

Scheme for the disregard of certain historical convictions relating to consensual sexual activity

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Policy and Legislative Briefing Paper

Abstract

This Policy and Legislative Briefing Paper provides an overview of the policy background to a new proposed Scheme for the disregard of certain historical convictions relating to consensual same-sex activity. This Scheme will function as an application-based scheme and the relevant proposals will set out the qualifying offences, the criteria for a disregard and the procedures for making, considering and determining applications. The Scheme will be introduced as Report Stage amendments to the *Criminal Law, Civil Law and Defence (Miscellaneous Provisions) Bill 2026*.



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Executive Summary

On 4 February, 2026, Minister for Justice, Home Affairs and Migration, Jim O’Callaghan TD, secured Government approval to introduce amendments to the *Criminal Law, Civil Law and Defence (Miscellaneous Provisions) Bill 2026*.¹ These amendments included the establishment of a scheme for the disregard of certain historical convictions relating to consensual same-sex activity, as committed to in the Programme for Government.² The Minister indicated that this will operate as an application-based scheme, and the proposals set out the qualifying offences, the criteria for a disregard and the procedures for making, considering and determining applications.³

These amendments incorporate the central proposals of the Criminal Justice (Disregard of Certain Convictions related to Consensual Sexual Activity) Bill.⁴ The Minister indicated that the draft heads for the new disregard scheme could be produced in a streamlined form and incorporated *Criminal Law, Civil Law and Defence (Miscellaneous Provisions) Bill 2026*, providing “a speedier route to enactment than a dedicated disregard Bill”.⁵ It was noted by the Minister during Committee Stage of the 2026 Bill that these amendments would be brought forward at Report Stage of the Bill.⁶

This Policy and Legislative Briefing Paper provides an overview of the policy background to these proposed amendments. As the precise form of the proposed Report Stage amendments have not been made publicly available, the structure of the new proposed scheme will not be addressed in detail. In addition, the L&RS does not typically provide briefing papers in response to Committee or Report Stage amendments. However, preparatory research was completed in preparation for the proposed Criminal Justice (Disregard of Certain Convictions related to Consensual Sexual Activity) Bill, and this Briefing Paper was prepared in this context.

The proposed amendments follow the report of a multi-stakeholder Working Group, which was established to examine and make recommendations on an application-based disregard

¹ Minister Jim O’Callaghan secures Government approval to introduce amendments to the *Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2026*, Department of Justice, Home Affairs and Migration, 4 February 2026.

² Programme for Government 2025 - Securing Ireland's Future, 23 January 2025.

³ Minister Jim O’Callaghan secures Government approval to introduce amendments to the *Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2026*; Department of Justice, Home Affairs and Migration, 4 February 2026; *Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2026* Dáil Committee Stage Dáil Select Committee on Justice, Home Affairs and Migration 19 May 2026.

⁴ The Bill is currently a C-list Bill on the *Summer 2026 Government Legislation Programme*, and proposes “to establish an application-based scheme to enable the disregard of certain historical convictions relating to consensual and primarily same-sex sexual activity”.

⁵ *Legislative Measures - Dáil Éireann Debate, Thursday - 3 July 2025*

⁶ *Select Committee on Justice, Home Affairs and Migration debate - Tuesday, 19 May 2026*

scheme.⁷ The outline provided by the Minister appears to indicate that the new scheme will broadly follow the central recommendations of the Report, in providing for an application-based statutory disregards scheme.

The legislation under which prospective applicants were convicted were sections 61 and 62 of the *Offences against the Person Act 1861*, and section 11 of the *Criminal Law Amendment Act 1885*. The constitutionality of these provisions was challenged in 1983 by Senator David Norris. The Supreme Court upheld the constitutionality of the provisions. Senator Norris was ultimately successful before the European Court of Human Rights,⁸ with the ECtHR holding by a majority of 8 to 6 that his right to privacy under Article 8 of the European Convention on Human Rights had been infringed.⁹

The *Criminal Law (Sexual Offences) Act 1993* decriminalised homosexual acts between consenting adult males. In 2018, the then Minister for Justice, Charlie Flanagan extended a “sincere apology” to people who were affected by the criminalisation of homosexuality in Ireland prior to 1993.

Two Private Members’ Bills have proposed to establish some form of pardons and disregards scheme:

- *Disregard of Historic Offences for Consensual Sexual Activity Between Men Bill 2025* [PMB]
- *Convictions for Certain Sexual Offences (Apology and Exoneration) Bill 2016* [PMB]

A range of countries have introduced some form of pardons and disregards scheme, with most being introduced around 2017. This Briefing Paper provides an overview of the schemes introduced in the following countries: New Zealand; Australia; Canada; Germany; Spain; England and Wales; Scotland; and Northern Ireland.

The standard scheme applied in the jurisdictions surveyed involves a process whereby persons convicted of historic homosexual offences may apply to have their conviction expunged or disregarded, if the nature of the conviction accords with certain requirements set out in legislation (e.g. the act was consensual and did not involve a minor).

In addition to the removal of past convictions, Germany has established a compensation scheme for those unjustly convicted.

In compiling the information on the schemes discussed in this Briefing Paper, certain common difficulties in the operation of disregard schemes were identified. These include:

⁷ Working Group to Examine the Disregard of Convictions for Certain Qualifying Offences Related to Consensual Sexual Activity between Men: A Progress Report, Department of Justice, Home Affairs and Migration, p 4.

⁸ *Norris v Ireland* (1991) 13 EHRR 186.

⁹ See: Tom O’Malley, ‘Norris v Ireland—An Opportunity for Law Reform’, *Irish Law Times* (1988), 6, 279

- A lack of awareness on the part of potential applicants that an expungement/pardon scheme exists. This is problematic as most schemes place the onus on the person who has been unjustly convicted to apply for expungement.
- A lack of monetary compensation for harm caused by unjust convictions.¹⁰
- Typically, a small number of potential applicants have applied for expungement/pardons under their countries' scheme. For example, very few people have applied under the scheme in place in Canada (as of 2022, 9 convictions have been expunged, out of a potential 9000 applicants). There is also the possibility that certain potential applicants would not wish to revisit their previous convictions due to past stigmas.¹¹
- Some schemes are too narrow and only offer disregards for select categories of offences.¹²

¹⁰ Only Germany offers some form of financial compensation for harm caused by conviction under anti-gay laws.

¹¹ [Concerns over pardons for convicted NI gay men](#), *BBC News*, 10 November 2016.

¹² See the recent reform in England and Wales, and the operation of the Canadian Scheme.

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Introduction

On 4 February, 2026, Minister for Justice, Home Affairs and Migration, Jim O’Callaghan TD, secured Government approval to introduce amendments to the *Criminal Law, Civil Law and Defence (Miscellaneous Provisions) Bill 2026*.¹³ These amendments included the establishment of a scheme for the disregard of certain historical convictions relating to consensual same-sex activity, as committed to in the Programme for Government.¹⁴ The Minister indicated that this will operate as an application-based scheme and the amendments will set out the qualifying offences, the criteria for a disregard and the procedures for making, considering and determining applications.¹⁵

Minister O’Callaghan noted the following:

“The Victorian-era laws that criminalised consensual sexual activity between men are now rightly recognised as a historical injustice. I am extremely pleased that the Government has agreed to my proposals for a statutory disregard scheme which seeks to acknowledge this injustice and to address meaningfully some of the harm caused to affected gay men, as well as their families and friends, during the period of criminalisation.”¹⁶

The proposed amendments follow the report of a multi-stakeholder Working Group, which was established to examine and make recommendations on an application-based disregard scheme.¹⁷ The group met eleven times, with follow up and wider outreach activities occurring between each meeting, before producing its final report in 2023.¹⁸ The Working Group’s final report,¹⁹ published in June 2023, included 95 recommendations across a number of areas,

¹³ Minister Jim O’Callaghan secures Government approval to introduce amendments to the *Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2026*, Department of Justice, Home Affairs and Migration, 4 February 2026.

