



Home Office

Disregards and Pardons Scheme: Application Assessment Process

Guidance to caseworkers

June 2023



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About this guidance

1. This guidance tells Home Office caseworkers how to assess applications to the disregards and pardons scheme ('the Scheme'), against the conditions set out in sections 92 – 101 of the Protection of Freedoms Act 2012 and sections 164 - 167 of the Policing and Crime Act 2017. This guidance applies to the extended Scheme which was introduced by sections 194-195 of the Police, Crime, Sentencing and Courts Act 2022, which amended the Protection of Freedoms Act and came into force on 13 June 2023.
2. The Scheme applies to civilian offences committed in England and Wales and to UK service law offences where the applicant was convicted anywhere in the UK or elsewhere under the jurisdiction of UK service law. Scotland and Northern Ireland have their own schemes for civilian offences.
3. Guidance for applicants can be found at: [Disregards and pardons for historical gay sexual convictions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/disregards-and-pardons-for-historical-gay-sexual-convictions).

Publication

4. This is version 1.0 of the guidance which was published on 13 June 2023.

Introduction

5. This section sets out the background to the disregards and pardons scheme ('the Scheme'), administered by Home Office officials on behalf of the Home Secretary.

Background

6. The Scheme was established in 2012 to address the historical wrongs suffered by men who had been criminalised for having sex with other men, by enabling them to apply to the Home Secretary to have their convictions disregarded, provided that certain conditions were met. (In this guidance 'conviction' should be taken as reference to 'convictions, cautions, warnings and reprimands'.)
7. If an application is successful, the conviction is disregarded and the applicant is treated in all circumstances as if the offence had never occurred and it need not be disclosed for any purpose (such as in court proceedings or when applying for a job). Official records relating to the conviction that are held by organisations prescribed in the Protection of Freedoms Act (Relevant Official Records) Order 2012 will be deleted or, where appropriate, annotated to this effect.
8. In 2017 section 165 of the Policing and Crime Act 2017 introduced automatic pardons for those who had already obtained a disregard and for future applicants to the Scheme who would be granted a disregard. Section 164 of the Policing and Crime Act 2017 also introduced posthumous pardons for those whose conviction meets the conditions for a disregard but who died before section 165 came into force.
9. Prior to 13 June 2023, the Scheme specified the offences that could be considered for a disregard and pardon. These consisted of buggery and gross indecency, corresponding earlier offences and service law equivalents.
10. The Police, Crime, Sentencing and Courts Act 2022 extended the scope of the Scheme to include any offence that was used to criminalise same-sex sexual activity which has since been repealed or abolished by enactment.
11. The aim is to enable more people, including women and those serving in the UK Armed Forces, who were convicted for same-sex sexual activity in the past to apply for those convictions to be disregarded.
12. Section 194 (Disregard of certain convictions and cautions) and section 195 (Pardons for certain convictions and cautions) of the Police, Crime, Sentencing and Courts Act 2022 came into force on 13 June 2023. All applications submitted to the Home Office on or after that date should be considered in line with this guidance.

(In the case of applications submitted by post, the relevant date will be the date of the postmark.)

The current legislation

Disregards

13. Section 92 of the Protection of Freedoms Act 2012 enables individuals to apply to the Home Secretary for a disregard of a conviction (under civilian or service law) for same-sex sexual activity. In order for a conviction to be disregarded, it must meet conditions A and B in section 92 of the Protection of Freedoms Act:

- (3) Condition A is that the Secretary of State decides that it appears that –
- (a) Any other person involved in the sexual activity was aged 16 or over,
 - (b) The offence has been repealed, or in the case of an offence at common law, abolished by enactment (whether or not it has been re-enacted or replaced), and
 - (c) The sexual activity would not, if occurring in the same circumstances at the point of decision, constitute an offence.

- (4) Condition B is that –
- (a) The Secretary of State has given notice of the decision to the applicant under section 94(4)(b), and
 - (b) The period of 14 days beginning with the day on which the notice was given has ended.

14. The Scheme applies to persons convicted of civilian offences in England and Wales and UK service law offences anywhere in the UK or elsewhere under the jurisdiction of the UK Armed Forces under service law.

