Northern Ireland) Order 2003 ([S.I. 2003/1247 \(N.I. 13\)](#)) (buggery),
  - (b) Article 7 of the Homosexual Offences (Northern Ireland) Order 1982 ([S.I. 1982/1536 \(N.I. 19\)](#)) (procuring others to commit homosexual acts),
  - (c) section 61 of the Offences against the Person Act 1861 (buggery), or
  - (d) section 11 of the Criminal Law Amendment Act 1885 (indecent acts between men),may apply to the Department of Justice in Northern Ireland for the conviction or caution to become a disregarded conviction or caution.
- (2) A conviction or caution becomes a disregarded conviction or caution when conditions A and B are met.
- (3) In relation to an offence under Article 7 of the Homosexual Offences (Northern Ireland) Order 1982, Condition A is that the Department of Justice in Northern Ireland decides that it appears that—
  - (a) the conduct procured was conduct involving persons who consented to it and were aged 17 or over (whether or not that conduct occurred), and
  - (b) the conduct procured would not now be an offence under Article 75 of the Sexual Offences (Northern Ireland) Order 2008 ([S.I. 2008/1769 \(N.I. 2\)](#)) (sexual activity in a public lavatory).
- (4) In relation to any other offence mentioned in subsection (1), Condition A is that the Department of Justice in Northern Ireland decides that it appears that—
  - (a) the other person involved in the conduct constituting the offence consented to it and was aged 17 or over, and
  - (b) any such conduct now would not be an offence under Article 75 of the Sexual Offences (Northern Ireland) Order 2008 ([S.I. 2008/1769 \(N.I. 2\)](#)).
- (5) Condition B is that—
  - (a) the Department of Justice in Northern Ireland has given notice of the decision to the applicant under section 101C(4)(b), and
  - (b) the period of 14 days beginning with the day on which the notice was given has ended.

- (6) Sections 101D to 101G explain the effect of a conviction or caution becoming a disregarded conviction or caution.

### **101B Applications to the Department of Justice**

- (1) An application under section 101A must be in writing.
- (2) It must state—
  - (a) the name, address and date of birth of the applicant,
  - (b) the name and address of the applicant at the time of the conviction or caution,
  - (c) so far as known to the applicant, the time when and the place where the conviction was made or the caution given and, for a conviction, the case number, and
  - (d) such other information as the Department of Justice in Northern Ireland may require.
- (3) It may include representations by the applicant or written evidence about the matters mentioned in condition A in section 101A.

### **101C Procedure for decisions by the Department of Justice**

- (1) In considering whether to make a decision of the kind mentioned in condition A in section 101A, the Department of Justice in Northern Ireland must, in particular, consider—
  - (a) any representations or evidence included in the application, and
  - (b) any available record of the investigation of the offence and of any proceedings relating to it that the Department of Justice in Northern Ireland considers to be relevant.
- (2) The Department of Justice in Northern Ireland may not hold an oral hearing for the purpose of deciding whether to make a decision of the kind mentioned in condition A in section 101A.
- (3) Subsection (4) applies if the Department of Justice in Northern Ireland—
  - (a) decides that it appears as mentioned in condition A in section 101A, or
  - (b) makes a different decision in relation to the matters mentioned in that condition.
- (4) The Department of Justice in Northern Ireland must—
  - (a) record the decision in writing, and
  - (b) give notice of it to the applicant.

### *Effect of disregard*

### **101D Effect of disregard on police and other records**

- (1) The Department of Justice in Northern Ireland must by notice direct the relevant data controller to delete details, contained in relevant official records, of a disregarded conviction or caution.

- (2) A notice under subsection (1) may be given at any time after condition A in section 101A is met but no deletion may have effect before condition B in that section is met.
- (3) Subject to that, the relevant data controller must delete the details as soon as reasonably practicable.
- (4) Having done so, the relevant data controller must give notice to the person who has the disregarded conviction or caution that the details of it have been deleted.
- (5) In this section—
  - “delete”, in relation to such relevant official records as may be prescribed, means record with the details of the conviction or caution concerned—
    - (a) the fact that it is a disregarded conviction or caution, and
    - (b) the effect of it being such a conviction or caution,
  - “the general names database” means the names database held by the Secretary of State for the use of constables,
  - “the Northern Ireland names database” means the names database maintained by the Department of Justice in Northern Ireland for the purpose of recording convictions and cautions,
  - “official records” means records containing information about persons convicted of, or cautioned for, offences and kept by any court, police force, government department or local or other public authority in Northern Ireland for the purposes of its functions,
  - “prescribed” means prescribed by order of the Department of Justice in Northern Ireland,
  - “relevant data controller” means—
    - (a) in relation to the general names database or the Northern Ireland names database, the Chief Constable of the Police Service of Northern Ireland,
    - (b) in relation to other relevant official records, such persons as may be prescribed,
  - “relevant official records” means—
    - (a) the general names database,
    - (b) the Northern Ireland names database, and
    - (c) such other official records as may be prescribed.
- (6) An order under this section may make different provision for different purposes.
- (7) Any power to make an order under this section is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (8) A statutory rule containing an order under this section is subject to negative resolution (within the meaning of section 41(6) of the [Interpretation Act \(Northern Ireland\) 1954 \(c. 33 \(N.I.\)\)](#)).