¹⁴ *Programme for Government 2025 - Securing Ireland's Future*, 23 January 2025.

¹⁵ Minister Jim O’Callaghan secures Government approval to introduce amendments to the *Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2026*, Department of Justice, Home Affairs and Migration, 4 February 2026.

¹⁶ Minister Jim O’Callaghan secures Government approval to introduce amendments to the *Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2026*, Department of Justice, Home Affairs and Migration, 4 February 2026.

¹⁷ *Working Group to Examine the Disregard of Convictions for Certain Qualifying Offences Related to Consensual Sexual Activity between Men: A Progress Report*, Department of Justice, Home Affairs and Migration, p 4.

¹⁸ *Public Consultation on key issues related to the Disregard of Convictions for Certain Qualifying Offences related to Consensual Sexual Activity between Men*, Department of Justice, Home Affairs and Migration, 3 November 2022.

¹⁹ *Final Report of the Working Group to Examine the Disregard of Convictions Related to Consensual Sexual Activity between Men*, Department of Justice, Home Affairs and Migration, June 2023.

including how to establish, operate and promulgate such a scheme, and on key matters such as the range of offences that should be included, the proposed eligibility criteria for a disregard, the legal effects of a disregard, and procedures for applications, record retrieval, decisions and reviews. The Report recommending introduction of a statutory scheme to enable the disregard of relevant criminal records and the ‘disregard’ rather than the expungement or destruction of relevant criminal records.

The precise form of the proposed amendments has not been made publicly available, and thus the scope and operation of the new Scheme is not clear. However, it appears to broadly follow the central recommendation of the Working Group Report, in providing for an application-based statutory disregards scheme. As the legislative proposal has not yet been published, this Briefing Paper will focus on the policy background to the new Scheme.

These amendments incorporate the central proposals of the Criminal Justice (Disregard of Certain Convictions related to Consensual Sexual Activity) Bill.²⁰ The Minister indicated that the draft heads for the new disregard scheme could be produced in a streamlined form and incorporated in the *Criminal Law, Civil Law and Defence (Miscellaneous Provisions) Bill 2026*, providing “a speedier route to enactment than a dedicated disregard Bill”.²¹

The PRS does not typically provide briefing papers in response to Committee or Report Stage amendments. However, preparatory research was completed in preparation for the proposed Criminal Justice (Disregard of Certain Convictions related to Consensual Sexual Activity) Bill, and this briefing paper was prepared in this context.

²⁰ The Bill is currently a C-list Bill on the *Summer 2026 Government Legislation Programme*, and proposes “to establish an application-based scheme to enable the disregard of certain historical convictions relating to consensual and primarily same-sex sexual activity”.

²¹ *Legislative Measures - Dáil Éireann Debate, Thursday - 3 July 2025*

Policy and legal context

Legal context

Relevant legislation – historical convictions

It may be noted at the outset of this section that this Briefing Paper reviews historical criminal legislation, and thus the language used in this section is reflective of the terminology used in the relevant legislative provisions.

The following provisions rendered all sexual relations between men, adult or minor, and with or without consent,²² a criminal offence:

- Sections 61 and 62 of the *Offences against the Person Act 1861*
- Section 11 of the *Criminal Law Amendment Act 1885*

Sections 61, 62 and 63 of the 1861 Act provided for the crime of “unnatural offences”:

Unnatural Offences

Sodomy and bestiality.

61. Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable . . . to be kept in penal servitude for life . . .

Attempt to commit an infamous crime.

62. Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable . . . to be kept in penal servitude for any term not exceeding ten years.

Carnal knowledge defined.

63. Whenever, upon the trial for any offence punishable under this Act, it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only.

Section 11 of the 1885 Act provided for “Outrages on decency”:

²² See *Charleton & McDermott’s Criminal Law and Evidence* (Bloomsbury Professional, 2020) paras. [27.19] - [27.21].

11. Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour.

The Supreme Court noted that the offences could only be committed by a male, and that the provisions apply irrespective of the age of the persons involved:

“It is to be noted that the offences dealt with in Sections 61 and 62 of the 1861 Act can, in relation to mankind, be committed with or upon a male or female person, but can only be committed by a male. It is also to be noted that the offence dealt with in Section 11 of the 1885 Act only applies to male persons, that the Section applies irrespective of the ages of the male persons involved and irrespective of whether the act is committed in public or private or with or without consent. While the impugned legislation does not expressly deal with homosexual practices and conduct it is accepted that the effect of the three Sections taken together is to prohibit and criminalise such conduct between male persons. No similar prohibition exists in relation to such practices and conduct between females.”²³

Historical legislation

In addition to the 1861 and 1885 Acts, there are two relevant historical Acts. The post-medieval statutory interventions on the subject of homosexual acts appear to date from 1634, with the *Punishment of the Vice of Buggery (Ireland) 1634*. The Act did not define the offence but assimilated it to felony at Common Law in terms of procedure and penalty and made it a “felony without benefit of clergy”.

The *Offences Against the Person (Ireland) Act 1829*, applicable to Ireland, was passed for the purpose of “consolidating and amending the Statutes...relating to Offences against the Person.” To that end it repealed a large number of enactments, including the Act of 1634 “for the Punishment of the Vice of Buggery”. Section 18 of the Act stated:

“And be it enacted, That every Person convicted of the abominable Crime of Buggery, committed either with Mankind or with any Animal, shall suffer Death as a Felon.”

In 1861, the Act of 1829 was repealed and replaced by the provisions of the 1861 Act (for a discussion of these Acts, see the judgments of the Supreme Court in *DPP v Judge Devins & O'M (M)*).²⁴

²³ *Norris v Attorney General* [1984] IR 36, per O'Higgins CJ (Supreme Court).

²⁴ *DPP v Judge Devins & O'M (M)* [2012] IESC 7.

Legal challenge to the constitutionality of the 1861 and 1885 Acts

In 1983, then Senator David Norris sought a declaration that sections 61 and 62 of the 1861 Act and section 11 of the 1885 Act were inconsistent with the Constitution, i.e. the provisions “are so irreconcilable with his personal rights under the Constitution that they cannot be said to have been carried forward into the post-Constitutional era”.²⁵ The constitutionality of the provisions was upheld by both the High Court and Supreme Court²⁶ (with a minority dissenting in the Supreme Court).

In 1988, Senator Norris was ultimately successful before the European Court of Human Rights,²⁷ with the Strasbourg Court holding by a majority of 8 to 6 that his right to privacy under Article 8 of the European Convention on Human Rights had been infringed.²⁸

The *Criminal Law (Sexual Offences) Act 1993* decriminalised homosexual acts between consenting adult males.²⁹ It abolished the common law offence of buggery between persons but made it an offence to “commit an act of buggery” with persons of either sex under 17 years of age or with a “mentally impaired person”. The Act also replaced the offence of gross indecency with a new offence of gross indecency by a male with a male under 17 years of age and it updated the law in regard to the protection of the “mentally impaired” from sexual abuse.³⁰

Formal apologies and proposals for a disregards scheme

In 2018, the then Minister for Justice, Charlie Flanagan, extended a “sincere apology” to people who were affected by the criminalisation of homosexuality in Ireland prior to 1993. He was speaking in the Seanad during the debate on an all-party motion³¹ acknowledging the harm caused by criminalisation and apologising to those affected.³²

²⁵ *Norris v Attorney General* [1984] IR 36, per McWilliam J (High Court).

