

MINERS' STRIKE (PARDONS) (SCOTLAND) BILL

EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Miners' Strike (Pardons) (Scotland) Bill, introduced in the Scottish Parliament on 27 October 2021.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 5–FM);
 - a Policy Memorandum (SP Bill 5–PM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 5–LC).
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

THE BILL

Pardons

5. The effect of section 1 of the Bill is that miners who were convicted of certain offences committed during the 1984–85 national miners' strike are pardoned for those offences if the requirements of the pardon are met.
6. The pardon applies automatically when the requirements of the pardon are met. There is no application process for a pardon.

Meaning of “miner”

7. In accordance with the definition of “miner” in section 4 of the Bill, the pardon applies to individuals who were employed by—

- the National Coal Board, or
- small mine licensees, to work at small private pits.

8. It does not matter what role the miner had. The definition of “miner” includes, for example, all underground workers, all surface workers and all of those employed in workshops that were situated away from the coal mines.

9. There is no need for the miner to have been employed in Scotland: the miner could have been employed in any part of Great Britain. As long as the conviction (as defined in section 4 of the Bill) was from a Scottish criminal court, it does not matter that the individual did not live in Scotland and had travelled from outside Scotland to participate in strike activity.

10. The miner could have been employed at any time during the strike period of 12 March 1984 to 3 March 1985. That means that the definition of “miner” includes miners who retired, or who were sacked during the strike period, who were not employed or on strike at the time that the offence was committed.

11. The definition of “miner” includes a deceased person, so the pardon applies to those living and posthumously.

The offences

12. A conviction comes within the scope of the pardon if it was for an offence listed in section 2 of the Bill. Those offences are—

- the common law offence of breach of the peace,
- breach of bail, which at the time of the strike was covered by section 3 of the Bail etc. (Scotland) Act 1980, or
- an offence under section 41(1)(a) of the Police (Scotland) Act 1967.

13. The definition of “conviction” in section 4 of the Bill extends its meaning so that it includes the scenario in which a person is unfit for trial and there is instead an examination of the facts, at which the court examines the available evidence and may make a finding as to whether the person did the act or made the omission constituting the offence (but there is no conviction). It also includes an absolute discharge, which is deemed not to be a conviction (other than for limited purposes).

14. Section 41(1)(a) of the Police (Scotland) Act 1967 criminalised assault of, or resisting, molesting, obstructing or hindering a constable, or a person assisting a constable, in the execution of the constable’s duty.

Qualifying conduct

15. The pardon applies to conduct that occurred during the 1984-85 miners' strike which, for the purposes of the Bill, is the period of nationwide industrial action led by the National Union of Mineworkers, which took place across the UK from 12 March 1984 to 3 March 1985 (inclusive).

16. In addition, the conduct must meet either condition A (as set out in section 1(2) of the Bill) or condition B (as set out in section 1(3) of the Bill).

17. Condition A is relevant to conduct that occurred while the miner was participating in a picket, demonstration or other similar gathering supporting the miners' strike. Condition A would cover, for example, conduct that occurred during an altercation between miners and police which took place on a picket line or at a strike-related demonstration.

18. Condition B is relevant to conduct that occurred while the miner was travelling to or from a picket, demonstration or other similar gathering supporting the miners' strike. Condition B would cover, for example, conduct that occurred between miners attempting to reach the picket line and police seeking to block them. Condition B would also cover an altercation between miners and police in the aftermath of a demonstration.

19. In conditions A and B, the words "other similar gathering" would cover other types of gathering, such as a protest, a rally or a march that were in support of the miners' strike. The pardon does not apply to conduct that could be viewed as strike-related but is not similar to a picket or a demonstration in support of the miners' strike. For example, the pardon would not cover conduct by a miner who was crossing a picket line to go to work or who was travelling to work during the strike. It also would not cover conduct that occurred in the community (unless the individual was participating in a strike-related gathering that was held within the community, or the individual was travelling through the community to get to or from a strike-related gathering). For example, the pardon does not apply to conduct that occurred during an altercation between a striking miner and a non-striking miner outside the non-striking miner's home.

20. Conduct that (a) did not occur in the course of an individual's participation in a picket, demonstration or other similar gathering supporting the miners' strike, or (b) was not directly related to an individual's participation, or intended participation, in a picket, demonstration or other similar gathering supporting the miners' strike, but which just happened to take place at, or on the way to or from, strike activity (but could equally have taken place in another context) would not be covered by the pardon. For example, a conviction of breach of the peace following a personal dispute would not be pardoned.

21. In the context of breach of bail, the conduct which breached the bail condition must itself occur in the course of, or be directly related to, the miner's intended or actual participation in a picket, demonstration or other similar gathering supporting the miners' strike. An example of conduct that would come within the pardon is a miner returning to the picket line in defiance of a bail condition prohibiting the miner from doing so (provided that the other requirements of the pardon are met).

Pardons: supplementary

22. Section 3(a) and (b) provides that section 1 does not affect any conviction or sentence or give rise to any right, entitlement or liability. For example, a pardon does not create any right to financial compensation and it does not reverse any decision made by the judiciary at the time.

23. As set out in section 3(c), nothing in section 1 affects the prerogative of mercy – that is, the common law power of the Crown to issue a pardon, commute a sentence or quash a conviction.

Commencement

24. Section 5 provides that all of the provisions of the Act come into force on the day after Royal Assent.

This document relates to the Miners' Strike (Pardons) (Scotland) Bill (SP Bill 5) as introduced in the Scottish Parliament on 27 October 2021

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