

Historical Sexual Offences (Pardons and Disregards) (Scotland) Bill

Bill Number:	SP Bill 21
Introduced on:	6 November 2017
Introduced by:	Michael Matheson MSP (Government Bill)
Passed:	6 June 2018
Royal Assent:	11 July 2018

[2018 asp 14](#)

Passage of the Bill

The Historical Sexual Offences (Pardons and Disregards) (Scotland Bill [SP Bill 21] was introduced on 6 November 2017. The Equalities and Human Rights Committee was designated as lead committee. The Bill completed stage 1 on 18 April 2018, stage 2 on 17 May 2018, and was passed by the Parliament at stage 3 on 6 June 2018.

Purpose and objectives of the Bill

The Bill aims to provide a form of redress against the discriminatory effect of convicting men for same-sex sexual offences in the past, for activity that is now legal.

Provisions of the Bill

The Bill contains a provision stating that its purpose is to acknowledge the wrongfulness and discriminatory effect of past convictions for certain historical sexual offences which criminalised same-sex sexual activity between men that would now be legal. The Bill provides for two distinct but linked procedures by:

- pardoning those convicted of criminal offences for engaging in same-sex sexual activity which is now legal; and
- putting in place a system to enable a person with such a conviction to apply to have it “disregarded” so that information about that conviction

held in records, generally maintained by Police Scotland, does not show up in a disclosure check.

Parliamentary consideration

The First Minister issued an apology in the Scottish Parliament, when the Bill was introduced, "...for those laws and for the hurt and harm that they have caused so many people." The apology was endorsed by other party leaders.

The Equalities and Human Rights Committee welcomed what they viewed as an improvement to a similar pardon and disregard scheme in England and Wales. In Scotland, the automatic pardon will apply to men living and deceased who were convicted for same-sex sexual offences, that would now be legal. Under the current system in England and Wales, the pardon is only automatic for men who died before the legislation commenced. Men still living with such convictions in England and Wales would have to apply for a disregard to obtain a pardon.

The Committee also welcomed the broad definition of historical sexual offences, which includes offences relating to 'importuning'. These are instances where men were convicted of approaching, or 'chatting up', other men.

The Equalities and Human Rights Committee called on the Scottish Government to ensure that the Bill's provisions are widely publicised, including clarity on the distinction between a pardon and a disregard. The Committee also sought assurance that the application process for a disregard would be as straightforward as possible.

The Committee did have some concerns for the families of men who are now deceased and might wish to have an acknowledgment of the wrongful and discriminatory effect of the past conviction. An amendment at Stage 2 sought a 'letter of comfort' to be issued by the Scottish Government in such cases. The Scottish Government agreed to put in place such a scheme, but without putting it in the Bill.

The Committee also sought assurances on the provision of legal aid for individuals who wish to appeal to the courts where a disregard application is refused. During Stage 2, the Cabinet Secretary for Justice assured the Committee that civil legal aid will be available, subject to its eligibility requirements. The Cabinet Secretary also indicated that civil legal assistance by way of representation (ABWOR) would be made available to a person who wishes to appeal a decision to refuse an application for a disregard.

There was unanimous support for the Bill, and there were no amendments at Stage 3.