²⁶ O’Higgins CJ (Finlay and Griffin JJ concurring); Henchy and McCarthy JJ dissenting.

²⁷ *Norris v Ireland* (1991) 13 EHRR 186.

²⁸ See: Tom O’Malley, ‘Norris v Ireland—An Opportunity for Law Reform’, *Irish Law Times* (1988), 6, 279

²⁹ Section 2 of the 1993 Act.

³⁰ Law Reform Commission, *Discussion Paper on the Law on Sexual Offences*, 1998, p. 20-21. The *Criminal Law (Sexual Offences) Act 2017* repealed sections of the 1993 Act, and provided an updated framework for the protection of “protected persons” (thus removing the category of “mentally impaired persons”). A protected person is defined as a person who by reason of a mental or intellectual disability or a mental illness is not capable of understanding the nature and consequences of a sexual act, and thus lacks capacity to consent to engaging in this act.

³¹ **25th Anniversary of Decriminalisation of Homosexuality: Motion** Seanad Éireann debate - Tuesday, 19 Jun 2018 Vol. 258 No. 11.

³² **Flanagan apologises to gay and bisexual men over historic convictions**, *Irish Legal News*, 20 June 2018.

Additionally, during a reception in Dublin Castle in 2018, marking the 25th anniversary of the decriminalisation of homosexuality in 1993, then Taoiseach Leo Varadkar made an announcement that the Government intended to bring forward legislation by the end of 2018 to expunge convictions for homosexuality.³³

Arrests and prosecution numbers

It is difficult to ascertain the exact number of persons prosecuted and convicted of homosexual offences in the State.³⁴ Senator David Norris, writing on the subject in 1976, stated:

“It is extremely difficult to elicit exact up-to-date figures in this area [...] data is released in the Garda Report on Crime in such a diffuse and inexact way as to make interpretation hazardous.”³⁵

In this article, Senator Norris discusses the number of persons who have been prosecuted or convicted of homosexual offences during a ten-year period (1962-1972) and discusses in detail the figures from 1973 and 1974. The article indicates that this data is provided by the annual Garda Report on Crime for the corresponding years and referred to persons prosecuted and convicted of “unnatural offences”.

Prof. Diarmaid Ferriter’s 2009 book *Occasions of Sin: Sex and Society in Modern Ireland*³⁶ cites statistics that had previously been provided by Senator Norris. When discussing these statistics, Prof. Ferriter references the information provided in a book by Chrystel Hug,³⁷ which also primarily references the earlier statistics provided by Senator Norris. These are the figures that have been cited in modern discourse on this issue³⁸ (see for example the 2018 [Statement of the Taoiseach 25th Anniversary of Decriminalisation of Homosexuality](#)).

This data provided by these two books and article shows the following:

- The annual reports on prisons from the Department of Justice show that, between 1940 and 1978, an average of six men per year were jailed for “indecent with males”,

³³ [Government to ‘expunge’ historic convictions for homosexuality](#), *Irish Legal News*, 25 June 2018.

³⁴ [Convictions for Certain Sexual Offences \(Apology and Exoneration\) Bill 2016: Second Stage – Seanad Éireann \(25th Seanad\) – Wednesday, 1 Feb 2017 – Houses of the Oireachtas](#).

³⁵ David Norris, 'Homosexual Law Reform in Ireland: A Progress Report' (1976) 1 *Dublin University Law Journal* 27, p. 27.

³⁶ Diarmaid Ferriter, *Occasions of Sin: Sex and Society in Modern Ireland* (Profile Books, 2009), p. 490.

³⁷ Chrystel Hug, *The Politics of Sexual Morality in Ireland* (Macmillan, 1998), pp. 207-211.

³⁸ [Apology for Persons Convicted of Consensual Same-Sex Sexual Acts: Motion](#), Dáil Éireann debate - Tuesday, 19 Jun 2018 Vol. 970 No. 4; [‘Lives were ruined’: State moves closer to exonerating men convicted of homosexual ‘offences’](#), *The Journal*, 05 January, 2022.

and an average of seven for “gross indecency”; an average of thirteen men per year in total.

- Based on the Annual Garda Report on Crime, between 1962 and 1972, there were a total of 455 convictions for homosexual activity.
- The total number of prosecutions for the period between 1978 and 1986 is 238 prosecutions.

The 2023 Working Group Report also noted that the “total number of men prosecuted and convicted for consensual sexual activity and affection with other men is unknown”, but that the figure is estimated to be “several hundred”.³⁹

Research was conducted on this issue by the Oireachtas Library and Research Service in 2022, which indicated that between 1950 and 1993, 941 people had been convicted under the relevant legislation.⁴⁰ However, the paper noted that this figure was a broad estimate and included a number of caveats; namely that the recording of such prosecutions was imprecise and, significantly, the relevant legislation did not include a distinction between consensual and non-consensual sexual activity, and did not take into account the age of the participants, and thus certain people convicted of these offences (and thus included in the above statistic) would not be eligible for a pardon under any scheme.

Public Consultation and Report of the Working Group

Views of select stakeholders on a proposed disregard scheme

In 2021, a multi-stakeholder Working Group was established to examine and make recommendations on an application-based disregard scheme.⁴¹ Preliminary research was conducted on the issue. In 2022, Dr Niamh Howlin⁴² published a [Report on Convictions for Homosexual Acts in the Irish Courts, 1922-1993](#),⁴³ which was commissioned by the Working Group.

In May 2022, the Department of Justice published the Progress Report of the Working Group, which contained a number of interim recommendations. One of the recommendations was that a targeted public consultation should be undertaken to provide an opportunity for affected

³⁹ [Final Report of the Working Group to Examine the Disregard of Convictions Related to Consensual Sexual Activity between Men](#), Department of Justice, Home Affairs and Migration, 21 June 2023, p 7.

⁴⁰ [Legislative Measures - Dáil Éireann Debate, Thursday - 3 July 2025; Pardons for persons convicted of homosexual acts](#), Library and Research Service, 12 January 2022.

⁴¹ [Working Group to Examine the Disregard of Convictions for Certain Qualifying Offences Related to Consensual Sexual Activity between Men: A Progress Report](#), Department of Justice, Home Affairs and Migration, p 4.

⁴² Associate Professor in Sutherland School of Law, University College Dublin.

⁴³ Dr Niamh Howlin, [Convictions for Homosexual Acts in the Irish Courts, 1922-1993](#), May 2022.

persons and representative groups to engage on some of the key questions related to the development of the disregard scheme.

The Department of Justice held a public consultation, from November to December 2022, on key issues related to the development of a scheme to disregard relevant convictions for qualifying offences related to consensual sexual activity between men. This consultation received 148 submissions from individuals, LGBTQI+ representative organisations, other non-governmental organisations, trade unions and political parties and representatives. The Department published a [Report on the Public Consultation](#),⁴⁴ and the submissions received during the public consultation informed the final Working Group Report.

