

# A step by step guide to deleting gay sex convictions from your record

From 1 October 2012 people in England and Wales with some convictions and cautions for consensual gay sex will be able to apply to the Home Office to have those offences removed from their criminal records.

This guide will tell you who is eligible and how to apply.



**Stonewall**



Stonewall campaigned hard for the repeal of laws that criminalised gay sex and to have those consensual gay sex convictions deleted from people's records. The inclusion of these unfair former offences on the criminal records of thousands of gay men stigmatised them and put many off volunteering or applying for jobs that required a criminal record check. The new rules secured by Stonewall now allow people with these convictions to apply to have them 'disregarded'.

### What does 'disregarded' mean?

Any conviction, caution, warning or reprimand that has been 'disregarded' should in all circumstances be considered as never having happened. This means it won't appear on your criminal record or in any criminal record checks. It also means you don't have to tell anyone about the offence, for example in application forms or in court cases.

### How long does the application process take?

The application process from start to finish is expected to take 12 weeks, although it may be longer or shorter depending on the complexity of the case.

### What offences can be disregarded?

Only people with convictions, cautions, reprimands and warnings under certain laws (see below) can have them disregarded. In general this means:

- People convicted or cautioned for having consensual gay sex with someone over 16
- People convicted or cautioned for gross indecency with another man
- People convicted or cautioned for frequenting with intent (commonly known as loitering with intent)

Each individual's case will be different. This means that each application will be judged on the information you provide and information contained in official records. People charged under these laws will only be able to have them disregarded if two key conditions are satisfied.

### What are the two conditions that have to be met?

The law is clear that people can only have offences disregarded that are no longer an offence today. When presented with your application the Home Secretary can only approve it if satisfied that the following conditions have been met:

- The other person(s) involved in the offence were 16 or over at the time of the offence
- The offence does not involve sexual activity in a public lavatory (which is still illegal)

### What laws were people prosecuted under?

Many people are unaware of exactly what they were cautioned or convicted with. The police or courts were often not clear what people were charged with, sometimes changing the charge during the process. In many other cases documentation or records have been lost.

The Home Office recognises that not everyone will have complete information about the offences with which they were charged. The application process is designed for you to provide as much information as possible to allow the Home Office to search your records for the specific offences.

## Gay sex and age of consent convictions

Until 1967 anal sex between men (buggery) was illegal. People caught were prosecuted under Section 61 of the Offences against the Person Act 1861 and Section 12 of the Sexual Offences Act 1956. The law was then amended by the Sexual Offences Act 1967 to make gay sex lawful, but set an age of consent of 21 years. The law was similarly amended by the Criminal Justice and Public Order Act 1994 to lower the age of consent to 18. It was lowered to 16 in 2003, equalising it with the age of consent for heterosexual sex.

## Gross indecency with another man

The offence of gross indecency was introduced in 1885. Whilst there was no set definition of gross indecency in law it was used to prosecute people for a whole range of 'homosexual acts' when it could not be proven they'd engaged in buggery. People were charged with the offence originally under Section 11 of the Criminal Law Amendment Act 1885 and subsequently Section 13 of the Sexual Offences Act 1956. Gross indecency was repealed in 2003.

## Loitering with intent

The police also maliciously prosecuted people for being in an area where they suspected gay men were having sex. Often men were prosecuted under Section 4 of the Vagrancy Act 1824 for frequenting with intent (commonly known as loitering with intent).

