



Protection of Freedoms Act 2012

2012 CHAPTER 9

PART 5

SAFEGUARDING VULNERABLE GROUPS, CRIMINAL RECORDS ETC.

[^{F1}CHAPTER 5

DISREGARDING CERTAIN CONVICTIONS FOR BUGGERY ETC: NORTHERN IRELAND

[^{F1}Effect of disregard

Textual Amendments

- F1** Pt. 5 Ch. 5 inserted (31.1.2017 for specified purposes, 28.6.2018) by [Policing and Crime Act 2017](#) (c. 3), ss. **168(1)**, 183(4)(5)(e); S.R. 2018/128, art. 2(a)

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—

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“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

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- (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.

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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.]

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2012/2234 art. 13 by [S.I. 2014/831 art. 2\(2\)](#)
- specified provision(s) transitional provisions and savings for commencing S.I. 2013/1814 by [S.I. 2013/1813 art. 2-9](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 1 para. 7A inserted by [2019 c. 3 Sch. 2 para. 20](#)