Working Group Report

A Progress Report was published by the Working Group in May 2022,⁴⁵ and the Group's Final Report was published in June 2023.⁴⁶ The group met 11 times during its tenure.⁴⁷

The report included 95 recommendations which addressed the following areas:

- Introduction of a statutory scheme to enable the disregard of relevant criminal records.
- The 'disregard' rather than the expungement or destruction of relevant criminal records.
- Identification of relevant records including an overview of the status of records held by relevant justice sector bodies and the Defence Forces.
- The offences to include in this scheme (including relevant provisions under Military Law).
- The eligibility standards which should apply to this scheme.
- That applications for disregard can be made on behalf of deceased persons and that emigrants and citizens of other countries who were affected can apply.
- The establishment of an independent first point of contact for applicants and of a panel of assessors.

⁴⁴ <https://assets.gov.ie/static/documents/summary-report-on-the-public-consultation.pdf>

⁴⁵ [Working Group to Examine the Disregard of Convictions for Certain Qualifying Offences Related to Consensual Sexual Activity between Men: A Progress Report](#), Department of Justice, Home Affairs and Migration, 5 May 2022.

⁴⁶ [Final Report of the Working Group to Examine the Disregard of Convictions Related to Consensual Sexual Activity between Men](#), Department of Justice, Home Affairs and Migration, 21 June 2023

⁴⁷ [Legislative Measures - Dáil Éireann Debate, Thursday - 15 May 2025](#).

- The effect of a disregard and what happens to relevant records when a disregard is granted.
- That formal statements may to be sought and accepted where no records in respect of the conviction are available, or the records do not contain the detail required to ascertain if the eligibility criteria have been met.
- That an independent review process be available if an initial application is refused, as well as a revocation process should a disregard be provided in error.
- The promotion of the scheme and ensuring public awareness of the scheme in Ireland and abroad.

Legislative proposals

In 2024, the Department of Justice, Home Affairs and Migration began preparing the Heads of the proposed *Criminal Justice (Disregard of Certain Convictions related to Consensual Sexual Activity) Bill*, which sought to “establish an application-based scheme to enable the disregard of certain historical convictions relating to consensual sexual activity (primarily homosexual activity)”.⁴⁸

During Parliamentary Questions in May 2025, the Minister for Justice, Jim O’Callaghan T.D., acknowledged the publication of the Report of the Working Group, and indicated that the Department was committed to “translating these recommendations into heads of Bill”.⁴⁹ The Minister acknowledged the time-sensitive nature of the legislation, as people who may avail of a pardon are of an advanced age, and proposed the following abridged version of the legislation, to be included as an amendment to a Miscellaneous Provisions Bill:

“any general statutory provision that could be introduced in a miscellaneous provisions Bill stating that for anyone convicted of an offence, that offence would be disregarded. However, that could be complicated.”⁵⁰

In June 2025, Minister O’Callaghan indicated that it was his intention to include a “streamlined” version of the scheme⁵¹ as an amendment to the *Criminal Law, Civil Law and Defence (Miscellaneous Provisions) Bill 2026*.⁵²

“I asked my officials to examine whether the draft heads for the disregard scheme could be produced in a streamlined form that would facilitate their inclusion in the miscellaneous provisions Bill [...] I believe this is achievable and offers a speedier route to enactment than a dedicated disregard Bill.”⁵³

The Minister acknowledged the Private Members’ Bill introduced in 2025 (discussed below) and indicated that the provisions of the PMB would be taken into account by Department officials when working on the legislative proposals.⁵⁴

⁴⁸ Government Legislation Programme Summer 2024.

⁴⁹ Legislative Measures - Dáil Éireann Debate, Thursday - 15 May 2025.

⁵⁰ Legislative Measures - Dáil Éireann Debate, Thursday - 15 May 2025.

⁵¹ These amendments incorporate the central proposals of the Criminal Justice (Disregard of Certain Convictions related to Consensual Sexual Activity) Bill. The Minister indicated that the draft heads for the new disregard scheme could be produced in a streamlined form and incorporated in the *Criminal Law, Civil Law and Defence (Miscellaneous Provisions) Bill 2026*, providing “a speedier route to enactment than a dedicated disregard Bill”.

⁵² *Criminal Law, Civil Law and Defence (Miscellaneous Provisions) Bill 2026*

⁵³ Legislative Measures - Dáil Éireann Debate, Thursday - 3 July 2025

⁵⁴ Legislative Measures - Dáil Éireann Debate, Thursday - 3 July 2025.

In December 2025, the Minister affirmed the Department’s intention to create “a statutory scheme that is legally and procedurally robust, efficient and fair”⁵⁵ and that this scheme would be introduced in 2026.

Legislative proposal – amendment to the *Criminal Law, Civil Law and Defence (Miscellaneous Provisions) Bill 2026*

On 4 February 2026, Minister O’Callaghan secured Government approval to introduce a variety of amendments to the *Criminal Law, Civil Law and Defence (Miscellaneous Provisions) Bill 2026*, including those relating to a new “Disregard Scheme”.⁵⁶

While the proposed amendments have not been made publicly available, the February Departmental press release provides the following information:

“[The Scheme] will operate as an application-based scheme and the proposals approved today set out the qualifying offences, the criteria for a disregard and the procedures for making, considering and determining applications.”⁵⁷

The Scheme will also apply in a posthumous way and people will be able to apply for disregards in respect of deceased relatives.⁵⁸

Further information was provided by the Minister for Justice, Home Affairs and Migration during Committee Stage of the *Criminal Law, Civil Law and Defence (Miscellaneous Provisions) Bill 2026*:

“Provision will be made for independent assessment of applications and for an applicant to request an independent review where it is proposed to refuse a disregard. Provision will also be made for the revocation of a disregard should this be found necessary in any case, again with provision for an independent review where a revocation is proposed.”⁵⁹

The Minister has noted that the number of recommendations in the Working Group report and the “many procedurally and legally novel aspects of the proposed scheme” have necessitated

⁵⁵ Departmental Policies - Dáil Éireann Debate, Thursday - 4 December 2025.

⁵⁶ Minister Jim O’Callaghan secures Government approval to introduce amendments to the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2026, Department of Justice, Home Affairs and Migration, 4 February 2026.

⁵⁷ Minister Jim O’Callaghan secures Government approval to introduce amendments to the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2026, Department of Justice, Home Affairs and Migration, 4 February 2026.

⁵⁸ Dáil Éireann debate - Thursday, 16 Apr 2026

⁵⁹ Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2026 Dáil Committee Stage Dáil Select Committee on Justice, Home Affairs and Migration 19 May 2026.

