

The Equality Network agrees with the expectation set out in paragraph 9 of the memorandum, that the pardons provisions (Part 2) of the bill will not result in costs to the Scottish Government. The pardon is automatic and symbolic – once the relevant provisions in the bill are commenced, the pardon is in place, but it has no specific effects that will incur costs, and requires no action by the Scottish Government. For the same reasons, we agree that there should be no costs to local authorities or to others arising from Part 2 of the bill.

There will clearly be costs resulting from the disregard provisions (Part 3) of the bill. These will depend on the number of applications for disregards that the Scottish Government receives, and paragraphs 15 to 24 of the memorandum deal with that. Paragraphs 15 to 18 outline the number of applications in England and Wales, during the first five years of the operation of a very similar scheme there.

Paragraph 19 explains why the England and Wales numbers need to be treated with some caution when estimating likely Scottish application numbers. Two effects are mentioned. The law remained more discriminatory in Scotland for a longer period than in England and Wales, in that all sexual acts between men remained a crime in Scotland between 1967 and 1981, while consensual sexual acts between men over 21 were decriminalised in England and Wales in 1967. After early 1981, the scope of the law on homosexual offences was very similar in Scotland to that in England and Wales. Paragraph 19 suggests that the difference in the law between 1967 and 1981 may have increased the number (proportionate to population) of prosecutions in Scotland during that period which may qualify for disregards. The Equality Network considers that this effect will be small, if it exists at all. We understand that prosecutions for consensual sex between men over 21 in private were very rare in Scotland after 1967, and we do not think that there is evidence that the law criminalising consensual sexual acts between men otherwise than in private, or with a man under 21, was applied more strictly in Scotland between 1967 and 1981 than in England and Wales.

Identifying a cause with the opposite effect, paragraph 19 also notes that it is commonly understood that evidential requirements in Scotland meant that prosecutions for "homosexual offences" were less common in here. This is certainly true, and is very well established. For example, the 1957 Wolfenden Report (Report of the Committee on Homosexual Offences and Prostitution, Home Office and Scottish Home Department) states that, in the three years ended March 1956, 300 men over 21 were convicted in England and Wales for consensual sexual acts in private

with another man over 21, whereas in Scotland the figure was only 7 – a rate of conviction that is proportionately four times lower in Scotland. We think that it is likely that this difference continued through the 1950s and 60s.

Sexual acts between men over 21 in private make up only some of the convictions which would qualify for the disregard. Others include consensual acts involving men between 16 and 21, and activities in public, such as kissing or “importuning” (chatting up another man), which are no longer crimes. There are no available statistics which distinguish these convictions from convictions for acts (such as sexual assaults and public indecency) which are still crimes and so do not qualify for the disregard. However, the total number of convictions for the “homosexual offences” of sodomy and gross indecency in Scotland was between one quarter and half, proportionately to the population, per year, than that for equivalent offences in England and Wales. There is no way of knowing whether the proportion of those convictions that qualify for the pardon and disregard varies between the two jurisdictions.

All this suggests that the number of disregard applications in Scotland might be less than one tenth, in absolute terms, of that in England and Wales.

However, there is a significant factor which operates in the other direction. That is that the coverage of the historical discriminatory sexual offences in the Scottish bill is wider than in the England and Wales legislation. The Scottish bill will pardon, and make a disregard available for, people convicted of “importuning” (that is non-prostitution related chatting up of another man) and also people convicted in a discriminatory way for affectionate activity (such as kissing in public) with another man. This includes convictions under byelaws or other offences such as breach of the peace. Such convictions are not included in the legislation for England and Wales. There are no statistics available for use of byelaws and other offences for this purpose, but of two men who have contacted the Equality Network with an interest in applying for a disregard, one was convicted under the “homosexual offences” legislation, and one under local byelaws.

The lower rates of prosecution in Scotland for the “homosexual offences” of gross indecency and sodomy, but the wider scope of the Scottish bill in including convictions for the same kinds of activity using other offences, may cancel each other out as effects. The Equality Network’s best estimate currently for the number of disregard applications in Scotland is therefore one tenth of the number in England and Wales –

the same estimate that the Scottish Government have made, which equates to around 50 applications in total in the first five years. The Equality Network is currently in touch with only two men who intend to apply.

There is a great deal of uncertainty in this figure, but we feel that the actual figure is more likely to be lower than the estimate than higher. We would therefore expect at present that costs would be at the lower end of the options shown in paragraph 58 of the memorandum (but see below).

We agree that the costs of operating the disregard scheme will fall on the Scottish Government, Police Scotland, and the Scottish Courts and Tribunals Service, and that there are unlikely to be significant costs to others. We agree with the Scottish Government that appeals to the sheriff court under section 8 of the bill are likely to be very rare.

Finally, section 11 of the bill enables Scottish Ministers to appoint one or more advisers to assist them in determining disregard applications, and to pay any adviser allowances and expenses. The Scottish Government may wish to do this, when assessing some of the (estimated 25 over 5 years) cases that make it through the initial checks, to take advantage of external expertise on the law in this area as it was some time ago. This would add to the Government's costs, although the overall impact on the total costs would be small.

I hope that these comments are useful.

With best wishes,



Equality Network
30 Bernard Street
Edinburgh
EH6 6PR
Telephone: 0131 467 6039
www.equality-network.org

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