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Equalities and Human Rights Committee Comataidh Co-ionannachd agus Còraichean Daonna

Subordinate Legislation considered by the Equalities and Human Rights Committee on 12 September 2019



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Equalities and Human Rights Committee

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Oliver Mundell
Scottish Conservative
and Unionist Party



Annie Wells
Scottish Conservative
and Unionist Party

Executive Summary

1. This report details the Equalities and Human Rights Committee's consideration of [The Historical Sexual Offences \(Disregarded Convictions and Official Records\) \(Scotland\) Regulations 2019 \[draft\]](#).

The Committee agreed to recommend to the Parliament that it approves the draft instrument.

The Historical Sexual Offences (Disregarded Convictions and Official Records) (Scotland) Regulations 2019 [draft]

The Committee reports to the Parliament as follows -

2. On the 13 June 2019, the Historical Sexual Offences (Disregarded Convictions and Official Records) (Scotland) Regulations 2019 [draft] was laid before the Parliament and was subject to the affirmative resolution procedure.

Background to the instrument

3. The instrument was made in exercise of the powers conferred by section 10(3) and 10(5) of the Historical Sexual Offences (Pardons and Disregards) (Scotland) Act 2018 (“the 2018 Act”).
4. The policy objective of this instrument is to prescribe the manner by which convictions that are to be ‘disregarded’ in terms of the 2018 Act are removed from official records. The Regulations also specify the identities of those bodies who are to be treated as relevant record keepers with responsibility for removing information about such convictions from official records for the purposes of section 10(3) and (5) of the Act.

Delegated Powers and Law Reform Committee consideration

5. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on [3 September 2019](#) and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Equalities and Human Rights Committee consideration

6. At its meeting on 12 September 2019, the Equalities and Human Rights Committee took evidence on this instrument from Humza Yousaf, the Cabinet Secretary for Justice and Scottish Government officials.
7. The Committee asked the Cabinet Secretary for clarification on where and how records were currently stored.
8. The Cabinet Secretary and his official explained the distinction between the police criminal history system, which is the primary source of information about the

criminal records of a person, stored on an IT system, and records about historical cases which are usually held by National Records of Scotland on behalf of the Scottish Courts and Tribunals Service, which in some circumstances may be kept on a physical microfiche document. The official stated that the regulations provide assurance that in practice all the possible sources that people may go to for a person's criminal history are covered.

9. The Committee asked the Cabinet Secretary for confirmation that he was confident the proposed regulations would not have the effect of altering the history of what happened to gay men in Scotland.
10. The Cabinet Secretary agreed it was important not to alter history and stated confidence in the degree of flexibility that the options of deletion, redaction and annotation offer in regulation 3 for this purpose.
11. The Committee also asked for confirmation in relation to the option for removal by annotation in regulation 3c, that it is the Scottish Government's intention that any annotation makes clear that the annotated material is to be treated as having been removed.
12. The Cabinet Secretary confirmed this was the regulation's intention.
13. The Cabinet Secretary subsequently moved the following motion in his name -

S5M-18075 — That the Equalities and Human Rights Committee recommends that the Historical Sexual Offences (Disregarded Convictions and Official Records) (Scotland) Regulations 2019 [draft] be approved.
14. The Committee agreed the motion without division.
15. The [Official Report](#) of the meeting is available online.

Recommendation

16. The Equalities and Human Rights Committee recommends to the Parliament that the Historical Sexual Offences (Disregarded Convictions and Official Records) (Scotland) Regulations 2019 [draft] be approved.