### **101E Effect of disregard for disclosure and other purposes**

- (1) A person who has a disregarded conviction or caution is to be treated for all purposes in law as if the person has not—
  - (a) committed the offence,
  - (b) been charged with, or prosecuted for, the offence,
  - (c) been convicted of the offence,
  - (d) been sentenced for the offence, or
  - (e) been cautioned for the offence.
- (2) In particular—
  - (a) no evidence is to be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in Northern Ireland to prove that the person has done, or undergone, anything within subsection (1)(a) to (e), and
  - (b) the person is not, in any such proceedings, to be asked (and, if asked, is not to be required to answer) any question relating to the person's past which cannot be answered without acknowledging or referring to the conviction or caution or any circumstances ancillary to it.
- (3) Where a question is put to a person, other than in such proceedings, seeking information with respect to the previous convictions, cautions, offences, conduct or circumstances of any person—
  - (a) the question is to be treated as not relating to any disregarded conviction or caution, or any circumstances ancillary to it (and the answer to the question may be framed accordingly), and
  - (b) the person questioned is not to be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose that conviction or caution or any circumstances ancillary to it in answering the question.
- (4) Any obligation imposed on any person by any enactment or rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person is not to extend to requiring the disclosure of a disregarded conviction or caution or any circumstances ancillary to it.
- (5) A disregarded conviction or caution, or any circumstances ancillary to it, is not a proper ground for—
  - (a) dismissing or excluding a person from any office, profession, occupation or employment, or
  - (b) prejudicing the person in any way in any office, profession, occupation or employment.
- (6) This section is subject to section 101F but otherwise applies despite any enactment or rule of law to the contrary.
- (7) See also section 101G (meaning of “proceedings before a judicial authority” and “circumstances ancillary to a conviction or caution”).



**101F Saving for Royal pardons etc**

Nothing in section 101E affects any right of Her Majesty, by virtue of Her Royal prerogative or otherwise, to grant a free pardon, to quash any conviction or sentence, or to commute any sentence.

**101G Section 101E: supplementary**

- (1) In section 101E, “proceedings before a judicial authority” includes (in addition to proceedings before any of the ordinary courts of law) proceedings before any tribunal, body or person having power—
  - (a) by virtue of any enactment, law, custom or practice,
  - (b) under the rules governing any association, institution, profession, occupation or employment, or
  - (c) under any provision of an agreement providing for arbitration with respect to questions arising under that agreement,
 to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question.
- (2) For the purposes of section 101E, circumstances ancillary to a conviction are any circumstances of—
  - (a) the offence which was the subject of the conviction;
  - (b) the conduct constituting the offence;
  - (c) any process or proceedings preliminary to the conviction;
  - (d) any sentence imposed in respect of the conviction;
  - (e) any proceedings (whether by appeal or otherwise) for reviewing the conviction or any such sentence;
  - (f) anything done in pursuance of, or undergone in compliance with, any such sentence.
- (3) For the purposes of section 101E, circumstances ancillary to a caution are any circumstances of—
  - (a) the offence which was the subject of the caution;
  - (b) the conduct constituting the offence;
  - (c) any process preliminary to the caution (including consideration by any person of how to deal with the offence and the procedure for giving the caution);
  - (d) any proceedings for the offence which take place before the caution is given;
  - (e) anything which happens after the caution is given for the purposes of bringing any such proceedings to an end;
  - (f) any judicial review proceedings relating to the caution.

*Appeals and other supplementary provision***101H Appeal against refusal to disregard convictions or caution**

- (1) The applicant may appeal to the High Court in Northern Ireland if—

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*Status: This is the original version (as it was originally enacted).*

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- (a) the Department of Justice in Northern Ireland makes a decision of the kind mentioned in section 101C(3)(b), and
  - (b) the High Court gives permission for an appeal against the decision.
- (2) On such an appeal, the High Court must make its decision only on the basis of the evidence that was available to the Department of Justice in Northern Ireland.
- (3) If the High Court decides that it appears as mentioned in condition A in section 101A, it must make an order to that effect.
- (4) Otherwise, it must dismiss the appeal.
- (5) A conviction or caution to which an order under subsection (3) relates becomes a disregarded conviction or caution when the period of 14 days beginning with the day on which the order was made has ended.
- (6) There is no appeal from a decision of the High Court under this section.

#### **101I Advisers**

- (1) The Department of Justice in Northern Ireland may appoint persons to advise whether, in any case referred to them by the Department of Justice in Northern Ireland, the Department of Justice in Northern Ireland should decide as mentioned in condition A in section 101A.
- (2) The Department of Justice in Northern Ireland may disclose to a person so appointed such information (including anything within section 101C(1)(a) or (b)) as the Department of Justice considers relevant to the provision of such advice.
- (3) The Department of Justice in Northern Ireland may pay expenses and allowances to a person so appointed.

#### **101J Interpretation: Chapter 5**

- (1) In this Chapter—
  - “caution” means a caution or a warning given to a person in Northern Ireland in respect of an offence which, at the time the caution or warning is given, that person has admitted,
  - “conviction” includes—
    - (a) a conviction in respect of which an order has been made discharging the person concerned absolutely or conditionally, and
    - (b) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that a person has committed an offence or done the act or made the omission charged,
  - “disregarded caution” is a caution which has become a disregarded caution by virtue of this Chapter,
  - “disregarded conviction” is a conviction which has become a disregarded conviction by virtue of this Chapter,
  - “document” includes information recorded in any form and, in relation to information recorded otherwise than in legible form,

references to its provision or production include providing or producing a copy of the information in legible form,

“information” includes documents,

“notice” means notice in writing,

“official records” has the meaning given by section 101D(5).

