



# Protection of Freedoms Act 2012

## 2012 CHAPTER 9

### PART 5

SAFEGUARDING VULNERABLE GROUPS, CRIMINAL RECORDS ETC.

### CHAPTER 4

DISREGARDING CERTAIN CONVICTIONS FOR BUGGERY ETC.

#### *General*

#### **92 Power of Secretary of State to disregard convictions or cautions**

- (1) A person who has been convicted of, or cautioned for, an offence under—
  - (a) section 12 of the Sexual Offences Act 1956 (buggery),
  - (b) section 13 of that Act (gross indecency between men), or
  - (c) section 61 of the Offences against the Person Act 1861 or section 11 of the Criminal Law Amendment Act 1885 (corresponding earlier offences),may apply to the Secretary of State for the conviction or caution to become a disregarded conviction or caution.
- (2) A conviction or caution becomes a disregarded conviction or caution when conditions A and B are met.
- (3) Condition A is that the Secretary of State decides that it appears 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 now would not be an offence under section 71 of the Sexual Offences Act 2003 (sexual activity in a public lavatory).
- (4) Condition B is that—

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*Status: This is the original version (as it was originally enacted).*

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- (a) the Secretary of State has given notice of the decision to the applicant under section 94(4)(b), and
  - (b) the period of 14 days beginning with the day on which the notice was given has ended.
- (5) Sections 95 to 98 explain the effect of a conviction or caution becoming a disregarded conviction or caution.

### **93 Applications to the Secretary of State**

- (1) An application under section 92 must be in writing.
- (2) It must state—
  - (a) the name, address and date of birth of the applicant,
  - (b) the name and address of the applicant at the time of the conviction or caution,
  - (c) so far as known to the applicant, the time when and the place where the conviction was made or the caution given and, for a conviction, the case number, and
  - (d) such other information as the Secretary of State may require.
- (3) It may include representations by the applicant or written evidence about the matters mentioned in condition A in section 92.

### **94 Procedure for decisions by the Secretary of State**

- (1) In considering whether to make a decision of the kind mentioned in condition A in section 92, the Secretary of State must, in particular, consider—
  - (a) any representations or evidence included in the application, and
  - (b) any available record of the investigation of the offence and of any proceedings relating to it that the Secretary of State considers to be relevant.
- (2) The Secretary of State may not hold an oral hearing for the purpose of deciding whether to make a decision of the kind mentioned in condition A in section 92.
- (3) Subsection (4) applies if the Secretary of State—
  - (a) decides that it appears as mentioned in condition A in section 92, or
  - (b) makes a different decision in relation to the matters mentioned in that condition.
- (4) The Secretary of State must—
  - (a) record the decision in writing, and
  - (b) give notice of it to the applicant.