## Military personnel

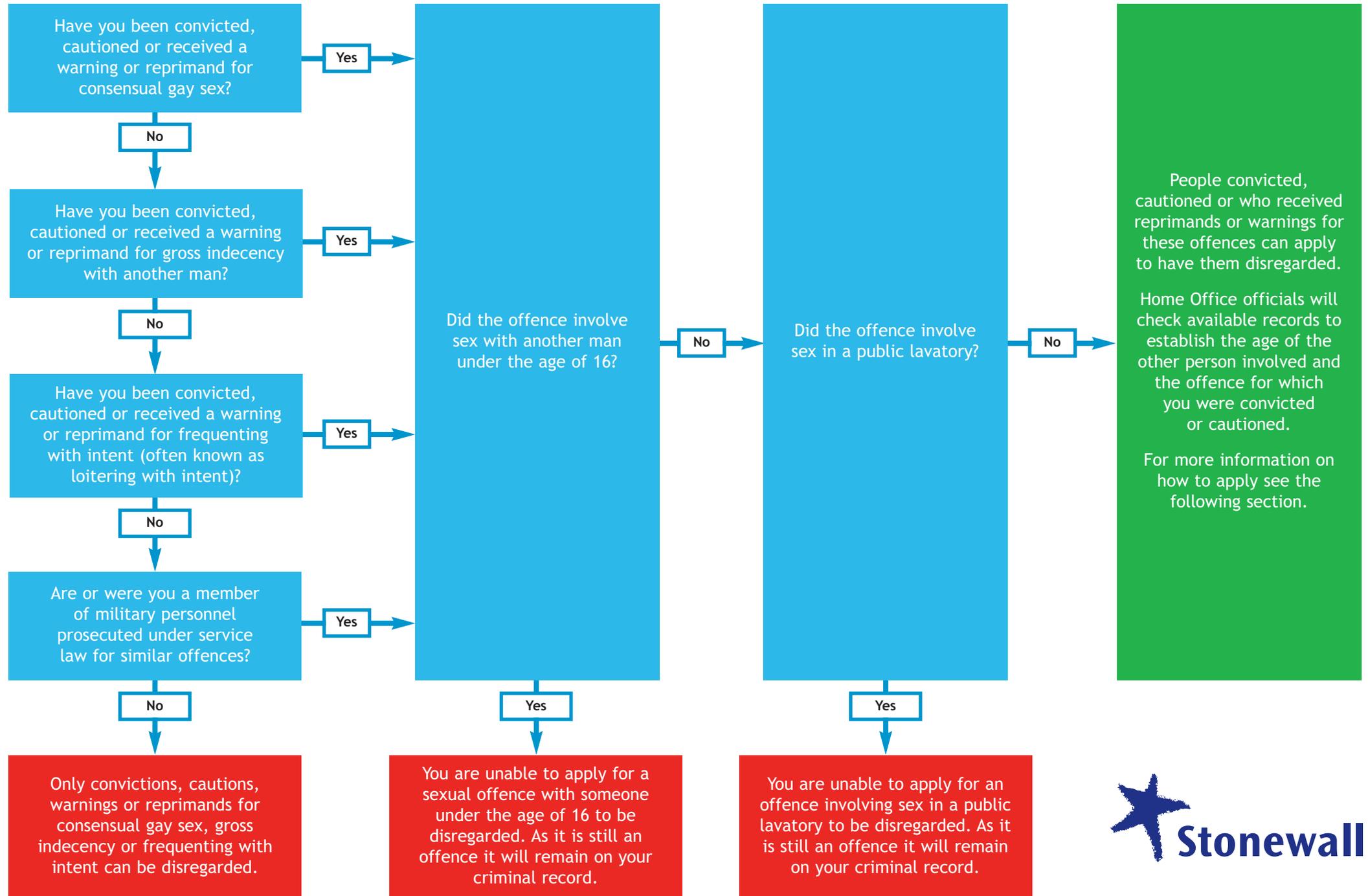
Members of the armed forces who were prosecuted for the above offences were sometimes charged under separate laws covering the armed forces.

## The laws covered

- Section 12 or 13 of the Sexual Offences Act 1956
- Section 4 of the Vagrancy Act 1824
- Section 61 of the Offences against the Person Act 1861
- Section 11 of the Criminal Law Amendment Act 1885
- Section 45 of the Naval Discipline Act 1866
- Section 41 of the Army Act 1881
- Section 41 of the Air Force Act 1917
- Section 70 of the Army Act 1955
- Section 70 of the Air Force Act 1955
- Section 42 of the Naval Discipline Act 1957

If you are unsure what offences you were convicted or cautioned for you can check a copy of your criminal record produced by the Criminal Records Bureau (CRB). You will have received this following any CRB application made through an employer or a voluntary placement. If you don't have access to a copy you can apply for a 'subject access request' from the police force where you were charged. If, having checked your record, you remain unsure of the offence for which you were convicted or cautioned you can still apply to the Home Office. They will try to establish what offences are listed on your record and whether they can be disregarded.

# Are you eligible to apply?



## The Application Process

We hope the step-by-step guide below is useful and helps you with your application. Our information service staff and volunteers are here to answer any further questions you may have about the process. We are holding a number of drop-in sessions (by appointment only) to answer any of your questions and offer information on completing your application form. For more information contact us on:

08000 50 20 20

[info@stonewall.org.uk](mailto:info@stonewall.org.uk)

Stonewall, Tower Building,

11 York Road, London, SE1 7NX

### Step 1 - Completing your application

To apply to have offences disregarded you need to complete an application form that can be downloaded at [www.stonewall.org.uk/oldconvictions](http://www.stonewall.org.uk/oldconvictions). If you need a paper form Stonewall can send you one. You can only apply by filling in the form and posting or emailing it to the Home Office (see Step 2).

The form comes in two sections:

Section A is for you to confirm your identity and how you would like to be contacted

Section B is for you to give details of the conviction(s) which you are seeking to have disregarded

#### Section A

You will need to provide proof of your identity (such as a copy of your passport or driving licence) and your current address (such as a copy of a utility bill). Do not submit original documentation, only copies. In Section A you will also need to state how many different offences you are applying to have disregarded.