(2) Paragraph (a) of the definition of “conviction” applies despite Article 6 of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)) (which deems a conviction of a person discharged not to be a conviction).

(3) In this Chapter, a reference to an offence includes—

- (a) a reference to an attempt, conspiracy or incitement to commit that offence, and
- (b) a reference to aiding, abetting, counselling or procuring the commission of that offence.

(4) In the case of an attempt, conspiracy or incitement, the references in this Chapter to the conduct constituting the offence are references to the conduct to which the attempt, conspiracy or incitement related (whether or not that conduct occurred).

(5) For the purposes of subsections (3) and (4) an attempt to commit an offence includes conduct which—

- (a) consisted of frequenting with intent to commit the offence any river, canal, street, highway, place of public resort or other location mentioned in section 4 of the Vagrancy Act 1824 (as it then had effect) in connection with frequenting by suspected persons or reputed thieves, and
- (b) was itself an offence under that section.”

(2) In Article 2 of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (S.I. 1978/1908 (N.I. 27) (interpretation), after paragraph (3) insert—

“(3A) This Order does not apply to any disregarded conviction or caution within the meaning of Chapter 5 of Part 5 of the Protection of Freedoms Act 2012.

(3B) Accordingly, references in this Order to a conviction or caution do not include references to any such disregarded conviction or caution.”

(3) In the heading of Chapter 4 of Part 5 of the Protection of Freedoms Act 2012, at the end insert “: England and Wales”.

(4) In section 92 of that Act, after subsection (5) insert—

“(6) Except in relation to service disciplinary proceedings, this section applies only in relation to persons convicted or cautioned in England and Wales.”

## **169 Posthumous pardons for convictions etc of certain abolished offences: Northern Ireland**

(1) A person who has in Northern Ireland been convicted of, or cautioned for, an offence specified in subsection (2) and who has died before this section comes into force is pardoned for the offence if the conditions that apply under this section in relation to the offence are met.

- (2) The offences to which subsection (1) applies are—
- (a) an offence under Article 19 of the Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247 (N.I. 13)) (buggery);
  - (b) an offence under Article 7 of the Homosexual Offences (Northern Ireland) Order 1982 (S.I. 1982/1536 (N.I. 19)) (procuring others to commit homosexual acts);
  - (c) an offence under any of the following earlier provisions—
    - (i) 10 Chas. 1 sess. 2 c. 20 (1634) (an Act for the punishment of the vice of buggery);
    - (ii) section 18 of 10 Geo. 4 c. 34 (1829) (an Act for consolidating and amending the statutes in Ireland relating to offences against the person) (buggery);
    - (iii) section 61 of the Offences against the Person Act 1861 (buggery);
    - (iv) section 11 of the Criminal Law Amendment Act 1885 (gross indecency between men).
- (3) In relation to an offence under Article 7 of the Homosexual Offences (Northern Ireland) Order 1982, the conditions that apply are that—
- (a) the conduct procured was conduct involving persons who consented to it and were aged 17 or over (whether or not that conduct occurred), and
  - (b) the conduct procured would not now be an offence under Article 75 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)) (sexual activity in a public lavatory).
- (4) In relation to any other offence mentioned in subsection (2), the conditions that apply are that—
- (a) the other person involved in the conduct constituting the offence consented to it and was aged 17 or over, and
  - (b) any such conduct at the time this section comes into force would not be an offence under Article 75 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)) (sexual activity in a public lavatory).
- (5) The following provisions of section 101J of the Protection of Freedoms Act 2012 apply for the purposes of this section and section 172(1) (so far as relating to this section) as they apply for the purposes of Chapter 5 of Part 5 of that Act—
- (a) in subsection (1), the definitions of “caution” and “conviction”;
  - (b) subsections (2) to (5).

## **170 Other pardons for convictions etc of certain abolished offences: Northern Ireland**

- (1) This section applies to a person who has in Northern Ireland been convicted of, or cautioned for, an offence mentioned in section 101A(1) of the Protection of Freedoms Act 2012 and who is living at the time this section comes into force.
- (2) If, at any time after this section comes into force, the person’s conviction or caution becomes a disregarded conviction or caution under Chapter 5 of Part 5 of the Protection of Freedoms Act 2012, the person is also pardoned for the offence at that time.

- (3) Expressions used in this section or section 172(1) (so far as relating to this section) and in Chapter 5 of Part 5 of the Protection of Freedoms Act 2012 have the same meaning in this section or (as the case may be) section 172(1) as in that Chapter (see section 101J of that Act).