“a lot of care being taken in the process of legislative analysis, consultation and drafting”.⁶⁰ It is proposed that the amendments be included in the Miscellaneous Provisions Bill during Report Stage on 10 June 2026. The PRS has produced a range of additional resources on the Miscellaneous Provisions Bill:

- **Bill Digest:** Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2026
- Policy and Legislative Briefing Paper on the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025 – **Head 19: Disclosure of Counselling Records in Sexual Offence Cases**
- Policy and Legislative Briefing Paper on the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025 – **Head 39: criminal offences for ‘sex for rent’**
- Policy and Legislative Briefing Paper on the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025 – **Remote Hearings in Criminal Proceedings**
- Policy and Legislative Briefing Paper on the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025- **power of An Garda Síochána to order removal of face coverings worn in public**

Private Members’ Bills

Disregard of Historic Offences for Consensual Sexual Activity Between Men Bill 2025 [PMB]

The *Disregard of Historic Offences for Consensual Sexual Activity Between Men Bill 2025*, sponsored by Aengus Ó Snodaigh, Ged Nash, Pádraig Rice, Paul Murphy, Roderic O’Gorman, and Catherine Connolly, was initiated in Dáil Éireann in July 2025. The Bill was taken for Second Stage Debate on 16 April, 2026.⁶¹ The Bill’s *Explanatory Memorandum*⁶² sets out the purpose and context of the Bill:

“The principal purpose of the Disregard of Historic Offences for Consensual Sexual Activity between Men Bill 2025 is to provide for a process for the disregard of certain

⁶⁰ Dáil Éireann debate - Thursday, 16 Apr 2026

⁶¹ Dáil Éireann debate - Thursday, 16 Apr 2026

⁶² Disregard of Historic Offences for Consensual Sexual Activity Between Men Bill 2025: Explanatory Memorandum.

historic criminal convictions or cautions arising from consensual sexual activity between men. [...]

The Bill builds on legislation previously introduced to the Seanad, the Convictions for Certain Sexual Offences (Apology and Exoneration) Bill 2016, and the provisions attempt to address issues raised by Minister of State David Stanton TD on behalf of the Government during the Second Stage debate on that legislation.”

This Bill also establishes a process for applying to the Irish Human Rights and Equality Commission for a disregard of one's conviction as well as an appeals process and a review of the process within three years, along with annual reporting of the performances of that function.

The Minister for Justice, Jim O’Callaghan TD, indicated that the Government would not oppose the Bill. However, the Minister did note that “while the intention of the Bill has obvious merit, there are legal, policy and operational issues with this Bill as drafted”.⁶³

Minister O’Callaghan noted that drafting is ongoing on the proposed Report Stage amendments, and that “the scheme being drafted in the Department at present is more robust [than the Scheme proposed by the Bill]”.⁶⁴

Convictions for Certain Sexual Offences (Apology and Exoneration) Bill 2016 [PMB]

The *Convictions for Certain Sexual Offences (Apology and Exoneration) Bill 2016*, sponsored by Ged Nash, Kevin Humphreys, Ivana Bacik, and Aodhán Ó Ríordáin, passed the First and Second stages in Seanad Éireann.⁶⁵ The Bill lapsed with the dissolution of the 33rd Dáil.

The Bill’s *Explanatory Memorandum*⁶⁶ provides the following information on the provisions of the Bill:

“The Bill is described in its long title as an Act to provide for an apology to and exoneration of persons convicted of consensual same-sex sexual acts, on the grounds that prosecutions for such offences were improperly discriminatory, contrary to human dignity and in breach of personal privacy and autonomy.

Section 1 lists the Acts containing the repealed offences to which this Bill applies:

- the Act for the *Punishment of the Vice of Buggery (Ireland) 1634*;

⁶³ Dáil Éireann debate - Thursday, 16 Apr 2026

⁶⁴ Dáil Éireann debate - Thursday, 16 Apr 2026

⁶⁵ See Seanad Éireann debate - Wednesday, 1 Feb 2017: Convictions for Certain Sexual Offences (Apology and Exoneration) Bill 2016: Second Stage.

⁶⁶ Convictions For Certain Sexual Offences (Apology and Exoneration) Bill 2016.

- section 18 of the *Offences against the Person (Ireland) Act 1829*;
- section 61 of the *Offences against the Person Act 1861*;
- section 11 of the *Criminal Law Amendment Act 1885*.

The section applies to convictions by a court or court martial established by or under the Constitution or the Constitution of Saorstát Éireann or, prior to the establishment of Saorstát Éireann, by a court or court martial sitting in a place that is now within the State.

Section 2 provides that a person convicted of any such offence receives an apology and exoneration and an acknowledgement that the offences concerned and prosecutions for those offences were improperly discriminatory, contrary to human dignity and infringed personal privacy and autonomy.”

International context – comparable disregard schemes

International pardon schemes

The following countries have introduced some form of disregard scheme:

- New Zealand
- Australia
- Canada
- Germany
- Spain
- England and Wales
- Scotland
- Northern Ireland

The standard scheme applied in the jurisdictions surveyed involves a process whereby persons convicted of historic homosexual offences may apply to have their conviction expunged or disregarded, if the nature of the conviction accords with certain requirements set out in legislation (e.g. the act was consensual and did not involve a minor).

In addition to the removal of past convictions, Germany has established a compensation scheme for those unjustly convicted.

Why disregards or expungements are usually not automatic, and must be assessed on a case-by-case basis

Commenting on the UK law, Prof. James Chalmers noted that it would be very difficult to operate an automatic disregard system as the law did not distinguish between consensual and non-consensual homosexual activity:⁶⁷

“The practical problem here is that there never was an offence of “consensual adult homosexual activity”. If there was, we could simply remove all these convictions from the records. But the old law simply did not distinguish between consensual and non-consensual sex, or have a concept of “underage sex” – before 1967, gay sex was

⁶⁷ Though the following has been noted by Prof. Fergus Ryan on the crime of “gross indecency”:

“[Consent] was an essential constituent of the offence of gross indecency, as then constituted, that the parties thereto “act in concert”, that is, co-operate in the venture”. Fergus Ryan, ‘Queering’ the Criminal Law: Some Thoughts on the Aftermath of Homosexual Decriminalisation, *Irish Criminal Law Journal* 1997, 7(1), 38-47.

criminal regardless of consent and regardless of age. This means that if someone has a conviction for – for example – “gross indecency”, you cannot tell from the fact of the conviction whether they were convicted for doing something which would still be an offence today or not. They might have been convicted for doing something which would now be prosecuted as sexual assault or a child sex offence.”⁶⁸

Difficulties in the operation of expungement/pardon schemes

In compiling the information on the schemes discussed below, certain common difficulties in the operation of disregard schemes were identified. These include:

- A lack of awareness on the part of potential applicants that an expungement/pardon scheme exists. This is problematic as most schemes place the onus on the person who has been unjustly convicted to apply for expungement.
- A lack of monetary compensation for harm caused by unjust convictions.⁶⁹
- Typically, a small number of potential applicants have applied for expungement/pardons under their countries’ scheme. For example, very few people have applied under the scheme in place in Canada (as of 2022, 9 convictions have been expunged, out of a potential 9,000 applicants). There is also the possibility that certain potential applicants would not wish to revisit their previous convictions due to past stigmas.⁷⁰
- Some schemes are too narrow and only offer disregards for select categories of offences.⁷¹

The difference between a disregard and a pardon

Before addressing the current schemes, it may be of assistance to note the difference between a disregard and a pardon. The House of Commons Library has provided the following information on the difference between a disregard and a pardon in the context of the 2012 UK legislation.

“The disregard system introduced by the 2012 Act is a different legal process to a pardon. [...] The aim of a **disregard** is to treat the individual concerned for all

⁶⁸ James Chalmers, “[Schrödinger’s pardon: the difficulties of the Turing Bill](#)”, October 2016.

⁶⁹ Only Germany offers some form of financial compensation for harm caused by conviction under anti-gay laws.

⁷⁰ [Concerns over pardons for convicted NI gay men](#), *BBC News*, 10 November 2016.

⁷¹ See the recent reform in England and Wales, and the operation of the Canadian Scheme.

purposes in law as if he had not committed the offence or been convicted for it. In the words of the then Justice Minister Lord Faulks:

The objective of the Protection of Freedoms Act, in disregarding certain offences, is that they should no longer affect a person's life or career. The intention is to support living people who are disadvantaged when they apply for work, rather than to set the record straight.