Related external links

[Protection of Freedoms Act 2012 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2012/92)

[Police, Crime, Sentencing and Courts Act 2022 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2022/17)

[The Protection of Freedoms Act 2012 \(Relevant Official Records\) Order 2012](#)

Pardons

15. Sections 164 and 165 of the Policing and Crime Act 2017 provide for pardons for the living and for posthumous pardons for those who have died.

16. Section 164 provides that any person who would have met the conditions for a disregard under section 164(2) but who died before, or within 12 months of, the commencement of the extended Scheme is posthumously pardoned. There is no application process for posthumous pardons.

17. Where an offence is repealed or abolished after the extended Scheme is commenced, those who die before the date of repeal or abolishment, or within the

12 months after the date of repeal or abolishment, are posthumously pardoned if their conviction meets the conditions for a disregard.

18. Section 165 provides that anyone who is granted a disregard is also pardoned for that offence. There is no need for the individual to apply for a pardon as it is an automatic consequence of a disregard.

Related external links

[Policing and Crime Act 2017 \(legislation.gov.uk\)](https://legislation.gov.uk)

[Police, Crime, Sentencing and Courts Act 2022 \(legislation.gov.uk\)](https://legislation.gov.uk)

The process

Receiving an application

19. This section explains the process that should be followed when an application to the Scheme is received by the Home Office.
20. The Home Office can consider applications only if they are submitted using the application form at [Disregards and pardons for historical gay sexual convictions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/disregards-and-pardons-for-historical-gay-sexual-convictions). If an application is submitted in any other way, you should advise the applicant to resubmit using the specified form. A case record should not be opened at this stage.
21. However, if it is already obvious from the information that the applicant has provided that a disregard cannot be granted (for example because the conviction was for an unrelated offence such as theft which did not involve sexual activity between persons of the same sex), you should not waste the applicant's time by advising them to resubmit using the form. Instead, after seeking clearance from a manager, you should advise the applicant that a disregard cannot be granted and why.
22. When a one-off query is received that does not necessitate opening a case because it is not an application, you should draft a response and clear it with a manager. The response should be sent using the same method by which the query was received, i.e. either by email or by post.

Application form and identity checks

23. Upon receipt of an application form, you should review it and any supporting documentation, including proof of identity, service number (where applicable) and current address, to ensure that the mandatory sections A (applicant's personal details) and C (declaration) have been completed in full.
24. The applicant is required to provide copies of two documents as proof of their identity and current address. You must cross-check these against the application form to ensure the details match. The Home Office can only accept applications from the person to whom the application relates. Where the applicant has asked someone to help them to complete the application form, they must still sign to confirm that the details contained therein are accurate and complete to the best of their knowledge.
25. Please see Annex A for the list of documents that can be accepted as proof of identification.

26. If the applicant has not completed all mandatory sections of the application form, something they have stated requires clarification (e.g. for service offences, which service they served in) or they have not provided sufficient proof of their identity and/or current address, you should write to the applicant to request this information before proceeding with the case.

Related external links

[Disregards and pardons for historical gay sexual convictions - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Creating a case record

27. When all the mandatory information has been obtained, you should create an official Home Office record of the case. This applies to both civilian and service law cases.
28. You should label each case with a Unique Reference Number (URN) created as set out in Annex B. You should also make an entry on the Case Management Register and set up a dedicated case folder in the disregards inbox using the sequential number from the URN to label it. All email correspondence relating to the case should be saved in this folder. On the SharePoint site you should also create a new folder in the 'live cases folder', labelling it using the URN reference.
29. If the application has been received by post, you should scan in all documentation to save as digitised copies and then shred the paper version (after checking there are no original documents included). For both scanned applications and applications received by email, you should save the application form and attachments, including ID documents, in the case SharePoint folder.
30. Throughout the process of considering the application, the aim should be to progress the case and gather as much information as possible to support the final decision. However, at this stage it may be obvious from the information that the applicant has provided that a disregard cannot be granted (for example, because the conviction is for an offence which does not involve sexual activity between persons of the same sex such as theft, burglary or the service offences of looting or desertion). In this case, you should, after seeking clearance from a manager, send a letter to the applicant, clearly stating the reason why the conviction cannot be disregarded.
31. If applications are received with a very high volume of attachments or with attachments that cannot easily be scanned, e.g. if they are ring bound, you should not attempt to scan all of the documents and instead retain the paper copy. You will need to submit a file label request to the Knowledge and Information Management Unit using the template in the Disregards Team's SharePoint folder.
32. You should create a new case checklist (by making a copy of the template version) to track the progress of the case. This should be saved in the SharePoint folder for the case.