## **171 Power to provide for disregards and pardons for additional abolished offences: Northern Ireland**

- (1) The Department of Justice in Northern Ireland may by regulations amend section 101A of the Protection of Freedoms Act 2012 (power of Department of Justice to disregard convictions or cautions) so as to add further offences to the list of offences specified in subsection (1) of that section.
- (2) An offence may be added to that list only if—
- (a) it was an offence under the law of Northern Ireland (or, in the case of an offence that applied before Northern Ireland became a separate legal jurisdiction, an offence under the law of Ireland),
  - (b) it has been repealed or, in the case of an offence at common law, abolished, and
  - (c) either—
    - (i) the offence expressly regulated homosexual activity, or
    - (ii) although the offence did not expressly regulate homosexual activity, it appears to the Department of Justice that those responsible for investigating occurrences of the offence targeted occurrences involving, or connected with, homosexual activity.
- (3) Regulations under subsection (1) adding an offence may also amend section 101A so as to provide that, in relation to the offence, condition A is that it appears to the Department of Justice that matters specified in the amendment apply (in substitution for the matters specified in subsection (4)(a) and (b) of that section).
- (4) Regulations under subsection (1) may make consequential amendments of Chapter 5 of Part 5 of the 2012 Act.
- (5) Regulations under subsection (1) adding an offence must also provide for any person who has been convicted of, or cautioned for, the offence to be pardoned where—
- (a) the person has died before the regulations come into force or the person dies during the period of 6 months beginning with the day on which they come into force, and
  - (b) the conditions specified in the regulations are met.
- (6) Those conditions must correspond to the matters that are specified in condition A in section 101A of the 2012 Act as it applies in relation to the offence (that is, the matters which must appear to the Department of Justice to apply in order for condition A to be met).
- (7) Subsection (5)(a) does not apply in relation to a person who dies during the period of 6 months if, before the person's death, the person's conviction of, or caution for, the offence becomes a disregarded conviction or caution under Chapter 5 of Part 5 of the 2012 Act (and, accordingly, the person is pardoned for the offence before death under section 170(2) of this Act).
- (8) The regulations must make provision which has a comparable effect in relation to the pardons provided for by the regulations and the offences to which those pardons

relate as section 169(5) of this Act has in relation to the pardons provided for by section 169(1) to (4) and the offences to which they relate.

- (9) The power to make regulations under subsection (1) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573) (N.I. 12)).
- (10) Regulations under this section may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (11) In this section, “caution”, “conviction”, “disregarded caution” and “disregarded conviction” have the same meaning as in Chapter 5 of Part 5 of the 2012 Act (see section 101J of that Act).

## **172 Sections 169 to 171: supplementary**

- (1) A pardon under section 169 or 170, or under regulations under section 171, does not—
  - (a) affect any conviction, caution or sentence, or
  - (b) give rise to any right, entitlement or liability.
- (2) Nothing in this section or in sections 169 to 171 or regulations under section 171 affects the prerogative of mercy.

*Forced marriage: anonymity for victims*

## **173 Anonymity of victims of forced marriage: England and Wales**

- (1) In Part 10 of the Anti-social Behaviour, Crime and Policing Act 2014 (forced marriage), after section 122 insert—

### **“122A Anonymity of victims of forced marriage: England and Wales**

Schedule 6A (anonymity of victims of forced marriage) has effect.”

- (2) Insert, as Schedule 6A to that Act, the following Schedule—

“SCHEDULE 6A

Section 122A

#### ANONYMITY OF VICTIMS OF FORCED MARRIAGE

##### *Prohibition on the identification of victims in publications*

- 1 (1) This paragraph applies where an allegation has been made that an offence of forced marriage has been committed against a person.
- (2) No matter likely to lead members of the public to identify the person, as the person against whom the offence is alleged to have been committed, may be included in any publication during the person’s lifetime.
- (3) In any criminal proceedings before a court, the court may direct that the restriction imposed by sub-paragraph (2) is not to apply (whether at all or to the extent specified in the direction) if the court is satisfied that either of the following conditions is met.

- (4) The first condition is that the conduct of a person’s defence at a trial of an offence of forced marriage would be substantially prejudiced if the direction were not given.
- (5) The second condition is that—

(a) the effect of sub-paragraph (2) is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and

(b) it is in the public interest to remove or relax the restriction.
- (6) A direction under sub-paragraph (3) does not affect the operation of sub-paragraph (2) at any time before the direction is given.
- (7) In this paragraph, “the court” means a magistrates’ court or the Crown Court.

Penalty for breaching prohibition imposed by paragraph 1(2)

- 2

(1) If anything is included in a publication in contravention of the prohibition imposed by paragraph 1(2), each of the persons responsible for the publication is guilty of an offence.

(2) A person guilty of an offence under this paragraph is liable, on summary conviction, to a fine.

(3) The persons responsible for a publication are as follows—

Type of publication	Persons responsible
Newspaper or other periodical	Any person who is a proprietor, editor or publisher of the newspaper or periodical.
Relevant programme	Any person who— <div>(a) is a body corporate engaged in providing the programme service in which the programme is included, or</div> <div>(b) has functions in relation to the programme corresponding to those of an editor of a newspaper.</div>
Any other kind of publication	Any person who publishes the publication.

- (4) If an offence under this paragraph is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a senior officer of a body corporate, or

(b) a person purporting to act in such a capacity,

the senior officer or person (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (5) “Senior officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate; and for this purpose “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.



- (6) Proceedings for an offence under this paragraph may not be instituted except by, or with the consent of, the Attorney General.

*Offence under paragraph 2: defences*

- 3 (1) This paragraph applies where a person (“the defendant”) is charged with an offence under paragraph 2 as a result of the inclusion of any matter in a publication.
- (2) It is a defence for the defendant to prove that, at the time of the alleged offence, the defendant was not aware, and did not suspect or have reason to suspect, that—
- (a) the publication included the matter in question, or
  - (b) the allegation in question had been made.
- (3) It is a defence for the defendant to prove that the publication in which the matter appeared was one in respect of which the victim had given written consent to the appearance of matter of that description.
- (4) The defence in sub-paragraph (3) is not available if—
- (a) the victim was under the age of 16 at the time when his or her consent was given, or
  - (b) a person interfered unreasonably with the peace and comfort of the victim with a view to obtaining his or her consent.
- (5) In this paragraph, “the victim” means the person against whom the offence of forced marriage in question is alleged to have been committed.