A pardon, by contrast, is used to recognise that a person was unjustly convicted. Pardons are issued by the Queen (on the recommendation of the Justice Secretary) under the royal prerogative of mercy.

In practice the Justice Secretary will usually recommend a pardon only where there are convincing reasons for believing a person to be both morally and technically innocent: general doubts about someone's guilt may not be sufficient. A pardon removes the "pains, penalties and punishments" which are consequent upon a person's conviction. It does not, however, remove the conviction itself. A pardon is not, therefore, equivalent to an acquittal; only the courts have the power to quash convictions altogether.

The 2012 Act specifically preserves the existing power of the Queen, under the Royal prerogative, to issue a free pardon, quash a conviction or sentence, or commute a sentence. These actions are therefore still available in respect of disregarded convictions or cautions."⁷² (emphasis added)

In England and Wales, a disregards scheme was first introduced in 2012 and subsequently broadened and amended in 2017 and 2023. These developments are outlined below.

England and Wales

2012 disregard scheme

The *Protection of Freedoms Act 2012* introduced a new "disregard scheme" for men with historic convictions for certain offences (buggery and gross indecency).⁷³ Such men can apply to the Home Secretary to have their convictions disregarded. The Home Secretary must be satisfied that the following conditions have been met:

⁷² House of Commons Library, "[The Sexual Offences \(Pardons Etc.\) Bill 2016- 17 \[Bill 6 of 2016-17\]](#)" Briefing Paper, Number 07441, 20 October 2016.

⁷³ In 1967, consensual sexual activity in private between two men over the age of 21 was decriminalised. The age of consent was lowered to 18 in 1994 and again to 16 in 2000. However, these changes did not have retrospective effect. Any convictions predating the decriminalisation of consensual gay sex and the lowering of the age of consent therefore continue to remain part of an individual's criminal record.

- the other person involved in the conduct constituting the offence consented to it and was aged 16 or over; and
- any such conduct now would not be an offence under section 71 of the *Sexual Offences Act 2003* (sexual activity in a public lavatory).

The aim of these two conditions is to ensure that the only convictions disregarded are those for behaviour that is not currently a criminal offence.

If an application for a disregard is successful, the applicant is treated for all purposes in law as if he had not committed the offence or been convicted for it. Where the convictions are disregarded, they will no longer be disclosed on Disclosure and Barring Service certificates or in court proceedings.

A [Guidance Note](#) provides details regarding the application process, eligibility, and the relevant legislation under which the applicant may have been convicted. The offences covered are mainly sections 12 (buggery) and 13 (gross indecency) of the *Sexual Offences Act 1956* as well as corresponding offences under earlier legislation, and equivalent military offences. Cautions, warnings and reprimands can also be disregarded.

The activity must have been consensual, with a person of 16 or over, and must not be an offence today.

The process is free of charge, and the applicant is required to complete an application form, provide proof of identity and address.

Initially, the disregard scheme was only available to living applicants. In December 2013, following numerous public campaigns, mathematician Alan Turing received a posthumous pardon from the Queen.⁷⁴ Turing had been convicted of gross indecency in the 1950s for activity that would have been legal under the current UK laws. The subject of posthumous pardons was then addressed by the *Policing and Crime Act 2017*, known as ‘Turing’s Law’ (see below).

Policing and Crime Act 2017 (‘Turing’s Law’) – posthumous pardons

Section 166 of the *Policing and Crime Act 2017* granted approximately 49,000 deceased gay and bisexual men a posthumous pardon for offences they were convicted of under former sexual offenses legislation that had criminalised homosexual acts. The Act also states that any living person who was convicted of these offences may apply for a statutory pardon to remove

⁷⁴ [Enigma codebreaker Alan Turing receives royal pardon](#), *Guardian*, 24 December 2013.

the convictions from their records.⁷⁵ There were some criticisms that the law did not go far enough.⁷⁶

Recent reform - *Police, Crime, Sentencing and Courts Act 2023*

In 2023, it was proposed that the Disregards and Pardons scheme be extended to ensure that anyone convicted or cautioned for consensual same-sex sexual activity, under relevant legislation, can apply to have them ‘disregarded’.⁷⁷

The 2012 Act set out a specified list of offences that can form the basis of an application, which are largely focused on the repealed offences of buggery and gross indecency between men. Anyone with a conviction or caution for an offence which is not specified in the legislation was excluded from applying. However, under the *Police, Crime, Sentencing and Courts Act 2022* pardons have been made available for any repealed or abolished civilian or military offence that was imposed on someone for, or arising from, consensual same-sex sexual activity. Those eligible may have the convictions wiped from their records.⁷⁸

The amendment applies to civilians in England and Wales and people convicted of military offences anywhere in Britain. Northern Ireland and Scotland retain their separate disregard and pardon schemes.⁷⁹

Statistics

Statistics on the disregard and pardon for historical gay sexual convictions were published by the UK government.⁸⁰ The data shows applications received between October 2012 and October 2022 on convictions for decriminalised sexual offences. There were 522 applicants, with a total of 785 convictions considered (some applicants have more than one conviction).⁸¹ A total of 208 convictions were eligible for disregard.

⁷⁵ “[England and Wales: Thousands Receive Posthumous Pardon for Homosexuality Convictions](#)”, United States Library of Congress.

⁷⁶ Sir John Dermot Turing, ‘[Alan Turing’s Law](#)’, *The Royal Society*, 28 February 2017.

⁷⁷ See: [More people to be pardoned and have their historical convictions for same-sex sexual activity disregarded](#), PolicyMogul, 04 January, 2022; [Past convictions for homosexual activity to be wiped from records, Patel to announce](#), *Guardian*, 04 January, 2022; [All gay sex convictions to be pardoned in plan to ‘right wrongs of the past’](#), *Independent*, 04 January, 2022.

⁷⁸ See e.g. Áine Kervick, [Disregarding Convictions - a step forward](#), *Lexology*, 4 July 2022.

⁷⁹ “[Britain to wipe from records past convictions for consensual same-sex activity](#)”, *The Washington Post*, 04 January, 2022.

⁸⁰ [Statistics on the disregard and pardon for historical gay sexual convictions](#), Gov.uk.

⁸¹ [Disregard process for convictions for decriminalised sexual offences \(consensual gay sex\) - GOV.UK](#)

Scotland

In 2017, an apology was made by First Minister, Nicola Sturgeon⁸² to any men convicted of engaging in any now-legal same-sex activities, and this apology coincided with the introduction of the Historical Sexual Offences (Pardons and Disregards) (Scotland) Bill. In 2018, the *Historical Sexual Offences (Pardons and Disregards) (Scotland) Act 2018* provided an automatic pardon to all men, living or dead, who were convicted of having consensual sex with men before decriminalisation. The pardon is a purely symbolic acknowledgement that the laws were discriminatory and does not reverse the conviction.⁸³ No further action was required by those pardoned.

