

Proposed amendments to the Policing and Crime Bill

Note on proposed amendments

These amendments, if accepted, would extend to Northern Ireland proposed and existing provisions relating to posthumous pardons for and disregard of convictions of abolished “homosexual” offences. Specifically, the amendments would:

- a) extend the Government’s proposed provisions in respect of posthumous pardons to Northern Ireland in the same manner as that proposed for England and Wales;
- b) amend the Protection of Freedoms Act 2012 to extend to Northern Ireland the “disregard” scheme that currently applies in England and Wales.

These amendments should be seen as necessary in the context of the Conservative Party Manifesto commitment (2015 p.46) “to introduce a new law that will pardon those people, and right these wrongs” which related to *all* people in the UK.

After Clause 142

Insert the following new Clause—

“Posthumous pardons for convictions etc of certain abolished offences: Northern Ireland

- (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 75 of the Sexual Offences (Northern Ireland) Order 2008 (sexual activity in a public lavatory).
- (3) The offences to which subsection (1) applies are—
 - (a) an offence under section 11 of the Criminal Law Amendment Act 1885 (gross indecency between men);
 - (b) an offence under section 61 of the Offences against the Person Act 1861 (buggery), or
 - (c) an offence under either of the following provisions (which made provision similar to section 61 of the Offences against the Person Act 1861)—
 - (i) 10 Cha.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).
 - (d) an offence under Article 19 of the Criminal Justice (Northern Ireland) Order 2003 (buggery).
- (4) The references in subsection (3) to offences under particular provisions are to be read as including offences under—
- (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, or
 - (f) section 42 of the Naval Discipline Act 1957,
- which are such offences by virtue of the provisions mentioned in subsection (3).
- (5) The reference in subsection (2)(b) to an offence under section 75 of the Sexual Offences (Northern Ireland) Order 2008 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 the Sexual Offences Act 2003 (corresponding offence of “sexual activity in a public lavatory” in England and Wales).
- (6) The following provisions of section 101 of the Protection of Freedoms Act 2012 apply for the purposes of this section and section (*Sections (Posthumous pardons for convictions etc of certain abolished offences: Northern Ireland) and (Other pardons for convictions etc of certain abolished offences: Northern Ireland): supplementary*)(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).”

Insert the following new Clause—

“Other pardons for convictions etc of certain abolished offences: Northern Ireland

- (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 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.
- (3) Expressions used in this section or section (*Sections (Posthumous pardons for convictions etc of certain abolished offences: Northern Ireland) and (Other pardons for convictions etc of certain abolished offences: Northern Ireland): supplementary*)(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 (*Sections (Posthumous pardons for convictions etc of certain abolished offences: Northern Ireland)* and (*Other pardons for convictions etc of certain abolished offences: Northern Ireland): supplementary*))(1) as in that Chapter (see section 101 of that Act).”

Insert the following new Clause—

“Sections (*Posthumous pardons for convictions etc of certain abolished offences: Northern Ireland*) and (*Other pardons for convictions etc of certain abolished offences: Northern Ireland*): supplementary”

- (1) A pardon under section (*Posthumous pardons for convictions etc of certain abolished offences: Northern Ireland*) or (*Other pardons for convictions etc of certain abolished offences: Northern Ireland*) 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 section (*Posthumous pardons for convictions etc of certain abolished offences: Northern Ireland*) or (*Other pardons for convictions etc of certain abolished offences: Northern Ireland*) affects the prerogative of mercy.”

Insert the following new Clause—

“Amendment of the Protection of Freedoms Act 2012

- (1) The Protection of Freedoms Act 2012 is amended as follows.
- (2) In section 92 (power of Secretary of State to disregard convictions or cautions) –
- (a) in subsection (1)(b) omit “or”,
 - (b) in subsection 1(c) after the words “corresponding earlier offences” insert “in England and Wales, and offences in Northern Ireland” and at the end of that subsection insert “or”,
 - (c) after subsection 1(c) insert –
 - “(d) Article 19 of the Criminal Justice (Northern Ireland) Order 2003 (buggery),”,
 - (d) in subsection (3)(b) after the words “Sexual Offences Act 2003” insert “or section 75 of the Sexual Offences (Northern Ireland) Order 2008”.
- (3) In section 96 (Effect of disregard for disclosure and other purposes) in subsection (2)(a) after the words “England and Wales” insert “and Northern Ireland”.
- (4) In section 101 (Interpretation: Chapter 4) in the meaning given to “caution” in subsection (1) after the words “England and Wales” insert “and Northern Ireland”.
- (5) In section 119 (Extent) –

- (a) omit subsection (1)(g),
- (b) at the end of subsection (3)(d) omit “.” and insert “,”,
- (c) after subsection (3)(d) insert –
 - “(e) Chapter 4 of Part 5.””

Clause 149

Page 171, line 5, at end insert—

“(6) The following provisions extend to Northern Ireland only—
sections (*Posthumous pardons for convictions etc of certain abolished offences: Northern Ireland*), (*Other pardons for convictions etc of certain abolished offences: Northern Ireland*), (*Sections (Posthumous pardons for convictions etc of certain abolished offences: Northern Ireland) and (Other pardons for convictions etc of certain abolished offences: Northern Ireland): supplementary*) and (*Amendment of the Protection of Freedoms Act 2012*).”

Clause 150

Page 171, line 16, at end insert—

“() sections (*Posthumous pardons for convictions etc of certain abolished offences: Northern Ireland*), (*Other pardons for convictions etc of certain abolished offences: Northern Ireland*), (*Sections (Posthumous pardons for convictions etc of certain abolished offences: Northern Ireland) and (Other pardons for convictions etc of certain abolished offences: Northern Ireland): supplementary*) and (*Amendment of the Protection of Freedoms Act 2012*);”