

**EXPLANATORY MEMORANDUM TO
THE PROTECTION OF FREEDOMS ACT 2012 (RELEVANT OFFICIAL
RECORDS) ORDER 2012**

2012 No. 2279

1. This explanatory memorandum has been prepared by the Home Office (“the Department”) and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 This Order sets out which official records will be subject to the disregard provisions in the Protection of Freedoms Act 2012 (“the Act”).
 - 2.2 This will put into effect the Coalition commitment “to change the law so that historical convictions for consensual gay sex with over 16s will be treated as spent and will not show up on criminal records checks”.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 Chapter 4 of Part 5 of the Act provides that an individual may make an application to the Secretary of State to have particular convictions or cautions disregarded. The convictions and cautions within scope are those that criminalised consensual homosexual sex between men over the age of consent, namely section 12 of the Sexual Offences Act 1956 (“the 1956 Act”) for the offence of buggery, and section 13 of the 1956 Act for the offence of gross indecency between men. These replaced similar offences under earlier legislation (e.g. the Offences Against the Person Act 1861, etc.); the Act’s provisions will cover the corresponding offences prior to the 1956 Act as well as offences charged via gateway provisions in service law (e.g. the Army Act 1955; the Naval Discipline Act 1957, etc.).
 - 4.2 Also included is the offence of “*loitering with intent to commit gross indecency*”, under section 4 of the Vagrancy Act 1824.
 - 4.3 Should the conditions be met for a conviction or caution to be disregarded, the Secretary of State will notify the person in writing that the application has been successful and will direct relevant data controllers to delete the details of that conviction or caution contained in relevant official records.
 - 4.4 This Order prescribes what records are relevant official records for these purposes and also prescribes who the relevant data controller is in relation to those records.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As these regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

• What is being done and why

7.1 The purpose of the provisions under the Act is to enable individuals to apply to the Secretary of State for a formal disregard of their relevant conviction(s) for behaviour which would not result in a conviction today (i.e. the behaviours have been decriminalised). As a result, a person will be able to lawfully conceal those convictions and not have them disclosed, should they apply to work or seek to volunteer in an area which requires a Criminal Records Bureau certificate.

7.2 As a consequence, should an application for a disregard be successful, the individual's criminal records relating to those convictions will be removed from official records prescribed by this Order where they are accessible, or, where removal is not possible, annotated to prevent future disclosure.

7.3 Local police records are prescribed under this Order along with other repositories of data, such as armed forces criminal records and some Court records.

• Consolidation

7.4 This is the first Order made under these provisions and therefore there are no consolidation issues.

8. Consultation outcome

8.1 The Department has consulted closely with key partners, including ACPO, on the development of this policy. A public consultation on this Order was not undertaken. Due to the nature of the provisions it was considered that engagement with key partners on this matter would provide the Department with the necessary intelligence to make a well judged and informed decision on this policy development.

9. Guidance

9.1 Guidance is being prepared for police forces and the Court service on the implementation of these provisions.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is estimated at £1.98m at a maximum.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The application process will be run by the Home Office in conjunction with the prescribed record holders.

12.2 The Home Office will collect statistical data on the number of applications received and this data, once anonymised, will be available if required.

13. Contact

Kevin Walsh at the Safeguarding and Public Protection Unit (Tel: 0207 035 0875 or email: Kevin.walsh1@homeoffice.gsi.gov.uk) can answer any queries regarding this Order.