*Special rules for providers of information society services*

- 4 (1) Paragraph 2 applies to a domestic service provider who, in the course of providing information society services, publishes prohibited matter in an EEA state other than the United Kingdom (as well as to a person, of any description, who publishes prohibited matter in England and Wales).
- (2) Proceedings for an offence under paragraph 2, as it applies to a domestic service provider by virtue of sub-paragraph (1), may be taken at any place in England and Wales.
- (3) Nothing in this paragraph affects the operation of any of paragraphs 6 to 8.
- 5 (1) Proceedings for an offence under paragraph 2 may not be taken against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is met.
- (2) The derogation condition is that taking proceedings—
- (a) is necessary for the purposes of the public interest objective,
  - (b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and
  - (c) is proportionate to that objective.
- (3) “The public interest objective” means the pursuit of public policy.



- 6 (1) A service provider does not commit an offence under paragraph 2 by providing access to a communication network or by transmitting, in a communication network, information provided by a recipient of the service, if the service provider does not—
- (a) initiate the transmission,
  - (b) select the recipient of the transmission, or
  - (c) select or modify the information contained in the transmission.
- (2) For the purposes of sub-paragraph (1)—
- (a) providing access to a communication network, and
  - (b) transmitting information in a communication network,
- include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission.
- 7 (1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service for transmission in a communication network if the first and second conditions are met.
- (2) The first condition is that the storage of the information—
- (a) is automatic, intermediate and temporary, and
  - (b) is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request.
- (3) The second condition is that the service provider—
- (a) does not modify the information,
  - (b) complies with any conditions attached to having access to the information, and
  - (c) if sub-paragraph (4) applies, promptly removes the information or disables access to it.
- (4) This sub-paragraph applies if the service provider obtains actual knowledge that—
- (a) the information at the initial source of the transmission has been removed from the network,
  - (b) access to it has been disabled, or
  - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.
- 8 (1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service if—
- (a) the service provider had no actual knowledge when the information was provided that it was, or contained, a prohibited publication, or
  - (b) on obtaining actual knowledge that the information was, or contained, a prohibited publication, the service provider promptly removed the information or disabled access to it.

- (2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

### *Interpretation*

9 (1) In this Schedule—

“domestic service provider” means a service provider established in England and Wales, Scotland or Northern Ireland;

“the E-Commerce Directive” means Directive [2000/31/EC](#) of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce);

“information society services”—

(a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive [98/34/EC](#) of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and

(b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;

“non-UK service provider” means a service provider established in an EEA state other than the United Kingdom;

“offence of forced marriage” means an offence under section 121;

“programme service” has the same meaning as in the Broadcasting Act 1990 (see section 201(1) of that Act);

“prohibited material” means any material the publication of which contravenes paragraph 1(2);

“publication” includes any speech, writing, relevant programme or other communication (in whatever form) which is addressed to, or is accessible by, the public at large or any section of the public;

“recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;

“relevant programme” means a programme included in a programme service;

“service provider” means a person providing an information society service.

- (2) For the purposes of the definition of “publication” in sub-paragraph (1)—

- (a) an indictment or other document prepared for use in particular legal proceedings is not to be taken as coming within the definition;
  - (b) every relevant programme is to be taken as addressed to the public at large or to a section of the public.
- (3) For the purposes of the definitions of “domestic service provider” and “non-UK service provider” in sub-paragraph (1)—
- (a) a service provider is established in a particular part of the United Kingdom, or in a particular EEA state, if the service provider—
    - (i) effectively pursues an economic activity using a fixed establishment in that part of the United Kingdom, or that EEA state, for an indefinite period, and
    - (ii) is a national of an EEA state or a company or firm mentioned in Article 54 of the Treaty on the Functioning of the European Union;
  - (b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;
  - (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider’s activities relating to that service.”

## 174 Anonymity of victims of forced marriage: Northern Ireland

- (1) After Part 4 of the [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015 \(c.2 \(N.I.\)\)](#) insert—

### “PART 4A

#### PROTECTION OF VICTIMS OF FORCED MARRIAGE

#### 24A Anonymity of victims of forced marriage

Schedule 3A (anonymity of victims of forced marriage) has effect.”

- (2) Insert, as Schedule 3A to that Act, the following Schedule—

### “SCHEDULE 3A

Section 24A

#### ANONYMITY OF VICTIMS OF FORCED MARRIAGE

##### *Prohibition on the identification of victims in publications*

- 1 (1) This paragraph applies where an allegation has been made that an offence of forced marriage has been committed against a person.

*Status: This is the original version (as it was originally enacted).*

- (2) No matter likely to lead members of the public to identify the person, as the person against whom the offence is alleged to have been committed, may be included in any publication during the person's lifetime.
- (3) In any criminal proceedings before a court, the court may direct that the restriction imposed by sub-paragraph (2) is not to apply (whether at all or to the extent specified in the direction) if the court is satisfied that either of the following conditions is met.
- (4) The first condition is that the conduct of a person's defence at a trial of an offence of forced marriage would be substantially prejudiced if the direction were not given.
- (5) The second condition is that—
  - (a) the effect of sub-paragraph (2) is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and
  - (b) it is in the public interest to remove or relax the restriction.
- (6) A direction under sub-paragraph (3) does not affect the operation of sub-paragraph (2) at any time before the direction is given.
- (7) In this paragraph, "the court" means a magistrates' court, a county court or the Crown Court.