There is also an option to apply to have convictions for same-sex sexual activity that is now legal removed from central criminal conviction records and to apply for a formal "disregard" in order to prevent the information being included in disclosure checks. A successful disregard application means the conviction will not appear on any background check carried out by Disclosure Scotland, and the person will be treated as not having committed the offence.⁸⁴ It is for Scottish ministers to decide, based on the available evidence about the specific case, whether the disregard is granted.⁸⁵

The Scottish government stated that it expects about 25 men to make such an application between 2018 and 2023.⁸⁶

Northern Ireland

The Northern Ireland Assembly agreed in November 2016 to bring the law in Northern Ireland in line with England and Wales.⁸⁷ The law facilitates the removal of convictions from police and court records of historic offences where the activity was consensual, with a person aged 17 or over, and is no longer an offence today.

Disregarded convictions will be considered as never having happened and will no longer appear on criminal records or in any criminal record checks. There will be no requirement to disclose the abolished offence, for example on job application forms or in court cases.

⁸² Nicola Sturgeon makes gay convictions apology, *BBC News*, 7 November 2017.

⁸³ Pardon for gay men convicted under discriminatory laws Scottish Government, 15 Oct 2019.

⁸⁴ Thousands of gay Scots to be pardoned, *BBC News*, 06 June 2018.

⁸⁵ Information on the procedures for obtaining a disregard are available here: [Pardons and disregards for convictions for sexual activity between men](#).

⁸⁶ Pardon for gay men convicted under abolished laws, *BBC News*, 15 October 2019.

⁸⁷ NI: Department of Justice launches disregard scheme for homosexual offences, *Irish Legal News*, 29 June 2018.

To have historic convictions disregarded, an application must be made to the Department of Justice. If an application is successful, the person is also, by law, pardoned for the offence.

Anyone who was convicted of an abolished homosexual offence and who has since died is also, by law, pardoned for the offence.⁸⁸

It has been suggested that many people who might avail of a pardon or expungement might choose not to do so.⁸⁹

Canada

In 2017, a formal apology was made on behalf of the Government of Canada to the LGBTQ community in Canada for historical discrimination and oppression.⁹⁰

In 2018, the [Expungement of Historically Unjust Convictions Act](#) established a procedure for expunging certain historically unjust convictions, which includes eligible offences involving consensual sexual activity with a same-sex partner that would be lawful under current Canadian law.

The legislation allows for the destruction or permanent removal of judicial records of historically unjust convictions from federal databases. When an expungement is ordered, the person convicted of the offence is deemed never to have been convicted of that offence.⁹¹

The Parole Board of Canada (PBC) is the official federal agency responsible for ordering or refusing to order expungement of a conviction. Persons convicted of an offence listed in the schedule to the Expungement Act are eligible to submit an application to the PBC to have the record(s) of their conviction(s) expunged. If the person is deceased, an appropriate representative, such as a close family member or a trustee, can apply on their behalf.⁹²

Applicants need to provide evidence that the conviction meets the following three criteria:

1. the activity for which the person was convicted was between persons of the same sex;
2. the person(s), other than the person convicted, had given their consent to participate in the activity; and

⁸⁸ Information on the procedures for obtaining a disregard are available here: [Pardons and disregards for homosexual offences](#).

⁸⁹ [Concerns over pardons for convicted NI gay men](#), *BBC News*, 10 November 2016.

⁹⁰ House of Commons, [Debates](#), 1st Session, 42nd Parliament, 28 November 2017.

⁹¹ See: Chloé Forget, [Legislative Summary of Bill C-66: An Act to establish a procedure for expunging certain historically unjust convictions and to make related amendments to other Acts](#), Parliament of Canada (2018).

⁹² Government of Canada, [What is expungement?](#).

3. the person(s) who participated in the activity were 16 years of age or older at the time of the activity or subject to a 'close in age' defence under the *Criminal Code*.

Criticism of the Act

The Act was criticised by the Canadian HIV/AIDS Legal Network as “**fundamentally flawed.**” The Network proposed a series of amendments to Bill C-66 (the 2018 Expungement Act), which were not subsequently adopted.⁹³

Additionally, very few people have applied under the law. Almost three years after the establishment of the new system, just nine (9) people had their record expunged. It had been estimated that there were approximately 6,000 to 9,000 people who were eligible to apply under the scheme.⁹⁴ Some reasons given for this low uptake include an arduous application process, issues arising from the discrepancy between the historical and current age of consent, and the narrow applicability of the Act.⁹⁵

Australia

In November 2012, the Australian Senate passed a resolution calling on its states and territories to purge convictions for legal homosexual acts.⁹⁶

Responsibility for criminal law in Australia is divided between the state and territory governments and the federal government. The criminal law system differs across Australian States, with distinctions regarding criminal offences, sentencing, and criminal procedure.⁹⁷ In the period from 2013 to 2018, a series of expungements took place in the Australian states, some with and some without formal apologies. South Australia (2013), New South Wales (2014), Victoria (2015), the Australian National Territory (2015), Queensland (2017), Western Australia (2018), the Northern Territory (2018), and Tasmania (2018) have expunged criminal

⁹³ **Queer activists disappointed by gay conviction expungement law**, Xtra, May 17, 2018.

⁹⁴ Steven Maynard, **Pride and prejudice: With only nine LGBTQ criminal record expungements, what's to celebrate?**, Queen's Gazette, 2021; **Law to wipe LGBT criminal records has deleted just nine crimes**, iPolitics.

⁹⁵ Steven Maynard, Adjunct Associate Professor, Department of History, Queen's University, Ontario (Steven Maynard, **Pride and prejudice: With only nine LGBTQ criminal record expungements, what's to celebrate?**, Queen's Gazette, 2021)

⁹⁶ Commonwealth, Parliamentary Debates, Senate, 22 November 2012, 9496 (S Hanson-Young).

⁹⁷ There are nine criminal jurisdictions in Australia; a federal, six states and two territories. David Lanham et. al, *Criminal Laws in Australia* (Federation Press, 2006). The federal code is the only general criminal law that applies throughout Australia. Jeremy Gans, *Modern Criminal Law of Australia* (Cambridge University Press, 2016), p. 9.

convictions, accompanied by an apology in the cases of Western Australia and the Northern Territory.⁹⁸

An overview of many of these schemes is provided by the 2016 [Consultation Paper](#) produced by the Queensland Law Reform Commission, which reviewed the expungement of criminal convictions for historical gay sex offences.⁹⁹ The paper considered how such schemes in Australia should operate in practice, the effect of expungement, the conditions for application etc.

One example of the change in policy is in New South Wales where, on 24 November 2014, the [Criminal Records Act 1991](#) was amended to allow historical homosexual offences to be “extinguished”.¹⁰⁰ The effect of the extinguishment is set out in [section 19F](#) of the 2014 Act, which states:

- (1) If a conviction of a person is an extinguished conviction—
 - (a) the person is not required to disclose to any other person for any purpose information concerning the extinguished conviction, and
 - (b) a question concerning the person’s criminal history is taken not to refer to any convictions of the person which are extinguished convictions, and
 - (c) in the application to the person of a provision of an Act or statutory instrument—
 - (i) a reference in the provision to a conviction is taken not to be a reference to any convictions of the person which are extinguished convictions, and
 - (ii) a reference in the provision to the person’s character or fitness is not to be interpreted as permitting or requiring account to be taken of extinguished convictions.

These amendments allow a person with an eligible historical homosexual conviction to apply to the Secretary of the Department of Justice to have the conviction extinguished. The Secretary has the authority to decide that an eligible conviction should be extinguished but only if he or she is satisfied that the other person involved in the sexual activity consented to the sexual activity and was above the age of consent. The Secretary has powers under the Act

⁹⁸ Smith M., ‘Homophobia and Homonationalism: LGBTQ Law Reform in Canada’, *Social & Legal Studies*. 2020;29(1):65-84. doi:[10.1177/0964663918822150](#).