#### Do you need someone to apply on your behalf?

You can give consent for someone else to liaise with the Home Office about your application. To do this you must also enclose a signed letter with your application granting consent to a named individual. Even if you have granted someone consent to help you with your application you must sign the forms yourself.

You can also list a separate address to which communication about your application can be sent but you must supply your current address so the Home Office can use it to search your records.

#### Section B

You will need to submit a signed copy of Section B for each conviction, caution, warning or reprimand you are seeking to have disregarded, even if they are for the same offence. For example, if you have been convicted of gross indecency twice you will need to fill out two copies of Section B, one for each conviction.

You should provide as much detail as you can about the time, date and offence. Don't worry if you cannot remember all the details as the purpose of Section B is to provide Home Office officials with as much information as possible to aid their search of official records. The more relevant information you are able to give, the more efficient the process will be.



You are also provided an opportunity to detail the other circumstances of the offence. This is a very important part of your application as it may help the Home Secretary decide whether you satisfy the two conditions outlined previously. It should be concise and primarily deal with the facts of the case and how they merit you applying. If you can you should give information on:

- The key facts of the case (date, location etc.)
- That you were not engaged in sex in a public lavatory
- That the person(s) involved were over 16
- Anything that may indicate you were targeted, such as anything the police said to you at the time of the arrest
- Why you feel the circumstances merit the offence being disregarded

**You can submit evidence in support of your application but remember to keep copies.**

## Step 2 - Submit your application

You can submit your application to the Home Office by post;

Chapter 4 Applications

SPPU

4th Floor Fry Building

2 Marsham Street

London

SW1P 4DF

You can also submit your application by email to: [chapter4applications@homeoffice.gsi.gov.uk](mailto:chapter4applications@homeoffice.gsi.gov.uk)

**Remember to keep a copy of your application.**

## Step 3 - Home Office review your official records

Once your application form has been received Home Office officials will begin to search official records where details of your offence may be recorded. They will contact different record holders (police forces, courts, armed forces etc.) and ask them for copies of any records they hold on you relating to the offence(s). Home Office officials may get in touch with you to request more information to help them do this.

Once the Home Office has collated all the information it needs about the offence(s) it will submit your application to the Home Secretary to make a decision.

## Step 4 - Complex cases

In cases where the information gathered appears particularly unclear or contradictory the case will be submitted to an independent panel to review and make a recommendation to the Home Secretary. You will not be called to give information or evidence to the panel.



## Step 5 - Decision by the Home Secretary

Your application will then be submitted to the Home Secretary to decide whether to disregard the offences or not. You will be notified about the Home Secretary's decision either way. Make sure you keep this notification for future reference.



## Step 6 - Offences disregarded

If the Home Secretary approves your application the Home Office will contact all of the organisations that hold a record of your offence advising them to delete or amend those records. They then have to write to you to confirm the offences have been removed from your record. Make sure you keep these letters for future reference. If you do not hear from these organisations you should contact the Home Office to notify them.

In the unlikely event that you find at a later date that these offences remain on your record you should contact the relevant record holders. For example, if it remains on your criminal record you should contact the police force where the offence took place.



## Step 7 - Appealing the decision

If your application is unsuccessful and you feel you could supply additional evidence or want to correct a mistake in your application, you should contact the Home Office to review the case. If you don't have any additional evidence to offer, you can appeal to the High Court.

The court can only review the facts presented to the Home Secretary, so you won't be able to submit new evidence at this stage. For further information on how to apply to the court to appeal the decision contact us on **08000 50 20 20**.

## Home Office records of your application

The Home Office will keep a secure and confidential record of who has applied for disregards and what decision was made. This is so they can assist you if you experience problems following your application. This record will not form part of your official criminal record and will not be accessible by anyone other than the case workers handling applications. These records will be deleted after 6 years.

Funded by individual donations, Stonewall lobbied hard for these new provisions and continues to campaign against homophobia in healthcare, care services, schools, at work and beyond. For more information on how you can support Stonewall visit [www.stonewall.org.uk/donate](http://www.stonewall.org.uk/donate) or contact Lynn Percival on **020 7593 1876** or [lynn.percival@stonewall.org.uk](mailto:lynn.percival@stonewall.org.uk).



Tower Building  
York Road  
London SE1 7NX

**Free Info Line:** 08000 50 20 20 (Mon-Fri 9:30am to 5:30pm)

For all information and resource requests and enquiries about Stonewall.

**Fax:** 020 7593 1877

**Email:** [info@stonewall.org.uk](mailto:info@stonewall.org.uk)

**We ask that you contact Stonewall through one of the above methods as we do not run a drop in service.**