*Penalty for breaching prohibition imposed by paragraph 1(2)*

- 2 (1) If anything is included in a publication in contravention of the prohibition imposed by paragraph 1(2), each of the persons responsible for the publication is guilty of an offence.
- (2) A person guilty of an offence under this paragraph is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (3) The persons responsible for a publication are as follows—

<i>Type of publication</i>	<i>Persons responsible</i>
Newspaper or other periodical	Any person who is a proprietor, editor or publisher of the newspaper or periodical.
Relevant programme	Any person who— <ul style="list-style-type: none"> <li>(a) is a body corporate engaged in providing the programme service in which the programme is included, or</li> <li>(b) has functions in relation to the programme corresponding to those of an editor of a newspaper.</li> </ul>
Any other kind of publication	Any person who publishes the publication.

- (4) Proceedings for an offence under this paragraph may not be instituted except by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

*Offence under paragraph 2: defences*

- 3 (1) This paragraph applies where a person (“the defendant”) is charged with an offence under paragraph 2 as a result of the inclusion of any matter in a publication.
- (2) It is a defence for the defendant to prove that, at the time of the alleged offence, the defendant was not aware, and did not suspect or have reason to suspect, that—
- (a) the publication included the matter in question, or
  - (b) the allegation in question had been made.
- (3) It is a defence for the defendant to prove that the publication in which the matter appeared was one in respect of which the victim had given written consent to the appearance of matter of that description.
- (4) The defence in sub-paragraph (3) is not available if—
- (a) the victim was under the age of 16 at the time when his or her consent was given, or
  - (b) a person interfered unreasonably with the peace and comfort of the victim with a view to obtaining his or her consent.
- (5) In this paragraph, “the victim” means the person against whom the offence of forced marriage in question is alleged to have been committed.

*Special rules for providers of information society services*

- 4 (1) Paragraph 2 applies to a domestic service provider who, in the course of providing information society services, publishes prohibited matter in an EEA state other than the United Kingdom (as well as to a person, of any description, who publishes prohibited matter in Northern Ireland).
- (2) Proceedings for an offence under paragraph 2, as it applies to a domestic service provider by virtue of sub-paragraph (1), may be taken at any place in Northern Ireland.
- (3) Nothing in this paragraph affects the operation of any of paragraphs 6 to 8.
- 5 (1) Proceedings for an offence under paragraph 2 may not be taken against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is met.
- (2) The derogation condition is that taking proceedings—
- (a) is necessary for the purposes of the public interest objective,
  - (b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and
  - (c) is proportionate to that objective.
- (3) “The public interest objective” means the pursuit of public policy.
- 6 (1) A service provider does not commit an offence under paragraph 2 by providing access to a communication network or by transmitting, in

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- a communication network, information provided by a recipient of the service, if the service provider does not—
- (a) initiate the transmission,
  - (b) select the recipient of the transmission, or
  - (c) select or modify the information contained in the transmission.
- (2) For the purposes of sub-paragraph (1)—
- (a) providing access to a communication network, and
  - (b) transmitting information in a communication network,
- include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission.
- 7 (1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service for transmission in a communication network if the first and second conditions are met.
- (2) The first condition is that the storage of the information—
- (a) is automatic, intermediate and temporary, and
  - (b) is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request.
- (3) The second condition is that the service provider—
- (a) does not modify the information,
  - (b) complies with any conditions attached to having access to the information, and
  - (c) if sub-paragraph (4) applies, promptly removes the information or disables access to it.
- (4) This sub-paragraph applies if the service provider obtains actual knowledge that—
- (a) the information at the initial source of the transmission has been removed from the network,
  - (b) access to it has been disabled, or
  - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.
- 8 (1) A service provider does not commit an offence under paragraph 2 by storing information provided by a recipient of the service if—
- (a) the service provider had no actual knowledge when the information was provided that it was, or contained, a prohibited publication, or
  - (b) on obtaining actual knowledge that the information was, or contained, a prohibited publication, the service provider promptly removed the information or disabled access to it.
- (2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

*Interpretation*

## 9 (1) In this Schedule—

“domestic service provider” means a service provider established in England and Wales, Scotland or Northern Ireland;

“the E-Commerce Directive” means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce);

“information society services”—

(a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and

(b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;

“non-UK service provider” means a service provider established in an EEA state other than the United Kingdom;

“offence of forced marriage” means an offence under section 16;

“programme service” has the same meaning as in the Broadcasting Act 1990 (see section 201(1) of that Act);

“prohibited material” means any material the publication of which contravenes paragraph 1(2);

“publication” includes any speech, writing, relevant programme or other communication (in whatever form) which is addressed to, or is accessible by, the public at large or any section of the public;

“recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;

“relevant programme” means a programme included in a programme service;

“service provider” means a person providing an information society service.

## (2) For the purposes of the definition of “publication” in sub-paragraph (1)—

(a) an indictment or other document prepared for use in particular legal proceedings is not to be taken as coming within the definition;

(b) every relevant programme is to be taken as addressed to the public at large or to a section of the public.

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- (3) For the purposes of the definitions of “domestic service provider” and “non-UK service provider” in sub-paragraph (1)—
- (a) a service provider is established in a particular part of the United Kingdom, or in a particular EEA state, if the service provider—
    - (i) effectively pursues an economic activity using a fixed establishment in that part of the United Kingdom, or that EEA state, for an indefinite period, and
    - (ii) is a national of an EEA state or a company or firm mentioned in Article 54 of the Treaty on the Functioning of the European Union;
  - (b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;
  - (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider’s activities relating to that service.”

