



Policing and Crime Act 2017

2017 CHAPTER 3

PART 9

MISCELLANEOUS AND GENERAL

CHAPTER 1

MISCELLANEOUS

Pardons for certain abolished offences etc

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),

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- (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

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- (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

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(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

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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.

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- (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—
 - (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.

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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.

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- (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.”

Commencement Information

- I1** [S. 168](#) in force for specified purposes at Royal Assent, see [s. 183](#)
- I2** [S. 168](#) in force at 28.6.2018 by [S.R. 2018/128](#), [art. 2\(a\)](#)

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing S.I. 2017/1139, reg. 2 by [S.I. 2017/1162 reg. 2](#)