Requests for records

Determine the appropriate data controllers

33. You should next assess who the appropriate data controllers of the required records are. For all applications (civilian and services), ACRO Criminal Records Office (ACRO), which is a data processor on behalf of the UK Police Forces subject to section 22A Collaboration Agreement, is the point of contact for gathering PNC record and microfiche information.
34. The other relevant data controllers will be determined on the basis of whether the application concerns civilian or service offence(s). Other relevant data controllers will be: the relevant local police force, HM Courts and Tribunals Service (HMCTS) and, for service offences, the relevant branch of the UK service police (Royal Military Police, the Royal Navy Police, the Royal Air Force Police) and the disclosure branches), depending where the applicant served.

Requesting records from ACRO

35. You will submit a request for information via email to ACRO Criminal Records Office using the appropriate template form. A response from ACRO should typically be received within one working week.
36. Based on the records provided by ACRO, you should reassess the application. If the ACRO records clearly show that the conviction does not meet the criteria for a disregard as set out in the Protection of Freedoms Act 2012, you should draft a rejection letter to the applicant for review by a manager.

Civilian offences

37. When the application concerns civilian offence(s), the appropriate data controllers will be the local police force who charged the applicant and the court at which the proceedings took place. This information will usually be clear from the application form and/or the records provided by ACRO Criminal Records Office. The exception to this will be in respect of application(s) for a caution, warning or reprimand, for which there will be no records with the courts, only the police.
38. You should create an information request letter by copying and completing the relevant template letter, for:
 - The relevant local police force, addressed to the named Single Point of Contact (SPOC) for that force; and
 - The relevant court, addressed to HMCTS SPOC.
39. You will need to refer to the contacts list held in the SharePoint folder for each letter. For each of these letters, you should include all relevant information provided in the application form and the records provided by ACRO. If there is any

information lacking, or ACRO found no trace of the offence(s), you should state this clearly in the letter or covering email.

40. You should send these emails from the disregards inbox, cc'ing disregards@homeoffice.gov.uk.

Service offences

41. When the application concerns service offence(s), you should send this to the Ministry of Defence with any attachments and any records received from ACRO by using Egress, the secure data sharing platform. The Ministry of Defence is responsible for requesting the records from the appropriate data controller which will be determined on the basis of which service the applicant served in.

Data controller responses

42. Any information held by the data controller or identified data processor about the applicant that is not relevant to the conviction raised in the application, will be excluded or redacted from the copies of records provided to the Home Office or the Ministry of Defence. If any additional records that are not relevant to the conviction in the application are inadvertently included, you must not consider these and should contact the data controller or identified data processor as soon as possible to let them know they have shared these in error.
43. If the data controller or identified data processor cannot find any records relating to the conviction, they will confirm this with the Home Office or the Ministry of Defence as soon as possible after their searches have concluded.

Assessment of whether a disregard can be granted

Reviewing information in historical records

44. Under section 94(1) of the Protection of Freedoms Act 2012, the Home Secretary must consider any representations or evidence included in the application, and any available record of the investigation of the offence and of any proceedings relating to it that the Home Secretary considers to be relevant.

45. You will review all the information provided by the applicant and the data controllers.

Assessing the information

46. With regards to applications for civilian convictions, after you have retrieved the records provided by ACRO Criminal Records Office, you will request records from the relevant data controllers. Once in receipt of all sets of available records, you should review these records to determine whether:

- There is sufficient information provided in the records to come to a disregard determination; and
- The conviction meet the conditions of a disregard.