⁹⁹ Queensland Law Reform Commission (2016), [Review of expunging of criminal convictions for historical gay sex offences: Consultation Paper](#), WP No74 (2016).

¹⁰⁰ [Extinguishment of Historical Homosexual Offences Factsheet](#).

to require certain persons or bodies to provide information for the purposes of making a decision under the Act.

Applications may be made to the Department of Justice to have certain offences extinguished. The list of offences is available [here](#).

Criticism of the reforms

While the legislative developments have been broadly viewed as positive, there are certain criticisms regarding the scope and operation of the schemes, which are summarised below:

- The Victorian legislation creates an absolute bar to any state compensation.
- As the onus is on the affected person to apply to have previous convictions extinguished, affected persons must be aware that they have a right to apply. It was recommended that a comprehensive notification scheme be put in place.
- Not many people have submitted applications under the scheme thus far. It is unclear as yet why this is the case.¹⁰¹

New Zealand

The [Criminal Records \(Expungement of Convictions for Historical Homosexual Offences\) Act 2018](#) came into force on 10 April 2018. The Act establishes a scheme to expunge convictions for men for specific offences. This means that men who were convicted of specific offences that have since been decriminalised can apply to be treated as if they had never been convicted.

The [scheme](#) is administered by the Ministry of Justice. Applications are assessed and determined by the Secretary for Justice who must assess whether, on the balance of probabilities, the conduct for which the applicant was convicted is no longer illegal – this will generally involve an assessment of whether the activity was consensual and involved adults over the age of 16.

If a person's conviction is expunged, their conviction will not appear on a criminal history check for any purpose in New Zealand. In situations where they have to disclose criminal convictions (such as on job applications), they will be able to declare they had no such conviction.¹⁰²

¹⁰¹ Egale Canada Human Rights Trust, [The Just Society Report: Confronting the Legacy of LGBTQ2SI Discrimination in Canada](#), pp 90-92.

¹⁰² For a detailed overview of the legislation, see: Kris Gledhill, "[Legislation Note: Criminal Records \(Expungement of Convictions for Historical Homosexual Offences\) Act 2018](#)", *New Zealand Criminal Law Review*, May 2020.

Germany

Germany was the first country to debate the expungement of past criminal convictions against gay men.¹⁰³ An official apology was made in 2000.¹⁰⁴ In 2002, the [Act on the Annulment of National Socialist Unjust Judgments in Criminal Justice](#) of 25 August 1998 (NS-AufhG), which repealed criminal court decisions that “were issued in violation of elementary ideas of justice, after 30 January 1933”, was amended to include Nazi-era convictions of homosexuals.

In 2017, Germany formalised the policy [in legislation](#) that overturned all convictions under an 1871 law that criminalised sex between men.¹⁰⁵ Those affected by the pardon can apply for a “vindication/rehabilitation certificate” free of charge from the competent public prosecutor's offices. If a convicted person has already died, this should also be possible for relatives or other people “if they have a legitimate interest in establishing the annulment of the judgment”.¹⁰⁶

The 2017 legislation also provided for a compensation scheme, which provided payments of €3,000 (£2,600) for each conviction, as well as €1,500 (£1,300) for every year started in prison by the convicted men.¹⁰⁷ In cases where victims had died still bearing a conviction, the government will instead make payments to gay rights groups.¹⁰⁸ The amount was challenged as insufficient by the German Lesbian and Gay Federation.¹⁰⁹ As of September 2021, the German Federal Office of Justice has indicated that it had paid out compensation worth nearly €860,000 in a total of 249 cases.¹¹⁰

¹⁰³ Smith M. ‘Homophobia and Homonationalism: LGBTQ Law Reform in Canada’. *Social & Legal Studies*. 2020;29(1):65-84. doi:[10.1177/0964663918822150](#).

¹⁰⁴ Eva Küblbeck, “[Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity: Germany](#)”, January 2014, German Institute for Human Rights.

¹⁰⁵ [Gesetz zur strafrechtlichen Rehabilitierung der nach dem 8. Mai 1945 wegen einvernehmlicher homosexueller Handlungen verurteilten Personen und zur Änderung des Einkommensteuergesetzes](#) [translation: Law on the criminal rehabilitation of persons convicted of consensual homosexual acts after May 8, 1945 and amending the Income Tax Act].

¹⁰⁶ [Verurteilte Homosexuelle sollen Entschädigung erhalten](#), *Zeit*, 21 October 2016 [translation: [Convicted homosexuals to receive compensation](#), *Zeit*, 21 October 2016].

¹⁰⁷ [Germany to overturn convictions of gay men prosecuted after war](#), *The Guardian*, 22 March 2017.

¹⁰⁸ [“Germany to quash historical convictions of gay men”](#), *The Guardian*, 11 May 2016.

¹⁰⁹ [“Germany Wipes Slate Clean for 50,000 Men Convicted Under Anti-Gay Law”](#), *New York Times*, June 23, 2017

¹¹⁰ [Germany compensates hundreds convicted under Nazi-era homosexuality law](#), *EuroNews*, 14 September, 2021.

In addition to victim compensation, a €500,000 annual grant was provided to the Magnus Hirschfeld gay history research centre in Berlin.¹¹¹ Also, in 2008, the German government opened a monument to gay victims of the Holocaust.¹¹²

The 2021 [Act on the Rehabilitation and Compensation of Soldiers Discriminated Against in Service Law on the grounds of Consensual Homosexual Acts, on the grounds of their homosexual orientation or on the grounds of their gender identity](#) was introduced, which repealed military service court verdicts related to consensual homosexual acts issued before 3 July 2000.

¹¹¹ [Germany to overturn convictions under Nazi-era anti-gay laws](#), *The Irish Times*, 22 March 2017.

¹¹² [Gay Reparations Are Past Due](#), *Foreign Policy*, 29 May, 2021.

Conclusion

The Minister for Justice, Home Affairs and Migration, Jim O’Callaghan TD, has committed to introducing a new scheme for the disregard of certain historical convictions at Report Stage of the *Criminal Law, Civil Law and Defence (Miscellaneous Provisions) Bill 2026*, on Wednesday 10 June 2026. This follows a commitment made by the Minister in summer 2025 to prioritise and expedite the creation of the scheme. While the text of the proposed amendment that will establish the scheme has not yet been made publicly available, the Minister has indicated that this will operate as an application-based scheme, and the proposals will set out the qualifying offences, the criteria for a disregard and the procedures for making, considering and determining applications. There will also be provision for an independent review of negative decisions or revocation of the disregard.

Only some of those with convictions under the repealed legislation may avail of a pardon, as this historical legislation did not differentiate between consensual and non-consensual sexual activity, and did not have regard to the age of the participants. As such, only those who engaged in sexual activity that would currently be considered lawful will be able to avail of the new scheme. However, as noted above, the text of the proposed amendment has not yet been published, so the scheme’s precise parameters are not yet clear.

A number of other countries have introduced similar schemes. The standard scheme applied in the jurisdictions surveyed involves a process whereby persons convicted of historic consensual same-sex offences may apply to have their conviction expunged or disregarded, if the nature of the conviction accords with certain requirements set out in legislation (e.g. the act was consensual and did not involve a minor). However, certain issues have arisen in the operation of these schemes, including low uptake, narrow scope, and a lack of compensation for those convicted.