### *Stalking*

## **175 Sentences for offences of putting people in fear of violence etc**

- (1) In the Protection from Harassment Act 1997 —
  - (a) in section 4 (putting people in fear of violence), in subsection (4)(a), for “five years” substitute “ten years”;
  - (b) in section 4A (stalking involving fear of violence or serious alarm or distress), in subsection (5)(a), for “five years” substitute “ten years”.
- (2) In the Crime and Disorder Act 1998, in section 32 (racially or religiously aggravated harassment etc), in subsection (4)(b) (which specifies the penalty on conviction on indictment for an offence under that section which consists of a racially or religiously aggravated offence under section 4 or 4A of the Protection from Harassment Act 1997), for “seven years” substitute “14 years”.
- (3) The amendments made by this section apply only in relation to an offence committed on or after the day on which this section comes into force.
- (4) Where the course of conduct constituting an offence is found to have occurred over a period of 2 or more days, or at some time during a period of 2 or more days, the offence must be taken for the purposes of subsection (3) to have been committed on the last of those days.

### *Protection of children and vulnerable adults*

## **176 Child sexual exploitation: streaming indecent images**

In section 51(2) of the Sexual Offences Act 2003 (sexual exploitation of children: interpretation), in paragraph (b), at the end insert “or streamed or otherwise transmitted”.



**177 Licensing functions under taxi and PHV legislation: protection of children and vulnerable adults**

- (1) The Secretary of State may issue guidance to public authorities as to how their licensing functions under taxi and private hire vehicle legislation may be exercised so as to protect children, and vulnerable individuals who are 18 or over, from harm.
- (2) The Secretary of State may revise any guidance issued under this section.
- (3) The Secretary of State must arrange for any guidance issued under this section, and any revision of it, to be published.
- (4) Any public authority which has licensing functions under taxi and private hire vehicle legislation must have regard to any guidance issued under this section.
- (5) Before issuing guidance under this section, the Secretary of State must consult—
  - (a) the National Police Chiefs’ Council,
  - (b) persons who appear to the Secretary of State to represent the interests of public authorities who are required to have regard to the guidance,
  - (c) persons who appear to the Secretary of State to represent the interests of those whose livelihood is affected by the exercise of the licensing functions to which the guidance relates, and
  - (d) such other persons as the Secretary of State considers appropriate.
- (6) In this section, “taxi and private hire vehicle legislation” means—
  - (a) the London Hackney Carriages Act 1843;
  - (b) sections 37 to 68 of the Town Police Clauses Act 1847;
  - (c) the Metropolitan Public Carriage Act 1869;
  - (d) Part 2 of the Local Government (Miscellaneous Provisions) Act 1976;
  - (e) the Private Hire Vehicles (London) Act 1998;
  - (f) the [Plymouth City Council Act 1975 \(c.xx\)](#).

*Coroners’ investigations into deaths***178 Coroners’ investigations into deaths: meaning of “state detention”**

- (1) Section 48 of the Coroners and Justice Act 2009 (interpretation of Part 1: general) is amended as follows.
- (2) In subsection (1), in the definition of “state detention”, after “subsection (2)” insert “(read with subsection (2A))”.
- (3) In subsection (2), at the beginning insert “Subject to subsection (2A),”.
- (4) After subsection (2) insert—
 

“(2A) But a person is not in state detention at any time when he or she is deprived of liberty under section 4A(3) or (5) or 4B of the Mental Capacity Act 2005.”

*Powers of Scottish litter authorities*

**179 Powers of litter authorities in Scotland**

(1) In Part 4 of the Environmental Protection Act 1990 (litter etc), after section 91 insert—

**“92 Summary proceedings by litter authorities**

- (1) Where a principal litter authority in Scotland other than a joint board is satisfied as respects—
  - (a) any relevant Crown land,
  - (b) any relevant land of a designated statutory undertaker,
  - (c) any relevant land of a designated educational institution, or
  - (d) any relevant land within a litter control area of a local authority,
 that it is defaced by litter or refuse or that defacement of it by litter or refuse is likely to recur, the authority shall serve a notice (a “litter abatement notice”) imposing either the requirement or the prohibition or both the requirement and the prohibition specified in subsection (2).
- (2) The requirement and prohibition referred to in subsection (1) are as follows, namely—
  - (a) a requirement that the litter or refuse be cleared within a time specified in the notice;
  - (b) a prohibition on permitting the land to become defaced by litter or refuse.
- (3) The litter abatement notice shall be served—
  - (a) as respects relevant Crown land, on the appropriate Crown authority;
  - (b) as respects relevant land of a designated statutory undertaker, on the undertaker;
  - (c) as respects relevant land of a designated educational institution, on the governing body of the institution or on the education authority responsible for the management of the institution;
  - (d) in any other case, on the occupier of the land or, if it is unoccupied, on the owner of the land.
- (4) The person served with the notice may appeal against the notice to the sheriff by way of application within the period of 21 days beginning with the date on which the notice was served.
- (5) If, on any appeal under subsection (4), the appellant proves that, as respects the land in question, he has complied with his duty under section 89(1), the court shall allow the appeal.
- (6) If a person on whom a litter abatement notice is served, without reasonable excuse, fails to comply with or contravenes the requirement or prohibition imposed by the notice, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale together with a further fine of an amount equal to one-twentieth of that level for each day on which the offence continues after the conviction.