Assessing service offence applications

47. For service offence applications, the assessment of the criteria will be carried out initially by the Ministry of Defence as the experts in military records and service law. Ministry of Defence will review the information provided by the applicant, the records obtained from the relevant branch of the service police and the data obtained by Home Office from ACRO Criminal Records Office and make a preliminary assessment of whether the application satisfies the conditions of section 92 of the Protection of Freedoms Act 2012. The Ministry of Defence will then share the assessment with the Home Office to help inform the Home Office's final determination.

No trace

48. If no records pertaining to the conviction can be found, you cannot disregard the conviction because there are no records to delete or annotate. In these

circumstances, you should draft a 'no trace' letter to the applicant, explaining clearly why the conviction cannot be disregarded and clear the letter with a manager.

Unclear or insufficient criminal record data

49. Even where records do exist, they are likely to vary in the level of detail that they provide. They may not include information which directly addresses the conditions for a disregard; for example, the records may not explicitly state that the other party consented or the age of any other party. It will be more difficult to conclude if the conditions are satisfied where the historical records are incomplete but this does not necessarily mean that the conviction cannot be disregarded. Each application must be considered on its own merits, taking into account all of the information that is available, to enable you to decide whether it appears that the conditions are met.

Conditions for a disregard and pardon

50. A conviction will receive a disregard and pardon if the conviction meets the conditions set out in sections 92(1) and (3) of the Protection of Freedoms Act 2012:

- The conduct constituting the offence was sexual activity between persons of the same sex;
- Any other person(s) involved in the conduct constituting the offence was aged 16 or over;
- The offence has been repealed or, in the case of an offence at common law, abolished by enactment (whether or not it has been re-enacted or replaced); and
- The sexual activity would not, if occurring in the same circumstances at the point of decision, constitute an offence.

Sexual activity between persons of the same sex

51. The conviction must relate to sexual activity between persons of the same sex. Section 92(7) states that sexual activity includes:

- Any physical or affectionate activity which is of a type characteristic of people involved in an intimate personal relationship; and
- Conduct intended to lead to sexual activity.

Age of any other party

52. Any other person involved in the sexual activity must be aged 16 or over. This provision will apply regardless of the age of consent at the time of the offence.

The offence has been repealed or abolished

53. If the offence for which the person has been convicted has not been repealed or, in the case of an offence at common law, abolished by enactment, the conviction cannot be disregarded. If there is any doubt as to the current status of the offence for which the disregard is sought, you should seek advice from Home Office Legal Advisers.

The sexual activity would not constitute an offence at the point of decision

54. Convictions for behaviour that is still against the law today cannot be disregarded. For example, sexual activity in a public lavatory remains an offence under section 71 of the Sexual Offences Act 2003, regardless of the sex of the individuals involved. This means that any conviction for sexual activity which took place in a public lavatory will not meet the conditions for a disregard and pardon. Similarly, sexual activity with a person who did not consent would be an offence and could not be disregarded. If there is doubt as to whether the activity would constitute an offence today, you should seek advice from Home Office Legal Advisers. Similarly, there are offences that are unique to the Service Justice System which govern sexual offences, regardless of the sex of the individuals involved. The Ministry of Defence will provide advice as to whether specific behaviours would constitute an offence today.

Final determination

55. Once all available and relevant records have been reviewed, you should come to a determination as to whether the conviction can be disregarded and your determination should be cleared by a manager. In the case of applications for service offences, your decision should be informed by the advice received from the Ministry of Defence, the records and the application.

56. You should send the appropriate letter to the applicant to confirm they have been granted a disregard for their conviction. You should also send letters to the data controllers to confirm they need to delete the conviction. Both of these letters will need to be cleared with a manager. You should ask the data controllers to delete or annotate the conviction as soon as reasonably practicable, in accordance with section 95(3) of the Protection of Freedoms Act 2012. (There is no separate process for assessing pardons. A pardon is granted automatically with a disregard. When you write to the applicant to confirm they have been granted a disregard for their conviction, you should also confirm they have been pardoned).

57. If, from the information available, it does not appear that the conditions for a disregard are met, the application for a disregard should be rejected and you should send a letter to the applicant confirming their application has been rejected. With regards to applications for service offences, you should send a copy of the applicant's final case determination letter to the Ministry of Defence by way of

notification. In the case of applications for civilian offences, ACRO Criminal Records Office should be notified of the final case determination in order to apply retention and disposal dates to the case file.