- (7) In any proceedings for an offence under subsection (6), it shall be a defence for the person charged to prove that he has complied, as respects the land in question, with his duty under section 89(1).
- (8) A direction under section 89(6A) or a code of practice under section 89(7) shall be admissible in evidence in any proceedings under this section and, if any provision of such a direction or code appears to the court to be relevant to any question in the proceedings, it shall be taken into account in determining that question.
- (9) If a person on whom a litter abatement notice is served fails to comply with the requirement imposed by the notice in respect of any land, the authority may, subject to subsection (10)—
  - (a) enter on the land and clear the litter or refuse, and
  - (b) recover from that person the expenditure attributable to their having done so, except such of the expenditure as that person shows was unnecessary in the circumstances.
- (10) Subsection (9) does not apply in relation to relevant Crown land or relevant land of statutory undertakers.

### **93 Street litter control notices**

- (1) A principal litter authority in Scotland other than a joint board may, with a view to the prevention of accumulations of litter or refuse in and around any street or open land adjacent to any street, issue notices (“street litter control notices”) imposing requirements on occupiers of premises in relation to such litter or refuse, in accordance with this section and section 94.
- (2) If the authority is satisfied, in respect of any premises which are of a description prescribed under section 94(1)(a) and have a frontage on a street in their area, that—
  - (a) there is recurrent defacement by litter or refuse of any land, being part of the street or open land adjacent to the street, which is in the vicinity of the premises,
  - (b) the condition of any part of the premises which is open land in the vicinity of the frontage is, and if no notice is served is likely to continue to be, detrimental to the amenities of the locality by reason of the presence of litter or refuse, or
  - (c) there is produced, as a result of the activities carried on on the premises, quantities of litter or refuse of such nature and in such amounts as are likely to cause the defacement of any part of the street, or of open land adjacent to the street, which is in the vicinity of the premises,
 the authority may serve a street litter control notice on the occupier or, if the premises are unoccupied, on the owner of the premises.
- (3) A notice shall, subject to section 94(2), (3) and (4)—
  - (a) identify the premises and state the grounds under subsection (2) on which it is issued;
  - (b) specify an area of open land which adjoins or is in the vicinity of the frontage of the premises on the street;

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- (c) specify, in relation to that area or any part of it, such reasonable requirements as the authority considers appropriate in the circumstances;

and, for the purposes of paragraph (b), an area which includes land on both sides of the frontage of the premises shall be treated as an area adjoining that frontage.

- (4) In this section and section 94—

“notice” means a street litter control notice;

“open land” means land in the open air;

“the premises”, in relation to a notice, means the premises in respect of which the notice is issued;

“specified area” means the area specified in a notice under subsection (3)(b); and

“street” means a relevant highway, a relevant road or any other highway or road over which there is a right of way on foot.

#### **94 Street litter: supplementary provisions**

- (1) The Scottish Ministers may by order prescribe—

- (a) the descriptions of commercial or retail premises in respect of which a street litter control notice may be issued;

- (b) the descriptions of land which may be included in a specified area; and

- (c) the maximum area of land which may be included in a specified area; and different descriptions or maximum dimensions may be prescribed under paragraph (b) or (c) for different cases or circumstances.

An order under this subsection is subject to the negative procedure.

- (2) The power to describe premises or land under subsection (1)(a) or (b) includes power to describe the premises or land by reference to occupation or ownership or to the activities carried on there.

- (3) The land comprised in a specified area—

- (a) shall include only land of one or more of the descriptions prescribed under subsection (1)(b);

- (b) shall not include any land which is not—

- (i) part of the premises,

- (ii) part of a street,

- (iii) relevant land of a principal litter authority, or

- (iv) land under the direct control of any other local authority; and

- (c) shall not exceed any applicable maximum area prescribed under subsection (1)(c);

but a specified area shall not include any part of the premises which is or is part of a litter control area.

- (4) The requirements which may be imposed by a notice shall relate to the clearing of litter or refuse from the specified area and may in particular require—

- (a) the provision or emptying of receptacles for litter or refuse;

- (b) the doing within a period specified in the notice of any such thing as may be so specified (including the standards to which any such thing must be done); or
  - (c) the doing (while the notice remains in force) at such times or intervals, or within such period, of any such thing as may be so specified;

but a notice may not require the clearing of litter or refuse from any carriageway, except at a time when the carriageway is closed to all vehicular traffic.
- (5) In relation to so much of the specified area as is not part of the premises the authority shall take account, in determining what requirements to impose, of their own duties under this Part or otherwise, and of any similar duties of any other local authority, in relation to that land.
- (6) An authority proposing to serve a notice shall—
  - (a) inform the person on whom the notice is to be served;
  - (b) give him the opportunity to make representations about the notice within the period of 21 days beginning with the day on which he is so informed; and
  - (c) take any representations so made into account in making their decision.
- (7) A person on whom a notice is served may appeal against the notice to the sheriff by way of application; and the court may quash the notice or may quash, vary or add to any requirement imposed by the notice.
- (8) If it appears to the authority that a person has failed or is failing to comply with any requirement imposed by a notice, the authority may apply to the sheriff by way of application for an order requiring the person to comply with the requirement within such time as may be specified in the order.
- (9) A person who, without reasonable excuse, fails to comply with an order under subsection (8) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.”
- (2) Any order under section 94(1) of the Environmental Protection Act 1990 which had effect immediately before the coming into force of paragraph 21 of Schedule 11 to the Anti-social Behaviour, Crime and Policing Act 2014—
  - (a) is (so far as extending to Scotland) revived on the coming into force of this section, and
  - (b) has effect on its revival as if made under section 94(1) of that Act as re-enacted with modifications by this section.