Removing convictions

58. If the determination has been made that a conviction can be disregarded, you will need to write to the data processor(s) and data controller to confirm the conviction needs to be deleted or annotated (where deletion is not possible) from the relevant records.
59. For all disregarded convictions that you received PNC and microfiche records for, you should fill out and send the FINDS-F-078 form to the Forensic Information Databases Service team in the Home Office, copying in ACRO Criminal Records Office, to confirm the conviction must be deleted. You will then need to write to the other data controller(s) to confirm the conviction must be deleted. The other relevant data controllers will be determined on the basis of whether the application concerns civilian or service offence(s). Other relevant data controllers will be: the relevant local police force, HMCTS and, for service offences, the relevant branch of the UK service police (either the Royal Military Police, the Royal Navy Police or the Royal Air Force Police), depending where the applicant served. You will find the contact details list held in the SharePoint folder.
60. If you are disregarding a conviction for which there was an incomplete set of records, you should write to the data processor and the data controllers that provided records of this conviction to confirm the conviction should be deleted. You should also write to the data processor or data controllers that were unable to locate records to confirm the conviction is being disregarded for their awareness.
61. To ensure the conviction has been deleted by the relevant data processor and data controllers, you should write to check the deletion or annotation has taken place two weeks after confirming the conviction needs to be deleted or annotated.
62. The applicant will also receive letters from the relevant data controllers to confirm the deletion or annotation process has been completed. The data controller will send a copy to the Home Office which you should add to the case record.

Posthumous pardons

63. If you receive a request for a posthumous pardon for an individual who has died, you should reply to explain posthumous pardons do not require an application process.
64. You should set out that section 164 of the Policing and Crime Act 2017 provides that any person who would have met the conditions for a disregard but who died before, or within 12 months of the commencement of the extended Scheme is

posthumously pardoned. Where an offence is repealed or abolished after the extended Scheme is commenced, those who die before the date of repeal or abolishment, or within the 12 months after the date of repeal or abolishment, are posthumously pardoned if their conviction meets the conditions for a disregard.

65. You should clear your reply with a case manager.

Appeals and review process

Requests to review the outcome

66. An applicant is able to request that their disregard decision be reconsidered. In such cases, the Home Office, and the Ministry of Defence where relevant, must review the evidence available and the decision taken to ensure the appropriate determination was reached. If fresh evidence is provided by the applicant or otherwise obtained, this should be factored into the review of the decision which should be cleared with a manager and Home Office Legal Advisers. You should then write to the applicant with the outcome of the review once it has been cleared by your manager.

The right to appeal

67. Under section 99 of Protection of Freedoms Act 2012, if an applicant disagrees with the decision taken by the Home Secretary, they may seek leave to appeal to the High Court. On such an appeal, the High Court must make its decision only on the basis of the evidence that was available to the Home Secretary.

Annex A

Accepted documents as proof of photographic identity

- Passport
- Driving licence
- HM Forces ID card
- Firearms licence
- Birth/adoption certificate

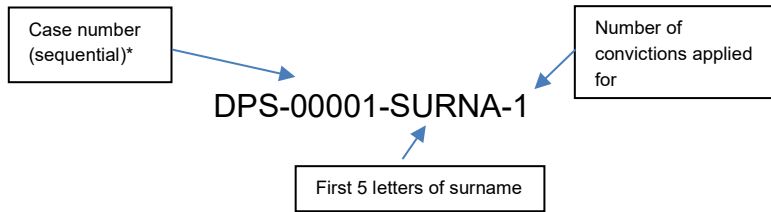
Accepted documents as proof of address

- Bank/building society statement
- Utility bill
- Credit/store card statement
- Benefits letter/statement
- Council tax bill

Annex B

If the application form has been completed adequately, and the two copies of identity documents provided, you should create a unique reference number (URN) for the case.

URNs should take the following format:



Using this URN, you should update the Case Management Register for all relevant fields, as able.

OFFICIAL-SENSITIVE

OFFICIAL-SENSITIVE